

## Chapter 123 Oregon Business Development Department

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<b>123-630-0040</b>	Ineligible Activities
<b>123-630-0050</b>	Application and Fees
<b>123-630-0060</b>	Preference
<b>123-630-0070</b>	Reporting Requirements
<b>123-630-0080</b>	Certification
<b>123-630-0090</b>	Limitations for Certification
<b>123-630-0100</b>	Recapture of Tax Credit
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### DIVISION 635

#### OREGON INVESTMENT ADVANTAGE

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<b>123-635-0100</b>	Definitions
<b>123-635-0150</b>	Qualified Locations

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123-635-0175	Unique Operations
123-635-0200	Preliminary Certification Application
123-635-0250	Determination of Preliminary Certification
123-635-0270	Local Objection and Relevant Requirements
123-635-0300	Annual Certification
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### DIVISION 650

#### ENTERPRISE ZONE CREATION AND AMENDMENT

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123-650-0066	Enterprise Zone Existence
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123-650-0500	Local Government Sponsorship or Consent
123-650-0600	Zones Allowed per Jurisdiction
123-650-0700	Rural and Urban Designations
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123-650-4000	Designations & Boundary Changes — Initiating Designation
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123-650-5200	Consultations Generally with Taxing Districts
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### DIVISION 656

#### TRIBALLY AND FEDERALLY BASED ZONE DESIGNATIONS

123-656-0001	Purpose and Scope
123-656-0100	Definitions
123-656-1000	Tribal Zones — Applicability of Regular Parameters
123-656-1200	Reservation Enterprise Zone Designations
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123-656-2100	Boundary Changes to Conform to Federal Zone
123-656-2300	Terminations

### DIVISION 662

#### ELECTRONIC COMMERCE ENTERPRISE ZONES

123-662-0001	Purpose and Scope
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123-662-1000	Electronic Commerce Status
123-662-1200	Designated Areas
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### DIVISION 668

#### LOCAL ENTERPRISE ZONE SPONSORSHIP

123-668-0001	Purpose and Scope
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123-668-0100	Sponsor of a Zone
123-668-1000	Duties and Options — Local Zone Manager
123-668-1100	Reports by Sponsor at Beginning and End of an Enterprise Zone
123-668-1300	Enhanced Public Services and Other Local Incentives
123-668-1400	Locally Available, Public Real Estate
123-668-1600	Funds Derived through an Enterprise Zone
123-668-1700	Authorization Filing Fee
123-668-2000	Requirements on Businesses — Applicable Situations
123-668-2100	Basic Parameters
123-668-2200	Additional to Statutory Provisions
123-668-2300	Reasonableness
123-668-2400	Zone Sponsor Policies
123-668-2450	Approving Agreements
123-668-2500	Additional Conditions in an Urban Zone

### DIVISION 674

#### STANDARD EXEMPTION ON TAXABLE ENTERPRISE ZONE PROPERTY

123-674-0001	Purpose, Scope and General Process for Businesses Seeking Exemption
123-674-0100	Definitions
123-674-0200	General Employment Terminology and Issues
123-674-0500	General Points
123-674-0600	Compensation Standard
123-674-0700	Written Agreement between Sponsor and Eligible Business Firm
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123-674-1100	Basic Eligibility of Firms and Operations
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123-674-1300	Eligible Business Firm with Ineligible Activities
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123-674-3100	Limitations on Exemption Relative to Authorization
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123-674-5200	Mechanical, Personal and Unqualified Property
123-674-5300	Buildings, Structures and Other Real Property
123-674-5400	Property Already Entered on Rolls
123-674-5500	Obligations for All Leases, Lessors and Lessees
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123-674-6100	Mandatory First-year Claim with Property Schedule
123-674-6200	Filing Latter-year Claims
123-674-6300	Disqualification of Particular Property
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123-674-6610	Payment of Tax Savings
123-674-6620	Distribution of Payment among Cosponsors
123-674-6630	Utilization of Payments
123-674-6880	Deferral during Recession
123-674-7200	General Lawfulness — Terminology
123-674-7210	Declarations and Responsibilities
123-674-7220	Effect of Event of Noncompliance
123-674-7230	Materiality
123-674-7240	Cure
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123-674-7700	First Source hiring Agreements — Coverage
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### DIVISION 680

#### RURAL RENEWABLE ENERGY DEVELOPMENT ZONES

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123-680-1000	Basic Points about RREDZs
123-680-1200	Designation of a RRED Zone
123-680-1400	Limitation of Exempt Real Market Value
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### DIVISION 690

#### LONG-TERM RURAL ENTERPRISE ZONE INCENTIVES

123-690-0001	Purpose and Scope
123-690-0100	Terminology
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123-690-4000	Facility Criteria — Minimum Investment Size
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123-690-4400	Minimum Distance from I-5
123-690-4600	Minimum Average Annual Compensation
123-690-5000	Maintaining Employment and Compensation
123-690-5200	Post-Certification Verification
123-690-6000	Property Tax Contingencies — Other Exemptions
123-690-6200	Subsequent Facility Site Investments
123-690-6400	Multiple, Joint Facilities
123-690-8000	Corporate Payroll Tax Credit — State Request
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### DIVISION 1

#### PROCEDURAL RULES

##### 123-001-0050

##### Definitions

For purposes of this division of administrative rules, and generally throughout this chapter of administrative rules, unless the context demands otherwise:

(1) Administrator means the Administrator of the Infrastructure Finance Authority.

(2) Authority means the Infrastructure Finance Authority within the Oregon Business Development Department.

(3) Board means the Oregon Infrastructure Finance Authority Board.

(4) Brownfield means real property where expansion or redevelopment is complicated by actual or perceived environmental contamination as defined in ORS 285A.185(1).

(5) Collateral means property subject to a security interest or security agreement, as defined in ORS 79.1050.

(6) Commission means the State of Oregon Business Development Commission appointed under ORS 285A.040.

(7) Department means the State of Oregon Business Development Department as established under ORS 285A.070.

(8) Deputy Director means the deputy director of the Oregon Business Development Department.

(9) Director means the director of the Oregon Business Development Department as appointed under ORS 285A.070.

(10) Distressed Area means a geographic area within the state of Oregon that meets the criteria set forth under OAR 123-024-0031.

(11) Finance Committee means the financial committee formed by the Oregon Business Development Commission as defined in OAR 123-001-0520.

(12) Financial Institution means a financial institution as defined in ORS 706.008.

(13) First Source Hiring Agreements means the hiring agreements as described in OAR 123-070.

(14) Grant means an award of monies to an approved recipient for eligible purposes.

(15) Governor means the sitting Governor of the State of Oregon, pursuant to Article V of the Constitution of Oregon.

(16) Loan means debt financing provided to an approved recipient for eligible purposes.

(17) Port means a municipal corporation organized under ORS chapter 777 or 778, which may be known as a “port authority” or “port district.”

(18) Small Business means a business having 100 or fewer employees in accordance with ORS 285A.010(9)

(19) State Revenue Bonds means bonds issued by the State of Oregon that are payable from specific revenue sources and are not a pledge of the full faith and credit of the State of Oregon.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 183.335, 183.341, 183.355, 285A, 285B & 1999 OL Ch. 509

Hist.: EDD 4-2003, f. & cert. ef. 3-26-03; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08; EDD 8-2009, f. & cert. ef. 10-1-09

##### 123-001-0100

##### Notice Rule (Proposed Permanent Rulemaking)

In proposing to amend, repeal or adopt permanent administrative rules for this chapter, pursuant to ORS 183.335(1)(a) and 183.341(4):

(1) The Department shall at a minimum do the following with respect to those listed in section (2) of this rule:

(a) Furnish a copy of the notice of proposed rulemaking/hearing, as published or to be published in the *Oregon Bulletin* consistent with ORS 183.335(1)(b); and

(b) Make available a copy of the proposed rule language to be amended or adopted.

(2) All of the following are included for purposes of section (1) of this rule:

(a) The current list of persons, organizations and so forth that have requested notification, in accordance with ORS 183.335(1)(c) and (8);

(b) Certain legislators, as prescribed in ORS 183.335(1)(d) and (15);

(c) Department of Land Conservation and Development, consistent with the time frame for subsection (b) of this section, for rules governing any program or activity affecting land use (see Division 008 of this chapter of administrative rules);

(d) The following organizations and media sources, consistent with the time frame for subsection (a) or (b) of this section:

(A) Associated Press;

(B) Association of Oregon Counties;

(C) Capitol Press Room;

(D) League of Oregon Cities; and

(E) Oregon Department of Administrative Services, Director's Office, for any substantial program change not arising directly from legislation; and

(e) Any other media source, person or party interested in or significantly affected by the proposed rulemaking, as determined by the Department, depending on the particular nature and subject of the rules, which might include but is not limited to Economic Development Districts, Port Districts, Public Ports Association, Special Districts Association, Associated Oregon Industries, industry or contractor associations, nonprofit or labor organizations, local newspapers, business publications, local units of government, or state and federal agencies. This subsection may be carried out consistent with the time frame for subsection (a) or (b) of this section.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 183.335, 183.341, 183.355, 197.040, 197.180, 285A & 285B

Hist.: EDD 4-2003, f. & cert. ef. 3-26-03

### 123-001-0200

#### Model Rules of Procedure

(1) Division 001 and any statutorily mandated element in the other divisions of the State of Oregon Attorney General's Uniform and Model Rules (OAR chapter 137), pursuant to the *Administrative Procedures Act* (ORS Chapter 183), are hereby incorporated into and adopted as part of this division of administrative rules, by reference. These and other relevant documents are published in the Attorney General's "Administrative Law Manual," which may be obtained from the Oregon Department of Justice, Publications Section, Justice Building Room 16, 1162 Court Street NE, Salem, OR 97301-4096.

(2) No internal guidance materials of the Department for purposes of administrative rules are incorporated into or adopted as part of this division of administrative rules, in any way, and such materials are not binding on the rulemaking procedures of the Department except insofar as they coincide with requirements pursuant to section (1) of this rule.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 183.335, 183.341, 183.355, 285A & 285B

Hist.: EDD 4-2003, f. & cert. ef. 3-26-03

### 123-001-0300

#### Waivers of Provisions Provided by Rule in This Chapter

The Director or the Director's designee may formally waive requirements otherwise prescribed by this chapter of administrative rules, if such a waiver serves to further the goals and objectives of ORS Chapters 285A, 285B and 285C and results in sound economic development or job creation in the state, such that:

(1) The requirement must be an invention of the administrative rule itself, and not arise from policies established by the Commission or from any state or federal law, including cases where state law might in some way be ambiguous, but the administrative rule is considered to correctly and optimally clarify or interpret that law;

(2) This rule applies whether or not the division of administrative rule similarly provides for waiver by the Director; and

(3) This rule does not interfere with other ways to make exceptions or to provide flexibility, as described elsewhere for certain administrative rules, and it is not meant to substitute for the timely amendment of administrative rules.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A & 285B

Hist.: EDD 4-2003, f. & cert. ef. 3-26-03; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08

### 123-001-0500

#### Commission Committees

For purposes of advisory and technical committees for the Commission:

(1) These committees are different from, and this rule does not apply to, statutory boards or commissions affiliated with the Department, but whose appointment, authority, duties and relationship to the Commission, if any, are prescribed (such as the Oregon Arts Commission under ORS 359.010 to 359.137) by the Legislative Assembly.

(2) The committees under this rule, which are part of the Department and are public bodies as subsidiaries to the Commission, consist of Ad Hoc Committees established solely by authority of the Commission and operating at its discretion under ORS 285A.060.

(3) An Ad Hoc Committee ("it" for purposes of this section), as defined in subsection (2) of this rule, is subject to the following parameters:

(a) The Commission must create it by a formal and public action for a certain definite period, or otherwise it may exist and operate until the Commission terminates or suspends it;

(b) The chair of the Commission is primarily responsible for appointing each of its members, which serve at the chair's pleasure (the Director or designee is always an ex officio member), and for determining its makeup and similarly fundamental attributes;

(c) Its membership shall broadly reflect the different geographic regions of this state, and at least one of its members shall reside east of the Cascade Range;

(d) It shall provide advice and recommendations to the Commission or the Department, although it may exercise, on a day-to-day basis, such duties or powers as the Commission delegates to it;

(e) It is subject to the Commission's review and to reporting its decisions, actions and agenda for future meetings, which any member of the Commission may attend;

(f) It may adopt standards and procedures for its activities, with or without direction from the Commission; and

(g) Regardless of anything described in this chapter of administrative rules, the Commission reserves the discretion to change any delegation and directive related to its future functions, at any time.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.060

Hist.: EDD 4-2003, f. & cert. ef. 3-26-03; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08

### 123-001-0520

#### Finance Committee for the Commission

The Finance Committee is an Ad Hoc Committee that has been formed and empowered by the Commission in accordance with ORS 285A.060 such that:

(1) The Commission charges the Finance Committee (pursuant to divisions of this chapter of administrative rules) with the following:

(a) Immediate oversight and the approval of projects and proposals under the following business finance programs:

(A) Economic Development Revenue Bonds (division 011); and

(B) Oregon Business Development Fund (division 017);

(b) Consideration on appeal of administrative denials of business loans under the following programs:

(A) Entrepreneurial Development Loan Fund (division 019); and

(B) Credit Enhancement Fund (division 021); and

(2) The Finance Committee's members:

(a) Are appointed by the chair of the Commission to include representation from among this state's banking and financial community, as well as at least one member possessing general experience with a traded-sector industry or industry association; and

(b) Serve indefinite terms at the pleasure of the Commission's chair, such that a newly appointed Commission chair assumes the makeup and organization of the current Finance Committee until the Commission chair initiates changes.

(3) The Commission's chair shall select a chairperson for the Finance Committee, such that:

(a) The chairperson shall call meetings and set agendas for the Finance Committee with the assistance of Department staff; and

(b) A member chosen by the chairperson (or otherwise, the longest-serving member present) shall preside over a Finance Committee meeting at which the chairperson is absent.

(4) The supervisor of the Department's business finance programs shall administer the operations of the Finance Committee, officially carry out its decisions, prepare business for its consideration

with the chairperson's consent, and serve as an ex officio member on behalf of the Director.

(5) Nothing in this rule, or elsewhere in this chapter of administrative rules, interferes with the Commission's authority to dissolve the Finance Committee or to redirect its future procedures and purposes.

Stat. Auth.: ORS 285A.075, 285B.056, 285B.206(3) & 285B.743(2)

Stats. Implemented: ORS 285A.060, 285A.666 - 285A.732, 285B.050 - 285B.098, 285B.200 - 285B.285B.218, 285B.320 - 285B.371 & 285B.740 - 285B.758

Hist.: EDD 4-2003, f. & cert. ef. 3-26-03; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08; EDD 8-2009, f. & cert. ef. 10-1-09

### 123-001-0700

#### Purpose, Scope and Definitions

(1) OAR 123-001-0700 to 123-001-0750 establish procedural steps and options for handling appeals, in the manner of a contested case under ORS 183.310 to 183.550, when the Department denies:

(a) An application for either preliminary certification or annual certification to exempt the taxable income of a facility under ORS 316.778 or 317.391 (see OAR 123-635), other than when denial results from objection to preliminary certification by the city, county or port; or

(b) Any other application or request for which state law provides for appeal by contested case.

(2) Except as otherwise provided under state law or elsewhere in this chapter of administrative rules, this rule and contested case provisions do not pertain to any other proceeding, hearing, determination or decision by the Department, Director, Commission or any subsidiary body.

(3) OAR 123-001-0700 to 123-001-0750 are intended only to supplement mandatory elements of contested case proceedings under the Administrative Procedures Act for matters specific to the Department. Therefore, relevant parts of OAR 137-003 are hereby incorporated into and adopted as part of this division of administrative rules by reference.

(4) For purposes of OAR 123-001-0700 to 123-001-0750, unless the context demands otherwise:

(a) "Applicant" means the person (including but not limited to a business firm) that sought approval under section (1) of this rule, as identified in the application form or other submitted materials. This person is thus the affected party or appellant for purposes of the contested case, and the submitted address given in the form is assumed correct for mailing the Notice.

(b) "Notice" means the formal written statement on Department letterhead that the Department initially sends to the Applicant, in accordance with OAR 123-001-0725.

Stat. Auth.: ORS 183.341(2), 183.417(2), 183.464(2) & 285A.075

Stats. Implemented: ORS 183.413 - 183.470 & 285C.500 - 285C.506

Hist.: EDD 12-2004, f. & cert. ef. 7-27-04; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08; OBDD 40-2010, f. 11-30-10, cert. ef. 12-1-10

### 123-001-0725

#### Steps and Reservations of the Department

(1) As described in OAR 123-001-0700, the Department shall send notice to the applicant, such that:

(a) The Department sends notice by registered or certified mail;

(b) If a copy is sent also by regular, first-class mail, it must be so mailed at least five days prior to the notice as described in subsection (a) of this section; and

(c) The Department shall also furnish a copy to the Department of Revenue/county assessor as relevant.

(2) The notice, on Department letterhead, shall include but is not limited to the following:

(a) The date and other pertinent facts of the Department's receipt of the application;

(b) Brief explanation of why the Department is unable to approve it;

(c) Reference to the specifically relevant statutory subsection(s) or administrative rule section(s), and further explanation, as warranted, regarding how these references support the Department's conclusion(s);

(d) Statement of the applicant's right to a contested case hearing on the matter before an administrative law judge and to be represented by legal counsel;

(e) Designation of the Department's current file on the application as the record for purposes of proving a prima facie case upon default; and

(f) Instruction on how the applicant must file a written request in order to receive the hearing, such that the request is received by the Department on or before a specified date not less than 30 calendar days after the Notice.

(3) The Department reserves the option (at its sole discretion) to withdraw the proposed denial and grant certification to the applicant for any reason, prior to a final order, including but not limited to the re-submission of a new application or the consideration of evidence that alters the Department's prior conclusion(s), as otherwise allowed under the applicable laws.

(4) Upon default by the applicant, including but not limited to failure to timely file a request for a hearing with the Department, the Department shall promptly issue a final order denying certification, furnishing a copy to the Department of Revenue/county assessor as relevant.

(5) If the applicant files a timely request for a contested case hearing, the case shall be referred to the Office of Administrative Hearings and a copy of the referral furnished to the applicant, General Counsel and the Department of Revenue/county assessor as relevant.

(6) The administrative law judge will issue a proposed order, pursuant to applicable proceedings of the contested case hearing, and except as set forth in subsection (7)(a) or (b) of this rule, that proposed order shall become final by order of the administrative law judge not less than 45 calendar days after the issuance of the proposed order.

(7) A proposed order in section (6) of this rule shall not become final if:

(a) The Department gives timely written notification to the parties and the administrative law judge of its intent to alter the findings or effect of the order, subsequent to which it shall issue an amended proposed order and/or final order, as warranted.

(b) Within 30 calendar days from issuance of the proposed order, a party files written exceptions with both the Department and the administrative law judge that concisely present the party's entire argument against the proposed order, and the Department subsequently requests in writing that the administrative law judge undertake further steps. Such steps include, but are not limited to, an official response to the exceptions or the hearing of new or additional evidence.

Stat. Auth.: ORS 183.341(2), 183.417(2), 183.464(2) & 285A.075

Stats. Implemented: ORS 183.413 - 183.470 & 285C.500 - 285C.506

Hist.: EDD 12-2004, f. & cert. ef. 7-27-04; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08; EDD 8-2009, f. & cert. ef. 10-1-09; OBDD 40-2010, f. 11-30-10, cert. ef. 12-1-10

### 123-001-0750

#### Representations by Agency Representative

For purposes of any contested case hearing before an administrative law judge:

(1) Subject to the approval of the office of Attorney General of the State of Oregon under ORS chapter 180, the Director may authorize an officer or employee of the Department to appear on behalf of the Department.

(2) Such a Department representative may not present legal argument on behalf of state government.

(3) The Department retains its full prerogative, with or without intervention by the administrative law judge, to consult with or otherwise involve the office of Attorney General. Such prerogative includes but not necessarily limited to the sole purpose of having the office of Attorney General present legal argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

(4)(a) "Legal argument" includes arguments on:

(A) The jurisdiction to hear the contested case;

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(B) The constitutionality of a statute or rule or the application of a constitutional requirement to the Department; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or the presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures followed in the contested case hearing.

Stat. Auth.: ORS 183.452(2)(b) & 285A.075

Stats. Implemented: ORS 183.411 & 183.452

Hist.: EDD 12-2004, f. & cert. ef. 7-27-04; EDD 1-2008, f. & cert. ef. 1-2-08; EDD 11-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 15-2008, f. & cert. ef. 6-4-08; OBDD 40-2010, f. 11-30-10, cert. ef. 12-1-10

### DIVISION 5

#### ACCESS TO PUBLIC RECORDS, FEES FOR RECORD SEARCH AND COPIES OF PUBLIC RECORDS/PUBLICATIONS

##### 123-005-0000

###### Applicability of Rules and Definitions

This division of administrative rules applies to all public records for which the Department is custodian of. For the purposes of these rules definitions may be found in Procedural Rules, OAR 123-001.

Stat. Auth.: ORS 285A.075(A)

Stats. Implemented: ORS 192.410 - 192.505, 285A & 285B

Hist.: EDD 12-1993, f. & cert. ef. 12-2-93; EDD 4-2003, f. & cert. ef. 3-26-03; EDD 9-2009, f. & cert. ef. 10-1-09

##### 123-005-0010

###### Access to Records

In carrying out responsibilities under ORS 192.410 to 192.505, the Department shall:

(1) Make restrictions and take precautions necessary to protect the integrity of the records and prevent interference with the regular discharge of the Department's duties;

(2) Maintain the confidential nature of records as provided under ORS 192.502(16), 285A.090(5), 285B.701(4) and other applicable state or federal laws, including but not limited to protecting the attorney-client privilege, as well as related provisions in OAR 123-017-0040 or other administrative rules.

(3) Allow that public records of the Department to be inspected or examined, subject to prior request, approval and arrangements, during the normal working days and hours of the offices of the Department at which the records are kept. The inspection or examination shall take place at the main office, a field office, or any other reasonable location designated by the Department.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 192.410 - 192.505, 285A & 285B

Hist.: EDD 12-1993, f. & cert. ef. 12-2-93; EDD 4-2003, f. & cert. ef. 3-26-03

##### 123-005-0020

###### Requests to Inspect or Obtain Copies of Public Records

(1) A request to inspect or obtain copies of a public record or information from public records shall be made in writing (Attention: Public Information Staff, Oregon Business Development Department, State Lands Building Suite 200, 775 Summer Street NE, Salem, OR 97301-1280), and shall include:

(a) The name, address and telephone number of the requester;

(b) Identification of the needed public record, or of the type and format of needed public record information, if known to the requester;

(c) Time period records were produced and officials involved in producing records or other relevant information, if known to the requester; and

(d) The number of copies for each item requested of the record, if copies are requested.

(2) The Director may waive the requirement under section (1) of this rule for a request to be made in writing, if it is determined that the waiver contributes to effective administration.

Stat. Auth.: ORS 285A.075(A)

Stats. Implemented: ORS 192.410 - 192.505, 285A & 285B

Hist.: EDD 12-1993, f. & cert. ef. 12-2-93; EDD 4-2003, f. & cert. ef. 3-26-03; EDD 9-2009, f. & cert. ef. 10-1-09

##### 123-005-0030

###### Payment for Inspection and Copies of Public Records

(1) Except as waived in section (2) of this rule, a person who is receiving a copy of a public record or information from a public record shall pay the Department's actual cost for:

(a) Staff time necessary to identify, locate, summarize or compile the record as requested;

(b) Attorney fees, staff time and so forth associated with the screening of materials or blocking out of text that is exempt from disclosure;

(c) Supervision of on-site inspection of the public record by the requester;

(d) Customary fee per page for reproduction, handling and assembling of copies to be provided; and

(e) Postage or similar expenses and special supplies or services necessary to furnish the copy or information.

(2) The Director may reduce or waive the payment or charges in section (1) of this rule, if the Director determines that the reduction or waiver will aid in the effective administration of Department operations or is in the public interest because making the record available substantially benefits the general public.

(3) The Department shall as necessary establish a schedule of costs and charges for purposes of this division of administrative rules, which shall apply to all concurrent public records requests.

(4) The requester shall pay all fees for access to a public record in advance, based on estimates by the Department, unless the Director approves late payment.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 192.410 - 192.505, 285A & 285B

Hist.: EDD 12-1993, f. & cert. ef. 12-2-93; EDD 4-2003, f. & cert. ef. 3-26-03

### DIVISION 6

#### PROCEDURES FOR CONTRACTS ENTERED INTO WITH THE ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT

##### 123-006-0005

###### Purpose

Pursuant to ORS 285A.075(3), the department may enter into contracts as necessary or appropriate to carry out its authorized mission. This rule sets forth the Department's procurement and contracting procedures. This rule does not apply to financing contracts, grants, interagency or intergovernmental agreements, office leases, or contracts specifically directed by statute.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075 & 279A.070

Hist.: EDD 4-1991, f. & cert. ef. 5-20-91; EDD 11-2003(Temp), f. & cert. ef. 12-23-03 thru 6-15-04; EDD 11-2004(Temp), f. & cert. ef. 6-15-04 thru 8-5-04; EDD 21-2004, f. & cert. ef. 8-5-04; EDD 11-2005, f. 11-30-05, cert. ef. 12-1-05; EDD 26-2008, f. 8-28-08, cert. ef. 9-1-08

##### 123-006-0020

###### Standard Procedures and Exceptions

The Department will comply with the Oregon Department of Justice Model Public Contract Rules, OAR chapter 137, divisions 046, and 047, as applicable, for all its procurement and contracting activity, with the following exceptions:

(1) For Architectural, Engineering, and Land Surveying contracts, a special class of personal services contracts, the Department

will comply with OAR chapter 137, division 048. Services defined as Related Services are subject to 123, division 6.

(2) For contracts relating to the Department's foreign trade offices operating outside the state, the provisions of OAR 137-047-0700 through 137-047-0760 (regarding legal remedies) shall not apply to public contracts under this division.

(3) For contracts, other than those identified in (1) or (2) of this rule, that are best implemented as multiple work order contracts under an Agreement for Goods or Services, the Department will comply with OAR 123-006-0025.

(4) The provisions of OAR 137-047-0800, 137-047-0265(2) and 137-047-0270(3) (regarding contract amendments) do not apply to contracts by the Department.

(5) The provisions of OAR 137-047-0670 (regarding cancelled offers) do not apply to contracts by the Department.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075 & 279A.070

Hist.: EDD 4-1991, f. & cert. ef. 5-20-91; EDD 11-2004(Temp), f. & cert. ef. 6-15-04 thru 8-5-04; EDD 21-2004, f. & cert. ef. 8-5-04; EDD 11-2005, f. 11-30-05, cert. ef. 12-1-05; EDD 26-2008, f. 8-28-08, cert. ef. 9-1-08; OBDD 37-2010, f. 10-29-10, cert. ef. 11-1-10

### 123-006-0025

#### Use of Work Order Contracts

(1) Contracts may be implemented as multiple Work Order Contracts under an Agreement for Goods or Services instead of a single contract if that implementation will provide substantial savings in time or cost, or both.

(2) The Department and the selected contractor will sign a non-binding Agreement for Goods or Services, in which the Contractor acknowledges its readiness to enter into separate work order contracts with the Department that will describe, among other things, the specific goods or services to be performed, the timeline for delivery, and the compensation. Each Work Order Contract subsequently executed with the Contractor pursuant to the non-binding Agreement for Goods or Services must be within the scope of the solicitation, if any, and will constitute a separate legally binding contract between the Department and the Contractor.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075 & 279A.070

Hist.: EDD 4-1991, f. & cert. ef. 5-20-91; EDD 11-2004(Temp), f. & cert. ef. 6-15-04 thru 8-5-04; EDD 21-2004, f. & cert. ef. 8-5-04; EDD 11-2005, f. 11-30-05, cert. ef. 12-1-05; EDD 26-2008, f. 8-28-08, cert. ef. 9-1-08

### 123-006-0030

#### Electronic Public Notice

For all required public notices or advertisements related to source selection methods, the Department may publish the notice or advertisement on the Department of Administrative Services ORPIN Electronic Procurement System instead of publishing notice in a newspaper of general circulation as described in ORS 279B.055(4)(b).

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075 & 279A.070

Hist.: EDD 11-2005, f. 11-30-05, cert. ef. 12-1-05; EDD 26-2008, f. 8-28-08, cert. ef. 9-1-08

### 123-006-0035

#### Contract Amendments

(1) General Rule. The Department may amend any contract without additional competition, including reinstatements and cost overruns, but only when the Department has determined:

(a) The amended Contract is within the Scope of the Solicitation Document, or if no Solicitation Document, the Contract; or in the instance of a Special Procurement, the approval of Special Procurement;

(b) The amended Contract does not adversely affect the competitive conditions for the original contract; and

(c) If the Contract was selected according to the Small Procurement method, the total compensation does not exceed \$10,000, or, if selected according to the Intermediate Procurement method, the total compensation does not exceed \$150,000.

(2) Anticipated Amendments.

(a) "Anticipated Amendment" means the Department has text in any Solicitation Document and the Contract that explains:

(A) The possibility of one or more Amendments;

(B) A general description of circumstances that might require an Amendment to be issued under the Contract and any changes to the requirements of the Contract that may be anticipated or even planned for, but not necessarily quantified at the time of Contract execution. These changes may be described in any Solicitation and Contract as, for example: Extra Work or Goods; Additional Work; Work to be done if certain situations are encountered; or Changes in terms, conditions, price, or type of Work; etc.; and

(C) The provisions of the Contract that are subject to negotiation in order to finalize the details and costs of such an Amendment.

(b) Anticipated Amendments do not include cost overruns or reinstatements.

(c) The Department may make one or more Anticipated Amendments to a Contract without any additional competitive process and for an unlimited amount, subject to section (1) of this rule.

(3) Unanticipated Amendments.

(a) Unanticipated Amendment" means any Amendment that does not meet the requirements of an Anticipated Amendment. Unanticipated Amendments do not include cost overruns or reinstatements.

(b) Limited Amount. The Department may make one or more Unanticipated Amendments to a Contract without any additional competitive process, provided the cumulative amounts of all Unanticipated Amendments do not exceed \$12,500 for a Contract award as a small procurement under 137-047-0265 or 25% of the Original Contract amount of a Contract awarded as an intermediate procurement under 137-047-0270 and subject to section (1) of this rule.

(c) Unlimited Amount. The Department may make one or more Unanticipated Amendments to a Contract without any additional competitive process and for an unlimited amount, subject to section (1) of this rule, and provided the Department's Designated Procurement Officer gives written approval of the Unanticipated Amendment as meeting the following requirements:

(A) The Unanticipated Amendment is due to circumstances that were unforeseen at the time the original Contract was established;

(B) The Unanticipated Amendment does not represent any important general change that alters the essential identity or main purpose of the original Contract, nor is of such importance that it should be a new undertaking; and

(C) The Unanticipated Amendment serves the public interest, including specific reasoning to support that conclusion. Reasons may include, but are not limited to: To address emergencies arising in the course of the Contract that require prompt action to protect the Work already completed or Goods delivered; to comply with official or judicial commands or directives issued during contract performance; or to ensure that the purpose of the Contract will be realized.

(4) Cost Overruns.

(a) Unless the Contract provides that the maximum total compensation is based on an estimate and is subject to amendment, if Contractor expends all authorized compensation but the required Goods, Work or Services are not complete or are not satisfactory, Contractor is responsible to complete the Goods, Work or Services to Department's satisfaction without further compensation.

(b) Notwithstanding the general rule in subsection (4)(a) above, Department may, by Amendment to the Contract, agree to increases in the maximum total compensation, subject to section (1) of this rule, and provided the Department's Designated Procurement Officer gives written approval of the Cost Overrun Amendment as meeting the following requirements:

(A) The cost overrun arose out of circumstances or conditions encountered in the course of contract performance that were unavoidable and not reasonably anticipated at the time of the original Contract, or the most recent Amendment, if any;

(B) The cost overrun was incurred in good faith, results from the good faith performance by the Contractor, and is no greater than the prescribed hourly rate or the reasonable value of the additional Goods, Work or Services rendered; and

(C) The Cost Overrun Amendment serves the public interest, including specific reasoning to support that conclusion. Reasons may include, but are not limited to: To address emergencies arising in the course of the Contract that require prompt action to protect the Work already completed; to comply with official or judicial commands or directives issued during contract performance; or to ensure that the purpose of the Contract will be realized.

(5) Reinstatements.

(a) "Reinstatement" of an expired Contract means an amendment to restore the full action of the Contract as though the expiration had not occurred, and extend the Contract to a new expiration. A reinstatement may be combined with any other amendment allowed by this rule.

(b) The Department's Designated Procurement Officer may give written approval to reinstate an expired Contract if the following requirements are met:

(A) The failure to extend or renew the Contract in a timely manner was due to unforeseen or unavoidable conditions, or if due to administrative mistake, the reason for the mistake and the steps taken to prevent similar mistakes;

(B) The expiration occurred in good faith on the part of both the Department and the Contractor;

(C) The reinstatement furthers the public interest, compared to a separate procurement process, including specific reasoning to support that conclusion; and

(c) When a Contract is reinstated pursuant to this section, the Department may compensate the Contractor only at the rate or terms of compensation established in the original Contract, for Goods, Work or Services performed in the interim between the expiration of the original Contract and the execution of the Reinstatement Amendment.

(6) Amendments of Contracts for Architectural, Engineering and Land Surveying Services. This rule does not apply to amendments of Contracts for Architectural, Engineering and Land Surveying Services. The Department will comply with the Oregon Department of Justice Model Public Contract Rules, OAR chapter 137, division 048 for amendments to such contracts.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075 & 279.070

Hist.: EDD 11-2005, f. 11-30-05, cert. ef. 12-1-05; EDD 26-2008, f. 8-28-08, cert. ef. 9-1-08; OBDD 37-2010, f. 10-29-10, cert. ef. 11-1-10; OBDD 2-2012, f. 3-30-12, cert. ef. 4-2-12; OBDD 14-2013(Temp), f. & cert. ef. 12-30-13 thru 6-27-14; OBDD 1-2014, f. 2-28-14, cert. ef. 3-3-14

## 123-006-0040

### Contracts Must be Authorized Prior to Performance

All Contracts, including any amendments, must be in writing and fully executed before any Work or Services may be performed or payment made. Contractors are not entitled to payment for any Work or Services performed prior to such execution.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075 & 279.070

Hist.: EDD 11-2005, f. 11-30-05, cert. ef. 12-1-05; EDD 26-2008, f. 8-28-08, cert. ef. 9-1-08

## 123-006-0045

### Sole Source Procurements, by Rule.

The Department may procure goods or services for the following subjects without competition:

(1) **Advertising.** This covers all types of advertising, including booth space at trade shows and exhibitions.

(2) **Bond Counsel.** The Department will follow the procedures and requirements of ORS 286A.130 and any applicable Oregon Administrative Rules.

(3) **Event Speakers.** This covers those contracts for event speakers such as a keynote address. This does not cover those contracts for services such as training instructors or facilitators of meetings.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075, 279A.070 & 279B.075

Hist.: EDD 26-2008, f. 8-28-08, cert. ef. 9-1-08; OBDD 37-2010, f. 10-29-10, cert. ef. 11-1-10

## DIVISION 8

### QUALITY DEVELOPMENT AND LAND USE COORDINATION

## 123-008-0005

### Purpose and Scope

The Oregon Business Development Commission through the Oregon Business Development Department in accordance with this division of administrative rules has established policies and procedures for mandatory compatibility with Oregon's Planning Goals and associated land use plans and standards.

Stat. Auth.: ORS 285B.075(5) & 285A.075

Stats. Implemented: ORS 197.180, 285A & 285B

Hist.: EDD 9-1990, f. & cert. ef. 5-23-90; EDD 4-2003, f. & cert. ef. 3-26-03; EDD 21-2009, f. 11-30-09, cert. ef. 12-1-09

## 123-008-0010

### Policy

It is the policy of the Oregon Business Development Department that prior to approving or undertaking projects or actions under an Applicable Program, as defined in OAR 123-008-0015, the Department shall take steps or have program procedures for accomplishing compliance and compatibility with Planning Goals, principally through the applicable acknowledged comprehensive plans and the land use regulations of local governments, in accordance with OAR chapter 660, division 030.

Stat. Auth.: ORS 285B.075(5) & 285A.075

Stats. Implemented: ORS 197.180, 285A & 285B

Hist.: EDD 9-1990, f. & cert. ef. 5-23-90; EDD 4-2003, f. & cert. ef. 3-26-03; EDD 21-2009, f. 11-30-09, cert. ef. 12-1-09

## 123-008-0015

### Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. For purposes of this division of administrative rules, unless the context demands otherwise:

(1) **Applicable Programs** mean those funds, incentives and other activities, powers and resources of the Department and the Commission that directly influence physical development on or to the land and will generally not include educational, marketing, technical assistance, funds for technical analysis or other similar programs.

(2) **Planning Goals** mean the mandatory statewide planning standards for land use as adopted by the Oregon Land Conservation and Development Commission under ORS Chapters 195, 196 and 197, and are available and may be obtained from the Oregon Department of Land Conservation and Development, 635 Capitol Street, NE, Suite 150, Salem, Oregon 97301-2540.

Stat. Auth.: ORS 285B.075(5) & 285A.075

Stats. Implemented: ORS 197.180, 285A & 285B

Hist.: EDD 9-1990, f. & cert. ef. 5-23-90; EDD 4-2003, f. & cert. ef. 3-26-03; EDD 21-2009, f. 11-30-09, cert. ef. 12-1-09

## 123-008-0020

### Compliance with Planning Goals

(1) The Department shall achieve Planning Goal compliance whenever possible by taking actions that are compatible with the applicable acknowledged comprehensive plan of a county or city government and land use regulations of this state and local zone ordinances.

(2) However, if a situation arises that necessitates direct goal findings, because of potential or actual incompatibility under a local comprehensive plan or other reasons, as described in OAR 660-030-0065(3), the Department shall adhere to the following procedures, as formally as appropriate:

(a) Confirm that a situation exists requiring the Department to adopt direct goal findings of compliance with one or more of Planning Goals;

(b) Identify which Planning Goals or Goal requirements the Department must address;

(c) Consult directly with affected jurisdictions;

(d) Request interpretative guidance as needed from the Department of Land Conservation and Development or the Department of Justice;

(e) Rely on any relevant goal interpretations for state agencies adopted in accordance with OAR chapter 660, whenever applicable; and

(f) Adopt any necessary findings to ensure compliance with the Planning Goals.

Stat. Auth.: ORS 285B.075(5) & 285A.075

Stats. Implemented: ORS 197.180, 285A & 285B

Hist.: EDD 9-1990, f. & cert. ef. 5-23-90; EDD 4-2003, f. & cert. ef. 3-26-03; EDD 21-2009, f. 11-30-09, cert. ef. 12-1-09

### 123-008-0025

#### Compatibility with Acknowledged Comprehensive Plans and Land Use Regulations

For purposes of this division of administrative rules, and to act compatibly with acknowledged comprehensive plans and land use regulations, except when the Department makes direct findings for compliance with Planning Goals consistent with OAR 123-008-0020(2), a project applicant for resources under an Applicable Program shall effectively verify to the project's compliance with the applicable city or county comprehensive plan, public facility plan and land use regulations, through mechanisms such as the following:

(1) Receipt of a copy of the local land use permit or equivalent documentation from the city or county planning agency or the local governing body that the project has received land use approval;

(2) Receipt of a letter from the local planning agency or governing body stating that the project is permitted under the jurisdiction's comprehensive plan and land use regulations but does not require specific land use approval;

(3) Copies of official land use maps or other local documents that demonstrate necessary compliance; or

(4) Other equivalent documentation from the affected city or county.

Stat. Auth.: ORS 285B.075(5) & 285A.075

Stats. Implemented: ORS 197.180, 285A & 285B

Hist.: EDD 9-1990, f. & cert. ef. 5-23-90; EDD 4-2003, f. & cert. ef. 3-26-03; EDD 21-2009, f. 11-30-09, cert. ef. 12-1-09

### 123-008-0030

#### Dispute Resolution

(1) When a land use dispute related to a proposal or application for financial assistance under an Applicable Program arises, the proposal sponsor/applicant is expected to resolve the dispute directly with the government of the city or county where the proposed project is to be located. The Department will not provide funding for such a project until the dispute is resolved, as indicated by documentation pursuant to OAR 123-008-0025.

(2) In other cases, the Department may attempt to resolve disputes regarding land use issues by direct contact with the applicable local governing body. Whenever possible, Department efforts to resolve land use disputes shall be pursued prior to and through local government land use proceedings.

Stat. Auth.: ORS 285B.075(5) & 285A.075

Stats. Implemented: ORS 197.180, 285A & 285B

Hist.: EDD 9-1990, f. & cert. ef. 5-23-90; EDD 4-2003, f. & cert. ef. 3-26-03; EDD 21-2009, f. 11-30-09, cert. ef. 12-1-09

### 123-008-0035

#### Compliance and Compatibility of New or Amended Programs

The Department of Land Conservation and Development is expressly listed in the Department's Notice Rule, OAR 123-001-0100, and the Department shall follow the same notice procedures whenever amending the "Land Use Coordination Program."

Stat. Auth.: ORS 285B.075(5) & 285A.110(1)

Stats. Implemented: ORS 197.180, 285A & 285B

Hist.: EDD 9-1990, f. & cert. ef. 5-23-90; EDD 4-2003, f. & cert. ef. 3-26-03

### 123-008-0040

#### Consistency with Local Economic Development Plans

Applicable adopted local economic development plans under ORS 285A.055(5) include, but are not limited to, relevant parts of the comprehensive (land use) plans of cities and counties, such as those related to Planning Goal 9.

Stat. Auth.: ORS 285B.075(5) & 285A.110(1)

Stats. Implemented: ORS 197.180, 285A & 285B

Hist.: EDD 9-1990, f. & cert. ef. 5-23-90; EDD 4-2003, f. & cert. ef. 3-26-03

## DIVISION 9

### OREGON BUSINESS, INNOVATION AND TRADE FUND

#### 123-009-0050

##### Purpose

The Oregon Business, Innovation and Trade Fund is established by ORS 285A.227 as a means to provide the Oregon Business Development Department with flexibility in funding and decision-making to respond to economic development needs on a statewide and regional basis.

Stat. Auth.: ORS 285A.075 & 285A.227(2)

Stats. Implemented: ORS 285A.227

Hist.: EDD 3-1998, f. & cert. ef. 2-26-98; EDD 4-1999(Temp), f. & cert. ef. 8-5-99 thru 2-1-00; EDDS 5-2000, f. & cert. ef. 2-7-00; EDD 11-2009, f. & cert. ef. 10-1-09

#### 123-009-0060

##### Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. As used in this division of administrative rules, unless the context requires otherwise the following definitions apply:

(1) Fund means the Oregon Business, Innovation and Trade Fund established in ORS 285A.227, which includes lottery funding for grant and loan programs and contracted services and all interest earnings that accrue to the Fund.

(2) "Allocation Plan" means the distribution plan of the legislatively authorized Fund biennial budget.

Stat. Auth.: ORS 285A.075 & 285A.227(2)

Stats. Implemented: ORS 285A.227

Hist.: EDD 3-1998, f. & cert. ef. 2-26-98; EDD 4-1999(Temp), f. & cert. ef. 8-5-99 thru 2-1-00; EDDS 5-2000, f. & cert. ef. 2-7-00; EDD 2-2008, f. & cert. ef. 1-2-08; EDD 12-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 16-2008, f. & cert. ef. 6-4-08; EDD 11-2009, f. & cert. ef. 10-1-09; OBDD 1-2013, f. & cert. ef. 1-2-13

#### 123-009-0070

##### Commission Allocations

(1) The Commission shall distribute resources in the Fund within the policies and priorities set by the Legislature and pursuant to ORS 285A.020, 285A.045 and 285A.055.

(2) In the event of a shortfall of lottery funds, reductions will occur as prescribed by the Legislature and based on recommendations of the Commission.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285A.227(2)

Stats. Implemented: ORS 285A.227

Hist.: EDD 3-1998, f. & cert. ef. 2-26-98; EDD 4-1999(Temp), f. & cert. ef. 8-5-99 thru 2-1-00; EDDS 5-2000, f. & cert. ef. 2-7-00

#### 123-009-0080

##### Commission Responsibilities

(1) The Commission shall review and approve a biennial Allocation Plan for the Fund.

(2) The Commission shall be responsible for making allocations from the Fund and may adjust these allocations based on need. In the event of lottery revenue shortfalls, the Commission may adjust allocations in accordance with any Legislative direction and recommendations of the Commission.

Stat. Auth.: ORS 285A.075, 285A.227(2)

Stats. Implemented: ORS 285A.227

Hist.: EDD 3-1998, f. & cert. ef. 2-26-98; EDD 4-1999(Temp), f. & cert. ef. 8-5-99 thru 2-1-00; EDDS 5-2000, f. & cert. ef. 2-7-00; EDD 2-2008, f. & cert. ef. 1-2-08; EDD 12-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 16-2008, f. & cert. ef. 6-4-08

#### 123-009-0090

##### Criteria for Allocations

The Commission shall make biennial allocations from the Fund based on the following criteria:

(1) Funding shall be based on the principles established in ORS 285A.020, 285A.045 and 285A.055 to further business and economic development.

(2) Funds may be reserved and allocated to address opportunity-driven investments, projects and unanticipated needs.

(3) Consideration may be given to eliminating or combining funding for programs in allocations.

Stat. Auth.: ORS 285A.075 & 285A.227(2)

Stats. Implemented: ORS 285A.227

Hist.: EDD 3-1998, f. & cert. ef. 2-26-98; EDD 4-1999(Temp), f. & cert. ef. 8-5-99 thru 2-1-00; EDDS 5-2000, f. & cert. ef. 2-7-00; EDD 2-2008, f. & cert. ef. 1-2-08; EDD 12-2008(Temp), f. & cert. ef. 3-28-08 thru 9-23-08; EDD 16-2008, f. & cert. ef. 6-4-08; OBDD 1-2013, f. & cert. ef. 1-2-13

### 123-009-0100

#### Director's Review and Approval of Awards Under Allocation Plan

Once allocations from the Fund have been made by the Commission, the Director shall have final project funding approval unless otherwise delegated. All project funding shall be consistent with Commission allocations.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285A.227(2)

Stats. Implemented: ORS 285A.227

Hist.: EDD 3-1998, f. & cert. ef. 2-26-98; EDD 4-1999(Temp), f. & cert. ef. 8-5-99 thru 2-1-00; EDDS 5-2000, f. & cert. ef. 2-7-00

## DIVISION 11

### OREGON ECONOMIC DEVELOPMENT REVENUE BONDS

### 123-011-0020

#### Purpose

The purpose of these rules is to provide procedures, standards and criteria for operation of the Oregon Economic Development Revenue Bond program authorized by ORS 285B.320 to 285B.371.

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 285B.320 - 285B.371

Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988 (Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05

### 123-011-0021

#### Commission Powers

For the purposes of these rules, the Business Development Commission (the "Commission") shall retain and possess, in addition to all authority reserved to it under OAR 123-011-0027, all rights and powers delegated to the Finance Committee. Upon written notice to the Finance Committee, the Commission may elect to exercise directly, either in a specific instance or generally, any right or power delegated to the Finance Committee under these rules and the Finance Committee shall not have the authority to exercise the right or power identified in the notice under the circumstances described in the notice.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.320 - 285B.371

Hist.: EDD 36-1988, f. & cert. ef. 12-15-88; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05; OBDD 11-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 5-2012, f. & cert. ef. 6-1-12

### 123-011-0025

#### Definitions

For the purposes of these rules, the following terms shall have the following meaning, unless the context clearly indicates otherwise:

(1) "Applicant" means any person, firm or public or private corporation or federal or state governmental subdivision or agency which submits an application for Oregon Economic Development Revenue Bonds.

(2) "Bonds" means Oregon Economic Development Revenue Bonds issued by the State of Oregon under ORS 285B.320 to 285B.371.

(3) "Capital Asset" means real or personal property that the Commission expects to be:

(a) Used in connection with a revenue-producing enterprise, an exempt, or a non-profit entity; and

(b) Located in Oregon.

(4) "Economic Development Project" means a Capital Asset and may also include one or more the following:

(a) Research and development conducted in Oregon; or

(b) Estimated operating expenses associated with a Capital Asset.

(5) "Eligible Project" means the portion of an Economic Development Project that the Commission:

(a) Has found in compliance with applicable standards of the Commission;

(b) Has found will produce benefits substantially in Oregon; and

(c) Has approved for financing with proceeds of Bonds authorized under ORS 285B.320 to 285B.371.

(6) "Exempt Facility" means any facility described in section 142(a) of the Internal Revenue Code of 1986, as amended and in effect as of July 1, 2011.

(7) "Finance Committee" means the Finance Committee for the Business Development Commission as allowed in ORS 285A.060.

(8) "Financial Institution" means any commercial bank, mutual savings bank, savings and loan association, insurance company, investment bank or NASD securities underwriter licensed or authorized to do business in the State of Oregon.

(9) "In-state Plant Relocation" means the relocation of an Applicant's plant from one labor market area, as defined by the Oregon Employment Department, in Oregon to a different labor market area in Oregon.

(10) "Nonprofit Entity" means and institution, organization, or other entity exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, as amended and in effect as of July 1, 2011.

(11) "Oregon Express Bond Program" means a department program that involves a method of sale for a single client purchase that includes, but is not limited to, direct placement of bonds with a bank. Such a purchase does not require the use of placement agents, underwriters, marketing agents or letters of credit. To utilize this program, use of a standardized departmental bond process is required.

(12) "Treasurer" means the Treasurer of the State of Oregon or the Treasurer's designee.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.320 - 285B.371

Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988 (Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 14-1994(Temp), f. & cert. ef. 11-10-94; EDD 4-1995, f. 4-28-95, cert. ef. 5-3-95; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05; EDD 20-2008, f. 7-31-08, cert. ef. 8-1-08; OBDD 11-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 5-2012, f. & cert. ef. 6-1-12

### 123-011-0027

#### Delegation

(1) Authority for the day-to-day operation of the Economic Development Revenue Bond Program, including determination of eligibility, authorization of the issuance of bonds, adoption of inducement and bond resolutions and amendments thereto, is delegated to the Finance Committee.

(2) The Finance Committee may adopt standards and procedures for the operation of the bond program. Such standards and procedures shall not be inconsistent with any part of this division.

(3) The Department may send to each member of the Commission a summary of each project to be considered by the Finance Committee. If so, Commissioners shall receive such summaries in sufficient time to comment on the projects and to attend each Finance Committee meeting, as each individual commissioner may in his or her sole discretion determine.

(4) The Commission shall review and evaluate the operation of the bond program as it may from time to time determine and may order any changes that it considers necessary or desirable.

(5) The Commission shall retain final authority over policies and administrative procedures governing the operation of the bond program.

(6) If at any time the Commission decides to take any action or make any decision, it may do so at any regular or special meeting or

through any telephone conference call as the Commission in its sole discretion may determine.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.320 - 285B.371

Hist.: EDD 9-1988(Temp), f. & cert. ef. 3-18-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05; EDD 20-2008, f. 7-31-08, cert. ef. 8-1-08; OBDD 11-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 5-2012, f. & cert. ef. 6-1-12

### 123-011-0030

#### Application

(1) An Applicant desiring issuance of Economic Development Revenue Bonds must submit a complete application to the Department in a form approved by the Department.

(2) The application shall be received by the Department at least 21 days prior to the Finance Committee meeting at which the application will be considered. The Department may waive this requirement at its sole discretion.

(3) A non-refundable application fee is to be submitted with the Application: The application fee is a non-refundable application fee of \$500 and shall be paid by an Applicant seeking Economic Development Revenue Bond financing.

(4) Application materials may be obtained from the Oregon Business Development Department, 775 Summer Street N.E., Suite 200 Salem, OR 97301-1280.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.320 - 285B.371

Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988 (Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 13-1990, f. & cert. ef. 6-7-90; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05; EDD 9-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 9-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08; EDD 20-2008, f. 7-31-08, cert. ef. 8-1-08; OBDD 11-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 5-2012, f. & cert. ef. 6-1-12

### 123-011-0035

#### Determination of Eligibility

(1) The Department shall review the application.

(2) The Department shall make a recommendation to the Finance Committee to either approve or deny the application for eligibility for Economic Development Revenue Bonds. The review of the application will be based upon the standards set forth in this rule:

(a) The following Economic Development Projects are eligible for Economic Development Revenue Bonds, unless otherwise prohibited under this section:

- (A) Manufacturing or other industrial production;
- (B) Agricultural development or food processing;
- (C) Aquaculture development or seafood processing;
- (D) Development or improved utilization of natural resources;
- (E) Research and development;
- (F) Destination facilities other than retail or food service businesses;
- (G) Convention and trade centers;
- (H) Construction of buildings for corporate headquarters;
- (I) Product distribution facilities;
- (J) Transportation or freight facilities;
- (K) Scientific testing including, but not limited to, medical, clinical or engineering testing services;
- (L) Sports facilities not otherwise prohibited under paragraph (2)(b)(D) of this rule;

(M) Nonprofit entities organized under Section 501(c)(3) of the U.S. Internal Revenue Code ;

(N) Utilities, as allowed by ORS 285B.323(2);

(O) Management of waste;

(P) Other activities which represent a new technology or type of economic enterprise that the Finance Committee determines are needed to diversify the economic base of an area, or any other activities allowed by Federal law.

(b) Activities or projects that will not be considered for the issuance of Oregon Economic Development Revenue Bonds include:

(A) Retail businesses and shopping centers;

(B) Food service not part of a convention center or destination resort;

(C) Professional corporations for medicine, law, dentistry, or finance;

(D) Athletic, racquetball, handball clubs, amusement parks, or similar endeavors;

(E) Commercial office buildings except for corporate headquarters, unless the office building supports the eligible economic activities listed in (2)(a) of this section;

(F) Activities that maintain private memberships; are not open to the general public; or do not serve a broad cross section of the general public;

(c) The following serve as an elaboration and clarification of activities which qualify as Eligible Projects for Economic Development Revenue Bonds:

(A) "Destination Facility" means a project which has a significant impact on the regional tourism economy and has the capacity to be marketed to national or international markets. Incidental food service facilities may be included. Sleeping accommodations without unique attraction capabilities are not eligible;

(B) "Convention and Trade Centers" may include sleeping accommodations, but the majority of the total bond issue must be used for convention meeting facilities. Such facilities must have the capacity to seat a minimum of 300 people. However, the Finance Committee may approve financing for projects, as convention centers, consisting solely or primarily of sleeping accommodations, if the Applicant sufficiently demonstrates existing sleeping accommodations are inadequate for existing meeting facility space;

(C) "Corporate Headquarters" may qualify if a minimum of 75 percent of the floor space is allocated to the corporate headquarter function. Corporate headquarters do not include professional corporations for medicine, law, dentistry, or finance or office space to be leased to others;

(D) "Transportation" is not intended to include rolling stock or other highly moveable equipment operated by a carrier for hire;

(E) In deciding whether or not to approve economic development revenue bonding for a utility project, the Finance Committee may consider all relevant factors including but not limited to the utility company's published tariff schedules and construction and extension procedures as filed with the Oregon Public Utility Commission;

(F) "Pollution Control" equipment may qualify as part of projects that otherwise qualifies under this rule. Where pollution control equipment costs are incidental to the total capital investment of the project, the Finance Committee may qualify such equipment, provided the Oregon Department of Environmental Quality concurs;

(G) "In-State Plant Relocations" not accompanied by an expansion of the Applicant's business or employment, may be considered when the Applicant is able to demonstrate that:

(i) The relocation is caused by reasons beyond its control; or

(ii) The relocation will not cause a resulting loss of employment at the former site of the business; or

(iii) The relocation is necessary for the continued operation of the business.

(H) "Nonprofit entities" do not include religious or fraternal organizations;

(I) "Developer Project" may qualify. The Finance Committee shall have right of approval for each tenant occupying 25 percent or more of the leasable space. No more than 25 percent of the leasable space shall be leased to tenants relocating from another Oregon location, unless such relocation is accompanied by an expansion of the tenants' labor force. These conditions shall be incorporated into bond documents, shall survive closing and shall be enforceable for the term of the bond.

(d) The following serves as an elaboration and clarification of the qualifications of an Eligible Project for which Economic Development Revenue Bond proceeds can be used:

(A) The Applicant shall provide detailed information on the proposed uses of Bond proceeds for research and development costs. Research and development costs shall not represent a significant por-

tion of the total amount of the Bonds, at the discretion of the Finance Committee.

(B) The Applicant shall provide detailed information on how Bond proceeds will be used for operating expenses. Operating expenses shall not represent a significant portion of the total amount of the Bonds, at the discretion of the Finance Committee.

(C) Unless the Finance Committee determines otherwise, Bond proceeds shall not be used to refinance outstanding financing, but may be used to reimburse approved Applicants for short-term financing for costs of Capital Assets.

(D) Unless the Finance Committee determines otherwise, Bond proceeds may only be used for capitalized interest that accrued prior to completion of an Eligible Project and that is directly related to the financing of a Capital Asset.

(e) Public Purpose. The Applicant must demonstrate that a public purpose is served by the proposed Economic Development Project through economic diversification, creation of new jobs including construction activity, construction occurring before it otherwise could or would, economic activity occurring during economic slumps, tax dollars remaining in the state, increased productivity, or other public health benefit as determined by the Finance Committee. The Applicant is encouraged to demonstrate as many public purposes for the proposed project as can be prudently shown.; The Finance Committee shall consider these public purposes in determining whether a proposed project will produce benefits substantially in Oregon, pursuant to OAR 123-011-0025(5)(b).

(f) Prior to determining that an Economic Development Project is an Eligible Project, the Finance Committee shall:

(A) Determine that the action is cost effective, considering both major public expenses and major public benefits, unless the Economic Development Project involves an Exempt Facility;

(B) Find that the project involved is consistent with the Department's comprehensive policy and programs;

(C) Find that the project will produce goods or services which are sold in markets for which national or international competition exists, unless the Economic Development Project involves an Exempt Facility;

(D) Determine that, if the project is to be constructed and operated by a Non-profit Entity, the project will not compete significantly with local for-profit businesses;

(E) Determine that the action is the best use of the moneys involved, considering other pending applications for those moneys; and

(F) Provide for public notice of, and public comment on, the action. The public hearing is not a contested case hearing. Members of the public are invited to present written or oral testimony. Only Finance Committee members and department staff will ask questions.

(G) Notify a senior official (such as mayor or city manager) of the city or county (if in unincorporated county property) in which the project will be located about the project and the potential use of Economic Development Revenue Bonds.

(g) The Finance Committee may deny an application if the Applicant does not demonstrate, to the satisfaction of the Finance Committee, that the project is financially feasible. When bond proceeds for an Economic Development Project are to be used for research and development costs or operating expenses, the determination of financial feasibility may include one or more of the following criterion:

(A) The adequacy of long-term equity investment in the project;

(B) Collateral value of assets as supported by appraisals; or

(C) Other valuations or factors determined to be necessary by the Finance Committee.

(h) The Finance Committee may deny an application if the Applicant (or any of the principals in the Applicant) is subject to any existing, pending or threatened litigation or unasserted claim, unless such litigation or claim is fully disclosed to the Finance Committee and the arrangements for the settlement thereof are acceptable to the Finance Committee. In any case where such litigation or claim is unknown to the Finance Committee at the time project eligibility is granted or if such litigation or claim arises subsequent to a grant of

project eligibility, the Finance Committee may rescind the project eligibility;

(i) The Finance Committee may make any reasonable requirement of the Applicant related to the administration of the Oregon Economic Development Revenue Bond Program, including requirements that would survive closing and be enforceable for the term of the Bond.

(j) If Bond proceeds for an Economic Development Project are to be used for research and development costs or operating expenses, the Finance Committee may require, regardless of the method of sale, that the proposed Bond issuance receive an investment grade rating from a nationally recognized rating agency (Moody's Investors Service, Fitch Ratings or Standard and Poor's Corporation) or receive an equivalent rating through the use of credit enhancement. However, the investment grade rating requirement may be waived for Applicants who are listed on the New York Stock Exchange (NYSE) or the National Association of Securities Dealers Exchange (NASDAQ).

(k) If Bond proceeds for an Economic Development Project are to be used for research and development costs or operating expenses and research and development costs and operating expenses total more than 5% of the total amount of the Bonds, the Finance Committee shall approve the investment bankers, remarketing agents, and other finance team professionals, in addition to the approvals from Oregon State Treasury.

(l) If Bond proceeds for an Economic Development Project are to be used for research and development costs or operating expenses, the Finance Committee may impose requirements on the resale of the Bonds.

(3) The Finance Committee shall issue a Resolution for Project Eligibility for each economic development project determined to be an eligible project. The term of eligibility shall last 12 months unless extended by the department or the Finance Committee.

(4) Administrative rules in effect at the time the Finance Committee determines a project to be eligible shall continue to govern the project until the bonds have been redeemed, notwithstanding any contrary provision in any subsequently adopted administrative rule.

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

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.320 - 285B.371

Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 1-1985(Temp), f. & ef. 2-26-85; EDD 3-1985, f. & ef. 6-28-85; EDD 5-1985(Temp), f. & ef. 10-4-85; EDD 6-1985(Temp), f. & ef. 10-22-85; EDD 1-1986, f. 1-28-86, ef. 2-1-86; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988(Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 13-1990, f. & cert. ef. 6-7-90; EDD 14-1994(Temp), f. & cert. ef. 11-10-94; EDD 4-1995, f. 4-28-95, cert. ef. 5-3-95; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05; EDD 9-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 9-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08; EDD 20-2008, f. 7-31-08, cert. ef. 8-1-08; OBDD 11-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 7-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12; OBDD 5-2012, f. & cert. ef. 6-1-12

### 123-011-0037

#### Approval of Bond Closing Resolution

Prior to the approval of bond financing for an eligible project, as evidenced by the Commission's approval of a bond closing resolution, the Commission shall:

(1) Determine that the project satisfies the applicable requirements of OAR chapter 123, division 8 (compliance with local land use planning requirements), as evidenced by documentation to be provided by the city or county (if in unincorporated county property) in which the project is located.

(2) Determine that the project involved is consistent with applicable adopted local economic development plans, as evidenced by documentation from the city or county.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.320 - 285B.371

Hist.: EDD 9-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08; EDD 20-2008, f. 7-31-08, cert. ef. 8-1-08; OBDD 5-2012, f. & cert. ef. 6-1-12

**123-011-0040**

**Extension**

(1) The Department may extend the eligibility granted by the Finance Committee for up to six months if the Department determines that the project still constitutes an eligible activity and that there is a reasonable prospect of the Bonds being issued within the six-month extension period. The Applicant must provide updated financial information, and a project status report to the Department, in a form approved by the Department, at least 14 calendar days before eligibility expires. The Department may waive the 14 calendar day requirement at its sole discretion.

(2) The Finance Committee may extend eligibility if the Department denies extended eligibility or if the initial extension granted by the Department under section (1) of this rule has expired. The Finance Committee must determine that the project still constitutes an eligible activity, and that there is a reasonable prospect of the Bonds being issued within the extension period. The Applicant must provide updated financial information and a project status report, as well as a request for extension, in a form approved by the Department, at least one month prior to the expiration date of the original or extended eligibility period. The Finance Committee may waive this time period at its sole discretion.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.320 - 285B.371

Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 1-1986, f. 1-28-86, ef. 2-1-86; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988(Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05; EDD 9-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 9-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08; EDD 20-2008, f. 7-31-08, cert. ef. 8-1-08; OBDD 11-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 5-2012, f. & cert. ef. 6-1-12

**123-011-0045**

**Fees**

In addition to the application fee specified in OAR 123-011-0030(5):

(1) The Applicant shall pay to the Department at the time of initial bond closing a closing fee of 1/2 of one percent of the total Bonds issued for the project.

(2) For the Oregon Express Bond Program, the Applicant shall pay to the Department at the time of the initial Bond closing a closing fee of 1/4th of one percent of the total Bond Issuance for the project.

(3) An Applicant for a current refunding of an outstanding Bond shall pay to the Department a non-refundable processing fee of \$500 that shall accompany the request for the refunding.

(4) The Applicant shall pay to the Department a closing fee of 1/10 of one percent of the amount of the refunding Bond or for any additional Bonds issued under a single project eligibility. This closing fee may be waived for any refunding Bond issued within 18 months of the closing date of the Bond issue to be refunded.

(5) The Department may charge any out-of-pocket expenses, including but not limited to legal expenses, incurred by the Department for processing any Bond request.

(6) The Commission may collect the above fees and expense reimbursements from an Applicant that seeks to have an Economic Development Project declared eligible for financing, even though the project has not been determined to be eligible for financing.

(7) An Applicant for the restructuring of existing Bonds shall pay to the Department a non-refundable processing fee of \$1,000 that shall accompany the request for approval of the restructuring.

(8) The Department may charge the Applicant a closing fee of up to 1/10 of one percent of the amount of the restructured Bond.

(9) Applicants or beneficiaries of Bond financing shall pay directly to the Commission's bond counsel their legal fees and direct expenses related to issuance, refunding, modifications, or restructuring of Bonds.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.326

Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988 (Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 15-1994, f. & cert. ef.

11-10-94; EDD 10-1996(Temp), f. & cert. ef. 12-4-96; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 14-2000(Temp), f. & cert. ef. 12-14-00 thru 6-12-01; Administrative correction 6-14-01; EDD 10-2001(Temp), f. & cert. ef. 12-13-01 thru 6-1-02; Administrative correction 11-29-02; EDD 4-2005, f. & cert. ef. 5-5-05; EDD 9-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 9-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08; EDD 20-2008, f. 7-31-08, cert. ef. 8-1-08; OBDD 7-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12; OBDD 5-2012, f. & cert. ef. 6-1-12

**123-011-0050**

**Confidential Records**

(1) Upon written request and within a reasonable time, the Director or his designee shall provide program records, for inspection in accordance with ORS Chapter 192.

(2) The person requesting records will be charged for preparing and mailing such records. Costs may include but not be limited to costs incurred in locating records, separating exempt and nonexempt records, having a custodian present during the inspection, preparing lists of data, making photocopies and telefaxing materials. Fees to be collected shall be set forth in the Department's schedule of fees and may be amended from time to time as the Department may determine.

(3) Except as otherwise provided in ORS 192.410-192.595, records exempt from disclosure include but are not limited to:

(a) Reports and analyses of reports which bear on the Applicant's character, finances, management ability and reliability, and which were obtained in confidence from persons or firms not required by law to submit them and the Department has obliged itself in good faith not to disclose the information;

(b) Financial statements, tax returns, business records, employment history and other personal data submitted by or for Applicants, or analysis of such data;

(c) Intra-departmental advisory memoranda preliminary to a decision;

(d) Formulas, plans, designs and related information that constitute trade secrets under ORS Chapter 192;

(e) Personal financial statement;

(f) Financial statements of Applicants;

(g) Customer lists;

(h) Information of an Applicant pertaining to litigation to which the Applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the Applicant shows that such litigation is reasonably likely to occur. This exemption does not apply to concluded litigation and nothing in this section shall limit any right or opportunity granted by law to a party involved in litigation;

(i) Production, sales or cost data; and

(j) Marketing strategy information that relates to an Applicant's plan to address specific markets and Applicant's strategy regarding specific competitors.

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 285B.320 - 285B.371

Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988 (Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05; OBDD 5-2012, f. & cert. ef. 6-1-12

**DIVISION 15**

**INNOVATION INFRASTRUCTURE**

**123-015-0100**

**Purpose**

The following rules are for the purpose of assisting technology-based, start-up businesses in Oregon whose primary purpose is to commercialize university-based or university-assisted research with the University of Oregon, Oregon State University and the Oregon Solutions Network to increase the number of, and ensure the retention of, such businesses within Lane, Linn and Benton counties.

Stat. Auth.: OL 2013, ch. 762

Stats. Implemented: OL 2013, ch. 762

Hist.: OBDD 4-2014, f. & cert. ef. 4-1-14

**123-015-0200**

**Definitions**

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. The following terms shall have the following definitions, unless the context clearly indicates otherwise:

(1) “Grantee” means University of Oregon, Oregon State University and the Oregon Solutions Network within Lane, Linn and Benton counties.

(2) “Oregon Solutions Network” means the Oregon Solutions Network established pursuant to Executive Order 11-12 dated December 16, 2011.

Stat. Auth.: OL 2013, ch. 762

Stats. Implemented: OL 2013, ch. 762

Hist.: OBDD 4-2014, f. & cert. ef. 4-1-14

**123-015-0300**

**Performance Based Contracts**

(1) The department shall enter into performance based contracts and agreements with the University of Oregon, Oregon State University and the Oregon Solutions Network in Lane, Linn and Benton counties.

(2) Performance based contracts and agreements implement and accomplish the following:

(a) Providing financial assistance to programs, entities and providers of technical business development and creation assistance and providing support to technology-based start-up businesses whose primary purpose is to commercialize university-based or university-assisted research;

(b) Identifying and recruiting entrepreneurial talent, qualified investors and other sources of capital;

(c) Acquiring, procuring, furnishing or improving facilities in or near Lane, Linn or Benton counties, as identified by the University of Oregon, Oregon State university and the Oregon Solutions Network, for the operation or support of businesses, receiving assistance under this section, signature research centers and other businesses, programs and entities involved in the commercialization of university-based or university-assisted research;

(d) Establishing, connecting or expanding support programs, directly or indirectly, that provide assistance to technology-based, start-up businesses whose primary purpose is to commercialize university-based or university-assisted research within and outside the region.

Stat. Auth.: OL 2013, ch. 762

Stats. Implemented: OL 2013, ch. 762

Hist.: OBDD 4-2014, f. & cert. ef. 4-1-14

**123-015-0400**

**Administration**

The department is responsible for disbursement of funds to entities per legislative designation consistent with OL 2013, ch. 762 and that funds are utilized for the purposes intended by the Legislature. The department will carry out those responsibilities with performance-based contracts that tie timed payments to successful completion of contractual tasks and an agreed-upon timeline.

Stat. Auth.: OL 2013, ch. 762

Stats. Implemented: OL 2013, ch. 762

Hist.: OBDD 4-2014, f. & cert. ef. 4-1-14

**123-015-0500**

**Reporting**

Grantees are required to report to the department on a quarterly basis on progress made in meeting all obligations set forth in the performance based contracts and agreements.

Stat. Auth.: OL 2013, ch. 762

Stats. Implemented: OL 2013, ch. 762

Hist.: OBDD 4-2014, f. & cert. ef. 4-1-14

**DIVISION 16**

**BUSINESS RETENTION FUND**

**123-016-0000**

**Purpose**

The purpose of these rules is to provide procedures, standards and criteria for the making of Oregon Business Development Commission expenditures for feasibility studies, technical assistance and management consulting services from the Business Retention Fund.

Stat. Auth: ORS 285A.075

Stats. Implemented: ORS 285A.224

Hist.: EDD 10-1985(Temp), f. 11-7-85, ef. 10-22-85; EDD 4-1987(Temp), f. & ef. 10-1-87; EDD 13-1988, f. 5-24-88 (and corrected 5-27-88), cert. ef. 5-27-88; EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08; Administrative correction 12-22-08; OBDD 12-2010, f. 4-30-10, cert. ef. 5-1-10

**123-016-0010**

**Definitions**

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. The following terms shall have the following definitions, unless the context clearly indicates otherwise:

(1) Business retention services means technical assistance provided by experts, as qualified by the department, focused on retaining the viable operation of an existing business in Oregon. The services include, but are not limited to the following types of assistance:

(a) Assessment — initial evaluation to determine the extent of issues experienced by the business and the likelihood of the business's viability.

(b) Management consulting — identifying and solving problems including, but not limited to, management improvements, marketing problems, financial problems, equipment needs, productivity improvements, production control, cost and pricing systems, and/or ownership.

(c) Feasibility study — a study conducted to analyze the feasibility of reopening, keeping open, or converting a business firm or a facility to another product, identify ownership possibilities, including employee ownership, and conduct an appraisal of the facility's assets to be purchased.

(d) Conversion plan — a plan to convert a facility to a new product or enter a new market or convert a company's ownership structure, including an employee buy-out.

(e) Transition plan — strategic and business plans to grow or alter a business operation, including, but not limited to, mergers and transitions to local owners.

(f) Restructuring plan — plan for the acquisition of new equipment, technologies, management practices, sourcing solutions, and growth options focused on retaining the viable operation of an existing business in Oregon.

(g) Any other type of technical assistance necessary to retain a business in Oregon, maintain Oregon employees, or assist an Oregon business to manage growth that will lead to the creation of new jobs in Oregon.

(2) “Fund” means the Business Retention Fund.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.224

Hist.: EDD 10-1985(Temp), f. 11-7-85, ef. 10-22-85; EDD 4-1987(Temp), f. & ef. 10-1-87; EDD 13-1988, f. 5-24-88 (and corrected 5-27-88), cert. ef. 5-27-88; EDD 4-1998(Temp), f. & cert. ef. 3-6-98 thru 7-24-98; Administrative correction 8-5-99; EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08; Administrative correction 12-22-08; EDD 12-2009, f. & cert. ef. 10-1-09; OBDD 12-2010, f. 4-30-10, cert. ef. 5-1-10

**123-016-0020**

**Eligibility**

(1) Except as set forth in 123-016-0020(2), the following are eligible recipients of business retention services:

(a) A for-profit business firm, whose Oregon facility is:

(A) Engaged in:

(i) Technology manufacturing;

(ii) Wood and forest products processing;

(iii) Clean technologies;

(iv) Outdoor gear or active wear production;

- (v) Agriculture or aquaculture development;
- (vi) Food or seafood processing;
- (vii) Other advanced manufacturing; or
- (viii) producing goods or services and competing in markets for which regional, national or international competition exists; and

(B) Experiencing at least one of the following issues: Declining employment, declining sales, declining profits, or an erosion of working capital, that is likely to lead to major employee layoffs or closure of the business, or an emerging industry or part of an industry cluster with high potential for market growth, job retention and job creation.

(b) A public or non-profit, private entity which:

(A) has as one of its primary purposes, as stated in its articles of incorporation, charter or bylaws, the promotion of economic development in Oregon; and

(B) Is requesting business retention services for an industrial facility in Oregon which is actually closed or houses a business which has announced its closure.

(2) Business retention services shall not be used to relocate a business from one labor market in Oregon to another.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.224

Hist.: EDD 4-1987(Temp), f. & ef. 10-1-87; EDD 13-1988, f. 5-24-88 (and corrected 5-27-88), cert. ef. 5-27-88; EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08; Administrative correction 12-22-08; EDD 12-2009, f. & cert. ef. 10-1-09; OBDD 12-2010, f. 4-30-10, cert. ef. 5-1-10

### **123-016-0030**

#### **Awards of Grants and Loans; Match Requirements**

(1) A business firm described in OAR 123-016-0020(1)(a) is eligible for a maximum award of \$15,000 from the Fund for business retention services.

(2) A public or non-profit, private entity described in OAR 123-016-0020(1)(b) is eligible for a maximum grant of \$30,000 from the Fund for business retention services. A public or non-profit, private entity recipient will be required to contribute a minimum of 25 percent of cost of the business retention services in cash.

(3) As provided in OAR 123-016-0050, an award from the Fund may be required to be repaid, in whole or in part, if certain conditions are met.

(4) In most instances, the department will first approve an award from the Fund to conduct an assessment to determine what, if any, additional business retention services are likely to result in retaining the viable operation of an existing business in Oregon.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.224

Hist.: EDD 10-1985(Temp), f. 11-7-85, ef. 10-22-85; EDD 4-1987(Temp), f. & ef. 10-1-87; EDD 13-1988, f. 5-24-88 (and corrected 5-27-88), cert. ef. 5-27-88; EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08; Administrative correction 12-22-08; EDD 12-2009, f. & cert. ef. 10-1-09; OBDD 12-2010, f. 4-30-10, cert. ef. 5-1-10

### **123-016-0040**

#### **Application and Award Approval**

(1) An eligible recipient, as listed in 123-016-0020(1), shall make application for business retention services to the department on a form prescribed and provided by the department.

(2) All applications shall be reviewed by the department. The department may also designate an advisory committee to review applications and make recommendations to the department.

(3) The department may request any additional information, such as an assessment or an appraisal, or may recommend a modification to the application in order to make a final determination on an award for business retention services from the Fund.

(4) Prior to making an award from the Fund for a for-profit business firm described in OAR 123-016-0020, the department will make a determination that business retention services are likely to result in retaining a viable operation.

(5) Prior to making an award from the Fund for a closed facility or for a facility that houses a business which has announced its closure, the department must determine:

(a) There is a reasonable probability of restarting or converting the facility; and

(b) The business retention services will include consideration of reemploying or continuing the employment of that facility's former or existing labor force.

(6) In making a determination on an award from the Fund, the department shall give preference to businesses, facilities that are closed, or facilities housing businesses which have announced their closure which are located in a distressed area as designated under OAR 123-024.

(7) The department shall either approve or deny an application.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.224

Hist.: EDD 10-1985(Temp), f. 11-7-85, ef. 10-22-85; EDD 4-1987(Temp), f. & ef. 10-1-87; EDD 13-1988, f. 5-24-88 (and corrected 5-27-88), cert. ef. 5-27-88; EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08; Administrative correction 12-22-08; EDD 12-2009, f. & cert. ef. 10-1-09

### **123-016-0050**

#### **Contracts for Awards**

(1) Upon approval of an award from the Fund, the department will enter into a contract with the recipient. If the recipient is a for-profit business, the contract will require, among other items, repayment of the grant if the department has determined the business has the ability to repay the grant without jeopardizing the viability of the business. The department will make this determination based, in part, on a recommendation from the contracted expert.

(2) Upon approval of an award from the Fund, the department will determine the optimal method of delivering the business retention services to the recipient. In most instances, the department will identify an expert in the subject area in which the business is experiencing problems or an expert in the industry in which the business is engaged and enter into a contract with the expert for the provision of the business retention services.

(3) The department must ensure that costs for contractors are consistent with usual and customary rates and that contractors are certified, licensed, or otherwise experienced and qualified in their field.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.224

Hist.: EDD 10-1985(Temp), f. 11-7-85, ef. 10-22-85; EDD 4-1987(Temp), f. & ef. 10-1-87; EDD 13-1988, f. 5-24-88 (and corrected 5-27-88), cert. ef. 5-27-88; EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08; Administrative correction 12-22-08; EDD 12-2009, f. & cert. ef. 10-1-09

### **123-016-0060**

#### **Confidential Records**

For applicants and recipients of business retention services, ORS 192.502(17) lists certain types of business information that are exempted from public records requests.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.224, 192.502(17)

Hist.: EDD 4-1987(Temp), f. & ef. 10-1-87; EDD 13-1988, f. 5-24-88 (and corrected 5-27-88), cert. ef. 5-27-88; EDD 19-2008(Temp), f. 6-9-08 cert. ef. 6-10-08 thru 11-15-08; Administrative correction 12-22-08; EDD 12-2009, f. & cert. ef. 10-1-09; OBDD 32-2010, f. & cert. ef. 10-1-10

## **DIVISION 17**

### **OPERATION OF OREGON BUSINESS DEVELOPMENT FUND**

### **123-017-0005**

#### **Purpose**

The purpose of these rules is to provide procedures, standards and criteria for the making of loans from the Oregon Business Development Fund.

Stat. Auth.: ORS 285A.110

Stats. Implemented: ORS 285B.050 - 285B.098

Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 11-1999, f. & cert. ef. 10-11-99

### **123-017-0007**

#### **Policy and Set Asides**

(1) It is the policy of the Business Development Commission, the Finance Committee and the Business Development Department to make loans from the Oregon Business Development Fund to qual-

ified applicants without regard to race, color, creed, sex, age or national origin.

(2) Fifteen percent of the available money in the Fund shall be set aside for loans to emerging small enterprises that are located in or draw their work forces from within distressed areas.

(3) The Oregon Targeted Development Account is hereby established within the Oregon Business Development Fund to make loans in distressed areas. The Commission authorizes the Department to transfer from time to time up to \$10 million into or out of the Oregon Targeted Development Account.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.050 - 285B.098

Hist.: EDD 1-1984, f. & cert. ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05; EDD 22-2009, f. 11-30-09, cert. ef. 12-1-09

### **123-017-0008**

#### **Delegation**

(1) Authority for the day-to-day operation of the fund, including approval of loans and projects, and amendments thereto, is delegated to the Finance Committee.

(2) The Commission shall review and evaluate the operation of the fund with such frequency as it may from time to time determine, and may order any changes that it considers necessary or desirable.

(3) The Commission shall retain final authority over policies and administrative procedures governing the operation of the fund.

(4) The Director or designee is authorized to execute any document reasonably necessary or convenient to close any loan approved by the Finance Committee or, in the case of loans of \$250,000 or less, by the Director.

(5) When applicable, the references to the Finance Committee shall include the Director, acting in regard to loans for business development projects of \$250,000 or less pursuant to ORS 285B.080(3).

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.050 - 285B.098

Hist.: EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 6-2007(Temp), f. & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 21-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 22-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 9-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 20-2010(Temp), f. & cert. ef. 5-28-10 thru 10-9-10; OBDD 33-2010, f. & cert. ef. 10-1-10

### **123-017-0010**

#### **Definitions**

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. For purposes of this division of administrative rules, unless the context demands otherwise:

(1) "Applicant" means any county, municipality, person or any combination of counties, municipalities or persons applying for a loan from the Oregon Business Development Fund under ORS 285B.050 to 285B.098.

(2) "Business Development Project" means the acquisition, engineering, improvement, rehabilitation, construction, operation or maintenance of any property, real or personal, that is used or is suitable for use by an economic enterprise and that will result in or will aid, promote or facilitate, development of one or more of the following activities:

- (a) Manufacturing or other industrial production;
- (b) Agricultural development or food processing;
- (c) Aquacultural development or seafood processing;
- (d) Development or improved utilization of natural resources;
- (e) Convention facilities and trade centers;
- (f) Destination facilities other than retail or food service businesses;
- (g) Transportation or freight facilities; and
- (h) Other activities that represent new technology or type of economic enterprise that the Finance Committee determines are needed to diversify the economic base of an area but not including:

(A) Construction of office buildings, including corporate headquarters; and

(B) Retail businesses, shopping centers or food service facilities;

(C) An office area or facility providing an internal support function to, and serving as an integral part of, a business development project shall not be considered an office building under paragraph (h)(A) of this section.

(3) "Fund" or "OBDF" means the Oregon Business Development Fund as defined and set forth in ORS 285B.050-285B.098.

(4) "Local Development Group" means any public or private corporation that has as one of its primary purposes, as stated in its articles of incorporation, charter or bylaws, the promotion of economic development in any part of the State of Oregon.

(5) "Municipality" means any city, municipal corporation or quasi-municipal corporation.

(6) "Person" means any individual, association of individuals, joint venture, partnership, limited liability company or corporation.

(7) "Emerging Small Business" means any business as defined in ORS 200.005.

(8) "Convention center" means a facility for the holding of meetings, conferences, conventions, trade shows or similar gatherings. Sleeping accommodations may be included but at least one-third of the OBDF proceeds must be used for public meeting facilities. Such facilities must have the capacity to seat a minimum of 300 people. However, the Finance Committee, in its sole discretion, may approve financing for projects consisting solely or primarily of sleeping accommodations if the applicant sufficiently demonstrates that existing sleeping accommodations are inadequate for existing facility meeting space.

(9) "Destination facility" means a project which has a significant impact on the regional tourism economy and has the capacity to be marketed to national or international markets. Incidental food service facilities may be included. Sleeping accommodations without unique attraction capabilities are not eligible.

(10) "County" means any county or federally recognized Oregon Indian tribe.

Stat. Auth.: ORS 285A.110

Stats. Implemented: ORS 285B.050 & 285B.092

Hist.: EDD 2-1983(Temp), f. & cert. ef. 5-25-83; EDD 1-1984, f. & cert. ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 8-1996(Temp), f. & cert. ef. 8-13-96; EDD 4-1997, f. & cert. ef. 3-25-97; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 6-2007(Temp), f. & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 21-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 22-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 9-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; Administrative correction 10-26-10

### **123-017-0015**

#### **Eligibility**

(1) Eligible projects are business development projects as defined in OAR 123-017-0010(2). If the Department is unable to obtain a sufficient number of approvable applications to meet the requirements of ORS 285B.059(5), it may, notwithstanding the limitations imposed by 285B.050(2)(g)(B), make loans to service and retail businesses operated by emerging small businesses which are located in or draw their workforces from within distressed areas as determined by the Department, when such projects provide compelling economic development benefits. The amount of loans the Department may make to service and retail businesses under (1) of this section shall be limited to the amount calculated under the method described in 285B.059(5).

(2) Eligible purposes are the financing of land, buildings, fixture, equipment and machinery, research and development, and the provision of working capital.

(3) Eligible applicants are defined in OAR 123-017-0010(1).

(4) The relocation of a facility from one labor market area to another, if not accompanied by an expansion of the applicant's business or employment, is an eligible activity if:

(a) The relocation is caused by forces beyond the control of the applicant; or

(b) The relocation is necessary for the continued operation of the business; or

(c) There is no resulting loss of employment at the former site of the business.

(5) Relending of funds shall not be an eligible activity, except that the funds may be used for the local injection share of an SBA 503 or 504 Certified Development Company transaction.

(6) In cases where an otherwise eligible company or project has an insignificant (less than 25 percent) ineligible portion, the entire project may be determined eligible for a loan from the fund.

(7) Other than as specified in section (6) and (10) of this rule, Fund financing will be limited to 40 percent of the amount of the eligible costs, except that Fund financing may equal up to 50 percent of eligible costs when the application is submitted through or referral for financing is made to the Department by a Financial Institution.

(8) Tourist facilities shall not be eligible unless:

(a) The project can be qualified as a convention center; or

(b) The project can be qualified as a destination attraction with significant regional economic impact.

(9) Refinancing of existing debt, including existing trade payables and delinquent taxes, shall not be eligible unless the applicant demonstrates to the satisfaction of the Finance Committee that:

(a) The applicant contributes significantly to a target population or to a geographical area targeted by the Oregon Business Development Fund;

(b) The applicant requires refinancing to remain viable. Assessment of viability will be made at the sole discretion of the Finance Committee;

(c) Lenders agree to extend due dates, provide additional financing or provide other favorable terms to the applicant; and

(d) The applicant meets all other requirements set forth in statute and administrative rule, including demonstrating to the satisfaction of the Finance Committee that the project is feasible and a reasonable risk, has a reasonable prospect of repayment and can provide good and sufficient collateral.

(10) Except for the Oregon Targeted Development Account, Fund financing may exceed 50 percent of the amount of the eligible project costs and/or may be approved without a commitment from a commercial or private lender, or a local development group, to participate in the financing of the project, if

(a) Two or more Financial Institutions have denied a financing request for the project by the borrower. Such denied financing request must:

(A) Be for a loan for an eligible Fund loan purpose; and

(B) Be evidenced by a written denial from the Financial Institution specifying the reason(s) for the denial. Denial for reasons such as an incomplete application, failure to provide requested information, or the requested loan is for a purpose for which or on terms under which the Financial Institution does not make loans is not acceptable as a denial of financing; and

(b) The applicant certifies that there is no other available financing for the project with documentation as required by the Finance Committee.

(11) Fund financing may be approved without a commitment from a commercial or private lender or a local development group to participate in the financing of the project if the applicant is a county or municipality, or if there are required forms of payments other than scheduled principal and interest.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.059, 285B.080(3) & 285B.092

Hist.: EDD 2-1983(Temp), f. & cert. ef. 5-25-83; EDD 1-1984, f. & cert. ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 25-1990(Temp), f. & cert. ef. 9-13-90; EDD 29-1990, f. & cert. ef. 12-12-90; EDD 6-1991(Temp), f. & cert. ef. 6-18-91; EDD 8-1996(Temp), f. & cert. ef. 8-13-96; EDD 4-1997, f. & cert. ef. 3-25-97; EDD 9-1997(Temp), f. & cert. ef. 10-7-97; EDD 8-1998, f. & cert. ef. 5-22-98; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 6-2007(Temp), f. & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 21-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 22-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 9-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 20-2010(Temp), f. & cert. ef. 5-28-10 thru 10-9-10; OBDD 33-2010, f. & cert. ef. 10-1-10; OBDD 6-2013, f. & cert. ef. 7-1-13

## **123-017-0020**

### **Preference**

(1) Except in the case of a loan made from the Oregon Targeted Development Account, the Finance Committee shall give preference to loan applications for projects that demonstrate an overall community benefit and that have one or more of the following characteristics:

(a) Have a ratio of at least one projected job created or saved per \$30,000 sought to be borrowed from the Oregon Business Development Fund.

(b) Are operated by businesses with 100 or fewer employees;

(c) Are located in rural or distressed areas of the state;

(d) Are located in Enterprise Zones designated under ORS 285C.050 – 285C.250;

(e) Employ displaced workers in the area;

(f) Assist in the economic diversification of the area;

(g) Contain a significant amount of owner equity capital. At least ten percent of the project costs for established companies (three years old or more) and 30 percent of project costs for start-ups (firms less than three years old, or firms making the transition from research and development to production) should come from equity or subordinated loans from the owners;

(h) Maximize participation by financial institutions and local development groups;

(i) Produce goods or services for the export market;

(j) Encourage the flow of capital from outside the local area; and

(k) Do not cause severe adverse competitive disadvantages to existing businesses.

(2) The Finance Committee shall be the sole judge of the relative importance of each of the above factors for each individual loan application under consideration. Factors will not necessarily be assigned the same weights under all circumstances.

(3) In the case of a loan made from the Oregon Targeted Development Account, the Finance Committee will strive to fund projects that will create or save at least one job for every \$20,000 of Oregon Business Development Fund investment.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.059 & 285B.092

Hist.: EDD 2-1998(Temp), f. & cert. ef. 5-25-83; EDD 1-1984, f. & cert. ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 6-1991(Temp), f. & cert. ef. 6-18-91; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05; EDD 6-2007(Temp), f. & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 21-2008, f. 7-31-08, cert. ef. 8-1-08; OBDD 20-2010(Temp), f. & cert. ef. 5-28-10 thru 10-9-10; OBDD 33-2010, f. & cert. ef. 10-1-10

## **123-017-0025**

### **Application Procedure**

(1) It is the policy of the Finance Committee to strive for and encourage, throughout the application process:

(a) Maximum participation by financial institutions and local development groups; and

(b) A minimum administrative burden on the applicant and on the local government.

(2) Any applicant may submit an application to the Department on a form approved by the Department, together with an application fee.

(3) If the amount of the loan being sought from the Fund is \$250,000 or less, the Director may in the Director's sole discretion approve or deny the loan request or forward it to the Finance Committee for the Committee's consideration.

(4) If the amount of the loan being sought from the fund exceeds \$250,000 the Department shall make a recommendation to the Finance Committee, which may in its sole discretion approve or deny the loan request.

(5) If a loan request is approved, the Department shall prepare the documents necessary to close the loan transaction. Such documents shall reflect all terms and conditions upon which the Finance Committee or the Director may have conditioned approval of the loan. Any material modifications of those terms and conditions must be approved by the Chair of the Finance Committee or his/her designee, or the Director for loans of \$250,000 or less.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.053 & 285B.092

Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-87; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05; EDD 6-2007(Temp), f. & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 21-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 22-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 9-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 20-2010(Temp), f. & cert. ef. 5-28-10 thru 10-9-10; OBDD 33-2010, f. & cert. ef. 10-1-10

### 123-017-0030

#### Loan Conditions

(1) The Director (for loan requests of \$250,000 or less) or the Finance Committee may approve a loan request if it finds that:

(a) Fund participation in any financing shall not exceed 40 percent of the total amount of the eligible project costs, except that Fund financing may be up to 50 percent when an application is submitted through a Financial institution or Fund financing may exceed 40 percent when two or more Financial Institutions have denied financing as outlined in OAR 123-017-0015(10).

(b) The proposed business development project is feasible and a reasonable risk from practical and economic standpoints, and the loan has reasonable prospect of repayment.

(c) The applicant can provide good and sufficient collateral for the loan, as determined by the Commission. The Commission's security interest may be subordinated to the security interest of other lenders participating in the project. The security interest of loans from the Oregon Targeted Development Account will not be subordinated to the security interest of other lenders, unless the Finance Committee or the Director finds there is an abundance of collateral and/or company or guarantor financial strength. The Business Development Commission may make loans in distressed areas, as defined by the Department, without regard to the requirements for security and collateral under ORS 285B.059 and 285B.062 that are otherwise applicable. Collateral value of out-of-state real property will be significantly discounted from nominal assessed or appraised value.

(d) Monies in the Oregon Business Development Fund are or will be available for the proposed business development project.

(e) There is a need for the proposed business development project.

(f) The applicant's financial resources are adequate to ensure success of the project.

(g) The applicant has not received or entered into a contract or contracts exceeding \$1,000,000 with the Commission, under authority of ORS 285B.050–285B.098, for the previous 365 days.

(2) The Finance Committee may, in its sole discretion, permit the assumption of an outstanding Oregon Business Development Fund Loan, if the assuming obligor satisfies the Finance Committee or the Director as to its willingness and ability to perform all obligations of the original borrower related to the loan, including but not limited to the obligation to repay the loan in accordance with its terms, and if the State's collateral position is not diminished. Oregon Business Development Fund loans are not, however, necessarily or automatically assumable. A complete application, application fee and supporting documentation are required to initiate review of the request.

(3) The applicant agrees to abide by all laws and regulations applicable to the applicant's project.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.059 & 285B.092

Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 8-1996(Temp), f. & cert. ef. 8-13-96; EDD 4-1997, f. & cert. ef. 3-25-97; EDD 9-1997(Temp), f. & cert. ef. 10-7-97; EDD 8-1998, f. & cert. ef. 5-22-98; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05; EDD 6-2007(Temp), f. & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 21-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 22-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 9-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 20-2010(Temp), f. & cert. ef. 5-28-10 thru 10-9-10; OBDD 33-2010, f. & cert. ef. 10-1-10; OBDD 6-2013, f. & cert. ef. 7-1-13

### 123-017-0035

#### Loan Agreement

If the Finance Committee approves the business development project, the Finance Committee or the Director, on behalf of the state, and the borrower may enter into a loan contract of not more than \$1,000,000, secured by good and sufficient collateral (except as noted in OAR 123-017-0030(1)(c)), as determined by the Finance Committee, that shall set forth, among other matters:

(1) A plan for repayment by the borrower to the Oregon Business Development Fund moneys borrowed from the Fund used for the business development project with interest charged on those moneys at the fixed rate of one percentage point more than the prevailing interest rate on United States Treasury bills, notes or bonds of a comparable maturity. Loans made from the Oregon Targeted Development Account shall be made at a fixed interest rate of four percentage points less than the prevailing prime rate. Loans made under the conditions of OAR 123-0017-0015(10) shall be made at a fixed interest rate of not less than five percentage points over the prevailing prime rate. The rate shall not be less than four percent. For the purposes of this section, the prevailing interest rate shall be the weekly average interest rate as set forth in the most recent Federal Reserve Statistical Release H.15(519) that the Department has received at the time the loan is approved. The repayment plan, among other matters:

(a) Shall provide for commencement of repayment by the applicant of moneys used for the business development project and interest thereon no later than one year after the date of the loan contract or at such other time as the Finance Committee may provide;

(b) May provide for reasonable extension of the time for making any repayment in emergency or hardship circumstances if approved by the Finance Committee or the Director;

(c) Shall provide for such evidence of debt assurance of, and security for, repayment of the loan as is considered necessary by the Finance Committee;

(d) Shall set forth a schedule of payments and the period of loan which shall not exceed the usable life of the contracted project or 25 years from the date of the contract, whichever is less. The payment schedule shall include repayment of interest that accrues during any period of delay in repayment authorized by subsection (a) of this section, and the payment schedule may require payments of varying amounts for collection of accrued interest. The term of the Fund loan will normally be matched to, and not exceed twice that of, the commercial or private lender participating in the project, if applicable. Loans from the Oregon Targeted Development Account shall be for a maximum term of 5 years, with a maximum amortization of 15 years. Loans made under the terms of OAR 123-017-0015(10) shall be for a maximum term of 5 years, with a maximum amortization of 20 years.

(e) A request to renew any loan from the Fund that has reached its scheduled maturity and has not been repaid in full may be approved by the Finance Committee (or Director if the principal balance does not exceed \$250,000), with any additional terms and conditions, including interest rate, that it may determine. A new application, including an application fee and supporting documentation, are required to initiate review of the request.

(f) Shall set forth a procedure for formal declaration of delinquency or default of payment by the Department. Loans shall be declared delinquent when any payment is more than ten days late. Borrower shall be notified in writing of declaration of delinquency, and shall have 31 days from the original payment date to bring the loan current. If the loan is not brought current, or arrangements satisfactory to the Department for bringing the loan current have not been made, the Department may declare the loan in default, declare the entire outstanding indebtedness to be forthwith due and payable and assign the loan to the Attorney General for collection; The Finance Committee or the Director or their designee is authorized to approve any modification of terms on a loan that is delinquent or in default as deemed necessary or prudent to most likely effect repayment of the loan to the Fund.

(g) May allow for forms of payment on loans other than scheduled principal and interest payments, as determined by the Finance Committee, or Director in the case of loans of \$250,000 or less.

(2) Provisions satisfactory to the Department for field engineering and inspection, the Department to be the final judge of completion of the contract.

(3) That the liability of the state under the contract is contingent upon the availability of moneys in the Oregon Business Development Fund for use in the business development project.

(4) Such further provisions as the Finance Committee considers necessary to ensure expenditure of the funds for the purposes set forth in the approved application.

(5) That the borrower is responsible for payment of:

(a) All of the expenses of the operation and maintenance of the project, including adequate insurance;

(b) All taxes and special assessments levied with respect to the leased premises and payable during the term of the lease;

(c) Insurance premiums and providing insurance in amount and coverage acceptable to the Finance Committee. Such insurance shall include but shall not be limited to: fire and hazard insurance, liability insurance and flood insurance (if applicable); and

(d) Out-of-pocket costs associated with the loan closing which may include but are not limited to filing and recording fees, title insurance and appraisals, and attorney fees.

(6) That the borrower will provide to the Department on an annual basis, within 120 days of the end of its fiscal year, the same type of financial statements as required by the participating bank. The Finance Committee or the Department may require additional financial information.

(7) The Finance Committee, or Director for loans under \$250,000, may require an assignment of life insurance on active principals in borrower.

(8) The Department, at its sole discretion, may require the execution of a Commitment Letter and receipt of a non-refundable Commitment Fee to secure resources necessary to fund the loan. The Commitment Fee will be applied at closing to the loan fee. If the loan does not close, the Commitment Fee will not be refunded.

(9) In the case of loans of more than \$100,000 that are funded by proceeds from the Oregon Lottery, that the borrower shall make a good faith effort to hire and retain low-income individuals who have received job training assistance from publicly funded job training providers and enter into a first-source hiring agreement with a publicly funded job training provider.

(10) If the loan will result in the construction, expansion, rehabilitation or remodeling of a facility to which the public has access, adequate access for handicapped persons must be provided. This provision applies only to firms that deal directly with the general public in the normal and usual course of their business, and to facilities in which business is customarily transacted by and with members of the general public.

(11) If a project involves building construction, expansion, rehabilitation or modification, a loan from the fund shall be permanent and not interim financing.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.062 & 285B.092

Hist.: EDD 2-1983(Temp), f. & cert. ef. 5-25-83; EDD 1-1984, f. & cert. ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 25-1990 (Temp), f. & cert. ef. 9-13-90; EDD 29-1990, f. & cert. ef. 12-12-90; EDD 8-1996(Temp), f. & cert. ef. 8-13-96; EDD 4-1997, f. & cert. ef. 3-25-97; EDD 9-1997(Temp), f. & cert. ef. 10-7-97; EDD 8-1998, f. & cert. ef. 5-22-98; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05; EDD 6-2007(Temp), f. & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 21-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 22-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 9-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 20-2010(Temp), f. & cert. ef. 5-28-10 thru 10-9-10; OBDD 33-2010, f. & cert. ef. 10-1-10; OBDD 6-2013, f. & cert. ef. 7-1-13

### 123-017-0037

#### Appeals, Servicing, Amendments, Assumptions and Modifications

(1) If the Director denies a loan request, the applicant may appeal the Director's decision to the Finance Committee. The Finance Committee may:

(a) Affirm the Director's denial; or

(b) Decide to consider the loan request itself.

(2) If the Finance Committee denies a loan request, the applicant has the right to appeal to the Finance Committee for a rehearing of its application.

(3) An applicant has the right to appear in person at the appeal hearing, and to introduce whatever books, documents and data it regards as necessary to support the appeal.

(4) An applicant whose appeal of the Director's or the Finance Committee's decision has been denied by the Finance Committee must submit a new application, including a new application fee, to be eligible for further consideration of a new loan request.

(5) All loans shall be monitored by, and all loan repayments shall be made to, the Department.

(6) It is the responsibility of the Borrower to ensure that the Department receives its payment by the due date.

(7) Any request for modification or amendment to any loan condition shall be made in writing to the Department and approved by the Finance Committee or Director. However, in those cases where a requested amendment or modification will not have a serious adverse effect on the State's security position, the Chairperson or his/her designee from the Finance Committee or the Director may approve such requested amendment or modification.

(8) If the Director, the Finance Committee, its Chairperson or designee, consents to any requested modification, assumption or amendment, the Borrower shall be responsible for all costs, including filing fees, of modifying or amending of any loan documents, filings, recordings or financing statements.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.059, 285B.062 & 285B.092

Hist.: EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05; EDD 22-2009, f. 11-30-09, cert. ef. 12-1-09

### 123-017-0055

#### Fees and Charges

(1) The Department shall charge and collect a loan fee of \$200 at the time the application is filed.

(2) In addition, the applicant, immediately upon receiving the loan proceeds, shall pay to the Department one and one-half percent of the principal amount of the loan.

(3) The Department may charge and collect a Commitment Fee, payable to the Department, in an amount up to three quarters of one percent of the principal amount of the loan to be applied to the fee specified in section (2) of this rule at closing of the loan. If the loan does not close, the Commitment Fee will not be refunded.

(4) The Department may charge and collect an Assumption Fee, payable to the Department, in an amount up to one half of one percent of the remaining principal balance of the loan. The individual or entity assuming the obligation will also be responsible for closing costs associated with the transfer of debt including but not limited to document preparation, review of documentation for legal sufficiency, title, escrow, recording or filing fees.

(5) The Department may charge and collect a Loan Modification Fee, payable to the Department, of \$50 at the time of the modification request. A loan modification may include, but, is not limited to, modification to terms of repayment, subordination requests or collateral swaps. The individual or entity requesting the modification will also be responsible for costs associated with the modification including, but, not limited to, document preparation, review of documentation for legal sufficiency, title, escrow, recording or filing fees.

(6) Monies referred to in (1), (2), (3), (4) and (5) of this section shall be paid into the Fund.

(7) The Department may, in its sole discretion, use some or all of the money collected under section (2) of this rule, plus a maximum of an additional one and one-half percent, as payment to a contracted local development group for referring projects for financing, packaging the loans, processing applications, investigating proposed business development projects and servicing outstanding loans. In no case shall the Department make any payment of more than \$10,000 for any one project. In no case shall the Department make any payment to any third party until the loan has been closed and the Department has collected the fee specified in section (2) of this rule.

Stat. Auth.: ORS 285A.075  
 Stats. Implemented: ORS 285B.056, 285B.068 & 285B.092  
 Hist.: EDD 2-1983(Temp), f. & cert. ef. 5-25-83; EDD 1-1984, f. & cert. ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-13-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 6-2007(Temp), f. & cert. ef. 8-29-07 thru 2-23-08; EDD 3-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 21-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 22-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 20-2010(Temp), f. & cert. ef. 5-28-10 thru 10-9-10; OBDD 33-2010, f. & cert. ef. 10-1-10; OBDD 6-2013, f. & cert. ef. 7-1-13

## DIVISION 18

### CAPITAL ACCESS PROGRAM

#### 123-018-0000

##### Purpose and Scope

(1) The purpose of this division of administrative rules is to provide definitions, procedures, standards and criteria, to establish eligibility, and to stipulate rights and obligations for operation of the Capital Access Program.

(2) The Capital Access Program assists small businesses needing financial capital to grow and to undertake economic activity in this state by subsidizing loss reserves so that conventional lending institutions have greater capacity to satisfy this need.

Stat. Auth.: ORS 183.310 - 183.550 & 285.109 - 285.119  
 Stats. Implemented: ORS 285.109 - 285.119  
 Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

#### 123-018-0010

##### Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001 as used in this division of administrative rules, the following definitions apply, unless the context requires otherwise:

(1) "Agreement" means a contract between a Financial Institution and the Department authorizing the Financial Institution to participate in the Program as required under ORS 285B.113.

(2) "Borrower" means a Qualified Business, including but not limited to a corporation, partnership, limited liability company, joint venture, sole proprietorship, cooperative, or non-profit corporation, that has received a Qualified Loan from a Participating Financial Institution. The borrower, or any principal of the borrower, may not be an executive officer, director, or principal shareholder of the financial institution lender; a member of the immediate family of such executive officer, director or principal shareholder; or a related interest to any of the above. The terms "executive officer", "director", "principal shareholder", "immediate family", and "related interest" are described in 12 C.F.R. part 215.

(3) "Brownfield" means any real property where expansion or redevelopment is complicated by actual or perceived environmental contamination.

(4) "Department" means the State of Oregon Business Development Department under ORS Chapter 285A.

(5) "Distressed Area" means a geographic area so designated as described in division 024 of these administrative rules.

(6) "Enrolled Loan" means a Qualified Loan enrolled in the Program as described in OAR 123-018-0080, including but not limited to a term loan or line of credit.

(7) "Environmental action" on a brownfield(s) means activities undertaken to:

(a) Determine if a release has occurred, or may occur, if the release or potential release poses a significant threat to human health or the environment, or if additional remedial actions may be required at the site;

(b) Conduct a remedial investigation and a feasibility study;

(c) Plan for remedial action or removal; or

(d) Conduct a remedial action or removal action at a site.

(8) "Fund" means the Capital Access Fund in the State Treasury under ORS 285B.109.

(9) "Loss" means any principal amount due and not paid, accrued interest due and not paid, and actual and necessary, documented out-of-pocket collection expenses at the time the Participating Financial Institution determines, in a manner consistent with its standard lending and loan loss criteria and normal method for making such determinations, that an Enrolled Loan is uncollectible and is to be charged off as a loss. The amount of principal and interest included in the Loss shall not exceed the principal amount of the Enrolled Loan, plus accrued and unpaid interest on covered principal amount from the date the Qualified Loan is made.

(10) "Loss Reserve Account" means an account in the State Treasury or any Financial Institution that is established and maintained by the Department for the benefit of a Financial Institution participating in Program.

(11) "Participating Financial Institution" means a Financial Institution that has executed an Agreement with the Department to participate in the Program, has enrolled one or more qualified loans, and has adequate capacity, as determined by the Department, to underwrite and monitor business-purpose loans.

(12) "Primary Economic Effect" means the majority of economic benefit resulting from a business activity. A business's Primary Economic Effect is in a particular geographic location if either at least 51 percent of the business's total revenues are generated, or at least 51 percent of the business's total jobs are created or retained, in that location.

(13) "Principal" in regards to a Borrower is defined as:

(a) If a sole proprietorship, the proprietor;

(b) If a partnership, each managing partner and each partner who is a natural person and holds a twenty percent (20%) or more ownership interest in the partnership; and

(c) If a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of twenty percent (20%) or more of the ownership stock or stock equivalent of the entity.

(14) "Principal" in regards to a Lender is defined as:

(a) If a sole proprietorship, the proprietor;

(b) If a partnership, each partner; and

(c) If a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers or employees of the entity, and each direct or indirect holder of twenty percent (20%) or more of the ownership stock or stock equivalent of the entity.

(15) "Program" means the Capital Access Program authorized by ORS 285B.109 to 285B.119.

(16) "Qualified Business" means any person, conducting business for profit or not for profit, which is authorized to conduct business in the State of Oregon.

(17) "Qualified Loan" means a loan or portion of a loan made by a Participating Financial Institution to a Qualified Business for any business activity that has its Primary Economic Effect in Oregon. The term does not include a loan or portion of a loan used for any of the following purposes:

(a) The purchase of owner-occupied residential housing or for the construction, improvement, or purchase of residential housing that is owned or to be owned by the Borrower;

(b) The purchase of real property that is intended for resale or not used for the business operations of the Borrower;

(c) Refinance of the balance of an existing loan that is not an Enrolled Loan. Any portion of the loan used for a qualified purpose (i.e., that is in excess of the balance of an existing loan that is not an Enrolled Loan) may be eligible to be enrolled.

(d) The purchase of securities;

(e) Lobbying activities;

(f) Repayment of delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority;

(g) Repayment of taxes held in trust or escrow;

(h) Reimbursement of funds owed to any owner, including any equity injection or injection of capital for the business' continuance;

(i) Purchase of any portion of the ownership interest of any owner of the business; or

(j) Refinance of any portion of a loan enrolled in another state or federal credit enhancement or credit insurance program.

(k) The term also does not include a loan where any Principal of the Borrower has been convicted of a sex offense against a minor as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911).

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

Stat. Auth.: ORS 285A.075, 285B.115(3) & 285B.117(4)

Stats. Implemented: ORS 285B.109 - 285B.119

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 1-1994(Temp), f. & cert. ef. 1-11-94; EDD 9-1994, f. 5-27-94, cert. ef. 6-1-94; EDD 10-1997(Temp), f. & cert. ef. 10-7-97; EDD 9-1998, f. & cert. ef. 5-22-98; EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 6-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08; EDD 22-2008, f. 7-31-08, cert. ef. 8-1-08; OBDD 13-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 9-2011(Temp), f. & cert. ef. 12-19-11 thru 6-15-12; OBDD 6-2012, f. & cert. ef. 6-1-12

### **123-018-0020**

#### **Authority to Implement Program**

The manager of the Department's Business Finance programs, or his/her designee, may execute any document reasonably necessary or convenient to implement the Program.

Stat. Auth.: ORS 285A.075, 285B.113(3)

Stats. Implemented: ORS 285B.109 - 285B.119

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05; OBDD 13-2010, f. 4-30-10, cert. ef. 5-1-10

### **123-018-0030**

#### **Program Registration Procedure**

(1) A Financial Institution wishing to participate in the Program must submit a completed program registration application using a form prescribed by the Department.

(2) The Department shall determine the Financial Institution's eligibility to participate in the Program, based on the submitted application and other information the Department may deem necessary or appropriate.

(3) A Financial Institution that the Department determines is eligible to participate in the Program may enter into an Agreement with the Department as described in OAR 123-018-0040.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.109 & 285B.119

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

### **123-018-0040**

#### **Agreement**

All Agreements entered into between a Participating Financial Institution and the Department shall provide:

(1) For the creation of a Loss Reserve Account by the Department, owned by the Department for the benefit of the Participating Financial Institution in accordance with ORS 285B.115;

(2) That the liability of the State of Oregon and the Department to the Participating Financial Institution under the Agreement is limited to the outstanding balance in the Loss Reserve Account for that Participating Financial Institution, less the portion of the interest that is available for withdrawal by the Department for administrative costs as described in OAR 123-018-0060;

(3) That the terms and conditions of Qualified Loans are to be determined solely by the Participating Financial Institution and Borrower;

(4) The method for enrolling Qualified Loans in the Program;

(5) That the Borrowers, the Participating Financial Institution, and (subject to the availability of money in the Fund) the Department will deposit moneys into the Participating Financial Institution's Loss Reserve Account when the Participating Financial Institution makes a Qualified Loan to a Borrower;

(6) A claims process for reimbursement of Losses that have been incurred from defaults on Enrolled Loans;

(7) For payment by the Department from the Loss Reserve Account to the Participating Financial Institution to reimburse it for such Losses, up to the total amount of the then current balance available in the Loss Reserve Account, less the portion of the earned interest that belongs to the department for administrative costs.

(8) For disposition of any recoveries from a Borrower made by the Participating Financial Institution subsequent to being reimbursed for any Loss by the Department;

(9) Conditions for subrogation of the Department, at the Department's request, to the rights of the Participating Financial Institution in collateral, personal guarantees or other forms of security for the Qualified Loan;

(10) Conditions for withdrawal by the Department of excess balances or of certain interest earnings (see OAR 123-018-0150) in the Loss Reserve Account;

(11) Conditions for termination by the Department of the obligation to enroll Qualified Loans under the Program;

(12) Conditions for termination of the Agreement, and disposition by the Department of any remaining balance in the Loss Reserve Account;

(13) For withdrawal by the Participating Financial Institution from the Program and disposition by the Department of any remaining balance in the Loss Reserve Account;

(14) For the Participating Financial Institution to periodically report to the Department any information the Department requires, including financial information that is identifiable with, or identifiable from, the financial records of a Borrower;

(15) For inspection by the Department of the Participating Financial Institution's pertinent files relating to Enrolled Loans;

(16) That the Department may require from the Participating Financial Institution information relating to the Participating Financial Institution's status and performance, as developed by or for applicable state or federal regulatory bodies, and relevant to the Participating Financial Institution's participation in the Program or the financial health of institution, or that the Department may obtain public information from state or federal regulatory bodies such as the Oregon State Department of Consumer and Business Services, Division of Finance and Corporate Securities; and

(17) For other terms and conditions as the Department may require.

Stat. Auth.: ORS 285A.075 & 285B.115(3)

Stats. Implemented: ORS 285B.113, 285B.115, 285B.117 & 285B.118

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 6-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08; EDD 22-2008, f. 7-31-08, cert. ef. 8-1-08

### **123-018-0050**

#### **Establishing a Loss Reserve Account**

After executing an Agreement with a Participating Financial Institution, the Department shall establish a Loss Reserve Account to receive the fees described in OAR 123-018-0070 from the Borrower and the Participating Financial Institution, as well as the Department's matching contribution from the Fund as described in OAR 123-018-0080 and 123-018-0085. Except as determined by the Department to be otherwise necessary or desirable, the Loss Reserve Account shall be domiciled with the Participating Financial Institution in the form of an insured, interest-earning demand deposit account.

Stat. Auth.: ORS 285A.075 & 285B.115(3)

Stats. Implemented: ORS 285B.115 & 285B.117

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

### **123-018-0060**

#### **Ownership, Control, Investment of Loss Reserve Account**

(1) All moneys in a Loss Reserve Account are the exclusive property of the State of Oregon, acting by and through the Department, and are controlled solely by the Department. The Department may withdraw funds from a Loss Reserve Account only as described in this division of administrative rules or as contained in provisions of the applicable Agreement.

(2) The Department may withdraw and transfer into the Capital Access Fund up to 50% of the interest earned on moneys in Loss Reserve Accounts to pay for administrative expenses incurred by the Department.

(3) Any earnings on the balance in a Loss Reserve Account are part of the Loss Reserve Account, except as described in this section and in OAR 123-018-0150.

Stat. Auth.: ORS 285A.075 & 285B.115(3)

Stats. Implemented: ORS 285B.115 & 285B.119

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 6-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08; EDD 22-2008, f. 7-31-08, cert. ef. 8-1-08

### 123-018-0065

#### Loan Eligibility

A Participating Financial Institution may determine that a Qualified Loan is eligible for the Department to enroll in the Program if the Participating Financial Institution determines the Qualified Loan meets the following conditions:

(1) The Qualified Loan is not for a business enterprise in which a person described in section (2) of this section has a shared ownership, investment or other significant pecuniary interest; and

(2) The Qualified Loan is provided to a Borrower, who is not an executive officer, director or principal shareholder of the Participating Financial Institution, or person with comparable official capacity with or significant ownership in the Participating Financial Institution, or a member of the immediate family of such a person.

(3) The Borrower may not be:

(a) A business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business; or

(b) A business that earn more than half of its annual net revenue from lending activities; or

(c) A business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants; or

(d) A business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted; or

(E) A business engaged in gambling enterprises, unless the business earns less than 33% of its annual net revenue from lottery sales.

Stat. Auth.: ORS 285A.075 & 285B.115(3)

Stats. Implemented: ORS 285B.115 & 285B.119

Hist.: EDD 8-2005, f. & cert. ef. 10-24-05; OBDD 9-2011(Temp), f. & cert. ef. 12-19-11 thru 6-15-12; OBDD 6-2012, f. & cert. ef. 6-1-12

### 123-018-0070

#### Fees

(1) When making a Qualified Loan for which enrollment under the Program will be sought, the Participating Financial Institution shall charge the Borrower a fee that is at least 1.5 percent but not more than 3.5 percent of the principal amount of the Qualified Loan.

(2) The Participating Financial Institution shall pay a fee equal to the fee paid by the Borrower pursuant to section (1) of this rule. The Participating Financial Institution may charge the Borrower a fee to recover its contribution.

(3) These fees are non-refundable once the Qualified Loan is enrolled.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.117

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

### 123-018-0080

#### Procedure for Enrollment of a Qualified Loan

(1) A Participating Financial Institution may enroll a Qualified Loan in the Program by taking the following actions:

(a) Notifying the Department in writing of the Qualified Loan to be enrolled, using a form prescribed by the Department, within 30 days after the date the Participating Financial Institution disburses proceeds of the Qualified Loan to the Borrower or the date the loan documents are fully executed and the Participating Financial Institution is obligated to disburse proceeds, whichever occurs sooner; and

(b) Transmitting to the Department the fees required by OAR 123-018-0070. If the Loss Reserve Account is domiciled with the Participating Financial Institution, the deposit of fees by the Participating Financial Institution into the Loss Reserve Account satisfies the requirements of this section if the Participating Financial Institution provides the Department with proof of deposit or written notification confirming the deposit.

(2) The Department shall, upon receipt of documentation and fees satisfying the requirements in section (1) of this rule, enroll the Qualified Loan if:

(a) The Department is satisfied that the Qualified Loan is eligible under OAR 123-018-0065; and

(b) Sufficient moneys are or can be made available from the Fund to meet the Department's minimum contribution obligation described in OAR 123-018-0085.

(3) The Department shall notify the Participating Financial Institution of enrollment within 10 business days from receipt of the required documentation and fees.

(4) After notifying the Participating Financial Institution that the Qualified Loan is enrolled, the Department shall transfer from the Fund to the Loss Reserve Account of the Participating Financial Institution a contribution amount as described in OAR 123-018-0085.

(5) Before making a Qualified Loan, a Participating Financial Institution may request a commitment from the Department that sufficient funds are available to meet the Department's contribution as described in OAR 123-018-0085 and are available to be transferred to the Loss Reserve Account when the Qualified Loan is enrolled. If the Department provides the commitment, it will be binding on the Department for 30 days after the date of the commitment if the Participating Financial Institution has complied with section (1) of this rule and the Qualified Loan is eligible under OAR 123-018-0065.

Stat. Auth.: ORS 285A.075, 285B.115(3)

Stats. Implemented: ORS 285B.115 & 285B.117

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 1-1994(Temp), f. & cert. ef. 1-11-94; EDD 9-1994, f. 5-27-94, cert. ef. 6-1-94; EDD 8-2005, f. & cert. ef. 10-24-05; OBDD 13-2010, f. 4-30-10, cert. ef. 5-1-10

### 123-018-0085

#### State Contributions to Loss Reserve Accounts

The Department shall determine the amount of money it transfers from the Fund to a Loss Reserve Account as follows:

(1) For each Enrolled Loan, the Department shall deposit an amount equal to or greater than the total fees transmitted as described in OAR 123-018-0080(1)(b) and as required in 123-018-0070, subject to further limitations in this rule.

(2) If one or both of the following conditions exist, the Department shall deposit an amount equal to 200 percent of the minimum allowed by section (1) of this rule, except as otherwise restricted in section (4) of this rule:

(a) The Borrower's business operations that benefit from the Enrolled Loan are entirely located in a Distressed Area at the time that the Qualified Loan is made consistent with OAR 123-018-0080(1)(a); or

(b) The Enrolled Loan provides the Borrower with funding for use in an environmental action on a brownfield(s).

(3) For any Participating Financial Institution, the Department may deposit 200 percent of the minimum allowed by section (1) of this rule if the Loss Reserve Account currently contains less than \$100,000 according to the most recent information provided to the Department at the time of loan enrollment.

(4) The Department may not transfer:

(a) An amount greater than \$35,000 per Enrolled Loan and associated, concurrent transactions with related business interests; or

(b) More than a total of \$150,000 from the Fund to a Loss Reserve Account for a single Qualified Business and related business interests.

(5) Unless otherwise provided in this rule, the Department may transfer up to 200 percent of the minimum described in section (1) of this rule, if the Department finds the Qualified Loan advances economic development or job creation in this state by small business.

Stat. Auth.: ORS 285A.075, 285B.115(3) & 285B.117(4)

Stats. Implemented: ORS 285B.115 & 285B.117

Hist.: EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 6-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08; EDD 22-2008, f. 7-31-08, cert. ef. 8-1-08; OBDD 13-2010, f. 4-30-10, cert. ef. 5-1-10

### 123-018-0090

#### Procedure for Making Claim for Reimbursement of Loss

(1) If a Participating Financial Institution charges off all or part of an Enrolled Loan as a result of a default by the Borrower, the Participating Financial Institution may claim reimbursement for all or part of the Loss incurred by notifying the Department of the claim in writing on a form prescribed by the Department within three calendar months of the date the Enrolled Loan was charged off.

(2) Subject to OAR 123-018-0110 to 123-018-0130, a Participating Financial Institution may make a claim for reimbursement of a Loss prior to the liquidation of collateral, or to realization on personal or other financial guarantees or from other sources.

(3) The Participating Financial Institution shall retain documentation in its files substantiating all claims for a term commensurate with standard banking records retention practices but not less than five years after the date that the Enrolled Loan is terminated.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.141

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

### 123-018-0100

#### Payment of Claims by Department

(1) The Department shall reimburse a Participating Financial Institution for Losses claimed as described in OAR 123-018-0090. The Department may reject a claim only if the Department determines the representations and warranties provided by the Participating Financial Institution at the time of enrolling the Qualified Loan were false.

(2) All interest earnings shall be available to pay Loss claims, except for:

(a) Earnings available for withdrawal by the Department from the Loss Reserve Account, as described in OAR 123-018-0060, and

(b) As provided for in OAR 123-018-0150.

(3) When there are insufficient funds in the Loss Reserve Account to cover the total amount of a Loss claim, the Department shall pay an amount equal to the balance of the Loss Reserve Account, less the Department's share of any accumulated interest earnings on the account. This payment will fully satisfy the claim and the Participating Financial Institution will have no further right to receive any other amount with respect to such claim.

(4) The Department shall reimburse Loss claims in the order it receives them. If a Participating Financial Institution files two or more Loss claims simultaneously and there are insufficient funds in the Loss Reserve Account to pay them, the Participating Financial Institution may designate the order the Loss claims are to be paid by the Department.

Stat. Auth.: ORS 285A.075 & 285B.115(3)

Stats. Implemented: ORS 285B.115, 285B.117 & 285B.118

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 6-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08; EDD 22-2008, f. 7-31-08, cert. ef. 8-1-08; OBDD 13-2010, f. 4-30-10, cert. ef. 5-1-10

### 123-018-0110

#### Recoveries on Loans Subsequent to Payment of Claim

(1) If, subsequent to the payment of a Loss claim by the Department, the Participating Financial Institution recovers from the Borrower, through liquidation of collateral or from any other source,

amounts for which Participating Financial Institution was reimbursed from the Loss Reserve Account, the Participating Financial Institution shall promptly repay into the Loss Reserve Account the amount received up to the amount of the reimbursement.

(2) If the Loss Reserve Account is domiciled with the Participating Financial Institution, the deposit to the Loss Reserve Account of the amount recovered from the Borrower by the Participating Financial Institution (with written notification by the Participating Financial Institution to the Department confirming such deposit) is deemed payment to the Department of the amount recovered from the Borrower by the Participating Financial Institution and shall satisfy the requirements of this rule.

Stat. Auth.: ORS 285A.075 & 285B.115(3)

Stats. Implemented: ORS 285B.115, 285B.117 & 285B.118

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

### 123-018-0120

#### Available Collateral, Guarantees and Other Security Not Realized

(1) After the Department has received a request to pay a Loss claim to the Participating Financial Institution from the Loss Reserve Account, as described in OAR 123-018-0100, and if requested by the Department, the Participating Financial Institution shall promptly provide the Department with all available information, including but not limited to, copies of documents related to all pledges or security against the Enrolled Loan, or payment of principle or interest thereon. Such pledges or security include, but are not limited to:

(a) Collateral, such as real estate, bonds and personal property assets;

(b) Duly recorded and perfected liens, certificates of title, deeds, UCC information and other documents representing security related to the collateral or other sources of payment; and

(c) Guarantees (personal or otherwise), warranties, insurance, letters of credit and other instruments from the Borrower, or a third party, supporting the Qualified Loan.

(2) When a Participating Financial Institution furnishes information pursuant to section (1), it shall identify:

(a) Whether the pledges or security remain outstanding or available for potential collection;

(b) If the pledges or security has been liquidated or realized to recover some or all of the Loss;

(c) Any reason that the pledges or security is otherwise forfeit, worthless or undiscoverable; or

(d) The extent to which the lender has attempted to exercise its right to recover its Loss through that source.

Stat. Auth.: ORS 285A.075 & 285B.115(3)

Stats. Implemented: ORS 285B.115 & 285B.118

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05; OBDD 13-2010, f. 4-30-10, cert. ef. 5-1-10

### 123-018-0130

#### Subrogation

(1) The Department may request to be subrogated to the rights of a Participating Financial Institution to the pledges and security, pursuant to OAR 123-018-0120.

(2) The Department may make such a request if the Department believes that it would be able to take effective and proper action to more completely realize a return on the remaining available collateral or other sources of security, compared to the Lender, regardless of whether:

(a) The Lender has indicated its inability or unwillingness to take such action;

(b) Full or partial recovery of the Lender's loss has occurred through reimbursement of the Loss claim by the Department or by combination of such reimbursement and by liquidation or realization of pledges and security.

(3) In response to such a request, the Lender shall promptly subrogate its rights to the Department, providing the Department with

originals of all applicable documents, accompanied by enforceable assignments and conveyances to the Department.

Stat. Auth.: ORS 285A.075 & 285B.115(3)  
Stats. Implemented: ORS 285B.115 & 285B.118  
Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

### 123-018-0140

#### Reporting

(1) When a Loss Reserve Account is domiciled with the Participating Financial Institution, the Participating Financial Institution shall provide the Department with a monthly statement providing details of the balance and the payments and receipts activity in the Loss Reserve Account for the prior month.

(2) On or before January 15, April 15, July 15, and October 15 of each year, a Participating Financial Institution must file a quarterly report with the Department providing a complete list of Enrolled Loans and indicating the outstanding balance of each of its Enrolled Loans.

(3) When a Participating Financial Institution computes the aggregate outstanding balance of all its Enrolled Loans, it may only consider the balance of the portion of a loan enrolled in the Program.

Stat. Auth.: ORS 285A.075 & 285B.115(3)  
Stats. Implemented: ORS 285B.115  
Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05; OBDD 9-2011(Temp), f. & cert. ef. 12-19-11 thru 6-15-12; OBDD 6-2012, f. & cert. ef. 6-1-12

### 123-018-0150

#### Withdrawal of Excess Deposits in Loss Reserve Accounts

Upon and after a formal determination or order by the Director of the Department:

(1) The following shall apply to all interest earnings on monies transferred by the Department to match transmitted fees, as described in OAR 123-018-0085, for any loan enrolled after the date of Director's order:

(a) All Participating Financial Institutions shall continually remove such interest earnings from the Loss Reserve Account, paying the amount of such interest to the Department or sequestering them in a separate account;

(b) Such interest earnings shall not be available to cover any Loss, regardless of when they are effectively sequestered or transferred as described in this rule; and

(c) Such interest earnings shall be paid or transferred to the Department consistent with policies and directions of the Department, pursuant to the Director's determination; and

(2) Interest earnings arising from prior match funds or from any fee assessed on or paid by a Borrower or Lender shall remain in the Loss Reserve Account and available to cover Losses.

Stat. Auth.: ORS 285A.075 & 285B.115(3)  
Stats. Implemented: ORS 285B.115 & 285B.119  
Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05; OBDD 13-2010, f. 4-30-10, cert. ef. 5-1-10

### 123-018-0160

#### Termination of and Withdrawal from Program

(1) The Department may terminate enrollment of Qualified Loans under the Program for a Participating Financial Institution on the date specified in the Department's notice of termination to the Participating Financial Institution, or for all Participating Financial Institutions under the Program upon 90 days notice, or such earlier date should the balance in the Fund reach zero, or should the Department anticipate that the balance in the Fund will reach zero. Termination shall not apply to any Qualified Loans made before the date of termination.

(2) Should a Loss Reserve Account have a zero balance, the Department may terminate the Agreement at its sole discretion.

(3) A Participating Financial Institution may withdraw from the Program after giving written notice to the Department. After receipt of this notice, the Department shall determine when to withdraw any

remaining balance in the Participating Financial Institution's Loss Reserve Account.

(4) If a Participating Financial Institution is closed or taken over by the Federal Deposit Insurance Corporation (FDIC), with or without an Order to Cease and Desist issued by the FDIC and the Oregon Division of Finance and Corporate Securities, the Department shall terminate the failed Participating Financial Institution's membership in the Program and all funds in the Loss Reserve Account shall be transferred to the Department. This provision shall apply whether or not a new financial institution purchases some or all of the loans of the failed Participating Financial Institution.

Stat. Auth.: ORS 285A.075 & 285B.115(3)  
Stats. Implemented: ORS 285B.115 & 285B.119  
Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 6-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08; EDD 22-2008, f. 7-31-08, cert. ef. 8-1-08; OBDD 13-2010, f. 4-30-10, cert. ef. 5-1-10

### 123-018-0170

#### Disposition of Funds Withdrawals from Loss Reserve Accounts

The Department shall deposit moneys withdrawn by the Department from Loss Reserve Accounts as described in OAR 123-018-0040, 123-018-0150 and 123-018-0160 into the Fund.

Stat. Auth.: ORS 285A.075 & 285B.115(3)  
Stats. Implemented: ORS 285B.115 & 285B.118  
Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

### 123-018-0180

#### Inspection of Files

The Department may inspect a Participating Financial Institution's files relating to Enrolled Loans at any time during normal business hours. The Department is not required to provide a Participating Financial Institution with prior notice of an inspection.

Stat. Auth.: ORS 285A.075 & 285B.115(3)  
Stats. Implemented: ORS 285B.113 & 285B.115  
Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

### 123-018-0190

#### Reports of Regulatory Agencies

The Department may require from the Participating Financial Institution information relating to the Participating Financial Institution's status and performance, as developed by or for applicable state or federal regulatory bodies, and relevant to the Participating Financial Institution's participation in the Program or the financial health of institution, or the Department may obtain public information from state or federal regulatory bodies such as the Oregon State Department of Consumer and Business Services, Division of Finance and Corporate Securities. The Department shall not disclose any confidential information obtained as described in this rule, to the extent permitted by law.

Stat. Auth.: ORS 285A.075 & 285B.115(3)  
Stats. Implemented: ORS 285B.113  
Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

### 123-018-0200

#### Administrative Costs of Program

The Department may charge actual and necessary administrative expenses in operating the Program to the Fund.

Stat. Auth.: ORS 285A.075 & 285B.115(3)  
Stats. Implemented: ORS 285B.115 & 285B.119  
Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

DIVISION 19

OPERATION OF OREGON ENTREPRENEURIAL  
DEVELOPMENT LOAN FUND

123-019-0000

Purpose

The purpose of these rules is to provide procedures, standards and criteria for the making of loans from the Oregon Entrepreneurial Development Loan Fund for applications received by the Business Development Department.

Stat. Auth.: ORS 285A.075, 285B.740-285B.758, Ch. 765, OL 1993

Stats. Implemented: ORS 285B.740 - 285B.758, Ch. 765, OL 1993

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; EDD 7-1993(Temp), f. & cert. ef. 9-17-93; EDD 3-1994, f. 2-4-94, cert. ef. 2-7-94; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 34-2010, f. & cert. ef. 10-1-10

123-019-0010

Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. For purposes of this division of administrative rules, unless the context demands otherwise:

(1) "Applicant" means any individual, association of individuals, joint venture, partnership or corporation, person or any combination of persons applying for a loan from the Oregon Entrepreneurial Development Fund.

(2) "Certified Entity" means any entity certified by the Director of the Business Development Department under OAR 123-019-0100.

(3) "Equity" means cash, real and personal property owned or controlled by an Applicant and committed to use in the project for which a loan from the Fund is being sought. Property other than cash will be conservatively valued by the Department.

(4) "Fund" or "EDLF" means the Oregon Entrepreneurial Development Fund as defined and set forth in Section 13, Chapter 688, Oregon Laws 1991.

(5) "Loan Committee" means any loan committee selected by the Director from the Finance Committee or otherwise appointed by the Director. The Loan Committee shall consist of at least three members, and the Director shall select one of its members to be chair. The Loan Committee shall meet at the call of the chair. Two members of the Loan Committee shall constitute a quorum to transact the business of the Loan Committee.

(6) "Project" means the acquisition, improvement, rehabilitation, construction, operation or maintenance of any property, real or personal, that is or will be used or is suitable for use by an economic enterprise, but not including:

(a) A loan for the purchase or construction of residential housing;

(b) A loan for the purchase of property that will not be used for the business operation of the Applicant or is a passive real property investment not used to house the operations of a related company;

(c) A loan for the refinancing of an existing loan; the loan request may be considered for approval if such existing loan was for a business purpose and the refinance is necessary to secure collateral for or improve the collateral coverage and is a minor part of the new loan.

(7) "Severely Disabled Individuals" means individuals certified as severely disabled by the Vocational Rehabilitation Division of the Department of Human Resources or the Commission for the Blind.

(8) "Small Business Development Center" or "SBDC" means any small business development center described in the Small Business Training Assistance Act of 1983.

(9) "Small Business Management Program" means any of the following:

(a) A going into business class;

(b) A Small Business Management Program offered by an Oregon SBDC;

(c) Any series of classes/seminars/workshops/counseling sessions that meet the approval of a Small Business Development Center or Certified Entity.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.740-285B.758, Ch. 688, OL 1991, Ch. 765, OL 1993

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; EDD 7-1993(Temp), f. & cert. ef. 9-17-93; EDD 3-1994, f. 2-4-94, cert. ef. 2-7-94; EDD 8-1995, f. & cert. ef. 10-26-95; EDD 23-2008, f. 7-31-08, cert. ef. 8-1-08; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 34-2010, f. & cert. ef. 10-1-10; OBDD 35-2010, f. 10-14-10, cert. ef. 10-15-10; OBDD 12-2014, f. 6-30-14, cert. ef. 7-1-14

123-019-0020

Eligibility

(1) To be eligible for a loan from the Fund, each Applicant must meet at least one of the criteria in this section:

(a) The Applicant must have had total revenues of \$500,000 or less in the 12 calendar months immediately preceding the date application is made to the Fund;

(b) At least 50 percent of the Applicant business or proposed business must be owned by an individual or individuals classified as Severely Disabled.

(2) The Applicant may not be effectively owned or controlled by another business entity or other person or own or control another business entity that, either by itself or when combined with the Applicant, is not eligible for a loan under this rule. Ownership of 50 percent or more of the Applicant would constitute, or a subsidiary which sells a majority of its goods or services to the parent may constitute, effective ownership or control. The Director may, however, make this determination based on the facts of an individual case.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.740 - 285B.758

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; EDD 7-1993(Temp), f. & cert. ef. 9-17-93; EDD 3-1994, f. 2-4-94, cert. ef. 2-7-94; EDD 11-1997(Temp), f. & cert. ef. 10-7-97; EDD 10-1998, f. & cert. ef. 5-22-98; EDD 5-2007(Temp), f. & cert. ef. 8-28-07 thru 2-22-08; EDD 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 23-2008, f. 7-31-08, cert. ef. 8-1-08; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 34-2010, f. & cert. ef. 10-1-10; OBDD 12-2014, f. 6-30-14, cert. ef. 7-1-14

123-019-0030

Application Procedure

(1) Each Applicant shall certify to SBDC or other Certified Entity and the Department that it is an eligible Applicant for the Fund under OAR 123-019-0020(1) and shall specify which of the criteria outlined in 123-019-0020(1) it meets.

(2) The SBDC or Certified Entity may enroll the Applicant in an appropriate Small Business Management Program. Each Applicant shall have completed a Small Business Management Program or shall be enrolled in a Small Business Management Program prior to Department action on such Applicant's loan request. Each Applicant shall certify to the Department they are enrolled in or have completed a Small Business Management Program.

(3) Each Applicant must complete a business plan prior to applying for a loan from the Fund. Such business plan shall use the standard format set forth in Your Business Plan by Dennis J. Sargent or other such format as may be acceptable to the SBDC or Certified Entity and the Department.

(4) The business plan must be reviewed by the Director or counseling staff of the SBDC or Certified Entity where the Applicant is enrolled in a Small Business Management Program or where the Applicant is receiving assistance with the preparation of the business plan. Review of the business plan by the SBDC or Certified Entity does not imply any judgment by the SBDC or Certified Entity as to the accuracy or validity of the plan.

(5) Upon completion and review of the business plan as provided in sections (3) and (4) of this rule, the business plan, together with a credit application on the form provided by the Department, shall be forwarded to the Department for consideration. The credit application shall contain a detailed list of the proposed uses of the proceeds of the loan being sought from the Fund.

(6) The Department may require such additional information from an Applicant as the Department determines is necessary for a thorough review and analysis of the application.

(7) Upon completion of its review the Department shall forward the application to the Director, with a recommendation for action.

## Chapter 123 Oregon Business Development Department

The Department may submit the application to the Loan Committee for its recommendation. The Director may:

- (a) Approve the application; or
- (b) Deny the application; or
- (c) Return the application to the Applicant for further information.

(8) If a loan request is approved, the Department shall prepare such documents as are necessary to close the loan transaction. Such documents shall reflect all terms and conditions upon which the Director may have conditioned his or her approval of the loan.

(9) A Borrower may apply for and the Director may approve subsequent loans from the Fund. No borrower may receive more than an aggregate amount of \$100,000 in loan proceeds from the Fund. Applicants for subsequent loans must meet the eligibility requirements outlined in 123-019-0020.

(10) The Department may notify the SBDC or Certified Entity if any Borrower with which the SBDC or Certified Entity has worked becomes delinquent in its payment or otherwise acts in such a manner as to jeopardize the repayment of the loan.

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

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.240 - 285B.758, Ch. 688, OL 1991, Ch. 765, OL 1993

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; EDD 7-1993(Temp), f. & cert. ef. 9-17-93; EDD 3-1994, f. 2-4-94, cert. ef. 2-7-94; EDD 8-1995, f. & cert. ef. 10-26-95; EDD 11-1997(Temp), f. & cert. ef. 10-7-97; EDD 10-1998, f. & cert. ef. 5-22-98; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 34-2010, f. & cert. ef. 10-1-10; OBDD 35-2010, f. 10-14-10, cert. ef. 10-15-10; OBDD 12-2014, f. 6-30-14, cert. ef. 7-1-14

### 123-019-0040

#### Loan Conditions

The Director may approve a loan request if the Director finds that:

(1) The Applicant and the project are eligible for a loan from the Fund according to the criteria set forth in OAR 123-019-0020 and 123-019-0030.

(2) The Applicant has available, and has irrevocably committed to the project, Equity funds in the form of cash or property in an amount equal to or greater than 20 percent of the amount of the loan from the Fund.

(3) The proposed project is feasible and a reasonable risk from practical and economic standpoints, and the loan has a reasonable prospect of repayment from cash flow and collateral.

(4) The Applicant will provide good and sufficient collateral for the loan. The collateral coverage ratio for the loan should be at least 1:1 ratio applying the following advance rates:

(a) Real property will generally be valued for collateral purposes at 80 percent of the tax assessed value or 90 percent of appraised value;

(b) New construction will generally be valued for collateral purposes at no more than 90 percent of cost;

(c) Existing machinery will generally be valued for collateral purposes at 70 percent of depreciated book value;

(d) Newly acquired machinery will generally be valued for collateral purposes at 60 percent of acquisition cost for new equipment and 75% of acquisition cost for used equipment.

(5) The Department may, in its sole discretion, assign a value of more or less than the above percentages. Applicants should be aware that the collateral value of out-of-state real property will be significantly discounted from nominal assessed or appraised value.

(6) Monies in the Fund are or will be available for the proposed project.

(7) The Applicant's financial resources and management capability appear adequate to assure success of the project.

(8) The amount borrowed from the Fund by any borrower at any one time does not exceed \$75,000 and the total amount borrowed does not exceed \$100,000.

(9) The Director may, in his or her sole discretion, permit the assumption of an outstanding EDLF loan, if the assuming obligor satisfies the Director as to its willingness and ability to service the loan, and if the State's collateral position is not diminished. The Director

may require the obligor to meet all eligibility requirements set out in OAR 123-019-0020 and 123-019-0030. EDLF loans are not necessarily or automatically assumable.

(10) The Applicant agrees to abide by all laws and regulations applicable to the Applicant's project and will receive all applicable federal, state and local permits and licenses before the disbursement of any proceeds from the Fund.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.740 - 285B.758

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; EDD 11-1997(Temp), f. & cert. ef. 10-7-97; EDD 10-1998, f. & cert. ef. 5-22-98; EDD 5-2007(Temp), f. & cert. ef. 8-28-07 thru 2-22-08; EDD 4-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 23-2008, f. 7-31-08, cert. ef. 8-1-08; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 34-2010, f. & cert. ef. 10-1-10; OBDD 35-2010, f. 10-14-10, cert. ef. 10-15-10; OBDD 12-2014, f. 6-30-14, cert. ef. 7-1-14

### 123-019-0050

#### Loan Agreement

If the Director approves the loan, the Director, on behalf of the state, and the borrower may enter into a loan contract of not more than \$75,000, secured by Collateral, which shall set forth, among other matters:

(1) A plan for repayment by the Borrower to the Fund of monies borrowed from the Fund used for the Project with interest charged on those monies at a fixed rate of at least two percentage points (2%) more than the prevailing bank prime interest rate. For the purposes of this section, the prevailing bank prime interest rate shall be the rate set forth in the most recent Federal Reserve Statistical Release H.15(519) which the Department has received at the time the loan is approved. Notwithstanding the foregoing, the interest shall not exceed 18 percent per annum. The repayment plan, among other matters:

(a) Shall provide for commencement of repayment by the Applicant of monies used for the Project and interest thereon no later than six months after the date of the loan contract or at such other time as the Director may provide;

(b) May provide for reasonable extension of the time for making any repayment, not to exceed six months, in emergency or hardship circumstances if approved by the Director.

(c) Shall provide for such evidence of debt, assurance of and security for, repayment of the loan as is considered necessary by the Director;

(d) Shall set forth a schedule of payments and the period of the loan which shall not exceed the usable life of the assets financed or ten years from the date of the contract, whichever is less. The payment schedule shall include payment of interest which accrues during any period of delay in repayment authorized by subsection (b) of this section, and the payment schedule may require payments of varying amounts for collection of accrued interest;

(e) Shall set forth a procedure for formal declaration of delinquency or default of payment by the Department. Loans shall be declared delinquent when any payment is more than ten days late. Borrower shall be notified in writing of declaration of delinquency, and shall have 31 days from the original payment date to bring the loan current. If the loan is not brought current, or arrangements satisfactory to the Department for bringing the loan current have not been made, the Department may declare the loan in default, may declare the entire outstanding indebtedness to be forthwith due and payable and may assign the loan to the Attorney General for collection. The Department shall inform the borrower of each default and action taken in connection therewith. The Director may in his or her sole discretion waive or delay such assignment.

(2) Provisions satisfactory to the Department for field engineering and inspection, the Department to be the final judge of completion of the Project;

(3) That the liability of the state under the contract is contingent upon the availability of monies in the Fund for use in the Project;

(4) Such further provisions as the Director considers necessary to insure expenditure of the funds for the purposes set forth in the approved application;

(5) That the Department may institute appropriate action or suit to prevent use of the facilities of a Project financed by the Fund if

the Borrower is delinquent in the repayment of any monies due the Fund;

(6) That the Borrower is responsible for payment of:

(a) All of the expenses of the operation and maintenance of the Project, including adequate insurance;

(b) All taxes and special assessments levied with respect to the business or the Project;

(c) Insurance premiums and providing insurance in amount and coverage acceptable to the Department. Such insurance shall include but shall not be limited to: Fire and hazard insurance, liability insurance, and flood insurance if applicable at the sole discretion of the Department; and

(d) All out-of-pocket costs associated with the loan closing including but not limited to filing recording fees, title insurance and appraisals.

(7) That the Borrower will provide to the Department on an annual basis, within 120 days of the end of each fiscal year, financial statements prepared in accordance with generally accepted accounting principles. In addition, copies of federal tax returns may be required to be submitted annually. The Department may require additional financial information or more frequent financial statements;

(8) In the case of a loan made to an association, corporation or partnership, each partner and each owner of 20 percent or more of the corporation or association will provide a personal guaranty for the payment of all interest and repayment of principal amount of the loan unless the Director in his or her sole discretion, expressly waives such requirement;

(9) The Department may, in its sole discretion, disburse the proceeds of an approved loan in such amounts and at such times as the Department feels necessary to ensure that loan proceeds are used for the stated purposes and to preserve the integrity of the Fund. If the Department in its sole discretion determines that the financial condition of the Borrower has deteriorated since the eligibility and application process was commenced, the Department shall be under no obligation to disburse any loan funds.

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

Stat. Auth.: ORS 285A.075, 285B.740 - 285B.758

Stats. Implemented: ORS 285B.740 - 285B.758

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; EDD 11-1997(Temp), f. & cert. ef. 10-7-97; EDD 10-1998, f. & cert. ef. 5-22-98; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 34-2010, f. & cert. ef. 10-1-10; OBDD 35-2010, f. 10-14-10, cert. ef. 10-15-10; OBDD 12-2014, f. 6-30-14, cert. ef. 7-1-14

### 123-019-0060

#### Appeals, Monitoring, Amendments and Modifications

(1) If the Director denies a loan request, the Department shall inform the Applicant in writing of the reasons for such denial.

(2) A denied Applicant has the right to appeal in writing the Director's denial, whereupon the Department shall schedule an appeal hearing in front of the Director, the Director's designee or the Loan Committee, as the Department may decide. The Applicant may appear in person at the appeal hearing, and may introduce whatever books, documents and data it regards as necessary to support the appeal.

(3) An Applicant whose appeal has been denied must submit a new credit application to be eligible for consideration of a new loan request. This requirement may be waived by the Director, in his or her sole discretion.

(4) All loans shall be monitored by, and all loan repayments shall be made to, the Department or its assignee.

(5) It is the responsibility of the borrower to ensure that its payment arrives in the Department by the due date.

(6) Any request for modification or amendment to any loan condition shall be made in writing to the Department and approved by the Director. The Director may refer a request for modification or amendment to the Loan Committee for recommendation.

(7) If the Director consents to any requested modification or amendment, the borrower shall be responsible for all costs of modifying or amending any loan documents, filings, recordings or financing statements.

Stat. Auth.: ORS 285A.075, 285B.740 - 285B.758

Stats. Implemented: ORS 285A.075, 285B.740 - 285B.758, Ch. 765, OL 1993  
Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 34-2010, f. & cert. ef. 10-1-10; OBDD 12-2014, f. 6-30-14, cert. ef. 7-1-14

### 123-019-0070

#### Confidential Records

(1) Upon written request and within a reasonable time, the Director or his designee shall provide nonexempt loan program records for inspection in accordance with ORS Chapter 192.

(2) The person requesting inspection of the records may be charged in advance the Department's cost for locating, compiling, copying, and mailing the records. Such costs shall include but not be limited to costs incurred in locating records, separating exempt and nonexempt records, having a custodian present during the inspection, preparing lists of data, making photocopies, and telefaxing materials. Fees to be collected shall be set forth in the Department's schedule of fees and may be amended from time to time as the Department in its sole discretion may determine.

(3) Except as otherwise provided in ORS Chapter 192, records exempt from disclosure include but are not limited to:

(a) Reports and analyses of reports obtained in confidence from creditors, employers, customers, suppliers, and others which bear on the Applicant's character, finances, management ability, and reliability and which were obtained from persons or firms not required by law to submit them;

(b) Financial statements, tax returns, business records, employment history and other personal data submitted by or for Applicants, or analysis of such data;

(c) Interdepartmental advisory memoranda prior to a loan decision;

(d) Formulas, plans, designs and related information which constitute trade secrets under ORS Chapter 192;

(e) Personal financial statements;

(f) Financial statements of Applicants;

(g) Customer lists;

(h) Information of an Applicant pertaining to litigation to which the Applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the Applicant shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded and nothing in this section shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(i) Production, sales or cost data; and

(j) Marketing strategy information that relates to an Applicant's plan to address specific markets and Applicant's strategy regarding specific competitors.

Stat. Auth.: ORS 192.410-192.505, ORS 285A.075

Stats. Implemented: ORS 192.410 - 192.505, 285A.075, Ch. 765, OL 1993

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 34-2010, f. & cert. ef. 10-1-10

### 123-019-0080

#### Restrictions

(1) If the loan will result in the construction, expansion, rehabilitation or remodeling of a facility to which the public has access, access for handicapped persons must be provided in accordance with ORS 447.210 to 447.280. This provision applies only to firms which deal directly with the general public in the normal and usual course of their business, and to facilities in which business is customarily transacted by and with members of the general public.

(2) Borrowers receiving assistance from the EDLF are required to make a good faith effort to hire low income people who are trained by publicly-funded job training providers. Borrowers may also be required to enter into a First Source Hiring Agreement as defined in OAR 123-070-0300 through 123-070-0370.

Stat. Auth.: ORS 285A.075, 447.210-447.280

Stats. Implemented: ORS 285A.075, 447.210 - 447.280, Ch. 765, OL 1993

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 34-2010, f. & cert. ef. 10-1-10

**123-019-0090**

**Payment of Monies for Project**

(1) The Director shall be the sole judge of the suitability and eligibility of a Project for financing from the Fund, and approval of such financing shall be in the sole discretion of the Director.

(2) If the Director approves a loan for a Project, the Department shall pay monies for the Project from the Fund, in accordance with the terms of the loan contract as prescribed by the Director.

(3) If the Director determines that a loan should be made, the Director shall also determine the amount of the loan and authorize the disbursement of the funds. The Director may authorize the Department to disburse the funds and execute such documents as may be necessary to conclude the transaction.

Stat. Auth.: ORS.285A.075

Stats. Implemented: ORS 285A.075, .285B.740 - 285B.758, Ch. 765, OL 1993

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 34-2010, f. & cert. ef. 10-1-10

**123-019-0100**

**Certification of Entities for Business Plan Review**

(1) In addition to SBDCs, the Director may certify an entity for the review of business plans and for providing a Small Business Management Program if the Director finds in his or her sole discretion that the entity possesses:

(a) Sufficient experience in providing financial counseling to businesses;

(b) Sufficient experience in providing a Small Business Management Program; and

(c) Sufficient experience in reviewing business plans.

(2) The Director may establish time periods for certification and review in his or her sole discretion.

(3) The SBDCs and certified entities will continue to provide small business management services and counseling to the Applicant after the loan has been provided to the Applicant.

Stat. Auth.: ORS 285A.075, 285B.740 - 285B.758

Stats. Implemented: ORS.285B.740 - 285B.758, Ch. 688, OL 1991 & Ch. 765, OL 1993

Hist.: EDD 8-1995, f. & cert. ef. 10-26-95; OBDD 10-2010(Temp), f. & cert. ef. 4-12-10 thru 10-9-10; OBDD 34-2010, f. & cert. ef. 10-1-10; OBDD 35-2010, f. 10-14-10, cert. ef. 10-15-10; OBDD 12-2014, f. 6-30-14, cert. ef. 7-1-14

**DIVISION 20**

**FORMATION OF PORTS**

**123-020-0100**

**Purpose and Scope**

This division of administrative rules describes the steps and necessary elements for the Commission to approve the formation of a Port, as required under ORS 285A.627(2).

Stat. Auth.: ORS 285.075

Stats. Implemented: ORS 285A.627

Hist.: EDD 14-2004, f. & cert. ef. 8-2-04; EDD 13-2009, f. & cert. ef. 10-1-09

**123-020-0105**

**Definitions**

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. As used in this division of administrative rules, unless the context requires otherwise:

(1) "Applicant" means an entity that may legitimately seek and propose the formation of a new Port, and that submits a request for the Commission's approval.

(2) "Port" means a municipal corporation organized under ORS Chapter 777 or 778, which may be known as a "port authority" or "port district."

Stat. Auth.: ORS 285.075

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04; Renumbered from 123-020-0005, EDD 14-2004, f. & cert. ef. 8-2-04; EDD 13-2009, f. & cert. ef. 10-1-09

**123-020-0110**

**Application**

An Applicant for the formation of a port must:

(1) Send the following, prior to any official filing with the appropriate county, to Attn: Port Formation Application, Oregon Business Development Department, State Lands Building Suite 200, 775 Summer Street NE, Salem, OR 97301-1280:

(a) A sample of the petition or order to be used for purposes of ORS 198.705 to 198.955, as applicable;

(b) A letter formally requesting formation of the proposed Port;

(c) A legal description and map of the port boundaries; and

(2) Materials requested in OAR 123-020-0015 to 123-020-0035.

Stat. Auth.: ORS 285.075

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04; Renumbered from 123-020-0010, EDD 14-2004, f. & cert. ef. 8-2-04; EDD 13-2009, f. & cert. ef. 10-1-09

**123-020-0115**

**Criteria**

In carrying out its function as statewide coordinating, planning, and research agency for all Ports in the State of Oregon, and to insure the most orderly, efficient, and economical development of the state port system, the Authority will take into consideration and may request information from the Applicant regarding the following:

(1) The need for port services in the territory to be included within the proposed Port;

(2) The adequacy of funding for the proposed Port; and

(3) The orderly development of the proposed Port and its effects upon the development of a state port system.

Stat. Auth.: ORS 285.075(5) & 285A.110(1)

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04; Renumbered from 123-020-0015, EDD 14-2004, f. & cert. ef. 8-2-04; EDD 13-2009, f. & cert. ef. 10-1-09

**123-020-0120**

**Need for Port Services**

In evaluating the need for port services, the Authority will take the following into consideration:

(1) That reasonable alternatives to the formation of a Port have been considered;

(2) That significant adverse effects on other public or private agencies offering similar services within the proposed service area have been considered;

(3) That economic benefits and opportunities such as increased employment, income, and cost savings have been considered; and

(4) That proposed Port boundaries are reasonable in terms of tax assessment and property ownership.

Stat. Auth.: ORS 285.075

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04; Renumbered from 123-020-0020, EDD 14-2004, f. & cert. ef. 8-2-04; EDD 13-2009, f. & cert. ef. 10-1-09

**123-020-0125**

**Viability of Formation**

In reviewing the viability and merits of a proposed Port, the Authority will consider the following, in addition to the latest draft copy of the economic feasibility statement for district formation, if applicable, under ORS 198.749:

(1) A proposed budget of the proposed Port showing, among other things, capital improvements, staffing, and other sums and expenses required to implement and operate the proposed Port for a reasonable period;

(2) Adequacy of the existing tax base and proposed tax rate and the source and amounts of any other revenues estimated to be required; and

(3) Other financial information requested.

Stat. Auth.: ORS 285.075

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04; Renumbered from 123-020-0025, EDD 14-2004, f. & cert. ef. 8-2-04; EDD 13-2009, f. & cert. ef. 10-1-09

### 123-020-0130

#### Orderly Development of Port and State Port System

The Authority encourages and seeks public views on the following issues as they relate to the formation of a specific port district:

- (1) Relationship of the proposed Port activities to locally approved land use plans and the provision of other local public services or utilities;
- (2) Coordination with affected environmental, economic, and social agencies, including the impact on affected taxing jurisdictions; and
- (3) Effects of the proposed activities on transportation facilities and services.

Stat. Auth.: ORS 285.075

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04; Renumbered from 123-020-0030, EDD 14-2004, f. & cert. ef. 8-2-04; EDD 13-2009, f. & cert. ef. 10-1-09

### 123-020-0140

#### Review and Commission Approval or Denial

(1) An applicant will not seek, nor will any agency of a county government do either of the following, until such time as the Authority approves the formation of the port:

- (a) Conduct a deciding vote on port formation by the governing body of the county; or
- (b) Place the question of the port's formation on the ballot of a special or general election.

(2) Upon receipt of a request under OAR 123-020-0010, the Authority will review the submitted materials and may request additional information.

(3) Following its review and receipt of any additional information, the Authority will assemble materials and information along with a summary of the proposed port's advantages and disadvantages relative to OAR 123-020-0015 to 123-020-0030 that may include a recommendation of action.

(4) The Authority will submit a proposal summary and recommendation to the board.

(5) The Authority shall schedule a meeting to consider final approval of the requested port formation. The agenda for this meeting must be publicly available and be sent to the applicant and other interested parties at least 21 days prior to such meeting. The meeting must afford an opportunity for public commentary.

(6) At the meeting described in this rule or a subsequent meeting, the board will formally approve or deny the proposed port's formation, as it deems appropriate.

(7) If the Authority denies a port formation request, it will indicate in writing the reasons and the remedies, if any, that would allow the applicant to be reconsidered.

(8) If formation of the port is approved by the authority.

(a) The Authority will issue a formal declaration of its approval that the Authority will provide to the applicant and to the Chair of the Board of County Commissioners for the respective county or counties; and

(b) The applicant will proceed with and abide by all applicable procedures and requirements under ORS Chapters 198 and 777.

Stat. Auth.: ORS 285.075

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04; Renumbered from 123-020-0040, EDD 14-2004, f. & cert. ef. 8-2-04; EDD 13-2009, f. & cert. ef. 10-1-09

## DIVISION 21

### OPERATION OF OREGON CREDIT ENHANCEMENT FUND

### 123-021-0000

#### Purpose

The purpose of these rules is to provide procedures, standards, and criteria for providing loan insurance from the Oregon Credit Enhancement Fund.

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 17-2009, f. 10-30-09, cert. ef. 11-1-09; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12; OBDD 7-2012, f. & cert. ef. 6-1-12

### 123-021-0010

#### Definitions

For the purposes of these rules, additional definitions may be found in OAR chapter 123, division 1. The following terms shall have the following definitions, unless the context clearly indicates otherwise:

(1) "Authorized loan amount" means the amount of a loan authorized by the Department to be under the CEF Program pursuant to a loan insurance authorization issued by the Department to the financial institution making the loan.

(2) "CEF Program" means the Credit Enhancement Fund Insurance Program established under ORS 285B.200 to 285B.218.

(3) The "deficiency" of a loan means the amount of principal outstanding upon default, accrued interest and the financial institution's reasonable costs of collection, exclusive of costs attributable to environmental problems, remaining unpaid after liquidation of collateral and collection of guarantees.

(4) "Financial institution" has the meaning set forth in ORS 706.008.

(5) "Fund" means the Credit Enhancement Fund created by ORS 285B.215.

(6) "Loan insurance authorization" means a letter from the director or deputy director or designee to a financial institution agreeing to insure a loan to a borrower on the terms and conditions and subject to the requirements stated therein.

(7) "Loan insurance agreement" means the agreement between the financial institution and the Department required by OAR 123-021-0100.

(8) "Principal" in regards to a borrower is defined as:

(a) If a sole proprietorship, the proprietor;

(b) If a partnership, each managing partner and each partner who is a natural person and holds a twenty percent (20%) or more ownership interest in the partnership; and,

(c) If a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of twenty percent (20%) or more of the ownership stock or stock equivalent of the entity.

(9) "Principal" in regards to a financial institution is defined as:

(a) If a sole proprietorship, the proprietor;

(b) If a partnership, each partner; and

(c) If a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers or employees of the entity, and each direct or indirect holder of twenty percent (20%) or more of the ownership stock or stock equivalent of the entity.

(10) "Substantial benefit" may include, but is not limited to:

(a) Job creation or retention.

(b) Increased sales or profit, or higher revenue paid to the State of Oregon.

(c) Access to new markets for the borrower's product or service

(d) Diversification of the local or regional economy.

(e) Revitalization of a neighborhood or community.

(11) "SSBCI Funds" means U.S. Treasury funds allocated to the Department under the State Small Business Credit Initiative Act of 2010 (title III of the Small Business Jobs Act of 2010, P.L. 111-240, 124 Stat. 2568, 2582).

(12) “Working capital loan” means any loan, the proceeds of which are to be used for operating, maintenance and other costs and expenses, or for purposes other than acquiring real property, production equipment, or other capital assets.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 12-1997(Temp), f. & cert. ef. 10-7-97; EDD 11-1998, f. & cert. ef. 5-22-98; EDD 8-1999, f. & cert. ef. 10-1-99; EDD 4-2007(Temp), f. & cert. ef. 8-28-07 thru 2-22-08; EDD 5-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-30-09, cert. ef. 11-1-09; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12; OBDD 7-2012, f. & cert. ef. 6-1-12; OBDD 18-2012(Temp), f. & cert. ef. 11-20-12 thru 5-17-13; OBDD 3-2013, f. & cert. ef. 5-23-13; OBDD 1-2015(Temp), f. & cert. ef. 1-26-15 thru 7-24-15; OBDD 5-2015, f. & cert. ef. 8-3-15; OBDD 6-2016(Temp), f. & cert. ef. 4-11-16 thru 10-7-16; OBDD 7-2016, f. & cert. ef. 6-3-16

### 123-021-0015

#### Qualified Business

(1) An existing or proposed business without an existing or about to be without an existing revolving line of credit is a Qualified business for the Evergreen Entrants Insurance.

(2) An existing or proposed business with an existing revolving line of credit is a Qualified business for the Evergreen Plus Insurance.

(3) Any existing or proposed business is a Qualified business for the Conventional Insurance, First Loss Insurance, or Collateral Support Insurance.

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-30-09, cert. ef. 11-1-09; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12; OBDD 7-2012, f. & cert. ef. 6-1-12; OBDD 18-2012(Temp), f. & cert. ef. 11-20-12 thru 5-17-13; OBDD 3-2013, f. & cert. ef. 5-23-13; OBDD 6-2016(Temp), f. & cert. ef. 4-11-16 thru 10-7-16; OBDD 7-2016, f. & cert. ef. 6-3-16

### 123-021-0020

#### Eligibility

(1) In order for a loan to a Qualified business to be eligible for insurance, the project must be expected to result in a substantial benefit that is realized primarily in Oregon and the project must meet one or more of the following purposes: the acquisition, improvement, or rehabilitation of real or personal property; or working capital for operations, export transactions, maintenance and other business costs and expenses which are used for purposes other than acquiring real or personal property. Eligible purposes do not include:

(a) Any personal, family, or household expenses of the Qualified business or any owner or guarantor;

(b) Construction financing; however, permanent term financing after completion of construction of real property for business use may be insured;

(c) Purchase or construction of residential housing;

(d) A loan made primarily to pay off or refinance an existing debt to a creditor whose loan is inadequately secured or who is in danger of sustaining a loss;

(e) Repayment of delinquent federal or state income taxes unless the Qualified Business has a payment plan in place with the relevant taxing authority;

(f) Repayment of taxes held in trust or escrow;

(g) Finance lobbying activities (as defined in Section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended); or,

(h) Acquiring or holding passive investments such as commercial real estate for future use or the purchase of securities; this does not include acquisitions of businesses through 100% stock transfer.

(i) Reimbursement or payment of funds to any owner or borrower, including any equity injection or injection of business capital for the business' continuance, or the purchase of assets from any owner;

(j) (For loans insured by SSBCI Funds) Purchase of any portion of the ownership interest of any owner of the business;

(k) Purchase an existing Qualified business, except for:

(A) Expansions where the majority of loan proceeds are used to support expansion improvements;

(B) Purchase of all or substantially all of the assets of a Qualified business,

(C) (For loans not insured by SSBCI Funds) Purchase of 100% of the stock of a Qualified business, including stock held by employee stock ownership plans, where jobs will be created or retained; provided that the Department's liability for any loss resulting from a loan made for such purchase shall not exceed \$500,000.

(2) The Department will consider, on a case by case basis, requests to insure loans where proceeds are used to pay down or pay off an existing debt of the Qualified business. In evaluating such requests, the Department will consider the financial benefits to the borrower, the prospects for success, the expected resulting public benefit, the extent to which financial institutions agree to extend terms or provide other favorable financing to a borrower, and the extent to which collateral securing an insured loan is improved. The Department's maximum liability for any loss resulting from an insured loan used to refinance debt will be limited to no more than \$500,000 and no more than 75% of the authorized loan amount. Unless specifically waived by the Department, all business and personal assets securing a refinance may require an appraisal or other third party valuation to determine liquidation values at the time of application. The Department reserves the right to set the enrollment terms at the time of approval for loan insurance, including but not limited to the Department's maximum liability or the insured percentage and in its sole discretion may, when setting the Department's maximum liability or the insured percentage or both, consider whether a loan is less than fully secured, as determined by the estimated liquidation value of the collateral.

(3) Eligible borrowers are Qualified businesses as defined in OAR 123-021-0015.

(4) Eligible financial institutions are financial institutions as defined by ORS 706.008.

(5) Any loans insured by SSBCI Funds will be required to meet additional U.S. Treasury requirements including, but not limited to:

(a) The loan has not been made in order to place under the protection of the CEF Program prior debt that is not covered by the CEF Program and that is or was owed by the borrower to the financial institution or to an affiliate of the financial institution.

(b) The insured loan is not used to refinance a loan previously made to that borrower by the financial institution or an affiliate of the financial institution making the loan to be insured, unless the prior loan has matured and new funds are being added to the loan.

(c) No Principal of the borrower or the financial institution has been convicted of a sex offense against a minor as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911).

(d) The borrower, or any principal of the borrower, is not:

(A) an executive officer, director, or principal shareholder of the financial institution, or

(B) a member of the immediate family of an executive officer, director or principal shareholder of the financial institution; or

(C) a related interest of any such executive officer, director, principal shareholder or member of the immediate family. For the purposes of this OAR 123-021-0020(6)(d), the terms “executive officer”, “director”, “principal shareholder”, “immediate family”, and “related interest” refer to the same relationship to the financial institution as the relationship described in 12 C.F.R. Part 215.2 (1990), whether or not the financial institution is a member bank of the Federal Reserve System.

(e) The activities of the borrower are not activities currently prohibited by U.S. Treasury, such as, but not limited to:

(A) The borrower is a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade unless those activities are incidental to the regular activities of the business and are part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business;

(B) The borrower is a business that earns more than half of its annual net revenue from lending activities unless the business is a non-bank or non-bank holding company community development financial institution;

(C) The borrower is a business engaged in pyramid sales, or engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted; or,

(D) The borrower is a business engaged in gambling enterprises, unless the business earns less than 33% of its annual net revenue from lottery sales and gambling activities.

(f) The financial institution is in compliance with requirements of 31 C.F.R. § 103.121.

(g) At the time of approval the borrower does not employ more than 750 employees in the United States.

(h) Total financing for the project is \$20,000,000 or less.

(i) No Principal of the borrower is a current member or delegate to the United States Congress or resident U.S. Commissioner.

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 8-1999, f. & cert. ef. 10-1-99; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-30-09, cert. ef. 11-1-09; OBDD 14-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12; OBDD 7-2012, f. & cert. ef. 6-1-12; OBDD 6-2016(Temp), f. & cert. ef. 4-11-16 thru 10-7-16; OBDD 7-2016, f. & cert. ef. 6-3-16

### 123-021-0040

#### Application Contents

(1) Required Contents. Unless waived by the Department, the financial institution shall submit to the Department an application containing the following:

(a) A completed General Information Sheet provided by the Department;

(b) A written narrative by the financial institution analyzing the borrower's application (i.e. credit analysis), including an identification of the proposed amount of the loan, the requested percentage of insurance and Department insurance program, the purpose, terms and conditions of the loan, a description of the collateral and basis for its valuation, a summary of the borrower's credit standing, and a description of other sources of financing;

(c) Complete resumes of the borrower, all partners, owners, officers and guarantors, as applicable;

(d) Historical business financial statements for the prior three years, including income statements and balance sheets (income tax returns may also be required), as applicable, if an existing borrower. Income tax returns may be sufficient if accountant prepared statements are unavailable. Interim financial statements must also be included if the most recent statements are beyond 90 days;

(e) Signed current personal financial statement(s) of owners with a minimum 20% ownership interest in the borrower. Federal tax returns may be required. This information may also be required of guarantors;

(f) Pro forma balance sheet and income statement with supporting assumptions. In some instances, monthly cash flow statements may also be required. Cash flow statements are required in cases where loan repayment is dependent on projections, and for borrowers seeking working capital financing;

(g) Completion of the Department's environmental questionnaire or a comparable one provided by the financial institution and approved by the Department for loans secured in whole or part by real property and for other insured loans, if requested by the Department;

(h) Other information as the Department may require including, but not limited to, projected jobs created or jobs retained by a borrower.

(2) Supplemental Information. The Department may require, at its discretion:

(a) Appraisals of collateral or the financial institution's basis for determining collateral value;

(b) A business or marketing plan, including an analysis of competition;

(c) Certificates from the Oregon Department of Environmental Quality or any other governmental or regulatory agencies with jurisdiction, if applicable;

(d) Copies of leases or purchase agreements, as applicable;

(e) Any other information or certifications from the borrower or the financial institution deemed by the Department to be necessary or desirable in connection with an insured loan application.

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-30-09, cert. ef. 11-1-09; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12; OBDD 7-2012, f. & cert. ef. 6-1-12

### 123-021-0050

#### Application Procedure

(1) The Department shall determine when an application is complete.

(2) It shall be the responsibility of the financial institution to submit a complete application.

(3) The Department will review an application based on the following criteria and considerations:

(a) An application will not be approved unless the Department determines that there is a reasonable prospect that the borrower will repay a loan according to its terms.

(b) An application will only be approved to the extent, in terms of amount, percentage and period of insurance that is necessary and prudent for the Department to provide to complete the financing.

(c) No application will be approved unless the Department determines that the insured loan will be serviced by a financial institution as required by the Department.

(d) No application will be approved unless the Department determines that the borrower is eligible and the proceeds of the insured loan will be used for an eligible purpose.

(e) No application will be approved unless the Department determines that the application is complete and that information sufficient to make an informed decision on the application has been received.

(f) In reviewing applications, the Department will consider the following, as applicable:

(A) The extent to which the borrower demonstrates a need for an insured loan.

(B) The economic feasibility of the business endeavor as evidenced by the borrower's present and past financial situation and business experience and the general reasonableness of the business proposal and financial projections for the future.

(C) Whether the borrower and any guarantors have satisfactory credit histories.

(D) Whether the borrower has sufficient capital and other resources to conduct the business as planned, and the amount and source of equity contributed.

(E) The adequacy of the security offered for the loan.

(F) The extent to which the risk of financial loss is shared by others.

(G) The viability of the industry of which the borrower is a part and the contribution of the borrower to that industry.

(H) The extent to which the borrower contributes to local economic development, market development and employment opportunities.

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 12-1997(Temp), f. & cert. ef. 10-7-97; EDD 11-1998, f. & cert. ef. 5-22-98; EDD 4-2007(Temp), f. & cert. ef. 8-28-07 thru 2-22-08; EDD 5-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-30-09, cert. ef. 11-1-09; OBDD 6-2016(Temp), f. & cert. ef. 4-11-16 thru 10-7-16; OBDD 7-2016, f. & cert. ef. 6-3-16

### 123-021-0060

#### Application Approval or Rejection

(1) Upon approval of an application by the director, deputy director or their designees or members of the commission, a loan insurance authorization will be issued setting forth the terms and conditions upon which the loan will be insured.

(2) No loan insurance authorization shall become effective until the financial institution has paid the initial loan insurance premium required by OAR 123-021-0110. Such payment, along with an exe-

cuted loan insurance authorization, shall indicate the financial institution's acceptance of the terms of the loan insurance authorization.

(3) No loan insurance authorization shall be effective unless a loan insurance agreement has been executed by the financial institution and the Department and remains in effect.

(4) In the event the director or deputy director or their designees reject an application, upon written request, the Department will promptly send the financial institution a notice, including reasons for the rejection. The notice shall include a statement of the borrower's right to appeal the director's or deputy director's or their designees' decision to the commission.

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-30-09, cert. ef. 11-1-09

### 123-021-0070

#### Appeal to the Commission

In the event that an application is rejected, the borrower or the financial institution shall have the right to appeal the decision to the commission. Notice of the appeal must be submitted in writing within twenty days of receiving notification of rejection to the Department. The notice of appeal must include the departmental rejection statement(s) together with a statement of why the decision should be reversed or modified. The Department shall inform the applicants of the time and location of the appeal hearing, and the financial institution and the borrower may be present to support the appeal through public comment.

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 12-1997(Temp), f. & cert. ef. 10-7-97; EDD 11-1998, f. & cert. ef. 5-22-98; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-30-09, cert. ef. 11-1-09

### 123-021-0080

#### Loan and Insurance Terms and Conditions

(1) Interest rate and term. The rate of interest on the insured loan and the term of the loan shall be agreed between the financial institution and a borrower. The maximum term for insurance per borrower project is:

(a) the lesser of fifteen (15) years or the useful life of the assets being financed or the useful life of the assets securing the loan for the Conventional Insurance, First Loss Insurance, or Collateral Support Insurance, or

(b) one year plus four annual renewals for the Evergreen Entrants Insurance or Evergreen Plus Insurance.

(2) Collateral. Repayment of an insured loan shall be secured by such collateral as the Department deems prudent.

(a) Insured loans may, at the discretion of the Department, be secured by collateral valued for collateral purposes at less than the amount of the insured loan, provided the borrower, its principals, and the guarantors, to the satisfaction of the Department, are of good character, have good credit histories, and exhibit the ability to service the proposed and existing debt;

(b) Real estate or unmovable machinery or equipment constituting a significant portion of collateral for an insured loan shall be located within the state. Mobile machinery or equipment, including vessels, constituting a significant portion of collateral for repayment of an insured loan shall be registered with and taxed by the state or municipal authorities, if the State or municipal authorities register or tax machinery or equipment of a type similar to the collateral, and shall be stored or berthed in the state when not in use.

(c) The Department may, at its sole discretion, require independent collateral valuation and appraisal of the real property or other assets securing the loan.

(3) Covenants. The covenants and requirements of the loan shall be established by the financial institution in accordance with prudent lending practices. The Department may require such additional covenants and requirements as may be necessary, prudent or desirable. At a minimum, the loan documents should require the borrower to:

(a) Make periodic payments of principal and interest, with the exception of short term working capital loans or evergreen working capital loans or lines of credit where periodic interest payments with a balloon principal payment and/or term options may be acceptable, as determined by the Department;

(b) Make any lease payments;

(c) Maintain adequate insurance on collateral, and maintain books and records on the business;

(d) Pay any taxes or governmental charges assessed against the collateral and comply with all applicable laws and regulations;

(e) Keep the collateral free of liens and encumbrances except for as may be expressly accepted by the financial institution and Department;

(f) Provide for periodic financial reports to the financial institution;

(g) Pay advances necessary to protect the collateral and all expenses of protecting or enforcing the rights of the financial institution and Department.

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-30-09, cert. ef. 11-1-09; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12; OBDD 7-2012, f. & cert. ef. 6-1-12; OBDD 18-2012(Temp), f. & cert. ef. 11-20-12 thru 5-17-13; OBDD 3-2013, f. & cert. ef. 5-23-13; OBDD 6-2016(Temp), f. & cert. ef. 4-11-16 thru 10-7-16; OBDD 7-2016, f. & cert. ef. 6-3-16

### 123-021-0090

#### Loan Insurance Programs

The Department shall offer the following insurance programs:

(1) Conventional Insurance, under which the Department may insure

(a) Up to 80 percent of a loan in which case the Department's maximum liability for any loss under the Conventional Insurance is the lesser of \$2,000,000 or an amount equal to the insured percentage times the authorized loan amount, or

(b) Up to 90 percent of a loan in which case the Department's maximum liability for any loss under the Conventional Insurance is the lesser of \$500,000 or an amount equal to the insured percentage times the authorized loan amount. Should a borrower which receives an insured loan default or otherwise be unable to make loan payments, the Department will pay the financial institution the deficiency of a loan times the insured percentage, subject to the limitation set forth above. The balance of any loss is absorbed by the financial institution. Loan payments, the proceeds of collateral (including collection of guarantees), and any recovery after payment of a deficiency are applied pro rata to the portion of a loan insured through Conventional Insurance and the uninsured portion of the loan.

(2) First Loss Insurance, under which the Department will pay 100 percent of the deficiency of a loan, but the Department's maximum liability under the First Loss Insurance shall be the lesser of (a) the insured percentage (which shall not exceed 25 percent) times the authorized loan amount, (b) the insured percentage (which shall not exceed 25 percent) times the outstanding balance of the loan, including accrued interest and reasonable costs and expenses of collection and liquidation of collateral exclusive of costs attributable to environmental problems, but not taking into account the proceeds of collateral liquidation and payments by guarantors, or (c) \$500,000. Any recovery after payment of a deficiency is applied first to the uninsured portion of the loan and then to the portion of a loan insured through First Loss Insurance.

(3) First Loss Collateral Support Insurance (aka Collateral Support Insurance), under which the Department will pay up to a maximum of 100 percent of the deficiency of a loan as follows. The Department's maximum liability under the Collateral Support Insurance per enrolled loan shall be the lesser of:

(a) The insured percentage times the authorized and enrolled loan amount;

(b) The insured percentage times the outstanding balance of the enrolled loan, including accrued interest and reasonable costs and expenses of collection and liquidation of collateral exclusive of costs attributable to environmental problems, after taking into account pay-

ments by guarantors but not taking into account the proceeds of collateral liquidation; or,

(c) 25% of the enrolled loan or \$1,000,000. Collateral Support Insurance may not exceed a term of 5 years. Loan payments, the proceeds of collection of guarantees, and recovery after payment of a deficiency from any source other than liquidation of collateral are applied pro rata to the portion of a loan insured through Collateral Support Insurance and the uninsured portion of the loan; the proceeds of collateral are applied first to the uninsured portion of the loan and then to the portion of a loan insured through Collateral Support Insurance. Loans covered by Collateral Support Insurance must meet a participating Lender's credit underwriting criteria with the exception of loan collateral adequacy. Borrowers with loans covered by Collateral Support Insurance must:

(A) Demonstrate significant current and historical cash flow coverage,

(B) Demonstrate strong credit history,

(C) Provide personal guarantees of significant owners; and,

(D) Meet other criteria as determined by the Department.

(d) In contrast to First Loss Insurance, Collateral Support Insurance is only intended to mitigate a collateral shortfall and is not intended to mitigate other or additional credit deficiencies. Collateral Support Insurance will only be provided to the extent necessary to facilitate making a qualified loan, not on a maximum allowable basis for each loan. Loan proceeds may be used to pay off an existing loan where the collateral value is no longer adequate to secure the loan due to a decline in the value of the existing collateral (not due to the loan having been less than fully secured at inception). If any proceeds of the new insured loan are used to refinance an existing loan of the lender making application for Collateral Support Insurance, in order for the new loan to be eligible for Collateral Support Insurance the existing loan must have reached its maturity date and the new loan must also include new monies advanced to the borrower. If proceeds of the new loan are applied to an existing loan which is secured by collateral that secures the new loan, enrollment of the new loan in the Collateral Support Insurance will be limited to the amount of the collateral shortfall or the decline in the collateral value from the origination date of the existing loan, whichever is less. For the Collateral Support Insurance, the maximum insured percentage for insurance up to \$500,000 shall be 25% of the loan. For insurance above \$500,000 and up to \$1,000,000 the maximum insured percentage shall be 20% of the loan.

(4)(a) Evergreen Entrants Insurance, under which the Department may insure up to 75 percent of a line of credit working capital loan. Should a borrower which receives an insured loan default or otherwise be unable to make loan payments, the Department will pay the financial institution the deficiency of the line of credit working capital loan times the insured percentage; provided that the Department's maximum liability for any deficiency under the Evergreen Entrants Insurance is the lesser of \$1,500,000 or an amount equal to the insured percentage of the authorized loan amount. The balance of any loss is absorbed by the financial institution. Loan payments, the proceeds of collateral (including collection of guarantees), and any recovery after payment of a deficiency are applied pro rata to the portion of a loan insured through Evergreen Entrants Insurance and the uninsured portion of the loan.

(b) Eligible borrowers include persons or enterprises without or about to be without existing line of credit working capital loans.

(c) To obtain Evergreen Entrants Insurance, a financial institution must have the capacity to service the loan effectively, including monitoring compliance with any audit and control procedures prescribed by the Department or comparable procedures of the financial institution approved by the Department and must have in place and operating a lending program specializing in line of credit loans secured by or with advances based upon eligible accounts receivable and inventory or other assets. The Department must be satisfied that the financial institution is sufficiently experienced and capable of operating such a lending program effectively.

(5)(a) Evergreen Plus Insurance, under which the Department may insure up to 75 percent of a new increment of a line of credit; provided that the Department's maximum liability under the Ever-

green Plus Insurance is \$1,500,000. If the insured loan is a renewal of a loan where the Department insured more than 75% of the loan, the Department may, in its sole discretion, insure the new loan up to the percentage insured on the immediately previous loan being renewed. If a financial institution makes a payment request for any deficiency, the Department will pay to the financial institution the lesser of:

(A) A ratable share of the total default charges; or

(B) The deficiency times the insured percentage. The balance of any loss is absorbed by the financial institution. Loan payments, the proceeds of collateral (including collection of guarantees), and any recovery after payment of a deficiency are applied pro rata to the portion of a loan insured through Evergreen Plus Insurance and the uninsured portion of the loan.

(b) The formula for calculating the Department's ratable share of total default charges is:

$$R = (G \div T) * P$$

R represents the ratable share of total default charges.

G represents the amount of the new increment of the line of credit.

T represents the total credit facility made available.

P represents the principal outstanding upon default plus accrued unpaid interest and costs of collateral liquidation and collection of guarantees exclusive of costs attributable to environmental problems.

(c) To obtain the Evergreen Plus Insurance, a financial institution must have in place and operating a lending program specializing in line of credit loans secured by or with advances based upon eligible accounts receivable and inventory or other assets. The Department must be satisfied that the financial institution is sufficiently experienced and capable of operating such a lending program effectively.

(6) The Conventional Insurance, First Loss Insurance, and Collateral Support Insurance are available for all types of non-revolving loans with regular periodic payments of principal and interest no less often than annually for eligible purposes, including working capital loans that are secured by fixed assets or other collateral determined to be sufficient by the Department.

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 13-2002(Temp), f. & cert. ef. 6-18-02 thru 12-13-02; Administrative correction 4-15-03; EDD 6-2005(Temp), f. & cert. ef. 8-5-05 thru 1-31-06; EDD 1-2006, f. & cert. ef. 2-10-06; EDD 5-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-30-09, cert. ef. 11-1-09; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12; OBDD 7-2012, f. & cert. ef. 6-1-12; OBDD 18-2012(Temp), f. & cert. ef. 11-20-12 thru 5-17-13; OBDD 3-2013, f. & cert. ef. 5-23-13; OBDD 1-2015(Temp), f. & cert. ef. 1-26-15 thru 7-24-15; OBDD 5-2015, f. & cert. ef. 8-3-15; OBDD 6-2016(Temp), f. & cert. ef. 4-11-16 thru 10-7-16; OBDD 7-2016, f. & cert. ef. 6-3-16

## 123-021-0100

### Loan Insurance Agreement

No loan authorization shall be effective unless the financial institution and the Department have executed a loan insurance agreement in a form acceptable to the Department setting forth the relative rights and responsibilities of the financial institution and the Department for all insured loans. The loan insurance agreement shall include without limitation the following:

(1) General conditions and provisions incorporating the requirements of this division of the rules and ORS 285.466 to 285.481.

(2) Provisions setting forth the responsibilities of the financial institution to prudently underwrite and service insured loans in such a manner as would be the normal and customary practice of a prudent lender making or servicing a loan without relying on loan insurance.

(3) A requirement that the financial institution notify the Department in writing within 5 business days after a borrower's payment is 30 days late and within fifteen business days of any other default or event or condition which indicates the loan may be difficult to collect in full. Upon default, the financial institution and/or Department shall take such action as may be prudent, including without limitation foreclosing on and liquidating collateral.

(4) A description of the Department's insurance programs and the method for paying insurance claims.

(5) The Department shall be entitled at its discretion to cancel or reduce its insurance obligation if the financial institution breaches its responsibilities under the loan insurance agreement.

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-30-09, cert. ef. 11-1-09

### 123-021-0110

#### Insurance Premiums

(1) The Department shall charge a one-time (up-front) insurance premium. Premiums are due at the time financial institutions originate loans and execute loan authorizations with the Department. The Department's insurance is not effective until premiums are paid. It is expected that financial institutions will pass along the cost of premiums to borrowers. Premiums, expressed as a percentage of the Department's maximum liability, shall be charged in accordance with the schedule for the programs available from the agency.

(2) For revolving lines of credit or evergreen facilities, the premium is based on the Department's maximum liability in regard to the credit facility made available to a borrower, regardless of whether or not the line of credit is fully drawn down.

(3) Examples:

(a) The premium due on a \$200,000, five year loan with 80% Conventional Insurance would be \$3,200 ( $\$200,000 \times .80 \times .02$ );

(b) The premium for a \$200,000, eight year loan with 25% First Loss Insurance is \$2,500 ( $\$200,000 \times .25 \times .05$ );

(c) The premium for a \$1,000,000 five-year loan with a 15% Collateral Support Insurance is \$5,250 ( $\$1,000,000 \times .15 \times .035$ ).

(d) The premium for a \$200,000 loan with 75% Evergreen Entrants Insurance is \$2,625 ( $\$200,000 \times .75 \times .0175$ ); this amount would be due every year thereafter for up to four additional years, assuming the loan and amount is renewed each year for the maximum term permitted under the Evergreen Entrants program (5 years);

(e) The premium for a \$700,000 increment to the line of credit with 30% Evergreen Plus Insurance is \$3,675 ( $\$700,000 \times .30 \times .0175$ ); this amount would be due every year thereafter for up to four additional years, assuming the loan and amount is renewed each year for the maximum term permitted under the program (5 years);

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-30-09, cert. ef. 11-1-09; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12; OBDD 7-2012, f. & cert. ef. 6-1-12; OBDD 18-2012(Temp), f. & cert. ef. 11-20-12 thru 5-17-13; OBDD 3-2013, f. & cert. ef. 5-23-13; OBDD 1-2015(Temp), f. & cert. ef. 1-26-15 thru 7-24-15; OBDD 5-2015, f. & cert. ef. 8-3-15; OBDD 6-2016(Temp), f. & cert. ef. 4-11-16 thru 10-7-16; OBDD 7-2016, f. & cert. ef. 6-3-16

### 123-021-0120

#### Administrative Costs of the Program

The Department may charge the fund actual and necessary administrative expenses in operating the fund and its programs.

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285.476(2) & (5) & 285.471(1)(b)

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-30-09, cert. ef. 11-1-09

### 123-021-0130

#### Delegation

With the exception of appeals, the Department may authorize and approve loan insurance authorizations and require execution of any document necessary or convenient to make effective such insurance.

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-30-09, cert. ef. 11-1-09; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12; OBDD 7-2012, f. & cert. ef. 6-1-12

### 123-021-0140

#### Confidential Records

(1) The director or his designee shall provide nonexempt program records for inspection in accordance with ORS Chapter 192.

(2) The person requesting inspection of the records may be charged in advance the Department's cost for locating, compiling, copying, and mailing the records. Such costs shall include but not be limited to costs incurred in locating records, separating exempt and nonexempt records, having a custodian present during the inspection, preparing lists of data, making photocopies, and telefaxing materials. Fees to be collected shall be set forth in the Department's schedule of fees and may be amended from time to time as the Department in its sole discretion may determine.

(3) Except as otherwise provided in ORS Chapter 192, records exempt from disclosure include but are not limited to:

(a) Reports and analyses of reports obtained in confidence from creditors, employers, customers, suppliers, and others which bear on the borrower's character, finances, management ability, and reliability and which were obtained from persons or firms not required by law to submit them;

(b) Financial statements, tax returns, business records, employment history and other personal data submitted by or for borrowers, or analysis of such data;

(c) Interdepartmental advisory memoranda developed prior to a loan insurance decision;

(d) Formulas, plans, designs and related information which constitute trade secrets under ORS Chapter 192;

(e) Personal financial statements;

(f) Financial statements of borrower's;

(g) Customer lists;

(h) Information of a borrower pertaining to litigation to which the borrower is a party if the complaint has been filed, or if the complaint has not been filed, if the borrower shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded and nothing in this section shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(i) Production, sales or cost data; and

(j) Marketing strategy information that relates to a borrower's plan to address specific markets and borrower's strategy regarding specific competitors.

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 192.430 & 285.035(5)

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-30-09, cert. ef. 11-1-09

## DIVISION 22

### SMALL BUSINESS DEVELOPMENT CENTERS

### 123-022-0060

#### Purpose

The purpose of these rules is to provide procedures, standards, and criteria for making grants under ORS 285B.168 and 285A.340 to 285A.349 to community college and community college service districts to assist in the improvement and formation of small business development centers.

Stat. Auth.: ORS 285A.075 & 285A.110

Stats. Implemented: ORS 285A.340 - 285A.349 & 285B.165 - 285B.180

Hist.: EDD 6-1998, f. & cert. ef. 4-22-98

### 123-022-0070

#### Definitions

For the purposes of these rules definitions may be found in Procedural Rules, OAR 123-001. As used in this division of administrative rules, unless the context requires otherwise the following definitions apply:

(1) "Small Business Development Center" means a community college-based and state university-based center which helps small businesses develop and improve skill in such areas as marketing management and capital formation.

(2) “Small Business Development Center Network” means the statewide network of small business development centers.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.340 - 285A.075 285A.349 & 285B.165 - 285B.180

Hist.: EDD 6-1998, f. & cert. ef. 4-22-98; EDD 23-2009, f. 11-30-09, cert. ef. 12-1-09

### 123-022-0080

#### Eligibility Criteria

From funds appropriated for such purposes, the Department may make grants to community college and community college service districts and state university partners to assist in the formation and improvement of small business development centers. Grants are available on a justified need basis.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.340 - 285A.349 & 285B.165 - 285B.180

Hist.: EDD 6-1998, f. & cert. ef. 4-22-98; EDD 23-2009, f. 11-30-09, cert. ef. 12-1-09

### 123-022-0090

#### Application and Award Procedures

(1) Each applicant for a small business development center grant shall submit an annual work plan to the Small Business Development Center Network office and the Department. The annual work plan shall include:

(a) Evidence of the potential demand for assistance;

(b) Plans for involving other training resources and expert resource people from the business community;

(c) A plan to offer business counseling to the small business community;

(d) A budget for the year for which a grant is requested, including federal, state, college or university, and client grants.

(e) A plan to participate in evaluations conducted by the Small Business Development Center Network office.

(f) A plan for alignment with department’s job creation and retention definitions, policy and reporting methodology;

(g) A plan for alignment with department strategic goals and focus on key industries

(2) The Department and the Small Business Development Center Network office shall review and approve the work plans submitted by applicants prior to disbursement of grant funds to the Small Business Development Center program recipients.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.340 - 285A.349 & 285B.165 - 285B.180

Hist.: EDD 6-1998, f. & cert. ef. 4-22-98; EDD 23-2009, f. 11-30-09, cert. ef. 12-1-09

### 123-022-0100

#### Standards and Criteria

The Small Business Development Center Network office and the Department shall use the following criteria to evaluate applicants annual work plans:

(1) The number of small business clients to be served through one-to-one counseling and training programs as set out in the annual work plans;

(2) Special needs based upon geographic location or special populations to be served.

(3) The quality and the extent to which the annual work plan meets the needs of small business clients in the service area.

(4) Alignment with the department’s job creation and retention definitions, policy and reporting methodology;

(5) Alignment with department strategic goals and focus on key industries

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.340 - 285A.349 & 285B.165 - 285B.180

Hist.: EDD 6-1998, f. & cert. ef. 4-22-98; EDD 23-2009, f. 11-30-09, cert. ef. 12-1-09

### 123-022-0110

#### Project Administration

(1) The Director of the Department shall designate one of the small business development centers to coordinate the activities of all small business development centers and the Small Business Development Center Network office. In making the designation the Direc-

tor shall consider the recommendations of others providing substantial financial support to the Small Business Development Center Network.

(2) The Small Business Development Centers shall be required to provide matching funds, by cash or in-kind contributions or some combination of funds and contributions, on a 1:1 basis with Department funds.

(3) The Director of the Department shall have the discretion to waive or modify aspects of subsection 3 of this section if the Director determines it to be reasonable and necessary.

(4) The Small Business Development Centers shall require small businesses that receive business assistance services to pay part of the costs of those services. To the extent that federal laws or regulations impose requirements that limit the payment of fees by recipients of business assistance services to small businesses, the Business Development Department and the Small Business Development Center Network office shall apply for waivers of such federal requirements

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.340 - 285A.349 & 285B.165 - 285B.180

Hist.: EDD 6-1998, f. & cert. ef. 4-22-98; EDD 23-2009, f. 11-30-09, cert. ef. 12-1-09

## DIVISION 24

### DISTRESSED AREAS

### 123-024-0001

#### Scope and Purpose

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001 The following terms shall have the following definitions, unless the context clearly indicates otherwise: “City” means the area within the corporate limits of any incorporated city in Oregon.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.020, 285A.075, 285B.062 & 285B.065

Hist.: EDD 12-1998, f. & cert. ef. 8-14-98; EDD 12-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; EDD 10-2008(Temp), f. & cert. ef. 3-20-08 thru 9-15-08; EDD 27-2008, f. 8-28-08, cert. ef. 9-1-08; OBDD 2-2013, f. 3-29-13, cert. ef. 4-1-13; OBDD 2-2014, f. 2-28-14, cert. ef. 3-3-14

### 123-024-0011

#### Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001 The following terms shall have the following definitions, unless the context clearly indicates otherwise:

(1) “City” means the area within the corporate limits of any incorporated city in Oregon.

(2) “Quartile” means any of the three values which divide a sorted data set into four equal parts, so that each part represents one fourth of the sampled population.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.020, 285A.075, 285B.062 & 285B.065

Hist.: EDD 12-1998, f. & cert. ef. 8-14-98; EDD 4-2003, f. & cert. ef. 3-26-03; EDD 12-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; EDD 10-2008(Temp), f. & cert. ef. 3-20-08 thru 9-15-08; EDD 27-2008, f. 8-28-08, cert. ef. 9-1-08; EDD 24-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 3-2013, f. 3-29-13, cert. ef. 4-1-13

### 123-024-0021

#### Distressed Area List

At least once per biennium, the department will review the economic conditions in Oregon and prepare a list of distressed areas. The distressed area list on file with the department’s Director’s Office is adopted as part of these rules by reference. The department will make the distressed area list available to all interested parties. A copy of the distressed area list, as well as further information related to the methodology described in OAR 123-024-0031 and so forth, may be obtained from the Director’s Office, Oregon Business Development Department, State Lands Building Suite 200, 775 Summer Street NE, Salem, Oregon 97301-1280.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.095, 285B.062 & 285B.

Hist.: EDD 12-1998, f. & cert. ef. 8-14-98; EDD 4-2003, f. & cert. ef. 3-26-03; OBDD 2-2013, f. 3-29-13, cert. ef. 4-1-13

### 123-024-0031

#### Methodology for Determining Distressed Areas

The department will consider a county, City, or other geographic area to be a distressed area under one of the following methods:

(1) Using the most recent data available on the date of calculation, a county is considered distressed when, an index is calculated as the product of the values calculated using four composite factors. It is distressed if its index is less than 1.0. If the index is more than 1.0 the county is considered non-distressed. The following are the four factors used to determine a distressed county:

(a) The state's unemployment rate divided by the county's unemployment rate;

(b) The county's per capita personal income divided by the state's per capita personal income;

(c) The change in the county's average covered payroll per worker over a two year period;

(d) The sum of the change in the county's employment over a two year period; or

(2) A city outside of a county identified as a distressed area under subsection (1) of this section may be designated as distressed when its variable values are below the designated threshold value as determined by at least three of the four indicators listed below. The threshold values for each of the four indicators shall be determined by using reliable data from each of the distressed counties based on a demonstrated methodology, as approved by the director of the department. Threshold values are calculated using the most recent 5 year American Community Survey data from the U.S. Census Bureau.

(a) Percent of city population 25 years old and over with a bachelor's degree or higher. The threshold value for variable A is the percent of Oregon population 25 years old and over with a bachelor's degree or higher. If the percent of city population 25 years old and over with a bachelor's degree or higher is higher than the percent of Oregon population 25 years old and over with a bachelor's degree or higher, this value is above the threshold and not distressed.

(b) The city's unemployment rate. The threshold value for variable B is Oregon's unemployment rate. If the city's unemployment rate is lower than Oregon's unemployment rate, this value is below the threshold and not distressed.

(c) Percent of the city population below the poverty level. The threshold value for variable C is the percent of Oregon population below the poverty level. If the percent of the city's population below the poverty level is lower than the percent of Oregon population below the poverty level, this value is below the threshold and not distressed.

(d) The city's per capita personal income. The threshold value for variable D is Oregon's per capita personal income. If the city's per capita personal income is higher than Oregon per capita personal income, this value is higher than the threshold and not distressed.

(3) A county, City, or other geographic area that has demonstrated in writing, through a Temporary Distressed Petition, to the satisfaction of the director of the department, that it is suffering or is likely to suffer economic distress equal to or greater than those counties and cities qualifying as distressed areas under subsections (1) and (2) of this section. The director shall have the authority to declare counties, cities, and other geographic areas distressed as allowed under the Temporary Methodology for Determining Distressed Areas, OAR 123-024-0046.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.020, 285A.075, 285B.062 & 285B.065

Hist.: EDD 12-1998, f. & cert. ef. 8-14-98; EDD 3-2005(Temp), f. & cert. ef. 4-21-05 thru 10-15-05; Administrative correction 10-19-05; EDD 7-2005(Temp), f. & cert. ef. 10-24-05 thru 12-21-05; EDD 10-2005(Temp), f. & cert. ef. 11-4-05 thru 12-21-05; Administrative correction 1-19-06; EDD 12-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; EDD 10-2008(Temp), f. & cert. ef. 3-20-08 thru 9-15-08; EDD 27-2008, f. 8-28-08, cert. ef. 9-1-08; EDD 4-2009(Temp), f. & cert. ef. 5-7-09 thru 11-2-09; Administrative correction 11-19-09; EDD 24-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2013, f. 3-29-13, cert. ef. 4-1-13; OBDD 3-2014, f. 2-28-14, cert. ef. 3-3-14

### 123-024-0046

#### Temporary Methodology for Determining Distressed Areas

The following methodology will be used to determine temporarily distressed areas when economic distress is abundant throughout the state of Oregon.

(1) State Temporary Distressed Test: In a given month, if Oregon's unemployment rate exceeds 8.0%, the County Temporary Distressed Methodology will be used.

(2) County Temporary Distressed Test: In a given month, if Oregon's unemployment rate exceeds 8.0% and if the county's unemployment rate exceeds 8.0%, the county is considered temporarily distressed.

(a) When a temporarily distressed county's unemployment falls below 8.0%, it will remain distressed for 180 days or until the regular distressed communities list is published, whichever is less.

(b) All places and cities within a temporarily distressed county are considered distressed.

(3) Any county that is unable to pass the County Temporary Distressed Test is not considered to be temporarily distressed. All cities or places within a county that is unable to pass the County Temporary Distressed Test may seek temporary distressed status by filing a temporary distressed petition defined in OAR 123-024-0031(3).

(4) Temporary Distressed Petition: Any city or place not considered distressed may submit a formal petition asking for temporary distressed status in accordance with OAR 123-500-0031(3)

(a) Temporary distressed petitions will describe in narrative form local conditions that warrant temporary distressed status.

(b) Local conditions may include, but are not limited to, first-source anecdotal discussions of changes in employment, temporary lay-offs, furloughs, firm closures, firm idlings, reduced sales revenue, home foreclosure rates, welfare assistance, and unemployment assistance.

(c) The temporary distressed status granted under the petitions will last no longer than 180 days or until the normal distressed communities list is published.

(5) If Oregon fails to pass the State Temporary Distressed Test, the regular distressed communities' methodology will be used in December of the same year. The distressed communities list will be published at this time. All counties, cities, and places will maintain their temporary distressed status until the distressed communities list is published.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.020, 285A.075, 285B.062 & 285B.065

Hist.: EDD 24-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2013, f. 3-29-13, cert. ef. 4-1-13

## DIVISION 25

### PORT PLANNING AND MARKETING FUND

### 123-025-0005

#### Purpose

The purpose of these rules is to provide procedures, standards and criteria for operation of the Port Planning and Marketing Fund program authorized by ORS 285A.654 through 285A.660.

Stat. Auth.: ORS 285A.075(5)

Stats. Implemented: ORS 285A.654 - 285A.660

Hist.: EDD 8-1985(Temp), f. 10-22-85, ef. 11-1-85; EDD 5-1987, f. & ef. 10-9-87; EDD 6-1997, f. & cert. ef. 4-25-97; EDD 5-2001(Temp), f. & cert. ef. 7-13-01 thru 1-9-02; EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction 8-18-04

### 123-025-0010

#### Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. The following terms will have the following definitions, unless the context clearly indicates otherwise:

(1) "Fund" means Port Planning and Marketing Fund.

(2) "Peer Review Committee" means a committee of Oregon port representatives, as determined by the authority. The Peer Review Committee shall:

- (a) Recommend standards and priorities for typical Port Planning and Marketing Fund projects;
- (b) Review and evaluate Port Planning and Marketing Fund proposals submitted to the authority for possible funding; and
- (c) Review and evaluate project deliverables as described in the grant contract prior to disbursement of final payment.

(3) "Project" means any activity that is eligible for assistance from the Port Planning and Marketing Fund.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.654 - 285A.660

Hist.: EDD 8-1985(Temp), f. 10-22-85, ef. 11-1-85; EDD 5-1987, f. & ef. 10-9-87; EDD 6-1997, f. & cert. ef. 4-25-97; EDD 5-2001(Temp), f. & cert. ef. 7-13-01 thru 1-9-02; EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08; EDD 17-2008, f. & cert. ef. 6-4-08; EDD 18-2009, f. 10-30-09, cert. ef. 11-1-09; OBDD 5-2011, f. 10-31-11, cert. ef. 11-1-11

### 123-025-0012

#### Annual Funding of Program

The authority will transfer up to 5.00% of the assets of the Port Revolving Fund, not to exceed the annual accrued net income from the Port Revolving Fund into the Port Planning and Marketing Fund annually as calculated on receipt of the Fund Audit each year.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.654 - 285A.660

Hist.: EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08; EDD 17-2008, f. & cert. ef. 6-4-08; EDD 18-2009, f. 10-30-09, cert. ef. 11-1-09; OBDD 5-2011, f. 10-31-11, cert. ef. 11-1-11

### 123-025-0015

#### Project Eligibility and Criteria

A planning or marketing project that meets the following criteria is eligible for assistance from the fund:

(1) The project is necessary for improving a port's capability to carry out its authorized functions and activities relating to trade and commerce;

(2) The project is feasible and will produce measurable results;

(3) The project will promote the long-term economic self-sufficiency of the port and will encourage cost-effective investments guided by prudent financial consideration and review;

(4) The project has a single focus and does not attempt to accomplish multiple disjointed or unrelated outcomes or tasks;

(5) The applicant has met the strategic planning requirements in 123-025-0016; and

(6) The project meets the standards and criteria as set by the authority and Peer Review Committee in this division of administrative rules.

Stat. Auth.: ORS 285A.075(5)

Stats. Implemented: ORS 285A.654 - 285A.660

Hist.: EDD 8-1985(Temp), f. 10-22-85, ef. 11-1-85; EDD 5-1987, f. & ef. 10-9-87; EDD 6-1997, f. & cert. ef. 4-25-97; EDD 5-2001(Temp), f. & cert. ef. 7-13-01 thru 1-9-02; EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; Suspended by EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08; EDD 17-2008, f. & cert. ef. 6-4-08; EDD 18-2009, f. 10-30-09, cert. ef. 11-1-09; OBDD 5-2011, f. 10-31-11, cert. ef. 11-1-11

### 123-025-0016

#### Strategic Business Plan Requirements

(1) Ports formed under ORS 777 shall develop and maintain strategic business plans before obtaining authority funding for other projects. This requirement will be phased in over several years. Ports must have a formally adopted strategic business plan that meets the standards and requirements of the authority identified in the Statewide Ports Strategic Business Plan.

(2) The Ports Statewide Strategic Business Plan was adopted by the Oregon Business Development Commission on January 29, 2010. Ports must have their plan in place within three years after the adoption of the Statewide Ports Strategic Business Plan in order to obtain financial assistance from the authority. The strategic business plans required under this rule shall be updated at least every ten years.

(3) Exceptions may be made by the Board for funding to Ports without a strategic business plan if:

(a) A concerted effort is made by the port to begin drafting a strategic business plan based on the department's template that meets the requirements of the Statewide Ports Strategic Plan for adoption by the Board;

(b) During the phase in period of a project if the project complies with the recommendations of the Statewide Ports Strategic Plan;

(c) An extension of the three year deadline may be granted by the Board if a port is actively working to develop a department approved plan.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.654 - 285A.660

Hist.: OBDD 5-2011, f. 10-31-11, cert. ef. 11-1-11

### 123-025-0017

#### Application Submittal, Review and Approval

(1) An eligible port may submit an application after consulting with the authority on a preliminary determination of eligibility and otherwise follow the authority's procedures for submitting applications. The application must be in the form provided by the Authority and must contain or be accompanied by such information as the authority may require. The authority will process only completed applications.

(2) Upon receipt of a signed application the authority will within 14 days notify the port as to the status of the application and advise the port of any missing materials or incomplete application detail.

(3) Upon receipt of a completed application the authority will apply the following criteria to determine the project's eligibility:

(a) The project is cited in or conforms to a port's adopted strategic business plan required under OAR 123-025-0016 and approved by the authority and the Peer Review Committee.

(b) The project is not an unnecessary duplication of marketing efforts among ports. However, it is recognized that regional or cooperative projects may require ports to simultaneously perform similar tasks;

(c) The project does not subsidize regular port operating expenses;

(d) The project will not require or rely upon continuing subsidies from the authority or department;

(e) Financial need may be a consideration when reviewing a project proposal for funding; and,

(f) The requirements set out in OAR 123-025 are met. Should cite where these requirements are.

(4) Once an application is considered complete the authority will, within 60 days approve or reject the application.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.654 - 285A.660

Hist.: EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08; EDD 17-2008, f. & cert. ef. 6-4-08; EDD 18-2009, f. 10-30-09, cert. ef. 11-1-09; OBDD 5-2011, f. 10-31-11, cert. ef. 11-1-11

### 123-025-0021

#### Project Funding Priorities

(1) At the beginning of each state fiscal year the authority and the Ports will make reasonable efforts to identify and initiate high priority projects. Funding of up to 50% of that year's transfer of funds will be reserved exclusively for high priority projects for the first four months of the state fiscal year, after which it will become available for any eligible project.

(2) Projects to develop or update the strategic business plans as required under OAR 123-025-0016, or port marketing or financial plans, undertaken before the provisions of ORS 123-025-0016, will be given the highest priority.

(3) Other high priority projects are:

(a) Regional or cooperative projects that benefit more than one port;

(b) Projects that leverage other marketing and development efforts by the state or other government units;

(c) Projects leading to economic diversification, development of a new or emerging industry or redevelopment of existing public facilities.

(d) Priority will be given for immediate job or revenue creation projects. Other opportunities not cited in a port's adopted strategic

business plan may be given priority, provided that the port consults with the authority and the Peer Review Committee and, if required to do so by the authority, the ruling body of the port acts to amend its strategic business plan.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.654 - 285A.660

Hist.: EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08; EDD 17-2008, f. & cert. ef. 6-4-08; EDD 18-2009, f. 10-30-09, cert. ef. 11-1-09; OBDD 5-2011, f. 10-31-11, cert. ef. 11-1-11

### 123-025-0023

#### Grant Awards and Match

(1) The maximum grant is \$50,000 or 75% of the total project cost, whichever is less.

(2) Grants will be awarded only when there are sufficient funds available in the fund.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.654 - 285A.660

Hist.: EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08; EDD 17-2008, f. & cert. ef. 6-4-08

### 123-025-0025

#### Project Administration

(1) The authority and the port must execute a grant contract prior to disbursement of grant funds.

(2) Documentation of project costs incurred by a port must be submitted to the authority prior to disbursement of funds.

(3) Disbursement of grant funds to a port will not exceed one disbursement per month. The final disbursement request will be withheld until the Peer Review Committee reviews and recommends approval of the appropriate grant contract deliverables of the project.

(4) Upon request the port must provide the authority with a copy of documents, studies, reports, and materials developed during the project, including written report on activities or results of the project, or any other information that may reasonably be requested by the authority.

(5) Prior to final disbursement, the Peer Review Committee will review all documents produced as a result of the project. The committee will evaluate and make recommendations to the authority on value of resulting document(s) and how closely the project delivered the outcome anticipated in the application.

(6) Any monies disbursed but not used for an approved project, must be returned to the authority.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.654 - 285A.660

Hist.: EDD 8-1985(Temp), f. 10-22-85, ef. 11-1-85; EDD 5-1987, f. & ef. 10-9-87; EDD 5-2001(Temp), f. & cert. ef. 7-13-01 thru 1-9-02; EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 5-2006, f. 10-30-06, cert. ef. 10-31-06; EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08; EDD 17-2008, f. & cert. ef. 6-4-08; EDD 18-2009, f. 10-30-09, cert. ef. 11-1-09; OBDD 5-2011, f. 10-31-11, cert. ef. 11-1-11; OBDD 2-2014, f. 2-28-14, cert. ef. 3-3-14

### 123-025-0030

#### Remedies

The authority may seek legal remedies against ports that fail to comply with the requirements governing the fund. Remedies will not be imposed by the authority until the port has been notified in writing of deficiencies and has been given a reasonable time to respond and correct the deficiencies noted.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.654 - 285A.660

Hist.: EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 5-2006, f. 10-30-06, cert. ef. 10-31-06; EDD 13-2007(Temp), f. & cert. ef. 12-7-07 thru 6-1-08; EDD 17-2008, f. & cert. ef. 6-4-08; EDD 18-2009, f. 10-30-09, cert. ef. 11-1-09

## DIVISION 27

### MARINE NAVIGATION IMPROVEMENT FUND

#### 123-027-0035

##### Purpose

The purpose of these rules is to provide procedures, standards and criteria for operation of the Marine Navigation Improvement Fund authorized by ORS 777.262 to 777.267.

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction 8-18-04

#### 123-027-0040

##### Definitions

For the purposes of these rules, the following terms will have the following definitions, unless the text clearly indicates otherwise:

(1) "Federally authorized project" means a project that has been authorized or qualifies for federal funding from the United States Army Corps of Engineers.

(2) "Non-federal project" means a navigation project that is eligible under these rules but does not qualify for federal funding from the United States Army Corps of Engineers.

(3) "Fund" means the Marine Navigation Improvement Fund.

(4) "Project" means studies, necessary permits, dredging, acquisition, modification and maintenance of dredge disposal sites and construction of a new navigation improvement project that is sponsored by a port and is eligible for assistance from the Fund. A project can be either a federally authorized project or a non-federally authorized project.

(5) "Non-Federal Share" means that portion of a project cost not paid for by the United States Army Corps of Engineers.

(6) "New Navigation Improvement Project" means, for the purpose of ORS 777.267(1)(b) a water project that directly supports, or provides access to, a federally authorized navigation improvement project or a federally authorized navigation channel. To be characterized as 'new', the dredging activity must go beyond previously maintained improvements such as deeper channel depths or wider breadth of area being served. However, "New Navigational Improvement project" does not include dredging deeper than the depths of the federally authorized navigation improvement project.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 14-2002, f. & cert. ef. 6-21-02; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction 8-18-04; EDD 22-2004, f. & cert. ef. 8-19-04; EDD 24-2004, f. 10-25-04, cert. ef. 11-8-04; EDD 2-2006, f. & cert. ef. 2-10-06; EDD 19-2009, f. 10-30-09, cert. ef. 11-1-09

#### 123-027-0050

##### Project Eligibility, Priority and Funding

(1) To be eligible for funding, Federally Authorized Projects must meet the following criteria:

(a) The project is federally authorized;

(b) The project is listed in the Port's business or strategic plan; and

(c) The project has confirmed positive benefit/cost ratios as required by the National Economic Development Plan and has completed all federally required studies.

(2) First priority for assistance from the Fund shall be given to eligible Federally Authorized Projects.

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 14-2002, f. & cert. ef. 6-21-02; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction 8-18-04; EDD 22-2004, f. & cert. ef. 8-19-04; EDD 2-2006, f. & cert. ef. 2-10-06

#### 123-027-0056

##### Federally Authorized Project Application Requirements

The Port shall notify the Authority of a potential federally authorized project at the time it initiates the project with the United States Army Corps of Engineers and it shall submit written documentation to the Authority evidencing its participation with the Unit-

ed States Army Corps of Engineers. The written documentation must:

(1) Describe the nature and purpose of the project, including: proposed project scheduling; project term; estimated project cost; the Port's estimated non-federal share of the total project cost; and, the required schedule for payment of the Port's non-federal share of the total project cost;

(2) Contain federal documents that authorize the project, including Reconnaissance/Feasibility Studies; and

(3) Contain a copy of the Port's proposed Local Cost Share Agreement with the United States Army Corps of Engineers for undertaking and carrying out the project.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 22-2004, f. & cert. ef. 8-19-04; EDD 2-2006, f. & cert. ef. 2-10-06; EDD 19-2009, f. 10-30-09, cert. ef. 11-1-09

### 123-027-0060

#### Federally Authorized Project Application Review and Approval

Based upon a review of the information described in OAR 123-027-0056, the Authority will determine whether the project is eligible for assistance from the Fund. If the documentation is not adequate to determine eligibility, the Authority will require the Port to submit additional information as may be necessary.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 14-2002, f. & cert. ef. 6-21-02; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction, 8-18-04; EDD 22-2004, f. & cert. ef. 8-19-04; EDD 2-2006, f. & cert. ef. 2-10-06; EDD 19-2009, f. 10-30-09, cert. ef. 11-1-09

### 123-027-0070

#### Federally Authorized Project Award and Funding

(1) The Authority and the Port shall execute a contract prior to disbursement of moneys from the Fund. The contract shall be in a form and content as provided by the Authority.

(2) Payments from the Fund shall be disbursed in accordance with the executed contract.

(3) The Port must provide the Authority with a written report, records, and a detailed accounting of costs in the format required by the Authority :

(a) Within 30 days following the close of each federal fiscal year; and

(b) Within 90 days following final completion of a project.

(4) Any amount disbursed from the Fund and not used for a project must be returned to the Authority.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 14-2002, f. & cert. ef. 6-21-02; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction 8-18-04; EDD 22-2004, f. & cert. ef. 8-19-04; EDD 24-2004, f. 10-25-04, cert. ef. 11-8-04; EDD 2-2006, f. & cert. ef. 2-10-06; EDD 19-2009, f. 10-30-09, cert. ef. 11-1-09

### 123-027-0106

#### Non-Federal Project Eligibility

Non-federally authorized projects that meet the following criteria are also eligible for assistance from the Fund:

(1) The project is listed in a Port's business or strategic plan;

(2) The project is ready to begin in the biennium for which funding is requested;

(3) The project is a new navigation improvement project; and

(4) The project meets the criteria of a freight project, or a commercial/recreation project, as follows:

(a) A freight project facilitates transportation for at least 5,000 tons of freight or cargo annually;

(b) A commercial/recreation project supports at least 1,000 use days annually as evidenced by information from the State Marine Board, the Ports Reporting System, the U.S. Coast Guard, or other similar source of reliable data, or it is to support the operation of at least one tour boat.

(5) Navigation improvement projects that can't meet the criteria listed in subsection (4) may still qualify for funding if:

(a) The proposed improvement project is designed to facilitate usage to a level that exceeds the criteria in subsection (4); and

(b) Usage of the proposed improvement project is reasonably forecasted to meet the criteria in subsection (4) within the first two years of operation and exceed the minimum criteria thereafter.

Stat. Auth.: ORS 285.075(5) & 285A.110

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 14-2002, f. & cert. ef. 6-21-02; Renumbered from 123-027-0100 by EDD 22-2004, f. & cert. ef. 8-19-04; EDD 24-2004, f. 10-25-04, cert. ef. 11-8-04; EDD 2-2006, f. & cert. ef. 2-10-06

### 123-027-0156

#### Non-Federal Project Application Requirements

(1) A Port may submit an application after consulting with Authority staff on a preliminary determination of eligibility and otherwise following the Authority's procedures for submitting applications.

(2) The application must be in the form provided by the Authority and must contain or be accompanied by such information as the Authority may require. The Authority will process only completed applications.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 22-2004, f. & cert. ef. 8-19-04; EDD 2-2006, f. & cert. ef. 2-10-06; EDD 19-2009, f. 10-30-09, cert. ef. 11-1-09

### 123-027-0161

#### Non-Federal Project Application Review and Approval

To approve an application for assistance from the fund, the Authority must make the determinations as follows:

(1) The project is an eligible project. If the Authority determines that the project is not eligible, it may reject an application or require further documentation from the Port;

(2) The requisite need for the project has been demonstrated to the Authority in the application or the local planning process;

(3) If application is for a loan, the loan security includes the pledge of revenues and/or other funds, and is sufficient, when considered with other security, to assure repayment;

(4) The Port is willing and able to enter into a contract with the Authority; and

(5) Moneys in the fund are or will be available for the project.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 22-2004, f. & cert. ef. 8-19-04; EDD 2-2006, f. & cert. ef. 2-10-06; EDD 19-2009, f. 10-30-09, cert. ef. 11-1-09

### 123-027-0166

#### Non-Federal Project Award and Funding

(1) The Authority and the Port will execute a contract prior to disbursement of moneys from the Fund. The contract will be in a form and content as provided by the Authority.

(a) Payments from the fund will be disbursed in accordance with the executed contract.

(b) The Port must provide the Authority with written reports, records, and an accounting of detailed costs for a project as described in the contract.

(2) All eligible projects may be awarded loan funding of up to 100% of the total project cost, or for the required local match, under the following terms:

(a) Interest rates will be determined by Authority at time of award, according to Authority policy; and

(b) The loan term will not exceed 25 years.

(3) If the Authority determines 100% loan funding is not feasible due to the financial hardship of the port, grants may be awarded if the Authority determines at least one of the following circumstances exists:

(a) Job creation and/or retention will be a direct result of the project;

(b) There is an urgent need for environmental remediation and the Authority's financial analysis determines that the Port's borrowing capacity is insufficient to finance the project;

(c) The project deals with critical public safety issues and the Authority's financial analysis determines that the Port's borrowing capacity is insufficient to finance the project; or

(d) There is imminent threat that the Port will lose any applicable permits and the Authority's financial analysis determines that the Port's borrowing capacity is insufficient to finance the project.

(e) The Authority's financial analysis determines that the project cannot proceed without a grant.

(4) Projects eligible due to the provisions of subsection 0106 may be awarded grant funding up to 75 percent of the project cost. A 25 percent local match is required. In-kind services from the Port may be no more than 10 percent of the total project cost.

(5) The Port must secure, and be able to provide upon request, a land use compatibility statement from the appropriate jurisdiction(s) for the project.

(6) Any amount disbursed from the Fund and not used for a project must be returned to the Authority.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 22-2004, f. & cert. ef. 8-19-04; EDD 24-2004, f. 10-25-04, cert. ef. 11-8-04; EDD 2-2006, f. & cert. ef. 2-10-06; EDD 4-2006, f. 9-28-06, cert. ef. 10-1-06; EDD 19-2009, f. 10-30-09, cert. ef. 11-1-09

### **123-027-0211**

#### **Federal and Non-Federal Project Appeals and Exceptions**

(1) Appeals of local government decisions regarding a Project must be made at the local level.

(2) The Director will consider appeals of the Authority's funding decisions. Only the Port may appeal. Appeals must be submitted in writing to the Director within 30 days of the event or action that is being appealed. The Director's decision is final.

(3) The Director may waive non-statutory requirements of this program if it is demonstrated such a waiver would serve to further the goals and objectives of the program.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 14-2002, f. & cert. ef. 6-21-02; Renumbered from 123-027-0110, EDD 22-2004, f. & cert. ef. 8-19-04; EDD 2-2006, f. & cert. ef. 2-10-06; EDD 19-2009, f. 10-30-09, cert. ef. 11-1-09

## **DIVISION 30**

### **PORT REVOLVING FUND**

#### **123-030-0000**

##### **Purpose**

The purpose of these rules is to provide procedures, standards and criteria for operation of the Port Revolving Fund program authorized by ORS 285A.669 through 285A.732.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.669 - 285A.732

Hist.: EDD 8-2002, f. & cert. ef. 5-1-02; EDD 20-2009, f. 10-30-09, cert. ef. 11-1-09

#### **123-030-0004**

##### **Definitions**

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. The following terms have the following definitions unless the context clearly indicates otherwise: "Fund" means the Oregon Port Revolving Fund.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.669 - 285A.732

Hist.: EDD 8-2002, f. & cert. ef. 5-1-02; EDD 1-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 16-2004, f. & cert. ef. 8-2-04; EDD 6-2006, f. 10-30-06, cert. ef. 10-31-06; EDD 20-2009, f. 10-30-09, cert. ef. 11-1-09

#### **123-030-0010**

##### **Need for the Port Revolving Fund Project**

(1) Applications must include sufficient information that will demonstrate the need for the project. The information must include, but not be limited to, the following:

(a) Whether economic benefits and opportunities such as increased employment, increased personal income, and cost savings are evident;

(b) Whether the applicant has a prospective user or other near-term use of the proposed project; and

(c) That the project satisfies the applicable requirements of OAR chapter 123, division 8.

(2) In the event the loan is primarily for a proposed project to facilitate the location or expansion of an industry pursuant to ORS 285A.666-285A.732, the industry expansion to be induced by the loan must include activities consistent with the infrastructure target industries or Ports adopted Strategic Business Plan.

(3) Need for the project will be established for the purpose of these rules for in-state plant relocation if:

(a) The firm engaging in in-state plant relocation has demonstrated that the relocation is necessary for reasons beyond its control;

(b) The relocation will provide a substantial increase or prevent a substantial direct reduction in total Oregon employment.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.669 - 285A.732

Hist.: EDD 9, f. & cert. ef. 10-14-77; EDD 17-1990, f. & cert. ef. 6-28-90; EDD 8-2002, f. & cert. ef. 5-1-02; EDD 1-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 16-2004, f. & cert. ef. 8-2-04; EDD 20-2009, f. 10-30-09, cert. ef. 11-1-09

### **123-030-0020**

#### **Application Requirements**

An eligible port district may submit an application after consulting with Authority staff on a preliminary determination of eligibility and otherwise following the Authority procedures for submitting applications.

(1) The application must be in the form provided by the Authority and must contain or be accompanied by such information as the Authority may require. The Authority will process only completed applications.

(2) A fee of \$100 will be charged for each loan application submitted to the Authority. All application fees will be made by check or money order and made payable to the Oregon Port Revolving Fund.

(3) All applications for loans from the Oregon Port Revolving Fund must indicate the proposed collateral to secure the loan and must include the following information:

(a) If the port's taxing authority is proposed to be pledged as collateral, a statement certified by the county assessor's office that sets forth the current millage rate, the projected new millage rate, if required to pay off the loan, the port's maximum current limitation, and a statement indicating whether the proposed pledge is within the port's current maximum mileage limitation;

(b) If any of the port's personal or real property is proposed to be pledged as collateral, the Authority may require a formal appraisal, certified by an appropriate licensed authority, attesting to the value of all collateral proposed to be held as security.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.669 - 285A.732

Hist.: EDD 8-2002, f. & cert. ef. 5-1-02; EDD 1-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 16-2004, f. & cert. ef. 8-2-04; EDD 6-2006, f. 10-30-06, cert. ef. 10-31-06; EDD 20-2009, f. 10-30-09, cert. ef. 11-1-09

### **123-030-0030**

#### **Application Review and Approval**

(1) To approve an application for assistance from the fund, the Authority must make the determinations as follows:

(a) The project is consistent with the requirements governing assistance from the fund. If the Authority determines that the applicant and/or the proposed project do not meet the requirements of this section, the Authority may reject an application or require further documentation from the applicant;

(b) The requisite need for the project has been demonstrated in the application or the local planning process;

(c) The port has certified to the Authority that there will be adequate funds available to repay any loans made;

(d) The loan security includes the pledge of revenues and/or other funds are sufficient, when considered with other security, to assure repayment;

(e) The applicant is willing and able to enter into a contract with the Authority for repayment of the loan;

(f) The project is ready to proceed including all necessary permits required by federal, state and local agencies;

(g) The project activities constitute an eligible project;

(h) Moneys in the fund are or will be available for the project;  
(i) The requirements under ORS 285A.055 for approval have been satisfied;

(j) The applicant will not owe more than \$3 million in principle to the Port Revolving Fund if the loan is approved.

(2) The Authority may provide preliminary approval of a loan application at any time and identify all necessary requirements for final approval.

(3) If the application is denied, the matter will be set aside unless the applicant requests further action under ORS Chapter 183.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.669 - 285A.732

Hist.: EDD 8-2002, f. & cert. ef. 5-1-02; EDD 1-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 16-2004, f. & cert. ef. 8-2-04; EDD 6-2006, f. 10-30-06, cert. ef. 10-31-06; EDD 20-2009, f. 10-30-09, cert. ef. 11-1-09

### 123-030-0040

#### Loan Contract Terms and Conditions

(1) Interest rates will be set by the Authority at market rates, but not less than Treasury Notes of a similar term minus 1 percent.

(2) The term of the loan will not exceed the useful life of the contracted project or 25 years from the year of project completion, whichever is less.

(3) For a flexible manufacturing space project, the loan contract may provide that no interest accrue until the building is 25 percent occupied, or until three years after the date of the loan contract, whichever is earlier.

(4) The loan contract will:

(a) Be in a form as provided by the Authority, and

(b) Provide that the Authority may institute appropriate action to prevent use of project facilities financed by the fund if the port is delinquent in its repayments.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.669 - 285A.732

Hist.: EDD 8-2002, f. & cert. ef. 5-1-02; EDD 1-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 16-2004, f. & cert. ef. 8-2-04; EDD 6-2006, f. 10-30-06, cert. ef. 10-31-06; EDD 20-2009, f. 10-30-09, cert. ef. 11-1-09

### 123-030-0050

#### Sanctions, Exceptions and Appeals

The Department may seek legal remedies against ports that fail to comply with the requirements governing the fund. The Department will not impose remedies until the port has been notified in writing of deficiencies and has been given a reasonable time to respond and correct the deficiencies noted.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.669 - 285A.732 & 285A.690

Hist.: EDD 8-2002, f. & cert. ef. 5-1-02; EDD 1-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 16-2004, f. & cert. ef. 8-2-04; EDD 6-2006, f. 10-30-06, cert. ef. 10-31-06; EDD 20-2009, f. 10-30-09, cert. ef. 11-1-09; OBDD 15-2010, f. 4-30-10, cert. ef. 5-1-10

## DIVISION 42

### SPECIAL PUBLIC WORKS FUND PROGRAM

#### 123-042-0010

##### Purpose and Objectives

Pursuant to ORS 285B.419, the Oregon Business Development Department is required to adopt rules that implement the Special Public Works Fund Program. These rules are promulgated under authority granted by ORS 285B.419(1) and 285A.075.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: IRD 1-1986(Temp), f. & ef. 1-14-86; IRD 9-1986, f. 6-30-86, ef. 7-1-86; EDD 3-1987(Temp), f. 8-17-87, ef. 8-20-87; EDD 5-1988, f. & cert. ef. 2-17-88, Renumbered from 120-050-0010; EDD 26-1990, f. & cert. ef. 10-11-90; EDD 14-1991(Temp), f. & cert. ef. 10-17-91; EDD 9-1992, f. & cert. ef. 4-29-92; EDD 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 4-2002, f. & cert. ef. 2-26-02; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction 8-19-04; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10

#### 123-042-0020

##### Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. As used in this OAR 123 division 42 the following terms have the meanings set forth below, unless the context clearly indicates otherwise.

(1) "Authority" means the Infrastructure Finance Authority within the Oregon Business Development Department.

(2) "Award" means the Authority's determination that the project is eligible for funding and that the Authority has identified the specified funding type and amount for the activities described in the staff recommendation.

(3) "Award date" means the date of the final Authority management signature approving the award.

(4) "Board" means the Oregon Infrastructure Finance Authority Board.

(5) "Commission" means the Oregon Business Development Commission

(6) "Development project" means a project for the acquisition, improvement, construction, demolition, or redevelopment of municipally owned utilities, buildings, land, transportation facilities or other facilities that assist the economic and community development of the municipality, including but not limited to the following type of projects:

(a) Transportation projects

(b) Utility system projects

(c) Buildings, lands or other facility projects including planning project activities that are necessary or useful as determined by the Authority.

(7) "Direct project management costs" means expenses directly related to a project that are incurred by a municipality solely to support or manage a project eligible for assistance under ORS 285B.410 to 285B.482. Direct project management costs does not include routine or ongoing expenses of the municipality.

(8) "Eligible commercial jobs" means jobs that are created or retained by businesses selling goods or services into markets for which national or international competition exists.

(9) "Emergency project" means a development project resulting from an emergency as defined in ORS 401.025

(10) "Essential Community Facilities" means municipally owned or operated facilities that provide or support services vital to public health and safety, including, but not limited to police and fire protection, medical treatment, public utilities, transportation, and auxiliary shelter facilities.

(11) "Executive Director" means the administrator of the Infrastructure Finance Authority.

(12) "Firm business commitment project" means a project in response to a specific business development, expansion or retention proposal where assistance is necessary to enable the proposal to proceed and where permanent, full-time equivalent jobs will be created or retained. The project must support industrial development or eligible commercial jobs and be consistent with local comprehensive plans and implementing ordinances.

(13) "Fund" means the Special Public Works Fund created by ORS 285B.455.

(14) "Levee project" means a planning project, development project, or other project that is directly related to and necessary for required inspections, levee certification, accreditation or repairs.

(15) "Marine facility" has the meaning given that term in ORS 285B.410(7).

(16) "Municipality" means an Oregon city, or county, the Port of Portland created by ORS 778.010, a county service district organized under ORS Chapter 451, a district as defined in 198.010, a tribal council of a federally recognized Indian tribe in this state, or an airport district organized under ORS 838, but does not include an ORS 190 entity.

(17) "Planning project" means:

(a) A project related to a potential development project for preliminary, final or construction engineering;

(b) A survey, site investigation or environmental action related to a potential development project;

(c) A financial, technical or other feasibility report, study or plan related to a potential development project; or

(d) An activity that the Authority determines to be necessary or useful in planning for a potential development project.

(18) "Project" means a development, planning or emergency project.

(19) "State revenue bond loan" means a loan funded in whole or part through the sale of state revenue bonds issued by the State of Oregon at the request of the department that are payable from specific revenue sources pledged by a municipality and are not a pledge of the full faith and credit of the State of Oregon.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 7-2001(Temp), f. & cert. ef. 11-6-01 thru 3-29-02; EDD 4-2002, f. & cert. ef. 2-26-02; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 18-2004, f. & cert. ef. 8-2-04; EDD 10-2006, f. & cert. ef. 11-1-06; EDD 13-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 31-2008, f. 10-2-08, cert. ef. 10-3-08; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; OBDD 4-2016, f. & cert. ef. 2-29-16

## 123-042-0026

### Loan and Grant Information

(1) The moneys in the fund will be used primarily to provide loans to municipalities for projects. Grants may be given only when loans are not feasible due to the financial need of the municipality or special circumstances of a project. The level of loan or grant funding, if any, may be determined by the Authority on a case-by-case basis. The Authority shall determine awards in a manner that maximizes the use of available resources and maintains the desired credit standards of the fund according to the following criteria:

(a) Amount requested;

(b) Type;

(c) Interest rate;

(d) Terms and conditions of an award. The Authority may offer an alternate mix or lower amount of assistance than requested, and it may investigate and recommend other sources of funds for all or part of a proposed project.

(2) Grants:

(a) If the Authority determines that a firm business commitment project meets the minimum criteria for a grant, the Authority may make a further determination on the amount of the grant. The maximum grant amount is \$500,000 per project or 85% of allowable project costs, whichever is less. In-kind materials and services cannot be included in allowable project costs.

(b) The amount of grant will be based primarily on the number of eligible commercial and industrial jobs proposed to be created or retained with a maximum of \$5,000 for each job created or retained.

(c) If a grant is for the acquisition and improvement of real property, the maximum grant amount cannot exceed the fair market value of the real property after the improvements have been made or the value placed on the real property and improvements on the assessment rolls, whichever is less.

(d) The Authority must receive, in accordance with OAR 123 division 70, a copy of the appropriate First Source Hiring Agreement or assurance from the municipality that one has been entered into before the grant is dispersed.

(e) Not less than 60 percent of the grants awarded from the Special Public Works Fund in any biennium can be used to provide assistance to distressed or rural areas.

(f) The Authority cannot expend more than \$900,000 for grants or direct assistance, if any, for planning projects to municipalities in a biennium.

(g) The Authority cannot commit more than \$2,000,000 for grants for Firm Business Commitment development projects in a biennium.

(h) A development project that qualifies as a firm business commitment project is eligible to apply for a grant. When making a determination to award a grant, the Authority will apply prudent fiscal management of the fund in order to manage constrained funding resources. In addition to the criteria and process contained in its policies on grant and loan funding, the Authority will apply the following minimum criteria for grants:

(A) The Authority's financial analysis determines that the municipality's borrowing capacity is insufficient to support the amount of the loan requested for the project;

(B) Eligible commercial jobs will be created or retained as a result of the grant being awarded; and

(C) The Authority has received confirmation that the firm business commitment project will not occur, or that the eligible commercial jobs will be lost, if the municipality does not receive a grant.

(3) Loans:

(a) Maximum loan amount for a project will be based on the Authority's financial and credit analysis of the municipality's capacity to repay, the availability of moneys in the fund, and prudent fund management. Projects that the Authority determines are not financially feasible, or loans that cannot be adequately secured, will not be funded. The maximum loan amount per project cannot exceed \$10,000,000.

(b) A development project may receive loan funding as follows:

(A) The initial or renegotiated term is limited to the usable life of the contracted project, or a maximum of 30 years from the year of project completion, whichever is less.

(B) The interest rate on a loan will be based on market conditions for similar debt, and will be set at the time of the award.

(C) The repayment terms of a loan can include deferred repayment of principal and/or interest for a specified term of the loan to address special circumstances and financial feasibility of a project.

(D) The interest rate on a state revenue bond loan will be equal to the coupon rates on the bonds. Until the state revenue bonds are sold, the municipality will pay interest on the outstanding principal balance of the loan at the rate established by the Authority.

(c) A loan amount requiring Board approval will be established by the Board.

(d) The loan will be a full faith and credit obligation, which is payable from any taxes that the municipality may levy within the limitations of Article XI, Sections 11 and 11b, of the Oregon Constitution and all legally available funds of the municipality. Additional pledges of revenue or other collateral may also be required and may include, but are not limited to:

(A) Specific revenues of the municipality may also be required to be pledged as security, including revenues of the project, special assessment revenues and other collateral.

(B) If repayment of a loan substantially depends on revenues the municipality will receive from a lessee or payments from a benefiting business, the Authority will assess the financial capacity of the payor, the adequacy of the security, the financial instrument(s) requiring such payments to the municipality, and any liens, pledge(s), or assignments of collateral from the payor to the municipality. The Authority may require an assignment of such revenue and collateral from the municipality.

(C) If repayment of the loan substantially depends on a pledge of tax increment revenues from an urban renewal agency to the borrowing municipality, the Authority's financial analysis will extend to the financial feasibility of the projected revenues and the financial and legal adequacy of the proposed pledge of tax increment revenue.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; EDD 13-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 31-2008, f. 10-2-08, cert. ef. 10-3-08; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 10-2011, f. 12-30-11, cert. ef. 1-1-12; OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; OBDD 4-2016, f. & cert. ef. 2-29-16

## 123-042-0036

### Project Priorities and Funding

(1) The authority may consider the following priorities when determining a development project's eligibility, including but not limited to:

(a) Projects that help create or retain permanent jobs.

(b) Projects for which a municipality has documented a strong likelihood of creating construction jobs or otherwise promoting or contributing to economic and community development.

(c) Projects for which a municipality has documented substantial local commitment to the project's success.

(d) Projects for which a municipality has documented how the benefits of the project will be preserved over the project life.

(2) The authority may apply the following procedure when determining whether to make an award for an eligible development project:

(a) The authority will review project concepts and/or project information contained in the project intake form.

(b) Proposed projects that the authority determines to be eligible, meet the Board approved prioritization criteria, are a high priority and address the goals of the program, will be advanced to the next step. A proposed project that is not advanced will be referred to other possible funding source(s) or referred back to the proposing municipality for further project development.

(c) High priority projects will be funded on a funds available basis.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; EDD 13-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 31-2008, f. 10-2-08, cert. ef. 10-3-08; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; [OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; Temp Repealed by OBDD 4-2016, f. & cert. ef. 2-29-16]

### 123-042-0038

#### Criteria for Special Project Funding

Special types of development projects must meet the following criteria. If the project consists:

(1) Solely of the acquisition of land by the municipality, the land must be identified in the applicable land use or capital plan as necessary for a potential development project or be zoned solely for commercial or industrial use. A loan for such a project must be repaid if the land that is acquired through the proceeds of the loan is rezoned so as to be no longer zoned for industrial or commercial use.

(2) Of a privately owned railroad, the railroad must be designated by the owner and operator as subject to abandonment within three years, pursuant to federal law governing abandonment of common carrier railroad lines.

(3) Of a telecommunications system, the governing body of the municipality shall adopt a resolution, after a public hearing, finding that the proposed telecommunications system project is necessary and would not otherwise be provided by a for-profit entity within a reasonable time and for a reasonable cost.

(4) Of an energy system, the municipality and the serving utility must execute an ownership and operating agreement for the proposed energy system project. This sub-section does not apply when the energy system project will be located within the recognized service territory of the municipality.

(5) Of a marine facility project authorized under ORS 777.267, assistance from the fund can only be a loan that may not exceed the amount of the required local match.

(6) Of a project for a utility system that is functionally connected to, or anticipates connecting to, another municipality's utility system, an intergovernmental cooperation agreement that describes the duties and obligations of each entity in regard to the project and utility system is required. A certified copy of the fully executed intergovernmental agreement must be provided before the Authority will disburse funds.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075 & 285B.410 - 285B.460

Hist.: EDD 31-2008, f. 10-2-08, cert. ef. 10-3-08; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; OBDD 4-2016, f. & cert. ef. 2-29-16

### 123-042-0045

#### Planning Project Eligibility, Criteria and Funding

(1)(a) A planning project, as defined in ORS 285B.410(9), may be eligible for a loan. The Authority will make awards for loans based on availability of moneys in the fund and prudent fund management as well as its financial analysis of the municipality's ability to repay the loan;

(b) The interest rate for a planning project loan will be 50 percent of the rate set by the Authority for direct loans in effect at the time of the award. The loan term shall not exceed seven years.

(2) A planning project conducted for the purpose of developing industrial lands, including planning for industrial site certification, is eligible for a grant of up to \$60,000 per site, per biennium or 85% of the allowable planning project cost, whichever is less. This type of planning project must meet the following criteria:

(a) The land must be zoned "industrial"; and

(b) The land meets marketability standards as determined by the department using its adopted policy.

(3) A planning project conducted for the purpose of preliminary evaluation, planning, or engineering for levee certification is eligible for one grant of up to \$50,000 per levee certification project area or 85% of the allowable planning project cost, whichever is less.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 10-2011, f. 12-30-11, cert. ef. 1-1-12; OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; OBDD 4-2016, f. & cert. ef. 2-29-16

### 123-042-0055

#### Emergency Project Eligibility, Criteria and Funding

(1) An emergency project, as defined in ORS 285B.410(5), which meets the following criteria is eligible for assistance from the fund:

(a) The project must result from an emergency as defined in ORS 401.025; and

(b) The project must have federal disaster relief assistance funds committed;

(2) The following apply to both grants and loans for emergency projects:

(a) The maximum award amount for an emergency project cannot exceed the required local match for the federal disaster relief assistance committed to the project;

(b) A grant for an emergency project cannot exceed \$500,000 per project, or the amount of the federally required local match, whichever is less; and

(c) A loan for an emergency project must meet the criteria set forth in OAR 123-042-0036.

(3) The Authority shall not commit more than \$2.5 million for emergency project grants, including grants for essential community facilities, in a biennium.

(4) For the purposes of awards made under this OAR 123-042-0055, allowable project costs are those eligible for federal assistance, unless those costs are precluded by a restriction in state law or the Code of Federal Regulations.

(5) In the event of an emergency, the Authority may adopt a policy, after consultation with stakeholders and others, to guide implementation decisions regarding such matters as grant amounts and priorities.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; OBDD 4-2016, f. & cert. ef. 2-29-16

### 123-042-0061

#### Levee Project Eligibility, Criteria and Funding

(1) The Authority may provide financial assistance in the form of loans and grants for a levee project to:

(a) A municipality, including drainage districts organized under ORS Chapter 547;

(b) Corporations or companies for drainage or flood control organized under ORS Chapter 554.

(2) A levee project as defined in 123-042-0020(14) must meet all of the following criteria to be eligible for assistance from the fund:

(a) The project is for the purpose of completing certification documents or obtaining accreditation by the Federal Emergency Management Agency (FEMA) as defined in Chapter 44 of the Code of Federal Regulations (44 CFR), Section 65.2 or Section 65.10;

(b) The project, as determined by the Authority, will substantially contribute to the improvement, expansion or repair of the state's or municipality's infrastructure system; and,

(c) The project is essential for the continued use or development of farm, industrial, or commercial land in Oregon.

(3) The following applies to loans for levee projects:

(a) The maximum loan amount cannot exceed \$2,500,000;

(b) A principal only, zero percent (0%) interest rate loan of up to \$1,000,000 may be awarded for each levee certification project area. The zero percent loan cannot exceed 50 percent (50%) of the total loan amount from the Special Public Works Fund;

(c) The Authority cannot commit more than \$4,000,000 for zero percent (0%) interest rate loans for levee projects in a biennium.

(4) A levee project is eligible for one grant of up to a maximum of \$50,000. Maximum grant amount will include any amount previously awarded as a planning project grant pursuant to OAR 123-042-0045(3).

(5) For awards made under this OAR 123-042-0061, allowable project costs are those set forth in OAR 123-042-0065.

Stat. Auth.: ORS 285B.410, 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; OBDD 4-2016, f. & cert. ef. 2-29-16

### 123-042-0065

#### Allowable Project Costs

For purposes of projects funded under this division of rules, the allowable costs of a project include:

(1) Financing costs, including capitalized interest;

(2) Direct project management costs;

(3) Costs of consultant services and expenses;

(4) Construction costs and expenses;

(5) Costs of property acquisition, including any easement, or right of way directly related to and necessary for the project;

(6) Costs incurred by the municipality prior to the award if such costs are allowable under the Authority's adopted policy for reimbursement of pre-award costs;

(7) Costs of acquiring off-site property for purposes directly related to the project, such as wetland mitigation; and

(8) Other costs that the Authority determines to be necessary or useful.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; [OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; Temp Repealed by OBDD 4-2016, f. & cert. ef. 2-29-16]

### 123-042-0076

#### Ineligible Projects and Project Costs

Expenses and costs expressly allowed under this division of rules are eligible for reimbursement from the fund. All other costs are ineligible for reimbursement including but not limited to:

(1) Assistance to facilities that are or will be privately owned;

(2) Purchase of general purpose motor vehicles and equipment not essential to the project;

(3) Assistance to projects that primarily focus on relocating business or economic activity from one part of the state to another, except in cases where the business or economic activity would otherwise locate outside of Oregon; and

(4) Project operating or maintenance costs, except as allowed by statute.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; OBDD 4-2016, f. & cert. ef. 2-29-16

### 123-042-0122

#### Application Requirements

(1) A municipality may submit an application to the Authority after consulting with the Authority on a preliminary determination of eligibility and following the Authority's procedures.

(2) The application must be in the form provided by the Authority and must contain or be accompanied by such information and

documentation as the Authority may require. The Authority may assist municipalities in understanding program requirements and in completing applications. The Authority will process only completed applications.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; OBDD 4-2016, f. & cert. ef. 2-29-16

### 123-042-0132

#### Application Review and Approval

(1) For a construction project the Authority must make the following determinations:

(a) The municipality has certified that the proposed project is feasible, is the most cost effective solution, and adequately serves the applicable land uses in both the short and long term;

(b) The loan is secured by the pledge of utility revenues or other revenues, collateral, or payments from any owners of specially benefited properties, and such pledge is sufficient, when considered with other collateral or assets, to assure repayment, and the municipality has certified to the Authority that there will be adequate funds available to repay the loans made to the municipality from the fund;

(c) The municipality is willing and able to enter into a contract with the Authority;

(d) The project is consistent with the requirements governing assistance from the fund. If the Authority determines that the municipality or the proposed project does not meet the requirements of OAR chapter 123, division 42, the Authority may reject an application or require further documentation from the municipality;

(e) Other funds that may be needed to complete the project are available or the municipality has a binding commitment for such funds. If a portion of the other funds needed to complete the project is not available or committed at the time an award is made, the award will be conditional on securing the other needed funds or a binding commitment for such funds; and

(f) The project is ready to begin and the municipality has committed in writing that, if awarded the assistance, it shall proceed immediately.

(2) For a planning project, the Authority must make the following determinations:

(a) The requirements set out in OAR 123-042-0132(1) are met, except for subsection (b) if no loan is being awarded;

(b) The planning activities must be for a project that is eligible under OAR chapter 123, division 42 and meets the criteria listed in OAR 123-042-0045; and

(c) The municipality has demonstrated the ability to secure, the administrative capacity to undertake and complete the planning project.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; OBDD 4-2016, f. & cert. ef. 2-29-16

### 123-042-0155

#### Contracts and Disbursements of Funds

(1) The Authority shall disburse monies from the fund only after entering into a binding contract with the municipality.

(2) The contract will be in form and substance as provided by the Authority, and must include:

(a) A provision that disbursements from the fund will be according to the terms of the contract;

(b) A provision that the liability of the Authority under the contract is contingent upon the availability of moneys in the fund for use in the project;

(c) For a development project, a provision requiring the contracted project remain in municipal ownership for either the life of the loan, or for not less than 10 years following the Project Close-out Deadline if funding award is solely a grant. If this condition is not met, the grant and any interest earned is immediately payable to the Authority, unless the Authority in its sole discretion elects to con-

vert the grant to a loan on terms and conditions satisfactory to the Authority;

(d) For a planning project, other than planning projects conducted for levee certification, a provision requiring that the land involved in the project must remain zoned as industrial and not be converted to another use for at least 5 years after completion of the project. If this condition is not met, the grant and any interest earned is immediately payable to the Authority, unless the Authority in its sole discretion elects to convert the grant to a loan on terms and conditions satisfactory to the Authority;

(e) If any portion of the assistance is in the form of a loan or the purchase of a bond of a municipality, a provision granting the Authority a lien on, or a security interest in, the collateral as determined by the Authority to be necessary to secure repayment of the loan or bond;

(f) A provision that for a period of up to six (6) years after project completion, the Authority may request that the municipality, at its own expense, submit data on the economic development benefits of the project, including but not limited to, information on new or retained jobs resulting from the project, and other information necessary to evaluate the success and economic impact of the project; and

(g) Other provisions that the Authority considers necessary or appropriate to implement the assistance.

(4) The contract for a loan or grant must be authorized by an ordinance, order or resolution adopted by the governing body of the municipality in accordance with the municipality's requirements for public notice and authorizing debt.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 4-2016, f. & cert. ef. 2-29-16

### 123-042-0165

#### Municipality Responsibilities

(1) The municipality must comply with all applicable state laws, regulations and requirements, such as Oregon prevailing wage rates, municipal audit law, and procurement regulations.

(2) The municipality shall maintain accounts and records for all activities associated with the contracted project and shall provide the Authority, and its representatives, reasonable access to such records. The municipality shall submit periodic reports on the project as requested by the Authority.

(3) The municipality shall certify that any service provider retained for their professional expertise is certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty.

(4) The municipality shall certify that it will follow standard construction practices, such as bonding of engineers and contractors, requiring errors and omissions insurance, performing testing and inspections during construction, and obtaining as-built drawings.

(5) For a project funded with state lottery proceeds, the municipality shall comply with ORS 280.518 requiring public display of information on lottery funding of the project. At a minimum the municipality shall:

(a) Include the following statement, prominently placed on all plans, reports, bid documents and advertisements relating to the project: "This project was funded in part with a financial award from the Special Public Works Fund, funded by the Oregon State Lottery and administered by the Oregon Infrastructure Finance Authority"; and

(b) For a construction project, post a sign, provided by the Authority, at the project site or, if more than one site is included in the project, at a site visible to the general public stating that the project is being funded by lottery proceeds.

(6) For a construction project, the municipality shall have a financing plan for the ongoing operation, maintenance and repairs that will preserve the project benefits over its useful life.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482 & 280.518

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; OBDD 4-2016, f. & cert. ef. 2-29-16

### 123-042-0175

#### Eligibility Criteria for State Revenue Bond Loans

The Authority shall apply the following standards for determining the eligibility of development projects for revenue bond financing:

(1) Loan repayment must be secured by a full faith and credit pledge of the municipality;

(2) The loan must be of sufficient size as determined by the Authority;

(3) The loan must be fully amortized over its term with fixed annual principal and interest payments and the term of the loan will not exceed the usable life of the contracted project;

(4) The loan must conform to the requirements of the bond indenture for the state revenue bonds; and

(5) The loan and the municipality must meet the minimum underwriting criteria for revenue bond financing as established by Authority policies.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; OBDD 4-2016, f. & cert. ef. 2-29-16

### 123-042-0180

#### Remedies

The Authority may invoke remedies for an "event of default" as described in the contract with the municipality, including but not limited to the following:

(1) Withholding of amounts otherwise due to the municipality pursuant to ORS 285B.449;

(2) Barring Recipient from applying for future awards.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 18-2004, f. & cert. ef. 8-2-04; EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; OBDD 4-2016, f. & cert. ef. 2-29-16

### 123-042-0190

#### Appeals and Exceptions

(1) Appeals of decisions made by a municipality regarding a project must be made in accordance with the requirements and procedures of the municipality.

(2) The executive director of the Authority will consider appeals of the Authority's funding decisions. Only the municipality may appeal. An appeal must be submitted in writing to the executive director within 30 days of the event or action that is being appealed. A project that would have been funded but for a technical error in the Authority's review of the application will be funded as soon as sufficient moneys become available in the fund, provided the project is still viable. The executive director's decision is final.

(3) The executive director may waive non-statutory requirements of this program if it is demonstrated such a waiver would serve to further the goals and objectives of the program.

Stat. Auth.: ORS 285B.419 & 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482 & 285A.101

Hist.: ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 18-2004, f. & cert. ef. 8-2-04; EDD 10-2006, f. & cert. ef. 11-1-06; OBDD 41-2010, f. 11-30-10, cert. ef. 12-1-10; [OBDD 9-2015(Temp), f. & cert. ef. 10-1-15 thru 3-27-16; Temp Repealed by OBDD 4-2016, f. & cert. ef. 2-29-16]

## DIVISION 43

### WATER/WASTEWATER FINANCING PROGRAM

### 123-043-0000

#### Purpose and Objectives

Pursuant to ORS 285B.563, the Oregon Business Development Department is required to adopt rules that provide procedures, standards and criteria for the Water/Wastewater Financing Program.

Stat. Auth.: ORS 285B.563 & 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

## Chapter 123 Oregon Business Development Department

Hist.: EDD 10-1993(Temp), f. & cert. ef. 10-4-93; EDD 7-1994, f. & cert. ef. 4-7-94; EDD 7-2002, f. & cert. ef. 4-26-02; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09

### 123-043-0010

#### Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. As used in this division of administrative rules, the following terms shall have the following meaning, unless the context clearly indicates otherwise:

(1) “DEQ” means the State of Oregon Department of Environmental Quality.

(2) “Facilities” means something that is built or installed to perform some particular function.

(3) “Fund” means the water fund created by ORS 285B.563.

(4) “Grant” means an award to a municipality of monies that can be used to reimburse eligible project costs. Grant funds are not required to be repaid when contract conditions are met.

(5) “Non-compliance” means the municipality has received a notice of non-compliance with:

(a) Drinking water quality standards administered by the Oregon Health Authority Drinking Water Services; or

(b) Water quality statutes, rules, orders, or permits administered by DEQ or the Environmental Quality Commission.

(6) “Project” means only a project for constructing or improving a drinking water system, or a project for constructing or improving a system for waste water collection or treatment, including storm drainage systems as defined in ORS 285B.560(4) and (5).

(7) “System” means the interconnected facilities that are required or useful for performing the required function.

(8) “Technical Assistance” means preliminary engineering or planning; legal, financial, and economic investigations, reports and studies to determine the feasibility of a Project. Technical Assistance also means required Water Master Plans or Wastewater Facilities Plans needed to allow communities to properly plan for the future.

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

Stat. Auth.: ORS 285B.563 & 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 10-1993(Temp), f. & cert. ef. 10-4-93; EDD 7-1994, f. & cert. ef. 4-7-94; EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 14-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 32-2008, f. 10-2-08, cert. ef. 10-3-08; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; Administrative correction 7-27-10; OBDD 6-2011(Temp), f. & cert. ef. 11-3-11 thru 4-30-12; OBDD 3-2012, f. 3-30-12, cert. ef. 4-2-12; OBDD 12-2013, f. 12-30-13, cert. ef. 1-1-14

### 123-043-0015

#### Eligible Project Costs and Activities

(1) Eligible costs include the reasonable costs as determined by the Authority for eligible program activities and include:

(a) Project development costs;

(b) Construction contingencies as approved by the Authority for a project;

(c) Financing costs associated with the department’s financing including capitalized interest, issuance and debt service reserve costs, when such costs are incurred in funding a project;

(d) Costs incurred by the municipality prior to a non-technical assistance award if such costs are allowable under the Department’s adopted policy for reimbursement of pre-award costs; and

(e) At the discretion of the Authority, reasonable, new project management costs but not expenses for current staff that are already included in the municipality’s adopted budget.

(2) Eligible project and program activities include the construction, improvement or expansion of the following facilities owned and operated either by the municipality or under a management contract or an operating agreement with the municipality:

(a) Domestic drinking water systems including all facilities necessary for source, supply, filtration, treatment, storage, transmission, and metering;

(b) Wastewater systems including all facilities necessary for collecting; conveying, pumping, treating and disposing of sanitary sewage, including correction of infiltration and inflow through replacement of lines, sliplining, or other corrective processes approved by the Authority;

(c) Storm drainage systems including all facilities necessary for controlling, collecting, conveying, treating and discharging of storm water;

(d) The acquisition of real property directly related to or necessary for the proposed project; and

(e) Project development and the associated engineering, architectural and planning work involved in developing the facilities listed in (1) above, including technical assistance and support activities necessary to the construction of a project as determined by the Authority.

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; OBDD 30-2010, f. 6-30-10, cert. ef. 7-1-10; OBDD 12-2013, f. 12-30-13, cert. ef. 1-1-14

### 123-043-0025

#### Ineligible Project Costs

Expenses and costs expressly allowed by OAR 123-043-0015 are eligible for reimbursement from the fund. All other costs, including but not limited to those listed below, are ineligible for reimbursement:

(1) Costs incurred for facilities that are or will be privately owned.

(2) Cost of purchase of general purpose motor vehicles and other equipment not directly related to the project.

(3) Cost of purchase of off-site property for uses not directly related to the project; and

(4) Project operating or maintenance expenses.

Stat. Auth.: ORS 285B.563 & 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; Administrative correction 7-27-10; OBDD 42-2010, f. 11-30-10, cert. ef. 12-1-10; OBDD 6-2011(Temp), f. & cert. ef. 11-3-11 thru 4-30-12; OBDD 3-2012, f. 3-30-12, cert. ef. 4-2-12; OBDD 12-2013, f. 12-30-13, cert. ef. 1-1-14

### 123-043-0035

#### Criteria and Limitations for Funding — Non-Technical Assistance Projects

(1) The intent of the Legislature was to provide funding to municipalities to assist in complying with the Safe Drinking Water Act and the Clean Water Act. Therefore, priority will be given to projects necessary to ensure that municipal water and wastewater systems comply with the requirements of:

(a) Drinking water quality standards administered by the Oregon Health Authority Drinking Water Services; or

(b) Water quality statutes, rules, orders, or permits administered by DEQ or the Environmental Quality Commission.

(2) If a municipal water or wastewater system has not been issued a notice of non-compliance by the governing regulatory authority, the Authority may determine that a proposed project is eligible for assistance upon a finding that one of the following has been met:

(a) The Authority deems it reasonable and prudent that an award from the fund will assist in bringing the drinking water, storm water or wastewater system into compliance with the requirements of the Safe Drinking Water Act, the Clean Water Act, those requirements proposed to take effect within the next two years, or the requirements of other regulatory agencies recognized by the Authority as having responsibility for the protection of water quality and the supply of clean drinking water; or

(b) A recent letter has been issued by the appropriate regulatory authority, typically the Department of Human Services Drinking Water Program, DEQ, or its contracted agent, which indicates a high probability that the system owner will soon be notified of non-compliance with either the Safe Drinking Water Act or the Clean Water Act.

(3) The Authority generally will not fund projects without the conditions of 123-043-0035(2) being met.

(4) The project must be consistent with the acknowledged local comprehensive plan.

(5) The Authority encourages regionalization whenever feasible.

(6) The Authority encourages asset management planning where possible.

(7) The Authority will apply approved prioritization utilizing criteria listed in this section when reviewing project information contained in project notification intake form.

Stat. Auth.: ORS 285B.563 & 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp), f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 14-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 32-2008, f. 10-2-08, cert. ef. 10-3-08; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; OBDD 30-2010, f. 6-30-10, cert. ef. 7-1-10; OBDD 12-2013, f. 12-30-13, cert. ef. 1-1-14

### 123-043-0041

#### Criteria and Limitations for Funding — Technical Assistance Projects

(1) Awards are available to municipalities with populations of less than 15,000 people for technical assistance. If the project is for a facility plan or study required by a regulatory agency, the municipality is not required to document non-compliance. Other Technical Assistance projects may be considered after consulting with and receiving documentation of non-compliance from the regulatory agency.

(2) Technical assistance grants and loans are subject to the following limitations:

(a) A grant of up to \$20,000 per water, sewer, and storm drainage system may be awarded once every three (3) years for a project;

(b) A loan of up to \$60,000 may be awarded for a project. Interest shall be at 50 percent of the annual interest rate for other loans made in accordance with the requirements of this OAR chapter 123, division 43. The loan term shall not exceed seven years;

(c) Pre-award expenses are not eligible for reimbursement;

(d) No more than \$600,000 shall be expended from the fund on technical assistance in any biennium. When awarding a grant under this section the Authority will not first consider a municipality's ability to repay a loan; and

(e) The application must meet the requirements listed in OAR 123-043-0075(2).

(3) The loan shall be a full faith and credit obligation which is payable from any taxes which the municipality may levy within the limitations of Article XI of the Oregon Constitution and all legally available revenues and other funds of the municipality. A pledge of specific revenues of the municipality may be pledged in addition to the foregoing.

Stat. Auth.: ORS 285B.563 & 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; OBDD 30-2010, f. 6-30-10, cert. ef. 7-1-10; OBDD 12-2013, f. 12-30-13, cert. ef. 1-1-14; OBDD 10-2014, f. 5-30-14, cert. ef. 6-1-14

### 123-043-0055

#### Loan and Grant Information

(1) The Authority may award financing in a manner that maximizes the use of available resources and maintains the desired credit standards of the fund. The Authority shall determine the amount, type, interest rate and terms of any financing awarded. It may offer an alternate mix or lower amount of assistance than requested. The amount of the award may be the minimum amount that the department determines is necessary to enable the project to proceed, and the Authority may investigate and recommend other sources of funds for all or part of a proposed project. Projects that the Authority determines are not financially feasible will not be funded.

(2) Loans for non-technical assistance projects:

(a) The term of a loan is limited to the usable life of the contracted project, or 30 years from the year of project completion, whichever is less.

(b) Except as provided elsewhere in OAR chapter 123, division 43, the interest rate on a loan is based on market conditions for similar debt and is set at the time of the award.

(c) The interest rate on a bond funded loan is equal to the coupon rates on the state revenue bonds funding the loan. Until the state revenue bonds funding the loan are sold, the municipality will pay interest at a rate established by the Authority on loan funds disbursed to the municipality.

(d) Maximum amount for a loan for a project will be determined by the Authority on the basis of the department's financial analysis of the municipality's capacity for repaying the debt, the availability of moneys in the fund and prudent fund management but will not exceed \$10,000,000.

(e) The loan shall be a full faith and credit obligation which is payable from any taxes which the municipality may levy within the limitations of Article XI of the Oregon Constitution and all legally available revenues and other funds of the municipality. A pledge of specific revenues of the municipality may be required by the Authority to be pledged in addition to the foregoing.

(3) Grants for non-technical assistance projects: When making a determination to award a grant, the Authority will apply prudent fiscal management of the fund in order to manage limited funding resources. The Authority shall determine if the project meets the criteria of a grant and make a determination on the amount of the grant based on financial need or other special circumstances. In making its determination, the Authority shall apply the following criteria:

(a) The Authority's financial analysis determines that the municipality's financial resources, including its borrowing capacity, are insufficient to finance the project;

(b) The projected annual residential utility rate for the system is at least equivalent to a minimum rate as determined by the Authority's policy. The Authority's policy may include such factors as the most recent U.S. Census data on median household income and annual adjustments for inflation since the most recent census;

(c) Only a distressed community is eligible for a grant award; and

(d) Grants may be awarded up to \$750,000 based on the Department's policy, but not more than 50 percent of the financial award from the fund.

Stat. Auth.: ORS 285B.563 & 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp), f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 14-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 32-2008, f. 10-2-08, cert. ef. 10-3-08; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; OBDD 30-2010, f. 6-30-10, cert. ef. 7-1-10; OBDD 12-2013, f. 12-30-13, cert. ef. 1-1-14

### 123-043-0065

#### Application Requirements

(1) A municipality may submit an application to the Authority at any time after the Authority has made a preliminary determination of eligibility and shall comply with the Authority's procedures for submitting applications. The Authority may, to the extent possible, assist municipalities in understanding program requirements and in completing applications.

(2) For a project that is part of a system that is, or will be, functionally connected to, another municipality's system, an intergovernmental cooperation agreement that describes the duties and obligations of each entity is required. The fully executed intergovernmental agreement must be provided before the financing contract will be executed by the Authority.

(3) The application shall be in the form provided by the Authority and shall contain or be accompanied by such information and documentation as the Authority may require. The Authority will process only completed applications.

Stat. Auth.: ORS 285B.563 & 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09

### 123-043-0075

#### Application Review and Approval

(1) For a non-technical assistance project, the Authority must make the following determinations:

(a) The municipality shall document that a professional engineer registered in the State of Oregon has certified in an engineering report, such as a Master Plan, that the proposed project is feasible, is the most cost effective solution, and adequately serves the applicable land uses in both the short and long term;

(b) The loan is secured by the pledge of utility revenues or other revenues or payments from owners of specially benefited properties, and these revenues or payments are sufficient, when considered with other security, to assure repayment of the loan and the municipality has certified to the Authority that there will be adequate funds available to repay the loans made to the municipality from the fund;

(c) Moneys in the appropriate accounts of the fund are or will be available for the project;

(d) The municipality is willing and able to enter into a contract with the Authority;

(e) The project is consistent with the requirements governing assistance from the fund. If the Authority determines that the municipality or the proposed project does not meet the requirements of this OAR 123-043-0075, the Authority may reject an application or require further documentation from the municipality; and

(f) The project is ready to begin and the municipality has committed in writing that, if awarded the assistance it shall proceed immediately.

(2) To award assistance from the fund for a technical assistance project, the Authority must make the following determinations:

(a) The technical assistance activities must be for a project that is eligible under the criteria listed in 123-043-0041; and

(b) The municipality has, or has demonstrated the ability to secure, the administrative capacity to undertake and complete the project.

Stat. Auth.: ORS 285B.563 & 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 14-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 32-2008, f. 10-2-08, cert. ef. 10-3-08; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 30-2010, f. 6-30-10, cert. ef. 7-1-10; OBDD 12-2013, f. 12-30-13, cert. ef. 1-1-14

### 123-043-0085

#### Contract Administration and Disbursement of Funds

(1) The Authority shall disburse monies from the fund only after entering into a binding contract with the municipality.

(2) The contract shall be in a form provided by the Authority, and shall include:

(a) A provision that disbursements from the fund will be according to the terms of the contract;

(b) A provision that the liability of the Authority under the contract is contingent upon the availability of moneys in the fund for use in the project;

(c) If any portion of the assistance is in the form of a loan or the purchase of a bond of a municipality, a provision granting the Authority a lien on or a security interest in the collateral as determined by the Authority to be necessary to secure repayment of the loan or bond;

(d) A provision that, for a period of up to six (6) years after project completion, the Authority may request that the municipality, at its own expense, submit data on the economic development benefits of the project, including but not limited to information on new or retained jobs resulting from the project, and other information necessary to evaluate the success and economic impact of the project;

(e) For a drinking water project, a provision requiring the municipality to install meters on all new active service connections from any distribution lines that may be included in the project;

(f) For a drinking water project with existing, active unmetered service connections, a provision requiring the municipality to install meters on such service connections no later than two years after the completion of the project; and

(g) Other provisions that the Authority considers necessary or appropriate to implement the assistance.

(3) Other funds that may be needed to complete the project must be available or the municipality must have a binding commitment for such funds at the time the contract is executed. If a portion of the

other funds needed to complete the project is committed but not available at the time an award is made or the contract executed, the contract shall require that the project be fully funded prior to any disbursement from the fund.

(4) The contract for a loan or grant shall be authorized by an ordinance, order or resolution adopted by the governing body of the municipality in accordance with the municipality's requirements for public notice and authorizing debt.

Stat. Auth.: ORS 285B.563 & 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; OBDD 30-2010, f. 6-30-10, cert. ef. 7-1-10

### 123-043-0095

#### Recipient Responsibilities

(1) The municipality must comply with all applicable state laws, regulations and requirements, such as Oregon prevailing wage rates, municipal audit law, and procurement regulations.

(2) The municipality shall maintain accounts and records for all activities associated with the contracted project and shall provide the Authority and its representatives reasonable access to such records. The municipality shall submit periodic reports on the project as requested by the Authority.

(3) The municipality shall certify that a registered professional engineer will be responsible for the design and construction of the project and it shall follow standard construction practices, such as bonding of engineers and contractors, requiring errors and omissions insurance, performing testing and inspections during construction, and obtaining as-built drawings.

(4) For a project funded with state lottery proceeds, the municipality shall comply with ORS 280.518 for public display of information on lottery funding of the project. At a minimum the municipality shall:

(a) Include the following statement, prominently placed, on all plans, reports, bid documents and advertisements relating to the Project: "This project was funded in part with a financial award from the Water Fund, funded by the Oregon State Lottery and administered by the State of Oregon, Business Development Department." and

(b) For a construction project, post a sign, provided by the Authority, at the project site or, if more than one site is included in the project, at a site visible to the general public stating that the project is being funded by lottery proceeds.

(5) For a construction project the municipality shall have a plan for ongoing operation, maintenance and replacement that will preserve the project's benefits over its useful life.

Stat. Auth.: ORS 285B.563 & 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; Administrative correction 7-27-10

### 123-043-0102

#### Eligibility Criteria for State Revenue Bond Loans

The Authority shall apply the following standards for determining the eligibility of projects for state revenue bond financing:

(1) Loan repayment must be secured by a full faith and credit pledge of the municipality;

(2) The loan must be of sufficient size as determined by the Authority;

(3) The loan must be fully amortized over its term with fixed annual principal and interest payments, and the term of the loan must not exceed the usable life of the contracted project or 30 years from the year of project completion, whichever is less;

(4) The loan must conform to the requirements of the bond indenture for the state revenue bonds; and

(5) The loan and the municipality must meet the minimum underwriting criteria for state revenue bond financing as established by Department policies.

Stat. Auth.: ORS 285B.563 & 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 30-2010, f. 6-30-10, cert. ef. 7-1-10; OBDD 12-2013, f. 12-30-13, cert. ef. 1-1-14

**123-043-0105**

**Remedies**

The Department may pursue any remedies available to it against a municipality upon the occurrence of an event of default under the Authority's contract with the municipality.

Stat. Auth.: ORS 285B.563 & 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 30-2010, f. 6-30-10, cert. ef. 7-1-10

**123-043-0115**

**Appeals and Exceptions**

(1) Appeals of decisions made by the municipality regarding a project must be made at the local level in accordance with the requirements and procedures of the municipality.

(2) The director or the director's designee will consider appeals of the Authority's funding decisions. Only the municipality may appeal. Appeals must be submitted in writing to the director within 30 days of the event or action that is being appealed. A project that would have been funded but for a technical error in the Authority's review of the application, as determined by the director, will be funded as soon as sufficient moneys become available in the fund, provided the project is still viable. The director or the director's designee decision is final.

(3) The director or the director's designee may waive any non-statutory requirements of OAR chapter 123, division 43, if it is demonstrated such a waiver will further the goals and objectives of the program.

Stat. Auth.: ORS 285B.563 & 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; Administrative correction 7-27-10; OBDD 6-2011(Temp), f. & cert. ef. 11-3-11 thru 4-30-12; OBDD 3-2012, f. 3-30-12, cert. ef. 4-2-12; OBDD 12-2013, f. 12-30-13, cert. ef. 1-1-14

**DIVISION 49**

**SAFE DRINKING WATER REVOLVING  
LOAN FUND PROGRAM**

**123-049-0005**

**Purpose, Scope and Incorporated Documents**

(1) This division of administrative rules implements a federally funded state revolving fund to provide financing to community and nonprofit non-community drinking water systems for planning, design, construction or improvement of drinking water facilities or systems needed to maintain or achieve compliance with drinking water standards and to further public health protection goals of the federal Safe Drinking Water Act Amendments of 1996 P.L. 104-182 and this state's Drinking Water Quality Act.

(2) In accordance with ORS 285A.213, this division of administrative rules governs the administration of the moneys awarded through this Safe Drinking Water Revolving Loan Fund by the Oregon Business Development Department through its Infrastructure Finance Authority in cooperation with the State of Oregon's Health Services of the Oregon Department of Human Services, but not activities of Health Services itself.

(3) "SAFE DRINKING WATER IN OREGON: Program Guidelines and Applicant's Handbook for the Federally Funded Safe Drinking Water Revolving Loan Fund and Drinking Water Protection Fund" (July 2009 and any subsequent amendments), including but not limited to its appendices, is:

(a) The principal source of information on this program, as prepared by the Authority;

(b) Available by contacting any of the Authority's regionally assigned staff;

(c) Incorporated into and adopted as part of this division of administrative rules, by reference;

(d) Subject to the same definitions as used in this division of administrative rules; and

(e) Provides guidance specific to assistance for economic stimulus funding authorized by the American Recovery and Reinvestment Act of 2009 and allocated through the Safe Drinking Water Revolving Loan Fund Program.

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

Stat. Auth.: ORS 285A.075 & 285A.213(4)

Stats. Implemented: ORS 285A.213

Hist.: EDD 6-1999, f. & cert. ef. 8-26-99; EDD 11-2000(Temp), f. 7-20-00, cert. ef. 7-20-00 thru 1-16-01; EDD 1-2001, f. 1-11-01, cert. ef. 1-12-01; EDD 8-2004, f. & cert. ef. 2-3-04; EDD 28-2008, f. 8-28-08, cert. ef. 9-1-08; EDD 2-2009(Temp), f. & cert. ef. 3-6-09 thru 9-1-09; EDD 7-2009, f. 8-31-09 cert. ef. 9-1-09; OBDD 4-2010, f. 1-29-10, cert. ef. 2-1-10

**123-049-0010**

**Definitions**

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. As used in this division of administrative rules, unless the context clearly indicates otherwise:

(1) "Act" means the Safe Drinking Water Act at 42 U.S.C. 300f et seq., including amendments of 1996 (Public Law 104-182), and any subsequent amendments

(2) "Applicant" means a community or nonprofit non-community water system that is applying for a loan from the Fund.

(3) "Community water system" means a public water system, other than one owned by an agency of the federal government, that:

(a) Has 15 or more service connections used by year-round residents; or

(b) Regularly serves 25 or more year-round residents.

(4) "Contract" means a legally binding agreement between the department and recipient that sets out the terms and conditions for award of project funds.

(5) "Fund" means the Safe Drinking Water Revolving Loan Fund and the Drinking Water Protection Fund, which are the financing programs managed by the Authority under this division of administrative rules to pay for infrastructure improvements to eligible public water systems, and which includes moneys originating directly from federal capitalization grants (apart from set-asides), this state's match of such grants, program loan repayments, interest earnings and any additional funds provided by this state.

(6) "Intended Use Plan" the description of how the state intends to use moneys awarded and loaned from the fund to meet the objectives of the Act, as annually prepared by Health Services pursuant to USEPA guidelines.

(7) "Nonprofit non-community water system" means a public water system that:

(a) Is not a community water system;

(b) Regularly serves at least 25 people, even if they are not year-around residents; and

(c) Is recognized under Oregon law as a nonprofit corporation.

(8) "Project" means facility design construction activities or related/preceding tasks identified in the contract and loan agreement for which the recipient may expend, obligate or commit funds to address a drinking water problem or a documented health hazard.

(9) "Project priority list" means the comprehensive priority list of potential, eligible activities, as developed under the Intended Use Plan in response to letters of interest from community and nonprofit non-community water systems.

(10) A "public water system" means a system or infrastructure for the provision to the public of water for human consumption through pipe or other constructed conveyances, regardless of ownership, including but not limited to facilities for source of supply, filtration, treatment, storage, transmission or metering of that water.

(11) "Recipient" means a community or nonprofit non-community water system that has been awarded financing from the fund for a project.

(12) "USEPA" means the Environmental Protection Agency of the United States federal government.

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

Stat. Auth.: ORS 285A.075 & 285A.213(4)

Stats. Implemented: ORS 285A.213

Hist.: EDD 6-1999, f. & cert. ef. 8-26-99; EDD 8-2004, f. & cert. ef. 2-3-04; EDD 28-2008, f. 8-28-08, cert. ef. 9-1-08; EDD 7-2009, f. 8-31-09 cert. ef. 9-1-09; OBDD 4-2010, f. 1-29-10, cert. ef. 2-1-10

**123-049-0020**

**Eligible Applicants and Activities**

(1) All community water systems and nonprofit non-community water systems are eligible to apply for financing except those determined to be ineligible by the department because of prior nonperformance.

(2) Eligible and ineligible activities are defined in the Act and in USEPA's Drinking Water State Revolving Fund Program Guidelines, EPA 816-R-97-005 (February 1997), as well as subsequent revisions or editions of such guidelines.

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

Stat. Auth.: ORS 285A.075 & 285A.213(4)

Stats. Implemented: ORS 285A.213

Hist.: EDD 6-1999, f. & cert. ef. 8-26-99; EDD 8-2004, f. & cert. ef. 2-3-04; EDD 28-2008, f. 8-28-08, cert. ef. 9-1-08; EDD 7-2009, f. 8-31-09 cert. ef. 9-1-09; OBDD 4-2010, f. 1-29-10, cert. ef. 2-1-10

**123-049-0030**

**Program Information**

(1) The Authority shall prepare program guidelines, application forms and other supplementary program information to help eligible applicants seek financing and prepare financing applications for the fund.

(2) Program guidelines as prepared under section (1) of this rule shall include an explanation of project eligibility, the project priority list, the Intended Use Plan, disadvantaged communities, types of financial assistance, loan rates and terms, borrowing limits, public notification process, contract administration, federal crosscutting requirements and environmental review process.

(3) In addition to this division of administrative rules, the Authority shall administer the fund in compliance with the requirements of the Act, as amended, and the Act's applicable rules, guidelines and requirements from USEPA.

(4) For purposes of land use coordination, any project activity paid for with financing from the Fund shall comply with the applicable requirements of division 8 of this chapter of administrative rules and OAR chapter 660.

Stat. Auth.: ORS 285A.075 & 285A.213(4)

Stats. Implemented: ORS 285A.213

Hist.: EDD 6-1999, f. & cert. ef. 8-26-99; EDD 8-2004, f. & cert. ef. 2-3-04; EDD 28-2008, f. 8-28-08, cert. ef. 9-1-08; EDD 2-2009(Temp), f. & cert. ef. 3-6-09 thru 9-1-09; EDD 7-2009, f. 8-31-09 cert. ef. 9-1-09; OBDD 4-2010, f. 1-29-10, cert. ef. 2-1-10

**123-049-0040**

**Program Rights and Remedies**

(1) The department may exercise certain rights and remedies in the event the recipient fails to comply with contract provisions and the recipient fails to correct the deficiencies within a reasonable time after the recipient is notified of the deficiencies. The circumstances that may warrant the department exercise of rights or remedies include, but are not limited to one or more of the following:

(a) None of the project activities have begun within six months after award;

(b) Any third party agreement relating to the project is not legally binding within six months of the award;

(c) Federal or state statutory or regulatory requirements have not been met;

(d) There is a significant deviation from the contract;

(e) The department finds that significant corrective actions are necessary to protect the integrity of the project funds, and those corrective actions are not, or will not, be made within a reasonable time; or

(f) A recipient defaults on loan payments, which may otherwise be made from any source of revenue at the recipient's disposal, including but not limited to General Fund revenue.

(2) One or more of the following rights and remedies may be exercised by the department if the recipient fails to comply with contract provisions and the recipient fails to correct the deficiencies within a reasonable time after recipient is notified of the deficiencies:

(a) Bar a recipient from applying for future department or Authority assistance;

(b) Revoke an existing department or Authority award;

(c) Withhold unexpended department or Authority funds;

(d) Require immediate return of unexpended department or Authority funds;

(e) Require repayment of expended department or Authority funds;

(f) Withhold other state funds otherwise due to the recipient, such as state-shared revenues; or

(g) Other remedies that may be incorporated into the contract.

(3) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the contract.

(4) The recipient shall be responsible for ensuring that any subcontractor complies with the applicable terms and conditions of the contract. Nothing in this rule shall restrict the department's right to enforce independently the terms of any contract or to recover any sums that may become due as the result of a breach of such contract.

Stat. Auth.: ORS 285A.075 & 285A.213(4)

Stats. Implemented: ORS 285A.213

Hist.: EDD 6-1999, f. & cert. ef. 8-26-99; EDD 8-2004, f. & cert. ef. 2-3-04; EDD 28-2008, f. 8-28-08, cert. ef. 9-1-08; OBDD 4-2010, f. 1-29-10, cert. ef. 2-1-10

**123-049-0050**

**Private Ownership and Regulation of Subsidies for Public Benefit**

(1) Only if a privately owned public water system is regulated under the jurisdiction of the State of Oregon Public Utility Commission (PUC) may it enjoy the benefits of a "disadvantaged community," pursuant to section 1452(d) of the Act, in receiving financial assistance through the fund, including but not limited to principal forgiveness.

(2) The amount of subsidy shall not be treated as equity, but rather in all cases as a contingent liability on the balance sheet of the public water system receiving the financing and on the balance sheet of any entity that acquires that system or the assets financed by the Fund.

(3) If a water system is sold that was awarded subsidy by the fund, the value of the subsidy shall be effectively excluded from the purchase price, consistent with section (2) of this rule, such that the benefit of the principal forgiveness continues to accrue to the ratepayers or users of the system rather than to the seller. (This section also applies to the sale or lease of system assets financed by the loan, and it pertains but is not limited to the privatization of a publicly owned system)

(4) If section (2) or (3) of this rule is violated, then the water system shall repay the full amount of the subsidy into the fund. The Authority shall determine the schedule of such repayment, as it deems appropriate under the circumstances.

(5) The Oregon Public Utility Commission (PUC) has full authority to enforce the effects of this rule through applicable regulation of an affected water system.

(6) For non-PUC regulated privately-owned public water systems receiving financial assistance through the Fund under OAR 123-049-0005(3)(e), including but not limited to principle forgiveness, the amount of subsidy shall not be treated as equity, but rather in all cases as a contingent liability on the balance sheet of the public water system receiving the financing and on the balance sheet of any entity that acquires that system or the assets financed by the Fund. If the water system is sold that was awarded subsidy by the Fund, the value of the subsidy shall be effectively excluded from the purchase price, such that the benefit of the subsidy continues to accrue to the ratepayers or users of the system rather than to the seller. (This section also applies to the sale or lease of system assets financed by the Fund, and it pertains but is not limited to the privatization of a publicly owned system.) If this rule is violated, then the water system shall repay the full amount of the subsidy into the Fund. The Authority shall determine the schedule of such repayment, as it deems appropriate under the circumstances.

Stat. Auth.: ORS 285A.075 & 285A.213(4)

Stats. Implemented: ORS 285A.213

Hist.: EDD 11-2000(Temp), f. 7-20-00, cert. ef. 7-20-00 thru 1-16-01; EDD 1-2001, f. 1-11-01, cert. ef. 1-12-01; EDD 8-2004, f. & cert. ef. 2-3-04; EDD 28-2008, f. 8-28-08, cert. ef. 9-1-08; EDD 2-2009(Temp), f. & cert. ef. 3-6-09 thru

9-1-09; EDD 7-2009, f. 8-31-09 cert. ef. 9-1-09; OBDD 4-2010, f. 1-29-10, cert. ef. 2-1-10

## 123-049-0060

### Drinking Water Protection Fund

(1) For purposes of implementing section 1452(k)(1) of the Act, the Authority shall administer loans and grants to public water systems for protecting surface and underground sources of drinking water, in order to solve or prevent health problems before the water is collected or treated by the system.

(2) The moneys for these loans and grants are derived from the "local assistance" set-aside of the federal capitalization grant, such that unused amounts will be transferred to the fund, and repayments shall be either added to the fund or placed in a dedicated account for further lending under this rule.

(3) The loans under this rule are distinct from the fund. Relevant provisions of this division of administrative rules, however, shall apply to the administration of such loans and grants. (4) For purposes of this rule, administration includes underwriting assessments, loan awards, grant awards contract execution, disbursements, loan repayments and so forth.

(5) Health Services (Oregon Department of Human Services) and the Oregon Department of Environmental Quality shall handle determinations of eligibility, prioritization of loan grant recipients and related duties.

(6) More specific guidelines for the loans grant under this rule are available and included in the document incorporated by reference in OAR 123-049-0005(3).

Stat. Auth.: ORS 285A.075 & 285A.213(4)

Stats. Implemented: ORS 285A.213

Hist.: EDD 8-2004, f. & cert. ef. 2-3-04; EDD 28-2008, f. 8-28-08, cert. ef. 9-1-08; EDD 7-2009, f. 8-31-09 cert. ef. 9-1-09; OBDD 4-2010, f. 1-29-10, cert. ef. 2-1-10

## DIVISION 51

### OREGON SEISMIC REHABILITATION GRANTS PROGRAM

## 123-051-0100

### Purpose

(1) The Infrastructure Finance Authority, pursuant to Oregon Revised Statutes ORS 401.910, shall develop and administer grant programs for the seismic rehabilitation of critical public buildings.

(2) The funds for the seismic rehabilitation of critical public buildings under the grant program are provided from the issuance of bonds pursuant to the authority provided in Articles XI-M and XI-N of the Oregon Constitution.

Stat. Auth.: ORS 285A.093, 285A.098, 286A.760 – 286A.772, 401.910 & 2013 OL Ch. 782

Stats. Implemented: ORS 285A.098, 286A.760 – 286A.772, 401.910 & 2013 OL Ch. 782

Hist.: OBDD 13-2013, f. 12-30-13, cert. ef. 1-1-14

## 123-051-0200

### Definitions

(1) "Acute inpatient care facility" means a licensed hospital with an organized medical staff, with permanent facilities that include inpatient beds, with comprehensive medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment primarily for, but not limited to acutely ill patients and accident victims. "Acute inpatient care facility" includes the Oregon Health and Science University.

(2) "Applicant" means a school district, community college, education service district, higher education institution, police, sheriff, fire, hospital which is applying for a grant from the Seismic Rehabilitation program.

(3) "Authority" means the Infrastructure Finance Authority within the Oregon Business Development Department.

(4) "Collapse Prevention" means a building at this performance level is capable of maintaining gravity loads though structural damage is severe and risk of falling hazard is high as set forth in the

American Society of Civil Engineers Standard for Seismic Rehabilitation of Existing Buildings newest edition.

(5) "Critical Public Buildings" includes hospital buildings with acute inpatient care facilities, fire stations, police stations, sheriffs' offices, other facilities used by state, county, district, or municipal law enforcement agencies and buildings with a capacity of 250 or more persons that are routinely used for student activities by kindergarten through grade 12 public schools, community colleges, education service districts and institutions of higher education.

(6) "Distressed or Impoverished" means all Oregon cities and counties designated by Oregon Business Development Department as distressed or impoverished by established methodology.

(7) "Education Service District (ESD)" means a district created under ORS 334.010 that provides regional educational services to component school districts.

(8) "Grant Program" means The Seismic Rehabilitation Grant Program (SRGP).

(9) "Grant Selection Committee" means the committee that is charged with evaluating grant applications for the purpose of determining which projects receive funding. The grant selection committee membership shall include representatives of Oregon Department of Education, The Department of Human Services, The Office of Emergency Management/Oregon Military Department, The State Department of Geology and Mineral Industries, Oregon Seismic Safety Policy Advisory Commission, The Oregon Department of Administrative Services, The Oregon Fire Chiefs' Association, The Oregon Association of Chiefs of Police, Community Colleges and Workforce Development, Oregon University System, The Oregon Association of Hospitals and Health Systems, The Confederation of Oregon School Administrators and others who possess expertise in construction, construction grants and structural design as determined by the Authority.

(10) "Grantee" means applicant awarded grant funds for seismic rehabilitation project.

(11) "Holistic Project" means a project emphasizing the whole building instead of the separation of its parts.

(12) "Immediate Occupancy" means a building at this performance level is expected of being sufficiently functional for occupancy as set forth in the American Society of Civil Engineers Standard for Seismic Rehabilitation of Existing Buildings newest edition.

(13) "Life Safety" means a building at this performance level is expected to present low risk of life threatening injury to building inhabitants as set forth in the American Society of Civil Engineers Standard for Seismic Evaluation of Existing Buildings newest edition.

(14) "Match" is any contribution to a project that is non-seismic grant funds. Match may include:

(a) Cash on hand or cash that is pledged to be on hand prior to commencement of the project; and,

(b) Secured funding commitments from other sources.

(15) "Project" means seismic rehabilitation activity (or activities) to be performed on a building that is eligible for assistance from the Seismic Rehabilitation Grant Program.

(16) "Seismic Rehabilitation" means construction of structural improvements to a building that results in the increased capability of the building to resist earthquake forces and that is based on standards adopted by the State of Oregon or by local governments.

(17) "Structural" means components of a building that support or resist loads. Parts of a building that bear weight.

(18) "Tsunami Inundation Zone" means for purposes of the SRGP, the area depicted as the tsunami inundation zone in Oregon Department of Geology and Mineral Industries Open-File Reports O-95-09 through O-95-38, O-95-43 through O-95-66 and O-97-31 through O-97-32.

(19) "Useful Life" means the length of time that the building or structure is expected to be used, or 30 years, whichever is greater.

Stat. Auth.: ORS 285A.093, 285A.098, 401.910 & 2013 OL Ch. 782

Stats. Implemented: ORS 285A.093, 285A.098 & 401.910

Hist.: OBDD 13-2013, f. 12-30-13, cert. ef. 1-1-14

### 123-051-0300

#### Eligible Applicants

The following are eligible to apply for a Seismic Rehabilitation Grant, except those determined to be ineligible by the Authority because of nonperformance under a prior Seismic Rehabilitation Grant contract:

(1) All hospital buildings with acute inpatient care facilities, fire stations, police stations, sheriffs' offices, other facilities used by state, county, district or municipal law enforcement agencies.

(2) Kindergarten through grade 12 public schools, community colleges, education service districts and institutions of higher education buildings with a capacity of 250 or more persons that are routinely used for student activities and are owned by the State Board of Higher Education, a school district, an education service district, a community college district or a community college service district.

Stat. Auth.: ORS 285A.093, 285A.098, 401.910 & 2013 OL Ch. 782

Stats. Implemented: ORS 285A.093, 285A.098 & 401.910

Hist.: OBDD 13-2013, f. 12-30-13, cert. ef. 1-1-14

### 123-051-0400

#### Program Information

(1) The Authority shall prepare a Grant Application Package. The application package may contain a guidance document, application forms, and other supplementary information that may help eligible applicants prepare grant applications.

(2) The guidance document will include a description of eligibility criteria, and ranking factors used to evaluate and select applications for funding.

(3) The Grant Application Package on file with the Authority is incorporated as part of these rules by reference.

(4) The Authority will provide to Seismic Rehabilitation grantee a Grant Contract which specifies legal requirements for grant management, reporting, and record keeping, and the Authority's monitoring and grant closeout procedures.

(5) The Authority shall administer Seismic Rehabilitation Grants in compliance with the requirements of applicable statutes, rules, and the Grant Guidance Document.

Stat. Auth.: ORS 285A.093, 285A.098, 401.910 & 2013 OL Ch. 782

Stats. Implemented: ORS 285A.093, 285A.098 & 401.910

Hist.: OBDD 13-2013, f. 12-30-13, cert. ef. 1-1-14

### 123-051-0500

#### Program Sanctions

The grantee shall be responsible for taking all actions necessary to enforce the terms of the grant contract against any private or public participant who fails to comply with applicable provisions of the grant contract, and to recover on behalf of the state any liabilities that may arise as the result of the breach of the grant contract by any participant. Nothing in this paragraph shall restrict the state's rights to enforce independently the terms of any grant contract or to recover any sums that may become due as the result of a breach of such a contract.

Stat. Auth.: ORS 285A.093, 285A.098, 401.910 & 2013 OL Ch. 782

Stats. Implemented: ORS 285A.093, 285A.098 & 401.910

Hist.: OBDD 13-2013, f. 12-30-13, cert. ef. 1-1-14

### 123-051-0600

#### Project Eligible Activities

Projects must meet the following criteria to be eligible for this program:

(1) Education building rehabilitation to life safety seismic safety performance level as defined in OAR 123-051-0200(14); or

(2) Emergency services building rehabilitation to immediate occupancy seismic safety performance level as defined in OAR 123-051-0200(13).

Stat. Auth.: ORS 285A.093, 285A.098, 401.910 & 2013 OL Ch. 782

Stats. Implemented: ORS 285A.093, 285A.098 & 401.910

Hist.: OBDD 13-2013, f. 12-30-13, cert. ef. 1-1-14

### 123-051-0700

#### Project Ineligible Activities

Project ineligible activities include, but are not limited to:

(1) The demolition and rebuild of an existing critical public building.

(2) Rehabilitation to a building located in the Tsunami Inundation Zone as defined in OAR 123-051-0200(19).

(3) Rehabilitation of a building located in the 100 flood zone.

(4) Partial rehabilitation of a building that does not holistically address all known seismic deficiencies, as defined in OAR 123-051-0200(12).

(5) Reimbursement for already budgeted staff and routine or ongoing expenses of the recipient.

Stat. Auth.: ORS 285A.093, 285A.098, 401.910 & 2013 OL Ch. 782

Stats. Implemented: ORS 285A.093, 285A.098 & 401.910

Hist.: OBDD 13-2013, f. 12-30-13, cert. ef. 1-1-14

### 123-051-0800

#### Application Submittal, Review and Approval

(1) The Authority shall announce deadlines for submitting applications, how to obtain an application form, and required supplemental documents.

(2) An eligible critical public building may submit an application after consulting with the Authority on a preliminary determination of eligibility and otherwise follow the Authority's procedures for submitting applications. The application must be in the form provided by the Authority and must contain or be accompanied by such information as the Authority may require. The Authority will process only completed applications.

(3) Upon receipt of signed application, the Authority will notify the applicant within 30 days as to the receipt of the application.

(4) Upon receipt of a completed application, the Authority will evaluate the application using ranking factors and point values and will provide recommendations to the Grant Selection Committee to determine the project's prioritization ranking during a public meeting.

(5) Once a completed application is evaluated for a grant award, the applicant will be notified within 90 days of the status of their grant application.

Stat. Auth.: ORS 285A.093, 285A.098, 401.910 & 2013 OL Ch. 782

Stats. Implemented: ORS 285A.093, 285A.098 & 401.910

Hist.: OBDD 13-2013, f. 12-30-13, cert. ef. 1-1-14

### 123-051-0900

#### Project Administration

(1) The Authority and the Applicant must execute a grant contract prior to disbursement of grant funds.

(2) Documentation of project costs incurred by entity must be submitted to the Authority prior to disbursement of funds.

(3) Disbursement of grant funds to entity will be made on the schedule determined by the Authority.

(4) Prior to final disbursement, the Authority will review and evaluate all documents produced as a result of the project, perform a final on-site inspection of the completed project and determine how closely the project delivered the outcome anticipated in the application.

Stat. Auth.: ORS 285A.093, 285A.098, 401.910 & 2013 OL Ch. 782

Stats. Implemented: ORS 285A.093, 285A.098 & 401.910

Hist.: OBDD 13-2013, f. 12-30-13, cert. ef. 1-1-14

### 123-051-1000

#### Grant Awards and Match

(1) Grants will be awarded only when there are sufficient funds available in the Seismic Rehabilitation Grants program.

(2) Grant funds shall be distributed to public education facilities and emergency services facilities as allocated by the Legislative Assembly.

(3) The maximum grant award is \$1.5 million.

(4) There is no required match for this program. Additional application points may be considered for applicants that provide matching funds.

Stat. Auth.: ORS 285A.093, 285A.098, 401.910 & 2013 OL Ch. 782

Stats. Implemented: ORS 285A.093, 285A.098 & 401.910

Hist.: OBDD 13-2013, f. 12-30-13, cert. ef. 1-1-14

**123-051-1100**

**Grant Agreement Conditions**

(1) The Authority will only enter into new agreements or amendments to existing agreements, with prior Grantees, if all reporting obligations under earlier agreements have been met.

(2) If the grant agreement has not been fully executed by all the parties within 60 days of grantee receiving contract document, funding shall be terminated. The money allocated to the grant shall be available for reallocation by the grant committee.

(3) The Authority or designee shall establish grant agreement conditions. Grantees shall comply with all grant agreement conditions.

(4) The Grantee shall comply with all federal, state and local laws and ordinances applicable to the work to be done under the agreement.

(5) Upon notice to the Grantee in writing, the Authority may terminate funding for projects not completed in the prescribed time and manner. The money allocated to the project but not used will be available for reallocation by the grant committee.

(6) The Grantee will account for funds distributed by the grant committee, using project expense forms provided by the Authority.

(7) The Grantee will obtain the necessary permits and licenses from local, state or federal agencies or governing bodies.

Stat. Auth.: ORS 285A.093, 285A.098, 401.910 & 2013 OL Ch. 782

Stats. Implemented: ORS 285A.093, 285A.098 & 401.910

Hist.: OBDD 13-2013, f. 12-30-13, cert. ef. 1-1-14

**123-051-1200**

**Waivers, Exceptions and Appeals**

(1) The Authority may waive non-statutory requirements of the grant program if it is demonstrated such a waiver would serve to further the goals or objectives of the program.

(2) The Authority may consider appeals of the grant committee's funding decisions. Only the applicant may appeal. Appeals must be submitted in writing to the Authority within 30 days of the event or action that is being appealed. The Authority's decision is final.

Stat. Auth.: ORS 285A.093, 285A.098, 401.910 & 2013 OL Ch. 782

Stats. Implemented: ORS 285A.093, 285A.098 & 401.910

Hist.: OBDD 13-2013, f. 12-30-13, cert. ef. 1-1-14

**DIVISION 52**

**BEGINNING AND EXPANDING FARMER LOAN PROGRAM ("AGGIE BONDS")**

**123-052-1000**

**Purpose**

(1) The purpose of these rules is to assist Applicants in applying for the benefits available under the Beginning and Expanding Farmer Loan Program (aka "Aggie Bonds Program") authorized by ORS 285A.420 to 285A.435 and to describe the procedures to be used by the Oregon Business Development Department in administering that Program.

(2) The Program lowers the interest cost on loans made by private parties to Beginning Farmers for the acquisition of Agricultural Land and Agricultural Improvements and Depreciable Agricultural Property. This is accomplished by Beginning Farmers arranging loans through Eligible Lenders in compliance with the rules in this Division, so that the Eligible Lender may exclude interest from gross income under Section 147(c)(2) of the United States Internal Revenue Code and may exempt interest from Oregon personal income taxes.

(3) Section 147(c)(2) of the United States Internal Revenue Code, its regulations and ORS 285A.420 to 285A.435 impose very substantial restrictions on the Program; the administrative rules in this Division outline those restrictions to assist Applicants in determining whether they may qualify for the Program.

(4) The Program does not provide any state or federal money to repay Beginning and Expanding Farmer loans, to guarantee these loans, or to repay any Aggie Bonds that are issued under the Program. Those loans and the related Aggie Bonds are secured only by the resources that eligible Beginning Farmers provide to lenders.

(5) A lender under the Aggie Bonds Program may become a "Participating Lender." A Participating Lender will be familiar with the Aggie Bonds Program and will have executed a master financing agreement for Aggie Bonds with the Department. The Department will maintain a list of Participating Lenders and make that list available to people considering Aggie Bond financing.

Stat. Auth.: ORS 285A.420 - 285A.435, ch. 742 OL 2013

Stats. Implemented: ORS 285A.420.420 - 285A.435, ch. 742 OL 2013

Hist.: OBDD 3-2015, f. & cert. ef. 2-24-15; OBDD 8-2016, f. & cert. ef. 8-3-16

**123-052-1100**

**Definitions**

For the purposes of these rules, the following terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Aggie Bonds" means conduit revenue bonds issued by the State of Oregon pursuant to ORS 285A.420 to 285A.435 and these rules.

(2) "Agricultural Improvements" means any improvements, buildings, structures or fixtures suitable for use in farming that are located on Agricultural Land. "Agricultural Improvements" do not include personal residences.

(3) "Agricultural Land" means land located in the State of Oregon that is:

(a) Suitable for use in farming and that is or will be operated as a farm; and

(b) That will be acquired by a Beginning Farmer.

(4) "Applicant" means any person who submits an Application for Aggie Bond financing.

(5) "Application" means an Application for Aggie Bonds that is submitted to the Department on a form provided by the Department.

(6) "Beginning Farmer" means an individual who meets the requirements of OAR 123-052-1300 and is therefore eligible to be a Borrower under the Program.

(7) "Bond Counsel" means the bond counsel firm(s) under contract with Oregon Business Development Department to represent the State of Oregon as issuer of Aggie Bonds.

(8) "Borrower" means a Beginning Farmer who has received Aggie Bond financing under the Program.

(9) "Code" means the United States Internal Revenue Code of 1986, as amended, and all rules, regulations, and notices and releases issued under it.

(10) "Department" means the Oregon Business Development Department, or its designee.

(11) "Depreciable Agricultural Property" means property of a character subject to the allowance for depreciation in computing federal income tax under the Code, that is to be used in trade or business of farming. "Depreciable Agricultural Property" includes but is not limited to farm machinery and trucks, but does not include feeder livestock, seed, feed, fertilizer and other types of inventory or supplies.

(12) "Eligible Lender" means a lender who meets the requirements of OAR 123-052-1500.

(13) "Eligible Revenue" means the revenue or assets that are provided as security for a loan to a Beginning Farmer participating in the Program.

(14) "Federal Maximum" means the maximum amount of a loan that federal law allows to be financed under the Program. For calendar year 2016 the Federal Maximum is \$520,000. This amount may be adjusted for inflation in future calendar years as provided for in Section 147(c)(2)(H) of the Code.

(15) "Financed Property" means property described in OAR 123-052-1400(1)(a) which is financed through the Program.

(16) "Financing Agreement" means an agreement between the Department and the Eligible Lender, in substantially the form and with the substance acceptable to the Department, which describes the requirements for an Aggie Bond to be issued to an Eligible Lender.

(17) "Lender Documents" means the Financing Agreement and the Loan Agreement and related documents between an Eligible Lender and a Beginning Farmer, including but not limited to any

related security documents such as mortgages, deeds of trust and security agreements.

(18) “Participating Lender” means an Eligible Lender with substantial experience making agricultural loans, that has familiarized itself with these administrative rules and Oregon’s Aggie Bond Program, and has entered into, or will enter into prior to bond closing, a master financing agreement with the Department.

(19) “Permitted Costs” means any costs of property described in OAR 123-052-1400(1)(a).

(20) “Program” means the Beginning and Expanding Farmer Loan Program authorized by ORS 285A.420 to 285A.435 and described in these rules.

(21) “Related Person” means a person other than the Borrower if:

(a) The relationship between the Borrower and that person would result in a disallowance of losses under section 267 or 707(b) of the Code, or

(b) The Borrower and that person are members of the same controlled group of corporations (as defined in section 1563(a), except that “more than 50 percent” shall be substituted for “at least 80 percent” each place it appears therein). For example, a Related Person includes a grandparent, parent, sibling (whether whole or half-blood), child, grandchild, or spouse, as well as certain corporations and partnerships.

(22) “State” means the State of Oregon, any department, agency, or political subdivision of the State of Oregon, or any designee thereof.

(23) “Standard Lender” means an Eligible Lender that is not a Participating Lender.

(24) “Substantial Farmland” means any parcel of land unless the parcel is smaller than 30 percent of the median size of a farm in the county where the agricultural project is located. However, Substantial Farmland does not include farmland which was previously owned by the individual seeking to qualify as a Beginning Farmer if the farmland was disposed of while the individual was insolvent and Code section 108 applied to indebtedness with respect to that farmland.

(25) “Tax-exempt” means excludable from gross income under the Code, and exempt from Oregon personal income taxation.

(26) “State Treasurer” means the Treasurer of the State of Oregon or the Treasurer’s designee.

Stat. Auth.: ORS 285A.420 - 285A.435, ch. 742 OL 2013

Stats. Implemented: ORS 285A.420.420 - 285A.435, ch. 742 OL 2013

Hist.: OBDD 3-2015, f. & cert. ef. 2-24-15; OBDD 3-2016(Temp), f. & cert. ef. 2-9-16 thru 8-5-16; OBDD 8-2016, f. & cert. ef. 8-3-16

### 123-052-1150

#### Aggie Bonds Purchased By Participating Lenders

(1) An applicant seeking Aggie Bond financing through a Participating Lender must apply to the Program on a form provided by the Department. That Application must be accompanied by a non-refundable application fee of \$250.

(2) Once the Department receives an Application and any other information required by the Department, if the Department determines that the Applicant and the assets the Applicant wishes to finance appear to qualify for Aggie Bond financing, the Department shall prepare and sign a reimbursement declaration for the Application and notify the Applicant and the Participating Lender. After the Department notifies the Applicant and the Participating Lender:

(a) The Department and the Participating Lender shall prepare a schedule for the proposed financing, and shall modify that schedule as circumstances require.

(b) The Department shall schedule the “TEFRA” hearing and provide the Application and any required information to bond counsel as provided in the schedule.

(c) The Participating Lender shall prepare and circulate a draft loan agreement and other documents that the Participating Lender prepares as provided in the schedule. The loan agreement shall be in a form acceptable to the Department.

(d) Bond counsel shall review the application, circulate drafts of documents to be prepared by bond counsel, and conduct tax due diligence. When the tax due diligence is complete and bond coun-

sel is prepared to issue its approving opinion, bond counsel shall notify the Department and the Participating Lender.

(3) After bond counsel notifies the Department and the Participating Lender that bond counsel is prepared to issue its approving opinion, the Department shall request that the State Treasurer approve issuance of the bonds, and shall work with the Applicant, the Participating Lender and bond counsel to close the Aggie Bonds for the Applicant.

(4) The Department may impose additional requirements in connection with Aggie Bonds that are purchased by Participating Lenders.

Stat. Auth.: ORS 285A.420 - 285A.435, ch. 742 OL 2013

Stats. Implemented: ORS 285A.420.420 - 285A.435, ch. 742 OL 2013

Hist.: OBDD 8-2016, f. & cert. ef. 8-3-16

### 123-052-1300

#### Requirements for Beginning Farmers

(1) As required by federal law, a Beginning Farmer must:

(a) Be a “first-time farmer” within the meaning of Section 147(c)(2) of the Code. That section of the Code generally provides that a first-time farmer is an individual who has not at any time had any direct or indirect ownership interest in Substantial Farmland in the operation of which the individual has materially participated. However, in certain cases land that was disposed of while the individual was insolvent may be disregarded for this purpose. Dispositions of land while the individual was insolvent should be listed in the Application for Program financing.

(b) Be a principal user of the Financed Property.

(c) Materially and substantially participate in the operation of the farm of which the Financed Property is a part.

(d) Not have received tax-exempt financing under Section 147(c)(2) of the Code in an aggregate amount that, when added to the amount financed through the Program, exceeds the Federal Maximum.

(2) A Beginning Farmer must be a resident of the State of Oregon.

(3) Any property owned by an individual’s spouse or minor children will be treated as owned by the individual. Any material participation in the operation of a farm by an individual’s spouse or minor children will be treated as operation of that farm by the individual. Any receipt of Tax-exempt financing by an individual’s spouse or minor children will be treated as receipt by the individual.

(4) A Beginning Farmer and Applicant’s spouse must have total combined personal net worth of no more than \$750,000, as evidenced by a signed, dated personal financial statement on a form satisfactory to the Department.

Stat. Auth.: ORS 285A.420 - 285A.435, ch. 742 OL 2013

Stats. Implemented: ORS 285A.420.420 - 285A.435, ch. 742 OL 2013

Hist.: OBDD 3-2015, f. & cert. ef. 2-24-15; OBDD 8-2016, f. & cert. ef. 8-3-16

### 123-052-1400

#### Requirements for Property Financed through the Program

(1) Federal law requires that:

(a) Property financed through the Program consist only of:

(A) Agricultural Land as defined in OAR 123-052-1100(3).

(B) Agricultural Improvements as defined in OAR 123-052-1100(2).

(C) Depreciable Agricultural Property, as defined in OAR 123-052-1100(11), that is used for farming on Agricultural Land.

(i) The total amount of used Depreciable Agricultural Property that is financed through the Program may not exceed the maximum amount permitted by federal law. The Applicant must provide the Department with an appraisal or other method of determining the value of any used Depreciable Agricultural Property that will be financed through the Program. The appraisal or other method of determining the value of any used Depreciable Agricultural Property must be satisfactory to the Department. On the date these rules are adopted, the maximum amount permitted by federal law for this purpose is \$62,500; this amount may change periodically.

(ii) The total amount of new and used Depreciable Agricultural Property that is financed through the Program may not exceed the maximum amount permitted by federal law. On the date these rules

are adopted, the maximum amount permitted by federal law for this purpose is \$250,000; this amount may change periodically

(iii) The limits of subsections (i) and (ii) of this subsection (C) apply to all Depreciable Agricultural Property with respect to which the principal user is or will be the same person or 2 or more Related Persons.

(b) No more than two percent of the borrowed funds are used to pay costs related to obtaining the loan or participating in the Program.

(c) The Code limits the use of Aggie Bond proceeds to acquire property from a Related Person (as defined in OAR 123-052-1100(21)). Property may be acquired from a Related Person only if:

(A) The acquisition price is the fair market value of the property, as shown in an independent, professional appraisal that is performed to qualify the property for financing with the Program and is acceptable to the Department; and

(B) The Related Person will not have a financial interest in the farming operation in which the Financed Property is used.

(2) The Financed Property is located, or will be used, in the State of Oregon.

(3) The Financed Property will only be used for farming by the Beginning Farmer or by the Beginning Farmer and the Beginning Farmer's family.

Stat. Auth.: ORS 285A.420 - 285A.435, ch. 742 OL 2013

Stats. Implemented: ORS 285A.420-285A.435, ch. 742 OL 2013

Hist.: OBDD 3-2015, f. & cert. ef. 2-24-15; OBDD 8-2016, f. & cert. ef. 8-3-16

### 123-052-1500

#### Requirements for Standard Lenders

(1) A Standard Lender must either be:

(a) An insured institution, as defined by ORS 706.008, that is authorized to do business in Oregon and that makes loans to persons engaging in farming or similar operations;

(b) An "Accredited Investor" (AI) as defined under Section 3(a)(2) of the Securities Act of 1933;

(c) A "Qualified Institutional Buyer" (QIB) as defined under Rule 144A of the Securities Act of 1933;

(d) A "Sophisticated Investor" (SI) as defined in Rule 501 of Regulation D under the Securities Act of 1933 and as further described in 17 CFR 230.506(b)(2)(ii) as one who has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment; or

(e) An institution organized and existing under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.)

(2) The Standard Lender must represent in writing that it is an insured institution, AI, QIB, SI, or an institution organized and existing under the Farm Credit Act of 1971, pursuant to 123-052-1500(1), that the aggie bonds are being acquired for investment, and that the lender intends to hold the aggie bonds for the lender's own account and not with a view to, or for resale.

(3) Under no circumstances can a Standard Lender be a substantial user of the Financed Property or related to a substantial user of that property. For this purpose "related" means a Related Person within the meaning of OAR 123-052-1100(21) but shall also include a partnership and any of its partners (and their spouses and minor children), and an S corporation and each of its shareholders (and their spouses and minor children).

(4) The Standard Lender must execute a Financing Agreement in substantially the form and with the substance of the form of Financing Agreement provided by the Department, or must use a form that is specifically approved in advance and in writing by the Department. The Standard Lender must make loans under Loan Agreements that are substantially in the form and with the substance of the form of Loan Agreement provided by the Department, or must use a form that is specifically approved in advance and in writing by the Department.

(5) Seller financing is allowed, subject to the provisions of the Code, State Treasurer, OAR 123-052, including the Securities Act of 1933.

Stat. Auth.: ORS 285A.420 - 285A.435, ch. 742 OL 2013

Stats. Implemented: ORS 285A.420-285A.435, ch. 742 OL 2013

Hist.: OBDD 3-2015, f. & cert. ef. 2-24-15; OBDD 4-2015(Temp), f. & cert. ef. 7-13-15 thru 1-8-16; OBDD 7-2015, f. & cert. ef. 9-1-15; OBDD 8-2016, f. & cert. ef. 8-3-16

### 123-052-1600

#### Additional Requirements for Aggie Bonds

(1) The expenditures financed under the Program cannot exceed the Federal Maximum, reduced by the total amount of Tax-exempt financing under Section 147(c)(2) of the Code that the Borrower, the Borrower's spouse or minor children have received.

(2) The Department must obtain an allocation of private activity bond volume cap for each Aggie Bond from the Department's legislative allocation or the private activity bond committee. If an adequate allocation is not available for any reason, the Aggie Bond will not be issued until such allocation is made to the Program.

(3) The Department must hold a "TEFRA hearing" and the State Treasurer must approve the issuance of each Aggie Bond.

(4) The Lender Documents must not secure the loan with any stock, other equity securities, any debt securities or any other "investment property" (within the meaning of Treasury Regulation section 1.148-1(b)), or require that the Borrower maintain continuing balances of specified amounts in accounts in financial institutions.

(5) To obtain the approving opinion of the Program's Bond Counsel for a bond purchased by a Standard Lender:

(a) The Borrower must complete a tax and arbitrage certificate, in form and substance satisfactory to the Department and the Program's bond counsel, certifying the accuracy of facts that are necessary for Program Bond Counsel to issue its approving opinion and stating that the Borrower shall be solely responsible for compliance with Federal arbitrage restrictions.

(b) The lender must represent that it complies with sections (2) and (3) of OAR 123-052-1500.

(c) The State, the Borrower and the lender must execute any other documents required by the Program's Bond Counsel in order to deliver its approving tax and legal opinions.

(6) At closing, the Borrower shall execute a post-issuance tax compliance agreement satisfactory to the Program's Bond Counsel.

(7) The Borrower and lender shall be responsible for reviewing disbursement requests to confirm eligible uses of bond proceeds.

Stat. Auth.: ORS 285A.420 - 285A.435, ch. 742 OL 2013

Stats. Implemented: ORS 285A.420-285A.435, ch. 742 OL 2013

Hist.: OBDD 3-2015, f. & cert. ef. 2-24-15; OBDD 8-2016, f. & cert. ef. 8-3-16

### 123-052-1610

#### Application When Aggie Bonds are Purchased by a Standard Lender

(1) An Applicant must apply for qualification to the Program on a form provided by the Department.

(2) Each Application shall:

(a) Contain a representation that the Application is an individual who has reviewed the Program rules and determined that the Applicant qualifies as a Beginning Farmer as described in OAR 123-052-1300.

(b) Contain a description of the costs to be financed through the Program, together with a representation that those costs are Permitted Costs that comply with the requirements of these administrative rules.

(c) Be accompanied by a commitment, letter of interest or similar document satisfactory to the Department, from the proposed Standard Lender that:

(A) Outlines the terms of the proposed loan;

(B) Expresses the lender's interest in making the loan through the Program;

(C) States that the lender is qualified to make an Aggie Bond loan under OAR 123-052-1500, and provides facts supporting this statement.

(D) States whether the Lender will require that the Applicant receive training in farm management.

(E) States that the Lender has reviewed, and is willing to execute, a Financing Agreement in substantially the form provided by the Department, and is willing to make the proposed loan under a Loan Agreement substantially in the form and with the substance of the form of Loan Agreement provided by the Department.

(d) States that the Applicant has reviewed the form of Loan Agreement provided by the Department and is willing and able to make the certifications and promises, including the federal tax certifications, provided in that form.

(e) Be accompanied by an application fee of \$250. This fee is not refundable.

(f) Unless the Financed Property will consist exclusively of new Depreciable Agricultural Property, be accompanied by an appraisal that is satisfactory to the Department. The Lender should contact the Department to determine the Department's requirements for appraisals before the Lender orders an appraisal.

(g) Contain any other information or documents specified in the Application form provided by the Department.

(3) The Department shall review each completed Application and notify the Applicant within thirty days indicating whether the Applicant, the proposed project and the proposed lender appear eligible for the Program.

(4) Expenditures made by the Borrower more than sixty days before the Aggie Bonds are issued generally are not eligible for financing with Aggie Bonds unless the Department has signed a Reimbursement Declaration. If the Department signs a reimbursement declaration, expenditures made more than sixty days before the Reimbursement Declaration is signed are generally not eligible for financing with Aggie Bonds. If the Department determines that the Applicant, the proposed project and the proposed lender appear eligible for the Program, the Department shall sign a Reimbursement Declaration that complies with the requirements of Section 1.150-2 of the Code. Execution of the Reimbursement Declaration by the Department permits the Borrower to use the Program to finance certain expenditures made no earlier than sixty days before such Reimbursement Declaration is signed, but does not assure the Applicant that any Aggie Bond will be issued. The Department shall notify the Applicant promptly upon execution of the Reimbursement Declaration.

Stat. Auth.: ORS 285A.420 - 285A.435, ch. 742 OL 2013

Stats. Implemented: ORS 285A.420.420 - 285A.435, ch. 742 OL 2013

Hist.: OBDD 8-2016, f. & cert. ef. 8-3-16

### 123-052-1700

#### Procedure after Preliminary Eligibility Determination for Aggie Bonds to be Purchased by Standard Lenders

(1) If the Department notifies the Applicant that the Applicant, the proposed project and the proposed lender appear eligible for the Program, the Borrower may file a request for a final eligibility determination with the Department. The request for final eligibility determination shall be filed on a form provided by the Department, and shall contain:

(a) A detailed description of the costs to be financed;

(b) A statement, signed by the Borrower and in substantially the form provided by the Department that the Borrower is a Beginning Farmer who meets the requirements of OAR 123-052-1300, and that the Aggie Bond proceeds will be spent in compliance with these administrative rules.

(c) A statement, signed by the lender and in substantially the form provided by the Department:

(A) Attaching drafts of the Financing Agreement and other Lender Documents, in substantially final form;

(B) Describing the principal amount of the requested Aggie Bonds, whether lender's loan is a line of credit, and the interest rate and other material loan terms, including but not limited to all fees and points being charged by the lender (if not stated in the Lender Documents).

(C) That the lender is eligible to purchase Aggie Bonds under OAR 123-052-1500, and providing facts supporting this statement.

(D) That the lender has completed its credit review and is prepared to make the loan under the Lenders Documents provided to the Department, and that no significant contingencies remain.

(d) A signed, completed final tax questionnaire on a form provided by the Department.

(e) Any other information specified in the form of request for final eligibility determination provided by the Department.

(2) The Department shall review the request for final eligibility determination when the completed request has been filed with the Department and make a final eligibility determination. The final eligibility determination may be favorable or unfavorable.

(a) The Department shall notify the Applicant of a favorable final eligibility determination no later than five business days after Program Bond Counsel notifies the Department that it expects to be able to issue an approving opinion. The notice of a favorable final eligibility determination shall state that that financing described in the Application and request for final eligibility determination is eligible for Aggie Bond financing, and that the Applicant is authorized to proceed to closing, subject to any conditions imposed by the Department in the final eligibility determination.

(b) The Department shall notify the Applicant of an unfavorable final eligibility determination no later than five business days after either one of the following occurs first:

(A) The Department determines that the financing does not qualify under Oregon law or these rules for Aggie Bond financing; or

(B) Program Bond Counsel notifies the Department that it does not expect to be able to issue an approving opinion.

(c) The notice of an unfavorable final eligibility determination shall state that that financing described in the Application and request for final eligibility determination is not eligible for Aggie Bond financing. Unless appealed, an unfavorable final eligibility determination shall become final on the eleventh day after the Department notifies the Applicant of that determination.

(d) The Applicant is entitled to appeal the unfavorable final eligibility determination to the Finance Committee of the Oregon Business Development Commission by filing a notice of appeal with the Department no later than ten business days after the Department notifies the Applicant of the unfavorable final eligibility determination. Any decision by the Finance Committee of the Oregon Business Development Commission on an appeal is final when it is made.

Stat. Auth.: ORS 285A.420 - 285A.435, ch. 742 OL 2013

Stats. Implemented: ORS 285A.420.420 - 285A.435, ch. 742 OL 2013

Hist.: OBDD 3-2015, f. & cert. ef. 2-24-15; OBDD 8-2016, f. & cert. ef. 8-3-16

### 123-052-1900

#### Bond Counsel Opinion for Aggie Bonds Purchased by Standard Lenders

(1) The state requires the Applicant and the Standard Lender obtain a traditional approving opinion from the Program's Bond Counsel concluding that the Aggie Bond issued for the Applicant is a valid and binding obligation of the State, and that interest on the Aggie Bond is Tax-exempt.

(2) If the Department determines that the financing described in the Application and request for final eligibility determination, filed by the Applicant pursuant to OAR 123-052-1700, is eligible for participation in the Program, the Department shall forward the request for final eligibility determination to the Program's Bond Counsel. Program Bond Counsel shall:

(a) Conduct tax due diligence, determine whether it will be able to issue approving opinions on the proposed Aggie Bonds, and notify the Department of that determination.

(b) Assuming Bond Counsel determines it will be able to issue approving opinions on the proposed Aggie Bonds:

(A) Review the draft Financing Agreement and Loan Agreement provided by the lender and send required changes to the Borrower and lender for review;

(B) Provide forms of tax and arbitrage certificates, and other necessary documents, for the Borrower and lender to execute

(3) If Bond Counsel determines it will be able to issue an approving opinion on a proposed Aggie Bond, the Department will forward the Aggie Bond documents to the Treasurer with a request that the Treasurer approve the issuance of the Aggie Bond. The Treasurer, an independent, elected official of the State of Oregon, has no legal obligation to approve any Aggie Bond issue. If the Treasurer approves issuance of an Aggie Bond, the Department will coordinate the closing with the Borrower, the lender, the State Treasurer, and Bond Counsel.

Stat. Auth.: ORS 285A.420 - 285A.435, ch. 742 OL 2013

## Chapter 123 Oregon Business Development Department

Stats. Implemented: ORS 285A.420.420 - 285A.435, ch. 742 OL 2013  
Hist.: OBDD 3-2015, f. & cert. ef. 2-24-15; OBDD 8-2016, f. & cert. ef. 8-3-16

### 123-052-2000

#### Fees and Costs

(1) The Applicant shall pay the Department the nonrefundable \$250 application fee.

(2) At closing, the Department may require the Borrower to pay the following costs or fees:

(a) A bond closing fee of 1.5% of the total Aggie bonds issued for the project, with a minimum of \$1,500, payable to the Department.

(b) Out of pocket costs or fees of the State, including but not limited to any indirect costs charged to the Department or Treasurer by Oregon Department of Justice for complex transactions.

(c) State Treasurer's costs or fees related to the review, approval and processing of each Aggie Bond issuance request and issuance.

Stat. Auth.: ORS 285A.420 - 285A.435, ch. 742 OL 2013

Stats. Implemented: ORS 285A.420.420 - 285A.435, ch. 742 OL 2013

Hist.: OBDD 3-2015, f. & cert. ef. 2-24-15; OBDD 8-2016, f. & cert. ef. 8-3-16

### 123-052-2100

#### Security for Aggie Bonds

(1) Each Aggie Bond will be a special, limited obligation of the State of Oregon that is payable solely from the Eligible Revenue paid to the lender as provided in the Lender Documents

(2) As required by ORS 285A.420 to 285A.435, the Aggie Bonds are not:

(a) Secured by, payable from or chargeable to moneys other than the Eligible Revenue that is committed to pay the Aggie Bonds;

(b) A liability of the State of Oregon. No lender or other owner of an Aggie Bond may: compel an exercise of the taxing power of the State of Oregon to pay any Aggie Bonds or the interest on any Aggie Bonds or enforce payment of any Aggie Bonds against any property of the State of Oregon except the Eligible Revenue that is committed to pay the Aggie Bond.

(c) A charge lien or encumbrance, legal or equitable, upon any property of the State of Oregon, except the Eligible Revenue that is committed to pay an Aggie Bond.

(3) No Aggie Bond shall be a general obligation of the Department, the State of Oregon, or any department, agency, or political subdivision of the State of Oregon.

(4) The full faith and credit of the Department or the State of Oregon or any department, agency, or political subdivision of the State of Oregon shall not be pledged for the payment of any Aggie Bond.

Stat. Auth.: ORS 285A.420 - 285A.435, ch. 742 OL 2013

Stats. Implemented: ORS 285A.420.420 - 285A.435, ch. 742 OL 2013

Hist.: OBDD 3-2015, f. & cert. ef. 2-24-15

### 123-052-2200

#### Waiver

The Department may, in its discretion, waive any of the requirements of these administrative rules to the extent such requirements are not otherwise imposed by law.

Stat. Auth.: ORS 285A.420 - 285A.435, ch. 742 OL 2013

Stats. Implemented: ORS 285A.420.420 - 285A.435, ch. 742 OL 2013

Hist.: OBDD 3-2015, f. & cert. ef. 2-24-15

### 123-052-2300

#### Authority to Manage the Program

The Program shall be managed by the Department or its designee, and is not a Program of the Business Development Commission.

Stat. Auth.: ORS 285A.420 - 285A.435, ch. 742 OL 2013

Stats. Implemented: ORS 285A.420.420 - 285A.435, ch. 742 OL 2013

Hist.: OBDD 3-2015, f. & cert. ef. 2-24-15

### 123-052-2400

#### Confidential Records

(1) Upon written request and within a reasonable time, the Department shall provide program records for inspection in accordance with ORS Chapter 192.

(2) The person requesting records will be charged for preparing and mailing such records. Costs may include but not be limited to costs incurred in locating records, separating exempt and nonexempt records, having a custodian present during the inspection, preparing lists of data, making photocopies and telefaxing materials. Fees to be collected shall be set forth in the Department's schedule of fees and may be amended from time to time as the Department may determine.

(3) Except as otherwise provided in ORS 192.410-192.595, records exempt from disclosure include but are not limited to:

(a) Reports and analyses of reports which bear on the Applicant's character, finances, management ability and reliability, and which were obtained in confidence from persons or firms not required by law to submit them and the Department has obliged itself in good faith not to disclose the information;

(b) Financial statements, tax returns, business records, employment history and other personal data submitted by or for Applicants, or analysis of such data;

(c) Intra-departmental advisory memoranda preliminary to a decision;

(d) Formulas, plans, designs and related information that constitute trade secrets under ORS 192;

(e) Personal financial statement;

(f) Financial statements of Applicants;

(g) Customer lists;

(h) Information of an Applicant pertaining to litigation to which the Applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the Applicant shows that such litigation is reasonably likely to occur. This exemption does not apply to conclude litigation and nothing in this section shall limit any right or opportunity granted by law to a party involved in litigation;

(i) Production, sales or cost data; and

(j) Marketing strategy information that relates to an Applicant's plan to address specific markets and Applicant's strategy regarding specific competitors.

Stat. Auth.: ORS 192.410 - 192.595, ORS 285A.420 - 285A.435, ch. 742 OL 2013

Stats. Implemented: ORS 192.410 - 192.595, ORS 285A.420.420 - 285A.435, ch. 742 OL 2013

Hist.: OBDD 3-2015, f. & cert. ef. 2-24-15

## DIVISION 56

### LOCAL ECONOMIC OPPORTUNITY FUND

### 123-056-0010

#### Purpose

As provided in Oregon Revised Statutes (ORS) 285B.260, the Oregon Business Development Department shall administer the Local Economic Opportunity Fund to provide grants for projects that support economic development priorities as identified in approved local economic development strategies.

Stat. Auth.: ORS 285B.230 - 285B.266

Stats. Implemented: ORS 285B.230 - 285B.266

Hist.: OBDD 5-2013(Temp), f. & cert. ef. 6-3-13 thru 11-30-13; OBDD 10-2013, f. 10-31-13, cert. ef. 11-1-13

### 123-056-0020

#### Definitions

(1) "Department" means the Oregon Business Development Department.

(2) "Fund" means the Local Economic Opportunity Fund created by ORS 295B.260.

(3) "Approved Strategic Plan" means a strategic plan determined by the Department to meet the requirements set forth in OAR 123-056-0030.

Stat. Auth.: ORS 285B.230 - 285B.266

Stats. Implemented: ORS 285B.230 - 285B.266

Hist.: OBDD 5-2013(Temp), f. & cert. ef. 6-3-13 thru 11-30-13; OBDD 10-2013, f. 10-31-13, cert. ef. 11-1-13

**123-056-0030**

**Strategic Plans**

In order to be an Approved Strategic Plan, a strategic plan must:

(1) Identify, address and coordinate the economic development priorities of a community or geographic region in the state of Oregon

(2) Result in economic benefit to the state of Oregon, such as:

(a) Promotes favorable investment climate to strengthen businesses, create jobs, and raise real wages;

(b) Contributes in a manner that improves the national and global competitiveness of Oregon companies;

(c) Assists Oregon communities in building capacity to retain, expand, and attract businesses;

(d) Promotes, fosters and sustains economic development in the state, emphasizing rural and distressed areas; or

(e) Implements economic strategies that reinforce Oregon's long-term prosperity and livability.

(3) Sets forth, in measurable terms, the extent to which the strategic plan will accomplish the economic development priorities of the community or geographic region of the state of Oregon;

(4) Sets forth, in measurable terms, the extent to which the strategic plan will accomplish the Department's performance standards as adopted by the Oregon Business Development Commission; and

(5) Be formally adopted by a municipality, a special district, a port, or other governmental entity.

Stat. Auth.: ORS 285B.230 - 285B.266

Stats. Implemented: ORS 285B.230 - 285B.266

Hist.: OBDD 5-2013(Temp), f. & cert. ef. 6-3-13 thru 11-30-13; OBDD 10-2013, f. 10-31-13, cert. ef. 11-1-13

**123-056-0035**

**Distribution of Funds**

The Department, in its sole discretion, shall determine grants awarded from the Fund. The grant must support implementation of a project included in an Approved Strategic Plan.

Stat. Auth.: ORS 285B.230 - 285B.266

Stats. Implemented: ORS 285B.230 - 285B.266

Hist.: OBDD 5-2013(Temp), f. & cert. ef. 6-3-13 thru 11-30-13; OBDD 10-2013, f. 10-31-13, cert. ef. 11-1-13

**123-056-0040**

**Waiver of Non-Statutory Requirements**

The Director or the Director's designee may waive non-statutory requirements of this division of administrative rules, if demonstrated that such a waiver serves to further the goals and objectives of ORS 285B.230 to 285B.266, and that it contributes to sound economic or community development.

Stat. Auth.: ORS 285B.230 - 285B.266

Stats. Implemented: ORS 285B.230 - 285B.266

Hist.: OBDD 5-2013(Temp), f. & cert. ef. 6-3-13 thru 11-30-13; OBDD 10-2013, f. 10-31-13, cert. ef. 11-1-13

**DIVISION 57**

**REGIONALLY BASED FUNDS**

**123-057-0510**

**Allocation**

In each biennium: In accordance with ORS 285B.263 and 285B.266(3), the department may allocate a specific portion of the Strategic Reserve Fund to be used as the Strategic Regional Investment Opportunity Fund.

Stat. Auth.: ORS 285A.075, 285B.236(1) & 285B.263(2)

Stats. Implemented: ORS 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 8-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08; EDD 30-2008, f. 8-28-08, cert. ef. 9-1-08

**123-057-0530**

**Use and Criteria of Strategic Regional Investment Opportunity Project Moneys**

In each biennium, the commission may allocate funds from the Strategic Reserve Fund to create a Strategic Regional Investment Opportunity Fund. The department shall allocate a portion of the fund to each Regional Investment Board based upon consultation with Association of Oregon Counties, League of Oregon Cities, and Oregon Public Ports Association. This allocation shall:

(1) Ensure that each Strategic Regional Investment Opportunity Fund Project actualizes one or more of the following:

(a) The project is developed and brought forward to the department by a regional partnership or board, Business Development Officers or business partners;

(b) The project can demonstrate a significant private business investment, short or long term job creation or other long-term economic development impacts that results in job creation;

(c) Greater competitiveness and productivity by the regions' traded-sector industries resulting in short term job creation or retention;

(d) The investment of these funds will close a critical gap in funding for eligible activities;

(e) Significant improvement in the variety, wage level and quality of jobs in the participating regions;

(f) Collaboration with one or more industries or institutions that are important to the regions' future:

(A) Eliminate barriers that impede competitiveness of existing businesses;

(B) Foster new or expanded businesses emerging in the regions;

(C) Internationally market goods and services from the regions; or

(D)(i) Diversify the regional economies;

(ii) Similar goals consistent with or conducive to statewide efforts and priorities for economic and community development.

(2) Insist that Strategic Regional Investment Opportunity Projects adhere to funding standards, as follows:

(a) By satisfying sound investment/underwriting principles;

(b) By combining with funds from private, local, regional, state or federal sources; and

(c) By ensuring that the project is ready to proceed in terms of delivering planned outcomes in a reasonable time, including but not limited to a thorough scope of work in the project application, contract and reporting requirements as described in this rule, clear commitment of other resources and the absence of barriers to the project's timely commencement.

(3) Forbid Strategic Regional Investment Opportunity Fund Projects that amount to the following:

(a) A subsidy for ongoing capacity of an organization or for ongoing operation and maintenance of a facility;

(b) Open-ended efforts that lack a demonstrable and realistic plan for effectively concluding the project, generating future resources or ensuring the usefulness of any deliverables/capacity in the future; or

(c) A failure to demonstrate the criteria as described in section 1(b) of this rule.

(4) The department shall fund projects in accordance with the following:

(a) The department shall facilitate the identification and undertaking of Strategic Regional Investment Opportunity Fund Projects, through communications and assistance to regional boards and fiscal entities through the department's Business Development Officers. Regions seeking to access their allocated portion of the funds shall do so through their regionally assigned Business Development Officer.

(b) Strategic Regional Investment Opportunity Fund projects addressing projects that meet the criteria as described in this rule may be advanced for approval upon joint recommendation of a regional partnership or regional boards response committee and a Business Development Officer. If the project is recommended, the Business Development Officer will draft a staff recommendation for signature.

(c) Following approval of project funding, projects are assigned to the most appropriate Division within the department to negotiate final project conditions if any, performance measures and to develop and execute contract documents. The contract will specify the process and timing of disbursements of funds, conditions for reporting results, terms for repayment of funds where appropriate and the process for project closeout.

Stat. Auth.: ORS 285A.075, 285B.236(1) & 285B.263(2)

Stats. Implemented: ORS 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 8-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08; EDD 30-2008, f. 8-28-08, cert. ef. 9-1-08

### 123-057-0710

#### General Guidance

For purposes of ORS 285B.263(6), each region shall prepare and submit a biennial report to the Governor, Commission and Legislative Assembly:

(1) This biennial report shall be prepared and submitted in conformance with the following:

(a) Format and procedures that the department may prescribe; and

(b) The region's periodic performance reports and regional performance measures and distribution criteria including goals pursuant to OAR 123-055-0620 and ORS 285B.239.

(2) The final biennial report shall be due at a time determined by the department in relation to each general session of the legislature, and shall include information from prior biennia not covered in the previous biennial report, as well as the most currently available information for the ongoing biennium.

(3) The biennial report shall describe all expenditures of regionally controlled funds and, where multiple state funds are invested in a job creation or retention projects such as Strategic Regional Investment Opportunity Fund projects, the department will:

(a) In some manner, differentiate and proportion between the funding sources when reporting these job creation projects to the legislature.

(4) The biennial report shall indicate the success of projects and programs as funded or completed, not only in terms of the project or program itself, but also in terms of how each one contributes to:

(a) Carrying out the investment strategy as whole;

(b) Carrying out the rural action plan specifically;

(c) Affecting performance measures and regional benchmarks specified therein; and

(d) Achieving identified priorities for regional economic priorities, as both defined in statute and by the regional board itself in the investment strategy.

(5) The biennial report may (in addition to information about expenditures of regionally controlled funds and about funded projects) address the regional board and the investment strategy's general progress and impact, especially in coordination with other resources and entities.

(6) The biennial report shall indicate the success of projects and activities as funded in accordance with the regionally adopted, six-year Commission approved investment strategy and project funding criteria that has been established by the adoption of the strategy and goals as described in ORS 285B.239 thru 285B.263. The regions will be evaluated by department staff in accordance with ORS 285B.239(1)(h)(A), (B), (C) and 285B.239(1)(i), (j). If the department determines the region has funded projects not complying with the approved investment strategy, the department shall reduce future allocations from the Regional Fund in a like percent of the funds spent on the projects not meeting the adopted criteria established by the investment strategy.

Stat. Auth.: ORS 285A.075 & 285B.236(1)

Stats. Implemented: ORS 285B.260 & 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 11-2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; EDD 8-2008(Temp), f. & cert. ef. 3-4-08 thru 8-31-08; EDD 30-2008, f. 8-28-08, cert. ef. 9-1-08

### 123-057-0910

#### Waiver of Nonstatutory Requirements

The Director or the Director's designee may waive non-statutory requirements of this division of administrative rules, if demonstrated that such a waiver serves to further the goals and objectives of ORS 285B.230 to 285B.269, and that it contributes to sound economic or community development. The burden of proof in justifying such a waiver shall be on the Region seeking the waiver.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1), 285B.254(3) & 285B.263(2)

Stats. Implemented: ORS 285B.230 - 285B.269

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00

## DIVISION 61

### REGIONAL INFRASTRUCTURE FUND

### 123-061-0010

#### Purpose

As provided in ORS 285B.551, § 2-4, ch.786 OL 2013, the Oregon Business Development Department shall administer the Regional Infrastructure Fund to provide grants and/or loans for infrastructure projects including long range planning, research and design.

Stat. Auth.: ORS 285A.075, ORS 285B.55, §2-4, ch.786 OL 2013

Stats. Implemented: ORS 285B.551, §2-4, ch.786 OL 2013

Hist.: OBDD 7-2014, f. 4-30-14, cert. ef. 5-1-14

### 123-061-0020

#### Definitions

(1) "Department" means the Oregon Business Development Department.

(2) "Fund" means the Regional Infrastructure Fund.

(3) "Grant" means an award to a municipality of monies that can be used for eligible project costs. Grant funds are not required to be repaid when contract conditions are met.

(4) "Local government" means a city, county, authority or entity organized under state statute or city or county charter, and includes any council of governments.

(5) "Region" means an economic development district in Oregon, created by the Economic Development Administration of the United States Department of Commerce, for which a regional solutions center has been established.

Stat. Auth.: ORS 285A.075, ORS 285B.551, §2-4, ch.786 OL 2013

Stats. Implemented: ORS 285B.551, §2-4, ch.786 OL 2013

Hist.: OBDD 7-2014, f. 4-30-14, cert. ef. 5-1-14

### 123-061-0030

#### Projects

For the 2013–2015 biennium, projects shall be those approved within the legislatively adopted budget report that accompanies 2014 Legislative session House Bill 5201, or projects subsequently and additionally approved by action of the legislative Emergency Board.

Stat. Auth.: ORS 285B.551, 2014 Legislative Session HB 5201

Stats. Implemented: ORS 285B.551, 2014 Legislative Session HB 5201

Hist.: OBDD 7-2014, f. 4-30-14, cert. ef. 5-1-14

### 123-061-0035

#### Contracts

(1) The Department shall determine grants and/or loans awarded from the Fund.

(2) Upon approval of an award from the Fund, the department will enter into a binding contract with the local government.

(3) Disbursal of funds will not exceed one disbursal per month.

(4) The contract for a grant and/or loan shall be in a form provided by the department and shall include but be not limited to:

(a) A provision that disbursements from the fund will be according to the terms of the contract;

(b) The eligible use of funds;

(c) The performance standards expected of the local government;

(d) The repayment obligation of the local government for failure to perform the specified project activity.

Stat. Auth.: ORS 285A.075, ORS 285B.551, §2-4, ch.786 OL 2013

Stats. Implemented: ORS 285B.551, §2-4, ch.786 OL 2013  
Hist.: OBDD 7-2014, f. 4-30-14, cert. ef. 5-1-14

## 123-061-0040

### Waiver of Non-Statutory Requirements

The Director or the Director's designee may waive non-statutory requirements of this division of administrative rules, if demonstrated that such a waiver serves to further the goals and objectives of ORS 285B.551, §2-4, ch. 786 OL 2013 and House Bill 5201 from the 2014 Legislative session.

Stat. Auth.: ORS 285A.075, ORS 285B.551, §2-4, ch.786 OL 2013  
Stats. Implemented: ORS 285B.551, §2-4, ch.786 OL 2013  
Hist.: OBDD 7-2014, f. 4-30-14, cert. ef. 5-1-14

## DIVISION 70

### FIRST-SOURCE HIRING AGREEMENTS

## 123-070-1000

### Purpose and Scope

(1) The purpose of this division of administrative rules is to implement ORS 461.740, under which business firms are required to enter into a First Source Agreement if benefiting from funds derived from the Oregon State Lottery through certain economic or community development programs, as determined by the Oregon Business Development Department.

(2) Provisions of this division of administrative rules also apply to businesses benefiting under the following tax incentive programs, as provided by the relevant statutes:

(a) The "Strategic Investment Program" under ORS 285C.600 to 285C.626 and 307.123, as specified in OAR 123-623; and

(b) The standard exemption in "enterprise zones" under ORS 285C.050 to 285C.250, as specified in OAR 123-674.

(3) Requiring Benefited Businesses to enter into a First Source Agreement is intended to help individuals, who are already receiving job training and assistance supported by public funds, by linking these individuals with private sector employment opportunities of businesses that:

(a) Will be hiring in association with the receipt of public benefits; and

(b) Should make a good faith effort to hire and retain such individuals, who are presumed to have low incomes or otherwise face disadvantages in finding employment.

(4) First Source Agreements and this division of administrative rules are not intended to do the following:

(a) Guarantee employment for any such individual;

(b) Dictate the actual hiring by a Benefited Business; or

(c) Necessarily accomplish other public or social objectives associated with employment opportunities.

(5) As used in ORS 461.740(1), "good faith effort to hire and retain as employees low-income individuals who have received job training assistance from publicly funded job training providers" means the Benefited Business will reasonably honor the terms of the First Source Agreement entered into with the Contact Agency for local Providers.

Stat. Auth.: ORS 285A.075, 285C.060(1), 285C.215(3) & 285C.615(7)  
Stats. Implemented: ORS 285C.060, 285C.175, 285C.215, 285C.606 & 461.740  
Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0300; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2009, f. 2-23-09, cert. ef. 2-24-09; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 31-2010, f. 6-30-10, cert. ef. 7-1-10

## 123-070-1100

### Definitions

For purposes of this division of administrative rules, in addition to definitions in OAR 123-001 (Procedural Rules), unless the context demands otherwise:

(1) Contact Agency means the entity that represents publicly funded job training providers. It shall designate a Contact Person charged with interacting with Benefited Businesses and other entities and with representing the Contact Agency on matters related to First Source Agreements.

(2) First Source Agreement means the contract between a Benefited Business and Providers, as executed by a Contact Agency, under this division of administrative rules, and it has the same meaning as "first-source hiring agreement" under ORS 285C.050, 285C.606 and 461.740. It covers and is applicable to all of the Benefited Business's hiring or job openings, except for those persons or positions that are:

(a) Hired solely to construct, renovate or install property;

(b) Excluded by a waiver in accordance with OAR 123-070-1500; or

(c) Specified in OAR 123-674 as inapplicable for enterprise zone purposes.

(3) Interagency Agreement is the agreement entered into among Providers as specified in OAR 123-070-1200.

(4) Provider has the same meaning as "publicly funded job training provider," as used in ORS 285C.050, 285C.606 and 461.740 and means one of the following:

(a) A local office of the Oregon Department of Human Services that delivers training or employment services for low-income parents, seniors, persons with disabilities and so forth;

(b) An administrative agent for programs under the federal **Workforce Investment Act of 1998** (Public Law 105-220) or amendments thereto;

(c) A community college of this state;

(d) A government or government-supported entity, similar to those in subsections (a) to (c) of this section, that is directly or indirectly engaged in training or assisting people to perform or succeed in the workplace or in a particular occupation; or

(e) Any other entity that is a party to the Interagency Agreement as described in OAR 123-070-1200, but such inclusion is effective only insofar as the entity, including but not limited to a local office of this state's Employment Department, remains such a party.

(5) Qualified Applicants means individuals who have received job training assistance and who meet the Benefited Business's minimum requirements for education, experience, reliability and skills, or who are able to meet these requirements within a reasonable time period (as negotiated with the Benefited Business) with training provided either by the Benefited Business or by a Provider.

(6) As used in section (5) of this rule and OAR 123-070-1000, "received job training assistance" means the individual has received intake or other services from a Provider.

Stat. Auth.: ORS 285A.075, 285C.060(1), 285C.215(3) & 285C.615(7)  
Stats. Implemented: ORS 285C.050, 285C.060, 285C.215, 285C.606 & 461.740  
Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0310; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2009, f. 2-23-09, cert. ef. 2-24-09; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 31-2010, f. 6-30-10, cert. ef. 7-1-10

## 123-070-1150

### Affected Businesses

For purposes of this division of administrative rules:

(1) A Benefited Business means any for-profit business firm (regardless of its form of ownership or organization) that benefits directly or substantially from a state lottery-funded program, as indicated below in this section:

(a) Any of the following programs, throughout this state, except as set forth in section (3) of this rule:

(A) Oregon Business Development Fund (ORS 285B.050 to 285B.098);

(B) Strategic Reserve Fund (ORS 285B.266); or

(b) Any program financed by state lottery funds and administered by the Department, as so determined by the Director, including but not limited to industry development activities under ORS 285B.280 to 285B.286.

(2) A Benefited Business also means either of the following, regardless if section (1) of this rule applies too:

(a) An "authorized business firm" as defined under ORS 285C.050(2) for an enterprise zone exemption on qualified property from *ad valorem* taxation under 285C.175; or

(b) A business firm approved to receive or receiving the partial exemption of property from *ad valorem* taxation as an eligible pro-

ject of the Strategic Investment Program under ORS 285C.600 to 285C.626.

(3) Regardless of association with a program in subsection (1)(a) or (b) of this rule, a business firm is not a "Benefited Business" solely because it receives any of the following from the Department, a grantee or any other entity:

- (a) A purchase order or contract to provide services;
- (b) Funds strictly for marketing or research activities; or
- (c) Any grant or loan of \$100,000 or less.

(4) Benefits substantially from any program by way of loan or grant financed by state lottery funds" as used in ORS 461.740(4)(a) and section (1) of this rule means that the business firm:

(a) Receives benefits through infrastructure or facility improvements financed by an entity that is receiving state lottery-funded loan or grant assistance to immediately make such improvements; and

(b) Was given prior notice from the Department or the entity that the First Source Agreement was a condition for the facility or infrastructure improvements or modifications arising from lottery funds.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.615(7)

Stats. Implemented: ORS 285C.050, 285C.060, 285C.175, 285C.215, 285C.606 & 461.740

Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2009, f. 2-23-09, cert. ef. 2-24-09; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09

### 123-070-1300

#### Administration for Lottery-Funded Projects

(1) For the lottery-funded programs listed in OAR 123-070-1150(1)(a), the Department shall take anticipatory actions that are necessary and appropriate to implement the requirement of the First Source Agreement in accordance with ORS 461.740, which may include but are not limited to requiring a Benefited Business to submit a copy of the First Source Agreement, or otherwise ensuring that one has been entered into, before the grant or loan is ultimately awarded.

(2) The responsibilities consistent with section (1) of this rule may be delegated by the Department to a grantee that is the direct recipient of lottery-derived funds and that provides the grant, loan or substantial benefits to the Benefited Business.

Stat. Auth.: ORS 285A.075 & 285A.110(1)

Stats. Implemented: ORS 461.740

Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0320; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09

### 123-070-1500

#### Waivers and Geographic Coverage of First Source Agreements

(1) Except in the case of the Strategic Investment Program, the Director may issue a waiver that does the following:

- (a) Relieves a Benefited Business of the requirement of entering into the First Source Agreement, entirely; or
- (b) Excludes professional, managerial, technical, highly skilled or seasonal positions of a Benefited Business from the First Source Agreement.

(2) The Director shall make the final decision to grant the waiver, upon written recommendation by staff that explains why:

(a) The Benefited Business's small size or the technical, professional or unusual nature of its needs with respect to employees means that it will be unable to fill positions with persons referred by the Providers, either in general or for the excluded positions, and will thus receive little or no meaningful service through the First Source Agreement; or

(b) The waiver will further the goals or purposes of applicable and specified state policies, whether or not such policies are directly associated with the program.

(3) A Benefited Business may request a waiver by the Department under this rule at the time of application for the grant or loan assistance, or before execution of the contract for such assistance, in the case of lottery-funded programs, or at any time prior to qualifying for an enterprise zone exemption.

(4) Department staff will notify the Benefited Business and the Contact Agency for the geographic area in which the Benefited Business is located of the Director's decision and send a copy of any approved waiver. Such notice and distribution shall also include other entities as described in OAR 123-674, as applicable for an enterprise zone exemption.

(5) Except for an enterprise zone exemption, the First Source Agreement entered into by a Benefited Business shall apply only to the Benefited Business's operations at the site receiving the benefit, unless other locations are:

(a) Designated by the Department; or

(b) Specifically agreed to by the Benefited Business and the Contact Agency.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.215(3)

Stats. Implemented: ORS 285C.060, 285C.215 & 461.740

Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 9-1991, f. 9-6-91, cert. ef. 9-9-91; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0330; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 31-2010, f. 6-30-10, cert. ef. 7-1-10

### 123-070-1600

#### Duration of First Source Agreements

For purposes of a First Source Agreement:

(1) The term of agreement shall **begin** on or before the first date of any new hiring activity associated with employees for the benefited investment of the Benefited Business.

(2) The term of agreement shall **end**, as follows:

(a) Under state lottery-funded programs listed in OAR 123-070-1150(1), no less than 18 months from the date that the Benefited Business begins to request referrals under the First Source Agreement, unless a longer period is specified in the body of the First Source Agreement.

(b) Under tax incentive programs listed in OAR 123-070-1150(2), when the property tax exemption period concludes, which shall occur:

(A) On December 31 of the final year of exemption; or

(B) Sooner, in cases where an enterprise zone authorization application or exemption claim is formally withdrawn, or the exemption is disqualified or terminated by the county assessor, and the Benefited Business either does not exercise or has exhausted its right to appeal the refusal, denial, disqualification or termination.

(3) Nothing shall hinder or prevent a Benefited Business and a Contact Agency from mutually continuing to function under the arrangements of a First Source Agreement, even though the agreement is no longer in force, as stipulated by this rule.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.060, 285C.215, 285C.606 & 461.740

Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09

### 123-070-1800

#### Local/Case-Specific Modifications to the First Source Agreement

For purposes of OAR 123-070-1700, the First Source Agreement may be modified or amended as follows, as long as such modification or amendment does not alter or nullify the clear expression or the intent of any provision in OAR 123-070-1700(1):

(1) The Contact Agency or the Providers under the Interagency Agreement covering the geographic area in which the Benefited Business is located may add other substantive provisions or components to the First Source Agreement, but only through and pursuant to mutual consent by the Benefited Business, unless otherwise allowed in sections (2) or (3) of this rule or for data reporting as described in OAR 123-070-1900(4) and (5).

(2) As initiated or agreed to by the Contact Agency and Providers, a locally developed model First Source Agreement may include provisions that are conditions for receiving local administered incentives that are in addition to state lottery or property tax benefits. Such conditions do not, however, affect the benefits of programs listed in OAR 123-070-1150(1) or (2).

(3) With the consent and approval of the sponsor of an urban enterprise zone, the Contact Agency may add local conditions that are derived directly from the policy adopted by the sponsor under

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ORS 285C.150 to the regular format of the First Source Agreement that is used for the Benefited Businesses in that zone, and such additional provisions of the First Source Agreement shall be conditions for the enterprise zone property tax exemption consistent with the standards in the zone sponsor's policy.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.060, 285C.105, 285C.215, 285C.606 & 461.740

Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09

### 123-070-1900

#### Data Collection

(1) For purposes of OAR 123-070-1200(3)(e) and 123-070-1700(1)(e), the Contact Agency may collect and compile data by Benefited Business and by referring agency (Provider), and may specify in the First Source Agreement a schedule and method by which a Benefited Business submits or confirms data, for the following items:

(a) The Benefited Business's name, address and State Business Identification Number (BIN/unemployment insurance account number);

(b) The number and names of all persons referred to each Benefited Business through a First Source Agreement with the Contact Agency;

(c) The number of such referrals and the names of referred persons who were hired by the Benefited Business;

(d) The total number of individuals hired by each Benefited Business; or

(e) A consolidated list of applicable job openings, whether filled or unfilled, even if vacated or refilled.

(2) Any data collection under this rule shall be performed no more frequently than as follows, and then only for data specific to the intervening period in question and not previously collected:

(a) For Benefited Businesses as described in OAR 123-070-1150(1) (lottery-funded programs), the data may be collected for the following quarters: January 1 through March 31, April 1 through June 30, July 1 through September 30 and October 1 through December 31.

(b) For Benefited Businesses as described in OAR 123-070-1150(2) (tax incentive programs), the data may be collected on an annual basis, subject to modification under section (3) of this rule, for each calendar year until the end of the property tax exemption period.

(3) If a Benefited Business is receiving benefits under a program pursuant to both subsections (2)(a) and (b) of this rule, the data for the Benefited Business may be collected in the manner specified in subsection (2)(a) of this rule during the period in which the First Source Agreement is in effect for the lottery-funded benefits, with an annual compilation for every December 31. After such period, data collection may take place only as indicated in subsection (2)(b) of this rule.

(4) For Benefited Businesses as described in OAR 123-070-1150(2), the county under ORS 285C.609 or the enterprise zone sponsor may seek the Contact Agency's assistance as described in subsection (5) of this rule for the following:

(a) A Strategic Investment Program agreement under ORS 285C.609;

(b) An urban enterprise zone in which the sponsor has adopted a policy under ORS 285C.150 (irrespective of a regularly formatted First Source Agreement as provided in OAR 123-070-1800);

(c) Resolution adopted under ORS 285C.155 to waive employment increase requirement; or

(d) A written agreement for an extended period of enterprise zone abatement up to five years under ORS 285C.160.

(5) For the purposes of section (4) of this rule and this section, the zone sponsor or the county:

(a) Shall take appropriate and necessary actions to compensate the Contact Agency or Providers for any expenses that arise, and to safeguard the confidentiality of data submitted or compiled with respect to legal constraints affecting the Contact Agency or any Provider;

(b) May make the Benefited Business's submission of data specified in paragraph (c)(A) of this section a condition for the tax incentive benefit, if so provided in the policy or agreements under section (4) of this rule; and

(c) May in cooperation with the Contact Agency request the following:

(A) That the First Source Agreement specify particular types and formats of data that the Benefited Business must provide, either to demonstrate compliance with requirements under ORS 285C.150, 285C.155, 285C.160, 285C.205 or 285C.609(5) or to satisfy other information needs of the sponsor or the county related to the Benefited Business's hiring, employment, training, compensation and so forth, insofar as it is practical, and as such data or information reasonably relates to the First Source Agreement; and

(B) To have such data transmitted through the Contact Agency. (No such data is to come from any other information source to which a Provider has access, including but not limited to unemployment insurance data.)

(6) For Benefited Businesses under the state lottery-funded programs listed in OAR 123-070-1150(1), the Contact Agency may provide appropriate compilations of data collected under this rule to the Department, as requested by the Director.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.060, 285C.105, 285C.150, 285C.155, 285C.160, 285C.606, 285C.609 & 461.740

Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 3-1992(Temp), f. 3-12-92, cert. ef. 3-13-92; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 9-1996, f. 10-8-96, cert. ef. 10-11-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0360; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09

## DIVISION 80

### OREGON COMMUNITY DEVELOPMENT BLOCK GRANT (OCDBG) PROGRAM

#### 123-080-0000

##### Purpose

The Oregon Business Development Department (Department) through its Infrastructure Finance Authority (Authority) shall administer the state's participation in the federal Community Development Block Grant funding program authorized by 42 United States Code 5301 et. seq.

(2) Oregon Community Development Block Grants (OCDBG) are funded by annual allocations to the state from the U.S. Department of Housing and Urban Development (HUD) and program income generated by the grants. The primary objective of the federal community development block grant program is "...the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income..." (Title I, Sec. 101(c), Housing and Community Development Act of 1974, as amended (42 United States Code 5301 et seq.)). The primary objective of Oregon's Community Development Block Grant program is to enhance the quality of life in Oregon communities.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075

Hist.: IRD 2-1986(Temp), f. & ef. 1-14-86; IRD 8-1986, f. 6-30-86, ef. 7-1-86, Renumbered from 120-021-0000; EDD 5-1991, f. & cert. ef. 5-24-91; EDD 2-1994, f. & cert. ef. 2-3-94; EDD 12-1999, f. & cert. ef. 10-11-99; EDD 3-2001, f. & cert. ef. 4-10-01; EDD 27-2009, f. 12-31-09, cert. ef. 1-1-10

#### 123-080-0010

##### Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. As used in this division of administrative rules, unless the context requires otherwise the following definitions apply:

(1) "Act": The Housing and Community Development Act of 1974, as amended.

(2) "Applicant": A city or county which is applying for a grant from the OCDBG program.

(3) “Entitlement jurisdictions”: Metropolitan cities and urban counties, as defined in 42 United States Code 5302.

(4) “Non-entitlement Area”: All Oregon cities and counties, not including Indian Tribes, except those designated as entitlement jurisdictions by HUD.

(5) “Recipient”: A city or county which has been awarded a Community Development Block Grant.

(6) “Slums and Blight”: As defined in ORS 457.010 and 24 Code of Federal Regulations (CFR) 24 CFR 570.483(c).

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075

Hist.: IRD 2-1986(Temp), f. & ef. 1-14-86; IRD 8-1986, f. 6-30-86, ef. 7-1-86, Renumbered from 120-021-0002; EDD 5-1991, f. & cert. ef. 5-24-91; EDD 3-1993, f. & cert. ef. 3-30-93; EDD 2-1994, f. & cert. ef. 2-3-94; EDD 1-1995, f. 1-31-95, cert. ef. 2-1-95; EDD 12-1999, f. & cert. ef. 10-11-99; EDD 27-2009, f. 12-31-09, cert. ef. 1-1-10

### 123-080-0020

#### Eligible Applicants and Activities

(1) All cities and counties in non-entitlement areas of Oregon are eligible to apply for Community Development Block Grants except those determined to be ineligible by the Department because of nonperformance under a prior Community Development Block Grant contract.

(2) Eligible activities are listed in section 105(a) of title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) and further defined in 24 CFR Part 570.482.

Stat. Auth.: ORS 285A.075 & 285A.110

Stats. Implemented: ORS 285A.075

Hist.: IRD 2-1986(Temp), f. & ef. 1-14-86; IRD 8-1986, f. 6-30-86, ef. 7-1-86, Renumbered from 120-021-0005; EDD 5-1991, f. & cert. ef. 5-24-91; EDD 12-1999, f. & cert. ef. 10-11-99; EDD 3-2001, f. & cert. ef. 4-10-01

### 123-080-0030

#### Program Information

(1) The Authority shall prepare an Application Package each year. The Application Package shall contain the method of distribution, application forms, and other supplementary information that may help eligible applicants prepare grant applications.

(2) The method of distribution shall include a description of all criteria used to select applications from local governments for funding, including the relative importance of the criteria (if developed), a description of how all Community Development Block Grant resources will be allocated among all funding categories and the threshold factors and grant size limits that will be applied. The method of distribution shall be adopted each year after public review and comment of the Annual Update to the State of Oregon Consolidated Plan for Housing and Community Development.

(3) The adopted method of distribution section of the Annual Update to the State of Oregon Consolidated Plan for Housing and Community Development on file with the Department is incorporated as part of these rules by reference.

(4) The Authority shall prepare and provide to Community Development Block Grant recipients a Grant Management Handbook which specifies requirements for local grant management, reporting, and record keeping, and the Authority’s monitoring and grant closeout procedures.

(5) The Authority shall administer Community Development Block Grants in compliance with the requirements of the Act, as amended, applicable rules, the method of distribution, and the Grant Management Handbook.

(6) Land Use Coordination: Any project activity paid for with Community Development Block Grant funds that affects land use shall comply with the applicable requirements of OAR chapter 123, division 8.

(7) Procurement by Recipients: When procuring property or services to be paid for in whole or in part with Community Development Block Grant funds, the recipient shall comply with Chapters 244 and 279 of the Oregon Revised Statutes, as applicable.

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

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075

Hist.: IRD 2-1986(Temp), f. & ef. 1-14-86; IRD 8-1986, f. 6-30-86, ef. 7-1-86, Renumbered from 120-021-0010; EDD 5-1991, f. & cert. ef. 5-24-91; EDD 8-

1992, f. & cert. ef. 4-24-92; EDD 3-1993, f. & cert. ef. 3-30-93; EDD 8-1993, f. & cert. ef. 9-21-93; EDD 2-1994, f. & cert. ef. 2-3-94; EDD 12-1994, f. & cert. ef. 9-8-94; EDD 1-1995, f. 1-31-95, cert. ef. 2-1-95; EDD 4-1996, f. & cert. ef. 5-28-96; EDD 3-1997, f. & cert. ef. 3-17-97; EDD 13-1998, f. & cert. ef. 8-14-98; EDD 12-1999, f. & cert. ef. 10-11-99; EDD 3-2001, f. & cert. ef. 4-10-01; EDD 3-2002, f. & cert. ef. 2-22-02; EDD 7-2006, f. 10-30-06, cert. ef. 10-31-06; EDD 27-2009, f. 12-31-09, cert. ef. 1-1-10

### 123-080-0040

#### Program Remedies

The recipient shall be responsible for taking all action necessary to enforce the terms of the grant contract against any private or public participant who fails to comply with applicable provisions of the grant contract, and to recover on behalf of the state any financial liabilities that may arise as the result of the breach of the grant contract by any participant. Nothing in this paragraph shall restrict the state’s rights to enforce independently the terms of any grant contract or to recover any sums that may become due as the result of a breach of such a contract.

Stat. Auth.: ORS 184.125(3) & 190

Stats. Implemented: ORS 285A.300 - 285A.312

Hist.: IRD 2-1986(Temp), f. & ef. 1-14-86; IRD 8-1986, f. 6-30-86, ef. 7-1-86, Renumbered from 120-021-0015; EDD 5-1991, f. & cert. ef. 5-24-91; EDD 27-2009, f. 12-31-09, cert. ef. 1-1-10

## DIVISION 87

### PRIVATE SECTOR CONTRIBUTIONS AND INVOLVEMENT

### 123-087-0000

#### Purpose

This division of administrative rules sets forth guidelines for soliciting, accepting and reporting contributions to the Department projects, programs and purposes that are received from private, non-governmental sources, as permissible under state law, including but not limited to ORS 285B.200(1). These guidelines are based on the premise that building a stronger economy and vital communities in Oregon may necessitate and may sometimes be best accomplished by close collaboration among the public, nonprofit and private sectors.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.200

Hist.: EDD 35-1988, f. 11-30-88, cert. ef. 12-1-88; EDD 4-2003, f. & cert. ef. 3-26-03

### 123-087-0010

#### Definitions

(1) For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. As used in this division of administrative rules, unless the context requires otherwise the following definitions apply:

(2) **Private Sector Support** means financial contributions and/or in-kind goods and services, such as those listed in OAR 123-087-0020(1), that are received by the Department. Such donations may be received from individuals, partnerships, or corporations, or any other private entity, including but not limited to nonprofit organizations.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.200

Hist.: EDD 35-1988, f. 11-30-88, cert. ef. 12-1-88; EDD 4-2003, f. & cert. ef. 3-26-03; EDD 28-2009, f. 12-31-09, cert. ef. 1-1-10

### 123-087-0020

#### Solicitation and Use of Private Support

(1) The Department may solicit, receive and use Private Sector Support in the following contexts:

(a) Special projects for public information, publicity or promotional activities related to economic and community enhancement in this state;

(b) Employees who are hired by the state government but whose compensation is entirely or partially attributable to donations received by the Department or by the state government on the Department’s behalf from one or more private entities;

(c) Personnel employed by the contributing entity who are loaned to the Department for performing certain purposes, and who receive no compensation from the Department except for reimbursement of expenses;

(d) Activities related to the expansion, retention or recruitment of businesses, employment or commerce in and for this state;

(e) Efforts to organize, educate or increase institutional or human capacity for and among persons engaged in local economic and community development;

(f) Free or discounted provision of or access to public speakers, expertise, printing, advertisement, transportation, accommodations and so forth; or

(g) Similar reasons and circumstances.

(2) Solicitation of Private Sector Support by the Department shall be approved by the Director.

(3) Contributors to the Department shall not receive any special benefit, service, consideration, publicity or information as a result of their contribution to the Department, other than, for example, satisfaction with the mutual outcomes accomplished as a result of collaboration with the Department.

(4) Any Private Sector Support received in the form of money shall be paid into and disbursed from an appropriate account or fund and its origins recorded.

(5) Private Sector Support shall be used only for the purposes for which it was contributed or returned to the contributor when appropriate.

(6) Private Sector Support involving loaned personnel, privately supported compensation of state employees or similar arrangements shall be:

(a) Used only for temporary, limited duration or specially dedicated roles or for unusual circumstances, and not to fill a regular, permanent position of the state government or to displace or replace any existing employee;

(b) Approved directly by the Director;

(c) Reported to appropriate state agencies, in addition to OAR 123-087-0040, within 30 days of the commencement of such a person's work or service for the state, if the period of that work or service is expected to be at least that long;

(d) For no more than an overall period of two years and not repeated;

(e) Preceded by any affected person's orientation with the Department, including but not limited to facilitation and instruction by the Department for the person to read and understand the laws and guidelines described in subsection (f) of this section; and

(f) Done in accordance with all applicable laws and guidelines of the State of Oregon and of the Department relating to personnel, compensation, volunteers, state liability, ethics, and the identification and prevention of conflicts of interest, including but not limited to ORS 171.725 to 171.785, ORS Chapters 179 and 244, and OAR 123-087-0030.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.200

Hist.: EDD 35-1988, f. 11-30-88, cert. ef. 12-1-88; EDD 4-2003, f. & cert. ef. 3-26-03

### 123-087-0030

#### Avoiding Conflicts of Interest

(1) The Department shall solicit and receive Private Sector Support only for the purpose of assisting the Department to undertake or implement the programs, functions or laws that it is charged with administering.

(2) Private Sector Support may not be received or used in any way that:

(a) Provides for the personal benefit of any state employee;

(b) Directly benefits any entity responsible for the support; or

(c) Pertains significantly to Department actions, decisions or resources with the potential to have a pecuniary advantage or detriment to such an entity.

(3) If, in the judgment of the Director, an entity is offering or providing support in order to potentially receive special consideration, services or information from the state, or the support is otherwise improper, the Director shall refuse or return the support offered.

The Director may consult with the Governor's Office, Department of Administrative Services, Secretary of State, Attorney General, the Oregon Government Ethics Commissioner or other state agencies in order to determine whether receipt of such support is appropriate.

(4) The Department shall, as needed, develop special operational guidelines for purposes of this division of administrative rules (including but not limited to the treatment of confidential or privileged information), signed statements acknowledging such guidelines, and so forth.

(5) The elements and intent of this rule may be applied in situations that might arise with respect to contributions, in-kind goods or services or other forms of support offered to or received by the Department from local governments or municipal corporations that are eligible to receive funding from the Department.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.200

Hist.: EDD 35-1988, f. 11-30-88, cert. ef. 12-1-88; EDD 4-2003, f. & cert. ef. 3-26-03; EDD 28-2009, f. 12-31-09, cert. ef. 1-1-10

## DIVISION 90

### STRATEGIC RESERVE FUND

#### 123-090-0000

##### Purpose

The Strategic Reserve Fund was established by the Oregon Legislative Assembly to support economic and community development in Oregon. Particular emphasis shall be placed on investments that assist communities, businesses or industries with cost effective projects that assist the creation, expansion, and preservation of traded sector industries of Oregon, and that encourage diversification and preservation of regional economies.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.266

Hist.: EDD 26-1988(Temp), f. & cert. ef. 7-13-88; EDD 29-1988, f. & cert. ef. 8-30-88; EDD 7-2000, f. & cert. ef. 4-11-00; EDD 29-2009, f. 12-31-09, cert. ef. 1-1-10

#### 123-090-0010

##### Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. For purposes of this division of administrative rules, unless the context demands otherwise:

(1) "Administrative Expenses" mean any agency expenditures included under the classifications of expenditures, except categories of debt service and special payments, which are prepared and prescribed for purposes of agency budget-making and accounting.

(2) "Community" means an area or a locality in which the body of inhabitants has common economic or employment interests. The term is not limited to a city, county or other political subdivision and need not, but may be, limited by political boundaries.

(3) "Fund" means the Strategic Reserve Fund established by ORS 285B.266.

(4) "Debt Retirement" means payment in full of the balance owed on the principal of a loan.

(5) "Debt Service" means the interest and charges currently payable on a debt, including principal payments.

(6) "Rural Area" means an area located entirely outside of the acknowledged Portland Metropolitan Area Regional Urban Growth Boundary and the acknowledged urban growth boundaries of the cities of 30,000 or more in population, including Albany, Bend, Corvallis, Eugene, Springfield, Salem, Keizer or Medford.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.266

Hist.: EDD 26-1988(Temp), f. & cert. ef. 7-13-88; EDD 29-1988, f. & cert. ef. 8-30-88; EDD 6-1990(Temp), f. & cert. ef. 3-15-90; EDD 20-1990(Temp), f. & cert. ef. 6-28-90; EDD 23-1990, f. & cert. ef. 8-17-90; EDD 7-2000, f. & cert. ef. 4-11-00; EDD 29-2009, f. 12-31-09, cert. ef. 1-1-10

#### 123-090-0020

##### Funding Eligibility

The Strategic Reserve Fund may be used to finance economic and community development projects that:

(1) Are reasonably expected to result in new jobs, job retention, or higher incomes for Oregonians;

(2) Provide assistance to businesses that are considering starting in, expanding in, or relocating to Oregon. Assistance will be reserved for projects that result in a significant long-term economic benefit for residents of the county in which the project will be located; or

(3) Serve as a catalyst for additional economic and community development benefits, or that will result in improved utilization of existing Oregon resources.

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 285B.266

Hist.: EDD 26-1988(Temp), f. & cert. ef. 7-13-88; EDD 29-1988, f. & cert. ef. 8-30-88; EDD 7-2000, f. & cert. ef. 4-11-00

### 123-090-0030

#### Ineligible Expenditures

Strategic Reserve Funds will not be used to assist:

(1) Relocation of a business from one part of the state to another, except for businesses that would otherwise relocate outside Oregon. This restriction may be waived if the Director finds there is good and sufficient reason.

(2) The retirement or service of debt for any public or private entity; or

(3) The Department with any administrative expenses without legislative authorization.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.266

Hist.: EDD 26-1988(Temp), f. & cert. ef. 7-13-88; EDD 29-1988, f. & cert. ef. 8-30-88; EDD 6-1990(Temp), f. & cert. ef. 3-15-90; EDD 20-1990(Temp), f. & cert. ef. 6-28-90; EDD 23-1990, f. & cert. ef. 8-17-90; EDD 7-2000, f. & cert. ef. 4-11-00; EDD 29-2009, f. 12-31-09, cert. ef. 1-1-10

### 123-090-0040

#### Director's Review

(1) Projects shall not be funded by the Fund unless the Director finds that:

(a) The Project is or will be supported by the maximum feasible amount of local and private financial participation;

(b) The Project will produce significant long-term, regional or statewide economic impacts;

(c) The Project will not require continuing state subsidies;

(d) The Project does not supplant private investment or duplicate or undermine similar efforts; and,

(e) The Project meets, or can be reasonably expected to meet, at least one of the following criteria:

(A) The Project uses existing human and natural resources to harness Oregon's economic comparative advantage;

(B) The Project promotes economic and community recovery in Rural or Distressed areas, or among populations suffering economic hardship;

(C) The Project creates, or leads to the creation or retention of jobs of higher income for Oregonians;

(D) The Project promotes the development of new national and international markets for goods and services produced in Oregon; or,

(2) If the Project affects land use, it must satisfy the applicable requirements of OAR chapter 123, division 8 of this Department.

(3) Funding decisions shall be made by either the Governor or the Director.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.266

Hist.: EDD 26-1988(Temp), f. & cert. ef. 7-13-88; EDD 29-1988, f. & cert. ef. 8-30-88; EDD 20-1990(Temp), f. & cert. ef. 6-28-90; EDD 23-1990, f. & cert. ef. 8-17-90; EDD 7-2000, f. & cert. ef. 4-11-00; EDD 29-2009, f. 12-31-09, cert. ef. 1-1-10

### 123-090-0050

#### First Source Hiring

Any firm receiving an award of more than \$100,000 through the Strategic Reserve Fund shall enter into a first source agreement in accordance with division 70 of this chapter of administrative rules.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.266

Hist.: EDD 7-2000, f. & cert. ef. 4-11-00; EDD 7-2007, f. & cert. ef. 8-30-07; OBDD 3-2011, f. 6-30-11, cert. ef. 7-1-11

### 123-090-0060

#### Waivers

The Director may waive non-statutory requirements of this division of administrative rules if the project demonstrates a contribution to state job strategies consistent with the purpose of the Strategic Reserve Fund. Projects that improve the economic condition of a Rural or Distressed Area, or further global competitiveness of Oregon firms may receive special consideration by the Director.

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 285B.266

Hist.: EDD 7-2000, f. & cert. ef. 4-11-00; EDD 29-2009, f. 12-31-09, cert. ef. 1-1-10

## DIVISION 91

### OREGON BUSINESS RETENTION AND EXPANSION PROGRAM

### 123-091-0001

#### Purpose

This division of administrative rules clarifies, specifies and establishes procedures, standards and criteria for operation of and making loans to businesses from the Oregon Business Retention and Expansion Program (OBEP).

Stat. Auth.: ORS 285A.075, 285B & OL Ch. 549, Sec. 1-8 & 10-11

Stats. Implemented: ORS 285B, OL Ch. 549, Sec. 1-8 & 10-11

Hist.: OBDD 4-2012, f. 3-30-12, cert. ef. 4-2-12

### 123-091-0010

#### Definitions

For the purpose of this rule, the following terms shall have the following meanings:

(1) "Business" means any individual, association of individuals, joint venture, partnership, limited liability company or corporation which is validly existing and authorized to conduct business in Oregon.

(2) "Calendar year" means an individual's tax year of January 1–December 31.

(3) "Department" means the Oregon Business Development Department as established under ORS 285A.070.

(4) "Director" means the director of the Department as appointed under ORS 285A.070.

(5) "Eligible Employee" means a new employee of the Business:

(a) Who will have an annual wage that is at least 150% of the most recently available average pay for the county in which the new job will be created or the most recently available average pay for the state, both as determined by the Oregon Employment Department in the Covered Employment and Wages Summary Report, whichever is less;

(b) Who will be hired by the Business at its Oregon facility before the end of the two calendar years following the year of OBEP loan approval;

(c) For whom FICA and state and federal income taxes are deducted from his/her gross wages, which are then forwarded to the appropriate agencies by the Business on behalf of the person;

(d) For whom the Business pays state and federal unemployment insurance; and

(e) For whom the Business contributes to FICA.

(6) "Full-time Job" one Full-time Job equals 1,820 Hours Worked in a one-year period.

(7) "Hours Worked" means all hours that the employee worked, if the employee is paid for those hours. "Hours worked" does not include holiday, vacation time, sick leave or any other paid time where no work is performed.

(8) "OBEP Fund" means the Oregon Business Retention and Expansion Fund.

Stat. Auth.: ORS 285A.075, 285B & OL Ch. 549, Sec. 1-8 & 10-11

Stats. Implemented: ORS 285B, OL Ch. 549, Sec. 1-8 & 10-11

Hist.: OBDD 4-2012, f. 3-30-12, cert. ef. 4-2-12

**123-091-0015**

**Criteria for OBEP Fund Loan**

In order to be eligible for a loan from the OBEP Fund, the Department must first find:

(1) That, at the time a loan from the OBEP Fund is considered for approval, the Business:

- (a) Has at least 150 employees as demonstrated by documentation determined to be acceptable by the Department;
- (b) Is a traded sector business, as defined in ORS 285A.010;
- (c) Is not a retailer, as defined in ORS 72.8010;
- (d) Plans to hire at least 50 full-time Eligible Employees before the end of the two calendar years following the year in which the OBEP loan is approved;

(e) Has stated to the Department that a loan from the OBEP was an integral factor in the Business's decision to hire at least 50 full-time Eligible Employees; and

(f) Has provided all information to the Department as requested and as required by the Oregon Business Retention and Expansion Program;

(2) That the Business's proposed expansion will result in significant, long-term economic benefit in the region and will serve as a catalyst for additional economic development benefits in the state.

Stat. Auth.: ORS 285A.075, 285B & OL Ch. 549, Sec. 1-8 & 10-11

Stats. Implemented: ORS 285B, OL Ch. 549, Sec. 1-8 & 10-11

Hist.: OBDD 4-2012, f. 3-30-12, cert. ef. 4-2-12

**123-091-0020**

**Approval and Amount of OBEP Fund Loan**

(1) The Director, or his designee, in his sole discretion, shall determine whether to approve a loan to a Business from the OBEP Fund and the amount of the loan.

(2) A loan from the OBEP Fund shall not exceed the lesser of:

(a)(A) The amount of estimated Oregon personal income taxes to be paid in the two calendar years following the year of OBEP loan approval by Eligible Employees, using the result of the following formula:

(B) Average wage of all Eligible Employees multiplied by the applicable Tax as a Percent of Taxable Income from Table B: Average Income and Tax (Dollars) in the Oregon Department of Revenue's most recently published Oregon Personal Income Tax Statistics, All Returns and Full-Year Resident Returns (by AGI) multiplied by 2.

(b) The amount currently available in the OBEP Fund.

Stat. Auth.: ORS 285A.075, 285B & OL Ch. 549, Sec. 1-8 & 10-11

Stats. Implemented: ORS 285B, OL Ch. 549, Sec. 1-8 & 10-11

Hist.: OBDD 4-2012, f. 3-30-12, cert. ef. 4-2-12

**123-091-0025**

**Loan Agreement**

After approval of a loan from the OBEP Fund, the Department will enter into a loan agreement with the Business. Among other items, the loan agreement will contain the following provisions:

(1) The Business must enter into a First Source Agreement in accordance with OAR 123-070;

(2) The Business, to the extent practicable, must consult with vendors in Oregon before entering into contracts for goods and services;

(3) The Business must duly execute and deliver the following to the Department within 90 days from the date the loan was approved:

- (a) Loan agreement;
- (b) Promissory note;
- (c) If required, a copy of the First Source Agreement; and
- (d) Any other certificates, opinions and documents as the Department may reasonably require regarding the authorization of the loan agreement, the promissory note and any related documents.

(4) Loan funds must be disbursed to the Business no later than 120 days after the loan was approved, provided that the Department, in the reasonable exercise of its administrative discretion, has made a determination that there are sufficient funds in the OBEP Fund to make the disbursement;

(5) The terms for forgiveness of the loan, which will, among other items, require that the personal income tax estimated to be generated by the new Full-time Jobs in no more than two consecutive

calendar years is equal to or exceeds the amount of the loan and that the actual number of new Full-time Jobs is equal to or exceeds the number of Full-time Jobs proposed at the time the loan was approved. The Department intends to obtain information to calculate the personal income tax estimated to be generated by the new Full-time Jobs and the actual number of new Full-time Jobs from the Oregon Employment Department. If the Department is not able to obtain information from the Oregon Employment Department to make these calculations, the Business will be required to provide comparable information, as the Department may reasonably request, to the Department.

(6) If the personal income tax estimated to be generated by the new Full-time Jobs ("Total PIT") is less than the amount of the loan, the Business must immediately repay to the Department an amount equal to: (the loan amount multiplied by .5) multiplied by (1 - (Total PIT / the loan amount)). If the actual number of new Full-time Jobs is less than the number of new Full-time Jobs proposed at the time the loan was approved, the Business must immediately repay to the Department an amount equal to: (the loan amount multiplied by .5) multiplied by (1 - (the actual number of new Full-time Jobs / the required number of new Full-time Jobs)); and

(7) The Business must submit a report to the Department which lists categories of new positions created in the time period used to calculate the personal income tax, as described in paragraph e. above, the average hourly wage of the new positions, and the number of persons hired to fill those positions.

Stat. Auth.: ORS 285A.075, 285B & OL Ch. 549, Sec. 1-8 & 10-11

Stats. Implemented: ORS 285B, OL Ch. 549, Sec. 1-8 & 10-11

Hist.: OBDD 4-2012, f. 3-30-12, cert. ef. 4-2-12

**123-091-0030**

**Waivers**

The Director, or his designee, may waive non-statutory requirements of this division of administrative rule if such a waiver will serve to further the goals of the Oregon Business Retention and Expansion Program.

Stat. Auth.: ORS 285A.075, 285B & OL Ch. 549, Sec. 1-8 & 10-11

Stats. Implemented: ORS 285B, OL Ch. 549, Sec. 1-8 & 10-11

Hist.: OBDD 4-2012, f. 3-30-12, cert. ef. 4-2-12

**DIVISION 95**

**INDUSTRY COMPETITIVENESS FUND**

**123-095-0000**

**Purpose and Objectives**

The purpose of this division of administrative rules is to govern the use of funds in the Industry Competitiveness Fund established by ORS 285B.290.

Stat. Auth.: ORS 285A.075(5) & 285A.110

Stats. Implemented: ORS 285B.286 & 285B.290

Hist.: EDD 4-1992(Temp), f. & cert. ef. 3-18-92; EDD 1-1993, f. & cert. ef. 1-15-93; EDD 1-2000, f. & cert. ef. 1-13-00; OBDD 8-2013(Temp), f. & cert. ef. 10-4-13 thru 4-2-14; OBDD 11-2013, f. 11-26-13, cert. ef. 12-1-13

**123-095-0010**

**Definitions**

For the purposes of these rules, additional definitions may be found in Procedural Rules OAR 123-001. The following terms shall have the following meaning, unless the context clearly indicates otherwise:

(1) "Project" means an activity that contributes to the stability, growth, development, or competitiveness of a Traded Sector Industry, or group of Traded Sector Industries.

(2) "Traded Sector Industry" means an Oregon industry whose members sell their goods or services into markets for which national or international competition exists.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.286

Hist.: EDD 4-1992(Temp), f. & cert. ef. 3-18-92; EDD 1-1993, f. & cert. ef. 1-15-93; EDD 1-2000, f. & cert. ef. 1-13-00; OBDD 8-2013(Temp), f. & cert. ef. 10-4-13 thru 4-2-14; OBDD 11-2013, f. 11-26-13, cert. ef. 12-1-13

**123-095-0030**

**Eligible and Non-Eligible Activities**

(1) Funds in the Industry Competitiveness Fund may be used by Department to:

(a) provide grants for Projects. Examples of a Project include, but are not limited to, the following activities:

(A) Assisting a Traded Sector Industry(ies) in establishing research and development consortia;

(B) Introducing new products into an existing market or developing new markets for a Traded Sector Industry(ies) or businesses within a Traded Sector Industry;

(C) Promoting the commercialization of new technologies for a Traded Sector Industry(ies);

(D) Increasing the skills of workers to meet the needs of a Traded Sector Industry(ies);

(E) Enhancing the capacity of a Traded Sector Industry(ies) to take advantage of electronic communications and information technologies; and

(F) Increasing the global competitiveness of a Traded Sector Industry(ies);

(G) Activities that are prerequisite to and will lead to the implementation of any of the above (such as preparing an application for federal grant funds for one or more of the above activities); and

(H) Assisting in organizing focus groups or other meetings and conducting research to identify issues and needs of a Traded Sector Industry(ies) and developing strategies to address those needs and issues; and

(b) Directly purchase goods and services which contribute to the stability, growth, development or competitiveness of a Traded Sector Industry(ies).

(2) Funds in the Industry Competitiveness Fund may not be used for:

(a) Any activity that requires continuing subsidies from the State of Oregon; or

(b) Ongoing administrative expenses.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.286 & 285B.290

Hist.: EDD 4-1992(Temp), f. & cert. ef. 3-18-92; EDD 1-1993, f. & cert. ef. 1-15-93; EDD 1-2000, f. & cert. ef. 1-13-00; OBDD 8-2013(Temp), f. & cert. ef. 10-4-13 thru 4-2-14; OBDD 11-2013, f. 11-26-13, cert. ef. 12-1-13; OBDD 6-2015, f. & cert. ef. 8-4-15

**123-095-0035**

**Award Requirements**

A Project which is financed through an Industry Competitiveness Fund grant must meet the following criteria:

(1) Individual businesses in the Traded Sector Industry(ies) must be involved in planning the Project or Department must determine that the nature of the Project results in this involvement being unfeasible or in some other manner not applicable;

(2) The grant from the Industry Competitiveness Fund must not represent more than 50% of the total cash cost of the Project;

(3) Private sector funds used to cover cash expenses for the Project must be at least equal to the amount of the grant from the Industry Competitiveness Fund;

(4) Compliance with this division of administrative rule and ORS 285B.286 and 285B.290 does not entitle a Project to a grant from the Industry Competitiveness Fund.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.286 & 285B.290

Hist.: OBDD 8-2013(Temp), f. & cert. ef. 10-4-13 thru 4-2-14; OBDD 11-2013, f. 11-26-13, cert. ef. 12-1-13; OBDD 6-2015, f. & cert. ef. 8-4-15

**123-095-0040**

**Administration of Awards**

(1) Upon approval of a grant for a Project, Department will enter into an agreement with the entity responsible for completing the Project. The agreement will, as applicable, include, but is not limited to, the following:

(a) A description of the Project;

(b) Procedures and conditions for disbursing the grant moneys from the Industry Competitiveness Fund;

(c) A requirement that private sector funds used to cover cash expenses for the Project must be at least equal to the amount of the grant from the Industry Competitiveness Fund;

(d) A requirement that the grant from the Industry Competitiveness Fund may not exceed 50% of the total cash cost of the Project;

(e) A requirement that a sign be conspicuously displayed at the site of the Project or a statement included on written documents produced as a result of the Project which indicates the Project is being funded with Oregon State Lottery Funds, administered by Department;

(f) Reporting requirement(s); and

(g) Other provisions deemed necessary by Department.

(2) Upon approval of using Industry Competitiveness Fund moneys in accordance with 123-095-0020(1)(b), Department will procure the goods and services in accordance with OAR 123 division 6, Procedures for Contracts Entered with the Business Development Department.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.286 & 285B.290

Hist.: EDD 4-1992(Temp), f. & cert. ef. 3-18-92; EDD 1-1993, f. & cert. ef. 1-15-93; EDD 1-2000, f. & cert. ef. 1-13-00; OBDD 8-2013(Temp), f. & cert. ef. 10-4-13 thru 4-2-14; OBDD 11-2013, f. 11-26-13, cert. ef. 12-1-13; OBDD 6-2015, f. & cert. ef. 8-4-15

**DIVISION 97**

**INDUSTRIAL SITE READINESS**

**123-097-0100**

**Purpose**

This division of administrative rules establishes procedures and standards for the certification and use of regionally significant industrial sites, which are the basis of tax reimbursement arrangements and (potentially forgivable) loan agreements with local entities under the Industrial Site Readiness Program ("Program") and ORS 285B.625 to 285B.632 (2013).

Stat Auth: ORS 285A.075, 285B.626(1) & (8), 285B.627(10) & 285B.630(7)

Stats. Implemented: ORS 285B.625 - 285B.632

Hist.: OBDD 9-2014, f. 4-30-14, cert. ef. 5-1-14

**123-097-0200**

**Definitions**

ORS 285B.626 and OAR 123-001 (Procedural Rules) contain definitions used in this division of administrative rules. In addition, unless the context requires otherwise:

(1) "Business" means any individual, association of individuals, joint venture, partnership, limited liability company or corporation operating and authorized to conduct business in this state and does not include any governmental agency or public, municipal or nonprofit corporation.

(2) "Certified Industrial Land" means a site currently certified by the department under another program pursuant to ORS 284.565 and 285A.200(3)(b).

(3) "RSIS" means a certified 'Regionally Significant Industrial Site,' as defined under ORS 285B.626(6), that has been certified per OAR 123-097-0500, and for which all or portions of the property belong to the sponsor as a public owner or to one or more private owners, with whom the sponsor has entered into agreement.

(4) "Employee" means a person employed by a business that is an 'eligible employer,' as defined under ORS 285B.626(2) and described in OAR 123-097-2500, to perform work generally at the location of the RSIS, and for whom the business is her/his employer for purposes of withholdings under ORS 316.162 to 316.221, regardless of the person's residency in this state.

(5) "Incremental Revenue" means the estimated incremental income tax revenues generated under ORS 285B.630 by an eligible employer through the payment of taxable income to its applicable employees.

(6) "Loan Agreement" means the binding contract between the sponsor and the department, establishing the terms, conditions and repayment of moneys that the sponsor borrows to undertake a Pro-

ject, which may or may not be partially forgivable with Incremental Revenue.

(7) “Metro” means the metropolitan service district (for the Portland region) under ORS chapter 268.

(8) “Private owner,” as used in ORS 285B.626(5)(b), means one or more persons, businesses or nongovernmental organizations that hold clear and lawful title to RSIS property, even if not owning it outright, and subject to the department’s acceptance, it may mean a private developer with total and direct legal authority for the improvement and disposition of the property from the actual private owner.

(9) “Project” means the plans, investment and undertakings of the sponsor to develop land and otherwise ready a RSIS for actual industrial use in the form of eligible site preparation costs described in OAR 123-097-2000.

(10) “Public entity,” as used in ORS 285B.626(5)(b), means a government or agency of a:

(a) Local service district under ORS 174.116(2) that has a general and abiding interest in the re/development of land within its territory for industrial use and employment, such as a port, airport or county service district; or

(b) City, county or federally recognized Indian Tribe in Oregon, but excluding organizations under ORS chapter 190.

(11) “Public owner,” as used in ORS 285B.626(5)(a), means any Tribe, local government or local service district in Oregon that owns all of the RSIS.

(12) “RSIA” means a Regionally Significant Industrial Areas designated as such by:

(a) The Economic Recovery Review Council under ORS 197.723, as described in or proposed for OAR 966; or

(b) The Metro Council for regulation under Title 4 of Metro’s Urban Growth Management Functional Plan, Metro Code Chapter 3.07.

(13) “Sponsor” means a ‘project sponsor,’ as defined under ORS 285B.626(5) for a particular RSIS, although the same public entity/owner may sponsor multiple sites.

(14) “Taxable income” means remuneration paid by a business to its employees that is or normally would be used in calculating amounts withheld under ORS 316.162 to 316.221 for purposes of the employees’ Oregon personal income taxes.

(15) “Tax year,” as used in ORS 285B.626, 285B.627 and 285B.630, means the calendar year, over which an eligible employer pays taxable income to applicable employees preceding calculation of Incremental Revenue.

(16) “TRA” means the Tax Reimbursement Arrangement (TRA) taking the form of a binding contract between the department and the sponsor, pursuant to which the sponsor may receive Incremental Revenue relative to Project costs and pursuant to the procedures herein.

Stat Auth: ORS 285A.075, 285B.627(10) & 285B.630(7)

Stats. Implemented: ORS 285B.625 - 285B.632

Hist.: OBDD 9-2014, f. 4-30-14, cert. ef. 5-1-14

### 123-097-0500

#### Regionally Significant Industrial Site Certification

In receiving an application for qualification in OAR 123-097-1000, the department must find under ORS 285B.627(2) based on evidence provided by the sponsor that a discrete area (which may include brownfields or Certified Industrial Land) is a RSIS:

(1) Contiguous land comprising all or part of a RSIA and entirely inside the RSIA is automatically so certified.

(2) A proposed, RSIS not within a designated RSIA must be:

(a) Planned and expressively zoned -- and otherwise suitable -- for industrial uses (Note: an eligible employer could engage in traded services or other activities that would be “commercial” in a land-use or other sense, given the definition of “traded sector” and the reality of what industrial zoning often permits);

(b) Contiguous acreage subject to section (3) of this rule, which may comprise one or more tax lots or sites, at which complementary or integrated development can occur;

(c) Vacant or have enough undeveloped land, so that existing industrial operations have at least the potential to expand by 25 per-

cent or more, for example, in terms of facility square footage or productive capacity, and to significantly increase employment;

(d) Unique in one or more ways that are not generally replicable in the surrounding region, and that make it significantly attractive for industrial uses, such as size, configuration, amenities or intrinsic features; and

(e) Able to support exceptional transportation and shipping service through direct access or very efficient linkages to rail, port, airport, interstate freeway, multimodal freight, transshipment or other transportation infrastructure, which may depend on public improvements as part of the Project. If the proposed site has two or more distinct transportation advantages, then one or more may count for purposes of subsection (d) of this section.

(3) The department may establish further guidelines that apply to certifying RSIS sites with which would vary by rural and metropolitan location, in that:

(a) Project activities can be carried out to substantially and directly benefit the land in question;

(b) The ensuing improvements in site readiness will then be able to support additional employment (above the current or previous level) that would be significant within the defined region; and

(c) Similar objectives.

Stat Auth: ORS 285A.075 & 285B.627(2)(a) & (10)

Stats. Implemented: ORS 285B.625, 285B.626 & 285B.627

Hist.: OBDD 9-2014, f. 4-30-14, cert. ef. 5-1-14

### 123-097-1000

#### Project Sponsor Application

In seeking qualification under ORS 285B.627(3) and (4), a would-be sponsor must submit materials to the department, according to a format prescribed by the department, that:

(1) Fully identify the Certified RSIS including but not limited to mapping, property description and tax lots, evidence for OAR 123-097-0500, and that it is inside the sponsor’s jurisdiction, territory or urban growth boundary;

(2) Verify the current ownership and title to the land, as well as all associated encumbrances, easements, liens, or the like, including but not limited to addressing their potential to interfere with the implementation or effectiveness of the Project;

(3) Include executed copy of the formal development or other agreement with any private party, who owns all or portions of the property comprising the RSIS or rights critical to its re/development, stipulating among other things that:

(a) The sponsor will acquire such property or rights at the outset of the Project; or

(b)(A) The sponsor has complete authority to carry out the proposed Project on and at such property; and

(B) That then, either the property will be transferred to the sponsor, or it will be made reasonably available for purchase or lease by an eligible employer, in which case:

(i) The agreement shall provide for the sponsor’s control over disposition of the property; and

(ii) The parties shall consider if public investments in site preparation could affect the property’s market value, and as appropriate, that the sponsor would share in the proceeds from any such windfall gain in value;

(4) Generally delineate the sponsor’s development plans, estimated budget that make up the proposed Project (to be refined, further specified or possibly modified with any resulting Loan Agreement or TRA), as well as how the sponsor intends to prepare the RSIS for industrial uses; and

(5) Address other related matters required by the department’s instructions for making application.

Stat Auth: ORS 285A.075 & 285B.627(3), (4) & (10)

Stats. Implemented: ORS 285B.625, 285B.626 & 285B.627

Hist.: OBDD 9-2014, f. 4-30-14, cert. ef. 5-1-14

### 123-097-1500

#### Application Process

(1) For purposes of applications received in OAR 123-097-1000, the department will consider them in the order received, except that it may give priority to compelling and urgent opportunities that advance the public purposes of the Program, or it may delay final

processing due to extenuating circumstances or complexities.

(2) In undertaking technical review of the application, the department shall:

(a) Consult with the Governor's Regional Solutions Team and other state agency staff as appropriate.

(b) Seek to resolve deficiencies or questions in writing with the sponsor to ensure a complete application, denying it if deficiencies remain after 60 days.

(3) Criteria affecting sponsor qualification are:

(a) Site certification standards in OAR 123-097-0500(2) as applicable;

(b) Stipulations in OAR 123-097-1000;

(c) The relevance of proposed Project activities and the reasonableness of their estimated costs;

(d) Feasibility of carrying out the Project and the absence of legal and other impediments to doing so; and

(e) Likelihood that the Project will substantially advance the readiness of the RSIS for re/development and actual use by an eligible employer.

(4) Within 30 days of determining the application to be complete, the department will draft a staff report and recommendation. If favorable, a memorandum of the director to the sponsor will finalize the qualification.

(5) If denied, the department will provide a letter to the applicant detailing reasons the submission was incomplete or did not satisfy criteria. The applicant may resubmit at any time as described in this division of administrative rules.

(6) With formal concurrence of the sponsor the department may condition or restrict proposed Project elements or activities to conform to OAR 123-097-2000.

(7) For any formal response timely received before June 30, 2023, the department will respond to the qualified sponsor's request to enter into TRA described in OAR 123-097-3000 or a Loan Agreement described in OAR 123-097-3500 to 123-097-3700.

(8) The same Project costs or activity may not be contained in both TRA and Loan Agreement.

Stat Auth: ORS 285A.075 & 285B.627(3), (4) & (10)

Stats. Implemented: ORS 285B.625, 285B.626 & 285B.627

Hist.: OBDD 9-2014, f. 4-30-14, cert. ef. 5-1-14

### 123-097-2000

#### Eligible Project Costs

Project costs for loan forgiveness/tax reimbursement under the Program:

(1) Project costs must be incurred and site preparations implemented in:

(a) Compliance with applicable state and federal laws, regulations and legal requirements, such as State prevailing wage rates, public procurement strictures, and municipal audit and budgeting procedures, as well as local and regional development codes and standards; and

(b) Accordance with applicable and current state and federally approved plans, for example, a brownfields remediation plan.

(2) Costs to undertake the following activities are eligible in preparing a RSIS, in terms of direct management, technical oversight or verification, contractor fees, dedicated equipment, labor, materials and so forth, except as excluded in section (3) of this rule:

(a) Assembly and consolidation of parcels comprising the RSIS, so that it can be effectively transacted and used by eligible employers, including surveying, real estate, title, lot adjustment, legal, processing and similar costs external to the sponsor, as well as the sponsor's acquisition or conveyance of parcels, easements, rights of way, or the like, for which the agreement with any private owner (such as an option to buy) is submitted according to OAR 123-097-1000(3).

(b) Making the ground suitable for new construction or reconstruction, subject to subsection (d) of this section, including but not limited to the demolition of existing structures, clearing brush, disposal of materials, geotechnical testing, pilings, drainage, drilling, blasting, fill, leveling or grading.

(c) Extending, increasing or physically providing utility services or surface transportation access to the RSIS, subject to subsection (d)

of this section, through improvements that will remain in public ownership or as part of RSIS property, including infrastructure for:

(A) Electricity, natural gas or telecommunications that is located on or near and directly serves only the Certified RSIS.

(B) Water, sanitary sewer or storm sewer that directly serves the RSIS.

(C) Transportation in the form of new/upgraded roadways or railway sidings, or improved traffic flow, safety or system capacity in the immediate vicinity by installing or augmenting intersections, lanes, signals, crossings, curbs, storm drainage, or associated amenities for pedestrians, bicyclists or transit.

(D) Which only the RSIS's proper share of costs, including but not limited to hook-up fees and SDCs, applies to Program reimbursement or loan forgiveness, insofar as improvements described in paragraph (B) or (C) also benefit a discrete number of other properties in the immediate vicinity, as indicated in qualified Project plans, and only if the costs can be objectively apportioned among all properties.

(d) Eliminating the barrier to re/development posed by the need (including but not limited to requirements under state or federal law) to remediate, remove, protect, preserve or mitigate natural resources, cultural resources or environmental concerns or hazards at the RSIS, such as:

(A) Archaeological excavation and appropriate treatment or transfer of remains or artifacts to prevent unlawful disturbance;

(B) Remedial or removal actions to resolve brownfields issues or a hazardous substance under ORS 465.200; or

(C) Acquiring or securing control of off-site property or wetlands mitigation work at such property or on-site.

(e) Planning, engineering and administration required to directly make application for a local, state or federal permits that:

(A) The sponsor needs before undertaking activities described in this section, and for which technical information is otherwise available to have reasonable confidence of obtaining the permit; or

(B) An eligible employer needs before commencing re/development, re/construction or industrial use.

(f) Interest and associated expenses paid by the sponsor or accrued:

(A) On money borrowed consistent with a TRA in accordance with paragraph (3)(h)(B) of this rule; or

(B) Under a Loan Agreement as circumscribed in OAR 123-097-3700.

(3) Expenditures and costs not expressly allowed in section (2) of this rule are ineligible, including but not limited to:

(a) Purchase of vehicles or equipment not directly related to the Project;

(b) Operation or maintenance of infrastructure and facilities;

(c) Federal or state penalties or fines related to permit or other violations;

(d) Post-project monitoring, sampling and analytical services;

(e) Any remedial efforts in relation to superfund sites on the National Priorities List, if one or more of the following is liable under 42 USC 9607, specifically with respect to the RSIS: the sponsor, private owner, eligible employer, any other party to the TRA or Loan Agreement, or any business under common control of one of the foregoing;

(f) Off-site construction, public improvement or system development, even if necessary to generally increase system-wide capacity related to the RSIS;

(g) Administration and management by the sponsor or private owners;

(h) Repayment and expenses arising from debt, except in the case of:

(A) Refinancing temporary financial assistance through the department or authority related specifically to preparation of the Certified RSIS;

(B) Principal, interest, closing costs and customary fees arising from borrowing to pay Project costs described in section (2) of this rule through any financing source, as allowed by the TRA and department, which may disallow interest charges deemed unreasonable or usurious; or

(C) Loan forgiveness conforming to OAR 123-097-3700;

(i) Development, construction or other facility investments by an eligible employer;

(j) Activity to improve, upgrade, repair or remediate structures existing on the RSIS, other than for utility service; or

(k) Reports, studies, planning, assessments, samplings, investigations, site characterizations, delineations, engineering, architectural fees, financial evaluations, legal reviews or the like, even if necessary to define a proposed activity described in section (2) of this rule, unless in applying for qualification, the sponsor demonstrates that:

(A) Any such future pre-Project analytical/design work is not better funded separately through other sources of public financing;

(B) It will critically and directly lead to the proposed activity; and

(C) There is otherwise sufficient analytical/design work available to be confident in the proposed activity's feasibility, scope and general costs.

(4) In qualifying the sponsor in OAR 123-097-1500, the department may allow as part of the Project certain costs that the sponsor has already incurred since October 7, 2013, or 18 months before its submission of a complete application, whichever is more recent, but only for purposes of a TRA and for Project activities described in section (2).

Stat Auth: ORS 285A.075 & 285B.627(7) & (10)

Stats. Implemented: ORS 285B.625, 285B.626 & 285B.627

Hist.: OBDD 9-2014, f. 4-30-14, cert. ef. 5-1-14

### 123-097-2200

#### Sponsor Responsibilities

In carrying out the Project, to maintain the eligibility of costs described in OAR 123-097-2000:

(1) The sponsor shall:

(a) Maintain accounts and records for all activities and expenditures associated with the Project and the Loan Agreement or TRA, giving the department and its representative's reasonable access to such records, in addition to invoicing the department for costs incurred in completing Project activities as described in OAR 123-097-4500.

(b) Ensure that service providers retained for their professional expertise are certified, licensed, or registered, as appropriate or necessary in the State of Oregon for their specialty.

(c) Follow standard construction practices, such as requiring bonding, applicable insurance, inspections, use of as-built drawings, and so forth on the Project.

(d) Devise plans as necessary for the ongoing operation, maintenance and upgrade of infrastructure and remediation work that will preserve their benefits over their normally useful life.

(e) Guarantee that the RSIS will remain zoned for industrial use for not less than 20 years from when the Loan Agreement or TRA is executed.

(f) Actively participate with eligible employers in timely submitting annual reports as required in OAR 123-097-2600.

(2) For purposes of requisite signage posted at the RSIS and visible to the generally public, which the department may furnish, as well as all plans, bids, advertisement and other documents for the Project:

(a) The sponsor shall see that they prominently bear the statement, "Project supported through the Oregon Industrial Site Readiness Program Fund, administered by the State of Oregon Business Development Department."

(b) In the event that a Loan Agreement is in effect funded with state lottery proceeds used to capitalize the Oregon Industrial Site Readiness Program Fund under ORS 285B.632, the sponsor shall also comply with ORS 280.518 requiring public display of information on lottery funding, including that the statement in subsection (a) of this section also says, "...and funded by Oregon State Lottery proceeds."

(3) Responsibilities contained in this rule may affect the sponsor's receipt of Program loan award, loan forgiveness or tax reimbursements whether or not confirmed in the TRA or Loan Agreement, which may specify additional responsibilities.

Stat Auth: ORS 285A.075 & 285B.627(7) & (10)

Stats. Implemented: ORS 285B.625 & 285B.627

Hist.: OBDD 9-2014, f. 4-30-14, cert. ef. 5-1-14

### 123-097-2500

#### Eligible Employer Contracts

(1) The availability of Incremental Revenue to benefit a sponsor (by reimbursing Project costs under a TRA or by forgiving part of amounts borrowed) hinges on one or more businesses with new/additional employment at the RSIS. Such a business must be an eligible employer under ORS 285B.626(2), who meets applicable requirements in this division of administrative rules.

(2) An eligible employer must conduct traded-sector business operations that are:

(a) Located at the RSIS;

(b) New or expanded since entering into the contract in section

(3) of this rule; and

(c) Not relocated from another part of this state, except as addressed in the contract and shown through annual reporting that the operations would otherwise have located outside this state, but for the Project, and net employment of the business in this state increased at least initially.

(3) The sponsor qualified per OAR 123-097-1500 must execute a contract with the eligible employer in form and substance as prescribed by the department, including but not limited to:

(a) Establishing the business's existing operations, average employment and number of full-time employees, if any, at the RSIS and statewide;

(b) The business's and sponsor's joint obligation to annually submit reports under ORS 285B.630(1) in accordance with OAR 123-097-2600(1); and

(c) The requirements in OAR 123-097-2600(2).

(4) ORS 285B.625 to 285B.632 does not grant the sponsor any power to compel an eligible employer to enter into such a contract. Therefore, sponsors shall consider and plan for appropriate means to ensure that the business's use of the RSIS is effectively contingent on its respective cooperation.

(5) The sponsor shall furnish a signed copy of the contract to the department within 30 days of its execution or when submitting the request for a Loan Agreement or TRA, whichever happens later.

Stat Auth: ORS 285A.075 & 285B.627(10)

Stats. Implemented: ORS 285B.625, 285B.626, 285B.627 & 285B.630

Hist.: OBDD 9-2014, f. 4-30-14, cert. ef. 5-1-14

### 123-097-2600

#### Eligible Employee Criterion & Annual Reporting

Pursuant to the contract in OAR 123-097-2500:

(1)(a) An eligible employer and sponsor must annually complete a form available from the department and send it to the department after January 1 but on or before April 1 after every tax year:

(A) That ended after execution of requisite contract;

(B) During which new employees of the business worked at the RSIS and received taxable income for their work; and

(C) That begins (January 1) more than four full tax years after the date of the director's memorandum in OAR 123-097-0150, so that for example, if final sponsor qualification is on June 4, 2014, then the initial tax year would be 2019, and an annual report, potentially due not later than April 1, 2020.

(b) With respect to the just concluded tax year, the completed form shall provide:

(A) Both new and overall average employment and numbers of full-time employees of the business at the RSIS;

(B) Total compensation and taxable income for average employment and of full-time employees, both new and overall;

(C) The State business identification number (BIN) of the eligible employer for potential corroboration of employment and income through confidential Oregon Employment Department data; and

(D) Other information prescribed in the form by the department or the Department of Administrative Services.

(c) In the event the eligible employer had existing employment at the RSIS, Incremental Revenue shall relate to the taxable income attributable to the net increase in average employment, so that if

existing jobs/positions were eliminated, total new taxable income would equal that net increase multiplied by the average taxable income per full-time equivalent (FTE) of all newly created jobs/positions.

(2) In order for the business to be eligible and its income data to be used in that reporting cycle for estimating Incremental Revenue, the form will indicate that for the preceding tax year:

(a) A number of new full-time employees at the RSIS were residents of this state, and all of those employees received average annual compensation equal to or greater than 150 percent of wage (see subsection (5)(g) of this rule); and

(b) The business also satisfied the following performance measures under ORS 285B.627(10), respective to all workers at the RSIS regardless of residency, which the sponsor shall include in the contract according to the terminology in this rule, at minimum will include;

- (A) Average number FTEs;
- (B) Average employment changes from previous report;
- (C) Average annual compensation for overall employment;
- (D) Average annual compensation for new employment.

(3) In addition to subsection (2)(b) of this rule, the eligible employer's operations must pertain only to the RSIS, and they must be unrelated to employment or pay, except that the sponsor may set conditions for the minimum:

(a) Hourly wage paid to all or a portion of new employees as a percentage above the concurrent Oregon minimum wage; or

(b) Density of site employment relative to acres.

(4) For purposes of this rule, eligible employee criterion within a RSIS and annually reported data (unless the context dictates otherwise) the criterion defined as follows:

(a) 'Average employment' refers to the number of full-time equivalents (FTEs) derived by dividing hours worked over the course of a year among all applicable employees by 1,820 hours, which would also be used to annualize full-time salaried positions created part way through the tax year.

(b) 'Compensation' under ORS 285B.626(1) means all remuneration to employees in the form of taxable income, such as wages & salary, overtime pay, shift differential, profit-sharing, bonuses or paid vacation, and associated fringe or financial benefits (whether taxable or not), including life insurance, medical coverage or retirement plans, but excluded are workplace amenities and payroll taxes or costs similarly mandated to be paid directly by the employer under federal, state or local law.

(c) 'Full-time employees' are persons, whose job or position is year-round, and who received reimbursement or paid time (such as sick leave) for more than 32 hours per week on average.

(d) 'Hours worked' include all hours that an employee worked, and not holiday, vacation, sick leave or any other paid time where no work was performed.

(e) 'New' or 'newly' means either the net increase in the eligible employer's average employment over the level in the contract, or all jobs and positions created for full-time employees since execution of the contract between the sponsor and eligible employer.

(f) 'Overall' comprises both existing and new employees/employment.

(g) 'Wage' under ORS 285B.626(8) means the average annual covered payroll of all employees for all industries in the state or in the county containing the RSIS, whichever is less, as most recently published by the Oregon Employment Department when an annual report is submitted.

Stat Auth: ORS 285A.075, 285B.626(1) & (8), 285B.627(10) & 285B.630(7)

Stats. Implemented: ORS 285B.625 - 285B.632

Hist.: OBDD 9-2014, f. 4-30-14, cert. ef. 5-1-14

### 123-097-3000

#### Tax Reimbursement Arrangements

For purposes of a TRA under ORS 285B.627(5)(a):

(1) Upon formal request of a sponsor qualified in accordance with 123-097-1500, the department may finalize a contract with the sponsor to reimburse it for Project costs under terms and conditions consistent with this division of administrative rules.

(2) The TRA shall remain in effect indefinitely, until the sponsor's total Project costs that are expected to ever be realized have been reimbursed or other events cause termination as provided in the contract.

(3) In its request for the TRA the sponsor must specify what other funds, if any, will be used and are needed to complete preparation of the RSIS, including but not limited to Project activities.

(4) The sponsor must demonstrate that it is willing and able to enter into a contract with the department, and that it has or can obtain the administrative capacity to undertake and complete the Project.

(5) Unfinished elements of the Project must be ready to begin, and the sponsor must commit in writing that if awarded the TRA activity will proceed.

(6) The department shall consider the reasonableness of the sponsor's plans and estimated costs to prepare the RSIS, such that notwithstanding Project costs or activities allowed at qualification, the department may impose conditions or limitations on activities or reimbursable amounts. The total amount subject to reimbursement may not exceed final Project costs established in the contract, as the parties may mutually agree to amend or revise.

(7) The department shall reimburse Incremental Revenue received for that RSIS only after entering into a binding contract (the TRA) in form and substance as provided by the department, which shall stipulate that:

(a) Any and all reimbursements will be done in accordance with terms of the contract;

(b) The liability of the department under the contract is subject to temporary postponement or deferral at the discretion of the department in order to best comply with the cap under ORS 285B.627(8);

(c) Reimbursements may be made only pursuant to authorization of the TRA by the sponsor's governing body through resolution adopted in accordance with the sponsor's requirements for public notice;

(d) Reimbursement may commence in the fiscal year only after the initial tax year described in OAR 123-097-2600(1)(a);

(e) Any resulting reimbursement depends on information reported with an eligible employer in conformance with OAR 123-097-2600; and

(f) Amounts reimbursed must be satisfactorily invoiced and documented according to OAR 123-097-4500 and are limited to the total for all outstanding Project costs incurred by the sponsor.

Stat Auth: ORS 285A.075 & 285B.627(10)

Stats. Implemented: ORS 285B.625 & 285B.627

Hist.: OBDD 9-2014, f. 4-30-14, cert. ef. 5-1-14

### 123-097-3500

#### Loan Awards for Site Preparation

For purposes of a Loan Agreement under ORS 285B.627(5)(b):

(1) A sponsor qualified in accordance with 123-097-1500 may submit a request in the form and with documentation as prescribed by the department, in response to which the department may enter into a contract to loan money from the Oregon Industrial Site Readiness Program Fund ("Fund") under terms and conditions consistent with this division of administrative rules.

(2) The contract may:

(a) Include amounts in addition to Project costs to otherwise prepare the RSIS for industrial uses; and

(b) Provide for partial forgiveness of Project costs under the loan according to OAR 123-097-3700, that shall not unduly affect the department's underwriting assessment in this rule.

(3) The entire loan amount may not exceed the total of final Project costs and any additional amount documented in the sponsor's loan request to prepare the RSIS, as determined by the department. The department will also base the maximum loan amount on financial and credit analysis of the sponsor and the sponsor's ability to repay, the availability of moneys in the Fund, prudent funds management, and the annual cap under ORS 285B.627(8).

(4) In its request for the loan the sponsor must specify what other funds, if any, will be used and are needed to complete preparation of the RSIS, including but not limited to Project activities. If the sponsor identifies any state funds (whether grant or loan) as a

source to repay the loan (principal or interest), the contract may not provide for loan forgiveness.

(5) Site preparation must be ready to begin, and the sponsor must commit in writing that if awarded the loan, such work will proceed.

(6) The department shall consider the reasonableness of the sponsor's plans and estimated costs to prepare the RSIS, including but not limited to qualified Project costs, such that notwithstanding costs or activities allowed at qualification, the department may impose conditions or limitations on activities or loan amounts or may decline funding for what it determines is not functionally feasible or cannot be adequately secured.

(7) The sponsor must demonstrate that it is willing and able to enter into a contract with the department, and that it has or can obtain the administrative capacity to undertake and complete the Project and other site preparation activities to be funded out of loan proceeds.

(8) The department must find that the loan is secured by the pledge of utility revenues or other revenues, collateral, or payments from owners of specially benefited properties, and that such pledge is sufficient, when considered with other collateral or assets, to ensure repayment, and the sponsor has certified to the department that there will be adequate funds available to repay loan principal and interest.

(9) The loan shall, be a full faith and credit obligation payable from any taxes that the sponsor may levy within the limitations of Article XI, Sections 11 and 11b, of the Oregon Constitution and all legally available funds of the sponsor. This does not preclude that additional pledges of revenue or other collateral may be required as security, including but not limited to specific revenues of the sponsor, revenues arising from site improvements or special assessment revenues.

(10) If repayment of the loan substantially depends on a pledge of (property) tax increment revenues from an urban renewal agency to the borrowing sponsor, the department's financial analysis will extend to the projected revenues' viability and the financial and legal adequacy of the proposed pledge of revenue.

(11) The loan does not require match, although a Sponsor may be responsible for closing costs associated with the loan including but not limited to document preparation, review of documentation for legal sufficiency, title, escrow, and recording or filing fees.

(12) The department shall set the interest rate for the loan recipient (sponsor) at the time of awarding the loan based on subsidy need, credit risk and other appropriate considerations.

(13) Interest accrual, repayment terms, disbursement schedules and other necessary conditions shall be set by the department and stated in the contract. The maximum term of a loan shall not exceed 20 years from the date of loan closing.

(14) The department has discretion to vary loan terms and conditions from those enumerated in this rule as long as doing so serves to further the goals and objectives of the Program.

Stat Auth: ORS 285A.075 & 285B.627(10)

Stats. Implemented: ORS 285B.625 & 285B.627

Hist.: OBDD 9-2014, f. 4-30-14, cert. ef. 5-1-14

### 123-097-3600

#### Contract and Disbursement of Loan Award Funds

(1) The department shall disburse loan moneys from the Oregon Industrial Site Readiness Program Fund ("Fund") only after entering into a binding contract with the sponsor in the form of a Loan Agreement according to OAR 123-097-3500.

(2) The contract shall be in form and substance as provided by the department and shall stipulate that:

(a) Any and all disbursements from the Fund will be done in accordance with terms of the contract;

(b) The liability of the Department under the contract to disburse loan money is:

(A) Contingent upon the availability of moneys in the Fund; and

(B) Subject to temporary postponement or deferral at the discretion of the department in order to best comply with the cap under ORS 285B.627(8);

(c) The department is granted a lien on, or a security interest in, the collateral as determined by the department to be necessary to secure repayment of disbursed loan amounts;

(d) Loan forgiveness (if provided) is circumscribed as described in OAR 123-097-3700; and

(e) Any other such necessary or appropriate function is met to make loan disbursements as required by the department.

(3) Before any disbursement:

(a) If a portion of other funds needed to complete preparation of the RSIS, as specified in OAR 123-097-3500(4), is not available or committed at the time the award is made, the award shall be conditional on securing the other needed funds or a binding commitment for such funds.

(b) The Loan Agreement must be authorized by an ordinance, order or resolution adopted by the sponsor's governing body in accordance with the sponsor's requirements for public notice and authorizing debt.

Stat Auth: ORS 285A.075 & ORS 285B.627(10)

Stats. Implemented: ORS 285B.625 & 285B.627

Hist.: OBDD 9-2014, f. 4-30-14, cert. ef. 5-1-14

### 123-097-3700

#### Forgiving Portion of Loans

If a Loan Agreement provides for forgiveness:

(1) With each fiscal year, the department shall apply a credit against outstanding (unamortized) loan principal based on the Incremental Revenue received for that RSIS, up to but not exceeding 50 percent of Project costs that the sponsor has incurred prior to the fiscal year.

(2) Any Incremental Revenue that accumulates may be applied later as further Project costs are incurred during or after that fiscal year, until the date that the term of the loan is completed.

(3) The department shall separately track interest paid or accrued on the loan, so that it does not base more than 20 percent of the amount forgiven each fiscal year on such amounts, until more than 20 percent can be used for lack of other Project costs, while still ensuring that such interest overall does not represent more than 20 percent of total loan forgiveness.

(4) Loan forgiveness is prohibited:

(a) If seven years after the date of the director's memorandum in OAR 123-097-1500, the sponsor has not executed a contract with an eligible employers according to 123-097-2500; or

(b) Going forward, once any repayment of the loan (principal or interest) is actually made with any state funds (whether grant or loan) other than loan forgiveness by this rule.

(5) In addition, any loan forgiveness:

(a) May commence in a fiscal year only after the initial tax year described in OAR 123-097-2600(1)(a).

(b) Depends on information reported with an eligible employer in conformance with OAR 123-097-2600.

(c) Must be based on Project costs satisfactorily invoiced and documented according to OAR 123-097-4500.

(d) Does not count against the annual cap under ORS 285B.627(8) (rather, the earlier disbursement will have counted).

Stat Auth: ORS 285A.075 & ORS 285B.627(10)

Stats. Implemented: ORS 285B.625 & 285B.627

Hist.: OBDD 9-2014, f. 4-30-14, cert. ef. 5-1-14

### 123-097-4000

#### Generating Incremental Revenue and Reimbursements

Independently for each eligible employer, under ORS 285B.630:

(1) The department shall process only those annual reports received after the initial tax year described in OAR 123-097-2600(1)(a).

(2) The information compiled by the department and provided to the Department of Administrative Services:

(a) Shall depend on the reporting business's current and continuing eligibility based on OAR 123-097-2500 and 123-097-2600; and

(b) May be subject to scrutiny and corroboration as appropriate and practicable, including but not limited to special communi-

cation with the business, documentation furnished through the sponsor, or employment data through relevant state agencies.

(3) Pursuant to actions of the Department of Administrative Services and Department of Revenue and the department's actual receipt of 50 percent of Incremental Revenue under ORS 285B.630(2) to (6), the department will use it primarily:

(a) For loan forgiveness in OAR 123-097-3700; or

(b) To issue sponsor reimbursements under an executed TRA for amounts of Incremental Revenue that:

(A) Are received, up to but not exceeding 100 percent of Project costs that the sponsor has incurred.

(B) Have accumulated, as further Project costs are incurred during or after that fiscal year, until all such costs are reimbursed.

Stat Auth: ORS 285A.075, 285B.627(10) & 285B.630(7)

Stats. Implemented: ORS 285B.625 - 285B.632

Hist.: OBDD 9-2014, f. 4-30-14, cert. ef. 5-1-14

### 123-097-4500

#### Sponsor's Invoicing of Costs

For purposes of loan forgiveness or tax reimbursement, pursuant to a Loan Agreement or TRA:

(1) Not more than once a fiscal quarter, the sponsor shall file an invoice with the department for expenditures and accruals that clearly distinguishes current and previously identified costs, and is ordered according to distinct Project activities in OAR 123-097-2000(2).

(2) The invoice shall:

(a) Be accompanied by associated receipts, bills and other documents that the sponsor or department deem necessary to verify Project costs, and that are not redundant of previously supplied evidence;

(b) Account for costs only after the completion of significant milestones with the Project activity if not completion of the entire activity;

(c) Indicate the most recent status of each Project activity;

(d) Not include any cost that is not part of the Project under the Loan Agreement or TRA, regardless if funded with the loan or incurred for other efforts to prepare the RSIS; and

(e) Not track interest under the Loan Agreement for purposes of forgiveness.

(3) If applicable for OAR 123-097-2000(2)(c)(D), the sponsor shall maintain with its invoices a thorough accounting of how certain Projects costs are apportioned to the RSIS.

Stat Auth: ORS 285A.075 & 285B.627(7) & (10)

Stats. Implemented: ORS 285B.627 & 285B.632

Hist.: OBDD 9-2014, f. 4-30-14, cert. ef. 5-1-14

### 123-097-4800

#### Program Funds

With respect to the Oregon Industrial Site Readiness Program Fund established under ORS 285B.632, as administered by the department:

(1) Moneys credited to it, in addition to the 50 percent of Incremental Revenue received under ORS 285B.630, include but are not limited to:

(a) Amounts specially appropriated by the Legislative Assembly or transferred by the department, such as to capitalize the making of loans.

(b) Interest earned on outstanding balances.

(c) Repayments of principle pursuant to Loan Agreements, interest on that principle or amounts recovered in the event of default.

(d) The Incremental Revenue retained:

(A) In excess of total Project costs or of what may be otherwise reimbursed pursuant to a TRA.

(B) As forgiven and credited to loan principle, or in excess of what may be forgiven, pursuant to a Loan Agreement.

(e) Funding received from the federal government, other state agencies, local governments, or any other source, including but not limited to grants or gifts.

(2) The department may establish accounts within it for the payment of costs, reserves, operational expenses, revolving loan funds, and so forth, consistent with this division of administrative rules and ORS 285B.625 to 285B.632.

(3) The department may directly or indirectly grant, expend or pay out moneys to:

(a) Reimburse sponsors pursuant to TRAs;

(b) Make disbursements pursuant to Loan Agreements;

(c) Finance associated administrative costs of the department; or

(d) Pay other expenses necessary and appropriate to implement ORS 285B.625 to 285B.632.

(4) Expenditures in any fiscal year as described in subsections (3)(a) and (b) of this rule must be less than or equal to the cap in ORS 285B.627(8).

Stat Auth: ORS 285A.075, 285B.627(10) & 285B.630(7)

Stats. Implemented: ORS 285B.625 - 285B.632

Hist.: OBDD 9-2014, f. 4-30-14, cert. ef. 5-1-14

## DIVISION 98

### INDUSTRIAL SITE READINESS ASSESSMENT PROGRAM

#### 123-098-0010

##### Purpose

This division of administrative rules establishes standards and criteria for the approval of grants related to the Industrial Site Readiness Assessment Program ("Program") to evaluate regional industrial land inventories.

Stat Auth: ORS 285A.075, 285B.635-285B.642

Stats. Implemented: ORS 285B.635-285B.642

Hist.: OBDD 8-2014, f. 4-30-14, cert. ef. 5-1-14

#### 123-098-0020

##### Definitions

ORS 285B.636 and OAR 123-001 (Procedural Rules) contain definitions used in this division of administrative rules. In addition, unless the context requires otherwise:

(1) "Private owner," as used in ORS 285B.626(5)(b), means one or more persons, businesses or nongovernmental organizations that hold clear and lawful title to RSIS property, even if not owning it outright, and subject to the department's acceptance, it may mean a private developer with total and direct legal authority for the improvement and disposition of the property from the actual private owner.

(2) "Public entity" as used in ORS 285B.626(5)(b), means a government or agency of a:

(a) Local service district under ORS 174.116(2) that has a general and abiding interest in the re/development of land within its territory for industrial use and employment, such as a port, airport or county service district; or

(b) City, county or federally recognized Indian Tribe in Oregon, but excluding organizations under ORS chapter 190.

(3) "Public owner," as used in ORS 285B.626(5)(a), means any Tribe, local government or local service district in Oregon that owns all of the Regionally Significant Industrial Site (RSIS).

(4) "Development agreement" means an agreement between the private owner and the public entity, defining the project(s), requirements, and responsibilities to develop the project to "market ready".

(5) "Due diligence assessment" means an assessment of the actions, costs and time frames involved in bringing regionally significant industrial sites to market-ready status.

(6) "RSIA" means a Regionally Significant Industrial Area designated as such by:

(a) The Economic Recovery Review Council under ORS 197.723, as described in or proposed for OAR 966; or

(b) The Metro Council for regulation under Title 4 of Metro's Urban Growth Management Functional Plan, Metro Code Chapter 3.07.

(7) "Regionally Significant Industrial Site" (RSIS) means a site as defined under ORS 285B.626(6), that has been certified per OAR 123-097-0500, and for which all or portions of the property belong to the sponsor as a public owner or to one or more private owners, with whom the sponsor has entered into agreement.

(8) "Regional Solutions Team" means interagency teams established by the Governor for defined regions within the state comprised

of representative from each of the Department of Environmental Quality (DEQ), the Department of Land Conservation and Development (DLCD), the Department of Transportation (ODOT), the Department of Housing and Community Services (OHCS), and the Business Development Department (OBDD). The teams are led by a Regional Coordinator who represents the Governor as a catalyst for action in each region.

(9) "Regional industrial land inventory" means an inventory of regionally significant industrial sites in a region that identifies development-related constraints and opportunities to develop the regionally significant industrial sites and that rates the sites based on market readiness.

(10) "Willing Property Owner" means a public or private property owner that is committed to bringing a RSIS to market-readiness and pursuing development of the site for industrial use.

(11) "Market-ready" means that a RSIS has been issued all appropriate and necessary development permits.

Stat Auth: ORS 285A.075, 285B.626, 285B.635 — 285B.642

Stats. Implemented: ORS 285B.636

Hist.: OBDD 8-2014, f. 4-30-14, cert. ef. 5-1-14

### 123-098-0030

#### Eligible Economic Development Districts

"Economic development district" means one of the following:

(1) The Affiliated Tribes of Northwest Indians Economic Development Corporation, serving tribal members of the Burns-Paiute Tribe, the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, the Confederated Tribes of Grand Ronde, the Confederated Tribes of Siletz Indians, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Coquille Indian Tribe, the Cow Creek Band of Umpqua Tribe of Indians and the Klamath Tribes.

(2) The Cascades West Economic Development District, serving Benton, Lane, Lincoln and Linn

(3) The Columbia-Pacific Economic Development District, serving Clatsop, Columbia and Tillamook Counties and western Washington County.

(4) The CCD Business Development Corporation, serving Coos, Curry and Douglas Counties.

(5) The Greater Eastern Oregon Development Corporation, serving Gilliam, Grant, Morrow, Umatilla, Wheeler, Harney and Malheur Counties.

(6) The Central Oregon Intergovernmental Council, serving Crook, Deschutes and Jefferson Counties.

(7) The Mid-Columbia Economic Development District, serving Hood River, Wasco and Sherman Counties.

(8) The Mid-Willamette Valley Council of Governments, serving Marion, Polk and Yamhill Counties.

(9) The South Central Oregon Economic Development District, serving Lake and Klamath Counties.

(10) The Northeast Oregon Economic Development District serving Baker, Union and Wallowa Counties.

(11) Southern Oregon Regional Economic Development, Inc., serving Jackson and Josephine Counties.

(12) Greater Portland, Inc., Portland-Vancouver Economic Development District, serving Multnomah, Clackamas and Washington Counties.

Stat Auth: ORS 285A.075, 285B.635-285B.642

Stats. Implemented: ORS 285B.635-285B.642

Hist.: OBDD 8-2014, f. 4-30-14, cert. ef. 5-1-14

### 123-098-0040

#### Site Assessment and Development Plan Grants

(1) As funds are available, the Department will provide grants on a competitive basis to: Public owners of RSIS or public entities that have entered into development agreements or other agreements with private owners with respect to RSIS, to perform due diligence assessments, define development-related constraints and create detailed development plans to move the site(s) toward a state of market-readiness.

(2) Regionally significant industrial sites (RSIS) include;

(a) Sites identified within designated Regional Significant Industrial Areas (RSIA); or

(b) Sites considered and designated by the Department from nominations by Public Entity. Nominations may be submitted at any time, considered in order received, within the following criteria and requirements:

(A) Contains site or sites, including brownfields and "Decision Ready" sites, that are suitable for the location of new industrial uses or the expansion of existing industrial uses and can provide significant additional employment in the region;

(B) Has site characteristics that give the area significant competitive advantages that are difficult or impossible to replicate in the region;

(C) Has superior access to transportation and freight infrastructure, including but not limited to rail, port, airport, multimodal freight or transshipment facilities and other major transportation facilities or routes;

(D) Public Entity has entered into Development Agreement with the property owner (public or private);

(E) Property is available for sale or lease, and listed on Oregon's site selection service;

(F) Specifically identified in the Regional Solutions Team project list or priorities; and

(G) The nomination request will be considered by Department staff and Regional Solutions Team, who will complete a staff report and respond to Public Entity with written decision within 45 days of receipt of the nomination.

(3) Grant awards will be based on the following factors:

(a) Availability of appropriated funds;

(b) Total program not to exceed 80 percent of annual allocation;

(c) Public Entity grant not to exceed the lesser of \$100,000 per site or amount established in annual program guidelines;

(d) Assessments and development plans that contribute towards "Certified Industrial Site" designation;

(e) Receipt of complete application form provided by Department that includes at a minimum: Public Entity applicant information, copy of property listing, map of proposed RSIS, sponsor agreements, scope of work and budget estimate, consultation with Regional Solution Team(s), and contact information; and

(f) Department reserves the right to prioritize sites and assessments proposed in the application to meet fund limitations and State or Regional priorities.

Stat Auth: ORS 285A.075, 285B.635-285B.642

Stats. Implemented: ORS 285B.635-285B.642

Hist.: OBDD 8-2014, f. 4-30-14, cert. ef. 5-1-14

### 123-098-0050

#### Regional Inventory/Assessment, and Regional Planning Grants

(1) As funds are available, the Department will provide grants to conduct regional industrial land inventories, assess site development costs, prioritize regionally significant industrial sites, and evaluate market-ready status of industrial sites, to: Economic Development Districts as defined in 123-098-0030 that are committed and have the ability to perform regional industrial land inventories for a specific region and/or prioritize regionally significant industrial sites in a region for due diligence assessment and site preparation costs.

(2) Grant awards will be based on the following factors:

(a) Availability of appropriated funds;

(b) Total not to exceed 20 percent of annual program allocation;

(c) Individual Economic Development District grant not to exceed the lesser of \$50,000 or amount established in annual program guidelines;

(d) Receipt of complete application form provided by Department that includes at a minimum: Public Entity applicant information, list of existing relevant studies, scope of work and budget estimate, participating Public Entities, cooperating agreements, budget and in-kind match, public involvement and support, consultation with Regional Solution Team(s), and contact information; and

(e) Department reserves the right to modify scope and assessments proposed in the application to meet fund limitations and State or Regional priorities.

(3) Matching fund requirement to be set by the Department in annual application guidelines.

Stat Auth: ORS 285A.075, 285B.635-285B.642

Stats. Implemented: ORS 285B.635-285B.642  
Hist.: OBDD 8-2014, f. 4-30-14, cert. ef. 5-1-14

### 123-098-0060

#### Uncommitted Annual Program Allocation

Uncommitted funds from annual allocations will be added to the following annual allocation and made available in procedures defined within these rules.

Stat Auth: ORS 285A.075, 285B.635-285B.642  
Stats. Implemented: ORS 285B.635-285B.642  
Hist.: OBDD 8-2014, f. 4-30-14, cert. ef. 5-1-14

### 123-098-0070

#### Reporting

(1) Copies of final reports to be submitted to the Department within 30 days of receipt by Public Entity; and

(2) Annual progress report from Public Entity of all activities conducted or completed by program funding, and current budget to be submitted to Department within 60 days following the end of the Fiscal Year.

Stat Auth: ORS 285A.075, 285B.635-285B.642  
Stats. Implemented: ORS 285B.635-285B.642  
Hist.: OBDD 8-2014, f. 4-30-14, cert. ef. 5-1-14

## DIVISION 135

### BROWNFIELDS REDEVELOPMENT LOAN FUND

### 123-135-0000

#### Purpose

The purpose of these rules is to implement the Brownfields Redevelopment Fund created in 1997 through Chapter 738 Oregon Laws 1997 and amended by Chapter 96 Oregon Laws 2001. The purpose of the Brownfields Redevelopment Fund is to enhance the availability of resources through program development, grant proposals and other appropriate methods necessary to determine and facilitate the funding of environmental actions on properties that are brownfields.

Stat. Auth.: ORS 285A.075  
Stats. Implemented: ORS 285A.185 & 285A.188  
Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02; OBDD 7-2010, f. 3-30-10, cert. ef. 4-1-10

### 123-135-0010

#### Policy

It is the policy of the Oregon Business Development Department to promote sustainability and assist rural or distressed communities with local development priorities. Facilitating environmental cleanup consistent with a polluter-pays principle and the redevelopment of brownfields furthers this policy. The benefits of redeveloping brownfields include: promoting economic development; enabling efficient land use; minimizing the construction of new service infrastructure; facilitating the resolution of environmental justice issues; and protecting environmental and human health.

Stat. Auth.: ORS 285A.075  
Stats. Implemented: ORS 285A.185 & 285A.188  
Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02; OBDD 7-2010, f. 3-30-10, cert. ef. 4-1-10

### 123-135-0020

#### Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. As used in this division, the following terms shall have the following meaning unless otherwise indicated:

(1) "Bridge Loan" means a loan that will be repaid in full at the end of a short-term, twelve (12) to twenty four (24) months in length as determined at time of award or upon request within one year of award, following loan closing;

(2) "Brownfield" means real property where expansion or redevelopment is complicated by actual or perceived environmental contamination as defined in ORS 285A.185(1);

(3) "Capacity Building" involves conducting necessary studies that support the evaluation of a site or sites and incorporates cleanup activities for a site or sites with or without an identified redevelopment use but within zoning parameters to meet the buildable lands needs of a municipality;

(4) "Collateral" means property subject to a security interest or security agreement as defined in ORS 79.1050;

(5) "Contribution" means cash, a reduction in land sale price, a donation of real property or personal services of value; or some other like act that offsets the benefit of receiving sums from the Fund that are conveyed on a recipient or site owner who is a potentially responsible party for a release of a hazardous substance or is potentially liable for the cost of cleanup at the site according to ORS 465.255;

(6) "Environmental Action" means activities undertaken to:

(a) Determine if a release has occurred, if the release, or potential release, poses a significant threat to human health or the environment, or if additional remedial actions may be required at the site;

(b) Conduct a remedial investigation and a feasibility study;

(c) Plan for remedial action or removal action; or

(d) Conduct a remedial action or removal action at a site.

(7) "Environmental Insurance" means a specific form of casualty insurance based on industry custom standards. Policies such as, but not limited to, cleanup cost caps, secured creditor on impaired property, or pollution legal liability are examples of environmental insurance;

(8) "Environmental Justice" means community based issues, concerns, or problems resulting from the disparate effects caused by the placement and/or proximity of facilities that negatively impact minority or low-income populations;

(9) "Environmental Service Professional" means an entity that has the necessary experience, capacity, expertise, or is otherwise certified to conduct environmental actions;

(10) "Facility" means any building, structure, installation, equipment, pipe or pipeline including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, above ground tank, underground storage tank, motor vehicle, rolling stock, aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located and where a release has occurred or where there is a threat of a release, but does not include any consumer product in consumer use or any vessel. Facility has the meaning given in ORS 465.200;

(11) "Fund" means the Brownfields Redevelopment Fund;

(12) "Hazardous Substance" has the meaning given in ORS 465.200;

(13) "Institutional Controls" has the meaning given in ORS 465.315 and OAR 340-122-0115(32);

(14) "Municipality" means an Oregon city, county, the Port of Portland created by ORS 778.010, a county service district organized under ORS Chapter 451, a district as defined in 198.010, a tribal council of a federally recognized Indian tribe in Oregon, an airport district organized under ORS 838, or any other municipal corporation or quasi-municipal corporation.

(15) "Non-Profit" means an organization certified under sections 501(c)(2) through (4) and (6) through (8) and (10) of the Internal Revenue Code;

(16) "Person" means any individual, association of individuals, company, joint venture, partnership, or corporation;

(17) "Project" and "Project Description" means the resulting combination of the site, the proposed activities to be performed, the proposed or likely redevelopment use, and any other information stated in the Fund application;

(18) "Prospective Purchaser Program" refers to ORS 465.327 and associated administrative rules;

(19) "Release" (as in release of a hazardous substance) has the meaning given in ORS 465.200;

(20) “Scope of Work” means a detailed plan to perform in part or in whole an environmental action. Scopes of work shall be drafted by an environmental service professional;

(21) “Site” means the parcel or parcels of real property on which the funded activities will be performed;

(22) “Site Characterization” means determining and delineating the boundaries of the plume(s) of contamination and/or determining the status of the contamination such as whether it is migrating or crossing from one media to another, such as from soil to water, at the site. This review provides a level of detail comparable to a “preliminary assessment” (PA) as described in OAR 340-122-0072 and may be comparable to a “Phase II Environmental Site Assessment” under ASTM Standard E 1903;

(23) “Site Investigation” means a historic use investigation of the site involving, but not limited to, the analysis of aerial photos, public and private records, personal interviews, and other documents and data sources to determine the likelihood of a release of a hazardous substance at the site or facility. This review provides a level of detail comparable to a “Phase I” review under ASTM Standards E1527 and 1528 and is often a desktop review without any sampling;

(24) “Site Sampling” means systematically obtaining and analyzing representative samples from the site of relevant media such as soil and water to determine the presence of and/or the concentration of the contamination and/or identify the specific substances or compounds comprising the contamination. Sampling is a critical component of the “preliminary assessment” (PA) conducted under OAR 340-122-0072 or the ASTM “Phase II” under E-1903;

(25) “Term Loan” means a loan to be paid over a period of years, usually ten (10) to fifteen (15), with a rate of interest;

(26) “Voluntary Cleanup Program” relates to ORS 465.325 and associated administrative rules.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02; EDD 3-2007(Temp), f. & cert. ef. 8-10-07 thru 2-5-08; Administrative correction 2-22-08; EDD 18-2008, f. & cert. ef. 6-4-08; OBDD 7-2010, f. 3-30-10, cert. ef. 4-1-10

### 123-135-0030

#### Applicant Eligibility

(1) Any person, non-profit, or municipality is eligible to make application to the Department for assistance from the Fund as long as they are not subject to exclusion by ORS 285A.188(3)(a).

(2) Eligibility under OAR 123-135-0030 shall also be determined based on the status of compliance with enforcement actions against the applicant by the Oregon Department of Environmental Quality.

(3) If the applicant is not the land owner and the site is owned by a person that is excluded by OAR 123-135-0030(1), the application will not be accepted unless the applicant provides documentation adequately demonstrating how the funded activities will facilitate a transfer in ownership of the site to a person not subject to the exclusion.

(4) An applicant who is a responsible party for a release of a hazardous substance or is liable for the cost of cleanup at the project site according to ORS 465.255, must provide some form of contribution to the project to be eligible.

(5) An applicant that makes willful misrepresentations regarding applicant eligibility on a Fund application may be subject to the remedies described in OAR 123-135-0090.

(6) Applicant must have the authority and ability to enter into a contract with the Department.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02; OBDD 7-2010, f. 3-30-10, cert. ef. 4-1-10

### 123-135-0040

#### Project Eligibility

(1) Projects may contain non-residential underground storage tanks. Superfund sites on the National Priorities List are not eligible. Reimbursable project activities include, but are not limited to:

- (a) Site investigation;
- (b) Site sampling;
- (c) Site characterization;
- (d) Review, compilation and analysis of study data into a report;
- (e) Feasibility studies;
- (f) Plans for remedial action or removal;
- (g) Conducting of a remedial action or removal at a site; or
- (h) Regulatory oversight fees.

(2) Projects on sites that contain or are proposed to contain only privately owned single family residential dwelling(s) or privately owned multi-family dwelling(s) are not eligible for Fund assistance unless substantial public benefit can be demonstrated.

(3) Projects on sites that contain or are proposed to contain mixed use development such as a structure or structures that contain combined commercial and residential uses are eligible if:

- (a) A written endorsement from the project from the local jurisdiction is included with the application;
- (b) The project will provide a substantial public benefit; or
- (c) The project is part of a downtown or mixed use center redevelopment.

(4) The Department will determine if a project will have substantial public benefit.

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

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02; EDD 8-2006, f. 10-30-06, cert. ef. 10-31-06; OBDD 7-2010, f. 3-30-10, cert. ef. 4-1-10

### 123-135-0050

#### Application Requirements

(1) Applications that include capacity building, site sampling and/or site characterization must discuss in their project description how the funded activities will contribute or lead to cleanup and/or redevelopment of the site.

(2) Applications that include a site characterization must discuss in the project description how the funded activities will contribute or lead to a remediation plan or a No Further Action Determination by the Oregon Department of Environmental Quality.

(3) Applications that include a remedial or removal action or plan must identify the proposed redevelopment use in the project description and must provide documentation that demonstrates how the proposed redevelopment use is attainable.

(4) Applications that include a remedial or removal action or plan must discuss in the application how the plan or action will comply with state cleanup law and will contribute to the proposed redevelopment. The Department may ask the applicant to provide documentation that demonstrates how compliance or how progress towards the proposed redevelopment will be achieved.

(5) Applications that include a remedial or removal action but do not identify a redevelopment use as described in OAR 123-135-0050(4) are eligible if the project is for capacity building. Written endorsement for the capacity building project must be obtained from the local jurisdiction and be included in the application if the applicant is not a municipality.

(6) The sum of funding requested in the Fund application must be consistent with the scope and scale of work in the project description compared with an industry custom standard. If the amount requested is inconsistent with the scope and scale of work in the project description, the Department may work with the Applicant and Oregon Department of Environmental Quality to adjust the amount of the award or the scope and scale of work in the project description.

(7) If OAR 123-135-0030(4) or (5) applies, the necessary information regarding property transfer and/or contribution must also be included in the application.

Stat. Auth.: ORS 285A.075  
Stats. Implemented: ORS 285A.185 & 285A.188  
Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02; OBDD 7-2010, f. 3-30-10, cert. ef. 4-1-10

### 123-135-0065

#### Application Considerations and Processing

(1) Applications may be submitted to the Department at any time. The Department shall not process an incomplete Fund application. Applications are complete when all relevant requirements of this Division are met.

(2) The Department can waive application requirements in order to make an application completion determination if it is demonstrated that such a waiver would serve to further the goals and objectives of the Fund and would not violate any statutory requirements.

(3) The Department may request additional information about the project that is not listed in this division if necessary to facilitate application processing.

(4) When evaluating an application, the Department shall consider the following:

(a) The extent to which real or perceived contamination prevents the property from being fully utilized;

(b) The need for providing public assistance, after considering the difficulty of obtaining financing from other sources or of obtaining financing at reasonable rates and terms;

(c) The degree to which redevelopment of the property provides opportunity for achieving protection of human health or the environment by reducing or eliminating the contamination of the property and for contributing to the economic health and diversity of the area;

(d) The probability of the success of the intended use or the degree to which redevelopment of the property provides a public purpose following remediation of the property;

(e) Compliance with the land use plan of the local government with jurisdiction over the property;

(f) Endorsement from the local government with jurisdiction over the property.

(5) In the event of a shortage of funds, priority will be given to projects that provide significant economic benefit such as the creation of manufacturing or traded sector jobs and the Department may, at its discretion, consider other factors that demonstrate substantial public benefit.

(6) No more than sixty percent (60%) of the total amount of the Fund in any biennium shall be awarded to persons who are liable with respect to the site under ORS 465.255. The sixty percent (60%) limitation will be calculated at the beginning of each biennium and will be applied to the total, non-obligated, funds available in the Fund. Only awards to recipients that caused or contributed to the contamination at a site shall be included in the sixty percent (60%) calculation.

(7) Department approval of an application may contain conditions which will become part of the funding agreement.

(8) The Department will conduct a financial review on complete applications in accordance with prudent lending practices. Conditions of an loan award such as requiring collateral or other security; requiring a co-signer or guarantor; or obtaining an environmental insurance policy may be required in order to provide additional securities to mitigate credit deficiencies.

(9) The Department may request additional information from the applicant to facilitate a funding decision.

Stat. Auth.: ORS 285A.075  
Stats. Implemented: ORS 285A.185 & 285A.188  
Hist.: OBDD 7-2010, f. 3-30-10, cert. ef. 4-1-10

### 123-135-0080

#### Loan Agreement Conditions

(1) Loans do not require match. Applicants may be responsible for closing costs associated with the loan including but not limited to document preparation, review of documentation for legal sufficiency, title, escrow, recording or filing fees.

(2) The Department shall set the interest rate for municipal and non-municipal loan recipients at the time of award based on subsidy need, credit risk, and other appropriate considerations.

(3) Interest accrual, repayment and disbursement schedules, and other necessary conditions shall be stated in the loan agreement.

(4) Bridge loans shall have a maximum term of one (1) year from the beginning of loan disbursement unless the loan recipient requests an extension.

(a) Upon receipt of a request for extension, the maximum term of the extension shall not exceed one (1) additional year. If a bridge loan is not repaid within the approved period, a rate of interest may be applied from the date of first disbursement.

(b) A bridge loan recipient may be converted to a term loan. If a loan is converted, a rate of interest shall be applied from the date of first disbursement.

(5) The Department will set terms of repayment with consideration to the applicant's ability to repay, credit worthiness, economic benefit of the project, and use of proceeds as defined in the project. The maximum term of a loan shall not exceed 20 years from the date of loan closing.

(6) A term loan may convert to a bridge loan with the approval of the Department as long as the maximum bridge loan term of two (2) years has not passed from the date of loan closing.

(7) If the project includes other funding in the form of loan(s) obtained from a financial institution, the Department may subordinate the Fund loan to the financial institution loan(s) if appropriate.

(8) The Department has the discretion to establish loan terms that differ from those enumerated in OAR chapter 123, division 135 as long as it furthers the goals and objectives of the program.

(9) For loan funded projects, the total loan amount shall not exceed the final total project cost.

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

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02; OBDD 7-2010, f. 3-30-10, cert. ef. 4-1-10

### 123-135-0087

#### Grant Contract Conditions

(1) Municipal and eligible non-profit organization applicants may be eligible for grants. Determination of grant eligibility will be made by the Department at the time of award and may be based on subsidy need, credit risk, economic benefit, and other appropriate considerations. The Department has the discretion to impose conditions on the grant. Conditions shall be part of the grant contract, and if appropriate, the Department may require the recipient to demonstrate or document how the conditions have or will be met before funds are disbursed in whole or in part.

(2) All grant awards require some level of match. The level of match required will be determined based upon the liability considerations associated with the applicant and may have some portion waived if the applicant acquired the property according to ORS 465.327.

(3) For municipal and qualifying non-profit organization grant recipients, acceptable grant match includes cash, in-kind services, or other contributions of measurable value.

(4) For municipal and qualifying non-profit organization grant recipients that are not potentially liable for having caused or contributed to the release of contamination at the site and for which the project is located in or benefits a designated economically distressed community, the grant match is ten percent (10%) of the total award.

(5) For municipal and qualifying non-profit organization grant recipients that are not potentially liable for having caused or contributed to the release of contamination at the site and for which the project is not located in or does not benefit a designated economically distressed community, the grant match is twenty percent (20%) of the total award.

(6) Municipal and qualifying non-profit organization applicants that are potentially liable because the applicant's conduct lead to or contributed to the release of contamination at the site receiving the

environmental action are subject to a one to one (1:1) or 100% of award match requirement. Match must be in cash.

(7) Grant awards cannot exceed the final total project cost less the required match with a maximum award of \$60,000. For grant funded projects with a match ratio of one to one (1:1), the final grant award shall not exceed fifty percent (50%) of the total final project cost or a maximum award of \$60,000.

(8) If the environmental action at the site was funded with a condition requiring repayment of the grant the grant award must be repaid with any net profits generated from the resale of the site if that sale occurs within five (5) years after the completion of the environmental action. The repayment amount is the lesser of either the net profits or the amount of the grant award. Net profits equal the resale price less the sum of the purchase price and the required match for the project. In the case of properties resold by a county after property tax foreclosure, net profits equal the sum of the outstanding property tax, required match, and eligible expenses incurred by the County prior to award that are related to conducting environmental actions on the property.

(9) The Department shall make available technical assistance grants to municipalities for capacity building. Technical assistance grants may not exceed \$25,000 per municipality. Technical assistance grants shall not be subject to financial review. Technical assistance grants shall require a 10% match which may include case, in-kind services or other contributions of measurable value.

(10) Notwithstanding applicant and project eligibility, the amount of a grant award shall be based on the availability of grant funds at the time of the award. The grant capacity of the Fund is determined by the Department based on a percentage of biennial allocations. The Department has the discretion to make grant awards less than the amount requested in the application if it is necessary to ensure grant capacity until the next allocation to the Fund by the Commission.

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

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 18-2002, f. & cert. ef. 12-10-02; OBDD 7-2010, f. 3-30-10, cert. ef. 4-1-10

### 123-135-0090

#### Remedies

(1) If, at any time, it is discovered that the applicant or the project violates the applicant eligibility exclusions in OAR 123-135-0030 or the project eligibility exclusions in 123-135-0040. The Department may seek legal remedies against applicants that fail to comply with the requirements governing the fund. Remedies will not be imposed by the Department until the applicant has been notified in writing of deficiencies and has been given a reasonable time to respond and correct the deficiencies noted.

(2) One or more of the following remedies may be imposed by the Department:

- (a) Bar a recipient from applying for future Fund assistance;
- (b) Revoke an existing Fund award;
- (c) Withhold unexpended Fund funds;
- (d) Require return of unexpended funds;
- (e) Demand immediate repayment of expended funds at a market based rate of interest; or
- (f) Withhold other state funds.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 18-2002, f. & cert. ef. 12-10-02; OBDD 7-2010, f. 3-30-10, cert. ef. 4-1-10

### 123-135-0100

#### Subsidies and Waivers

(1) The Department has the discretion to waive interest charges or provide interest rate subsidies in the form of rate reductions and may grant any other form of waiver or subsidy within its authority. The Department shall utilize its discretion to make available interest charge waivers or provide interest rate subsidies following financial evaluation of the complete application taking into consideration the relationship between the project and the needs of the local community; the availability and or leveraging of other sources of fund-

ing in the project; and after determining whether the incentive will result in a substantial public benefit.

(2) The department shall waive interest for all bridge loans. The department shall set an interest rate for a bridge loan at the time of application approval in the event the bridge loan becomes a term loan or is not repaid within the allowed time period.

(3) Applicants may request consideration for incentives in the Fund application. The Department shall rule on all incentive requests made in the Fund application at the time of application approval.

(4) Determination of whether or not a project will result in a substantial public benefit will be made on a case-by-case basis by the Department.

(5) The Department may waive non-statutory requirements of this program if it is demonstrated such a waiver would serve to further the goals and objectives of the program.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02; OBDD 7-2010, f. 3-30-10, cert. ef. 4-1-10

### 123-135-0110

#### Consultation with Department of Environmental Quality

(1) In accordance with ORS 285A.188(4), the Department shall consult with the Department of Environmental Quality prior to the decision to approve an application. The Department shall provide the Department of Environmental Quality with information about the applicant, property, project description, environmental service professional, and funding amount requested.

(2) The Department of Environmental Quality shall verify within a reasonable period of time whether the applicant is ineligible for funding assistance in accordance with ORS 285A.188(3)(a).

(3) Any recommendations or relevant comments from the Department of Environmental Quality that are submitted to the Department within a reasonable period of time shall be included as part of the application for consideration.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02; OBDD 7-2010, f. 3-30-10, cert. ef. 4-1-10

## DIVISION 140

### OREGON COALITION BROWNFIELDS CLEANUP FUND

### 123-140-0010

#### Purpose, Scope, and Incorporated Documents

(1) As provided in Oregon Revised Statutes (ORS) 285A.190, the Oregon Business Development Department shall administer the federally funded revolving fund to provide cleanup financing to eligible publicly and privately owned brownfields as authorized by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, by the Small Business Liability Relief and Brownfields Revitalization Act of 2001 (P.L. 107-118).

(2) Oregon Coalition Brownfields Cleanup Fund Program is funded through a cooperative agreement (BF-97080301, and as amended from time to time) between the U.S. Environmental Protection Agency and Department and includes any program income generated as a result of Department loans to Recipients as provided for in ORS 285A.192. The primary objectives of the Program are to:

(a) Remove or abate environmental health risks at sites not yet addressed by the private market;

(b) Provide resource assistance to rural, distressed, or affected communities allowing them to build quality, livable communities and neighborhoods; and

(c) Employ a problem-solving philosophy of coordination through state and local partnerships.

Stat. Auth.: ORS 285A.190, 285A.192 & 285A.075

Stats. Implemented: ORS 285A.190

Hist.: EDD 9-2006, f. 10-30-06, cert. ef. 10-31-06; OBDD 8-2010, f. 3-30-10, cert. ef. 4-1-10; OBDD 19-2010(Temp), f. & cert. ef. 5-21-10 thru 11-17-10; OBDD 39-2010, f. 10-29-10, cert. ef. 11-1-10

## 123-140-0020

### Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. For purposes of this division of administrative rules, unless the context demands otherwise:

(1) "Applicant" means any public or private entity that is eligible under OAR 123, division 140 to receive an OBCF loan or grant and that has control over or access to a brownfields site, except those entities that may potentially be liable under CERCLA, or are currently suspended or debarred from receiving federal funding, or are otherwise declared ineligible.

(2) "Brownfields" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

(3) "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act (42 United States Code 9601) as amended by the Small Business Liability Relief and Brownfields Revitalization Act (P.L. 107-118), and any subsequent amendments.

(4) "Fund" means the Oregon Coalition Brownfields Cleanup Fund.

(5) "Non-profit Organization" means as defined at Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999 except those non-profit organizations described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995.

(6) "Program" means the Oregon Coalition Brownfields Cleanup Fund Program

(7) "Project" means under this division those remedial and/or removal action activities identified in the Contract for which the Recipient may expend, obligate or commit funds to address cleanup of a brownfields.

(8) "Recipient" means an Applicant that has been awarded an OBCF grant or loan for a Project.

(9) "Remedial and/or Removal Actions" means those eligible cost activities listed in the Program Guidelines and Application Handbook.

(10) "Site" means the parcel or parcels of real property on which the funded activities will be performed;

(11) "USEPA" means the Environmental Protection Agency of the United States federal government.

Stat. Auth.: ORS 285A.190 & 285A.192, 285A.075

Stats. Implemented: ORS 285A.190

Hist.: EDD 9-2006, f. 10-30-06, cert. ef. 10-31-06; OBDD 8-2010, f. 3-30-10, cert. ef. 4-1-10; OBDD 19-2010(Temp), f. & cert. ef. 5-21-10 thru 11-17-10; OBDD 39-2010, f. 10-29-10, cert. ef. 11-1-10

## 123-140-0030

### Eligible Applicants and Activities

(1) Eligible loan applicants are any public, private, or Non-Profit organization with control over or access to a brownfields site, except those entities which are potentially liable under CERCLA, or which are currently suspended, debarred from receiving federal funding, or are otherwise declared ineligible.

(2) Eligible grant applicants are any public or Non-Profit organization that owns a brownfields at the time the grant is awarded, except those entities which are potentially liable under CERCLA, which are currently suspended, debarred from receiving federal funding, or are otherwise declared ineligible.

(3) Eligible and ineligible activities are defined in CERCLA and in USEPA's Revolving Loan Fund Administrative Manual (October 2004), as well as subsequent revisions or editions of such guidelines.

Stat. Auth.: ORS 285A.190 & 285A.192, 285A.075

Stats. Implemented: ORS 285A.190

Hist.: EDD 9-2006, f. 10-30-06, cert. ef. 10-31-06; OBDD 8-2010, f. 3-30-10, cert. ef. 4-1-10; OBDD 19-2010(Temp), f. & cert. ef. 5-21-10 thru 11-17-10; OBDD 39-2010, f. 10-29-10, cert. ef. 11-1-10

## 123-140-0040

### Program Information

(1) The Department shall prepare program guidelines, application forms and other supplemental program information to help eligible Applicants seek financing and prepare loan and/or grant applications for the Fund.

(2) Program guidelines as prepared under section (1) of this rule shall include, but not be limited to, an explanation of project eligibility, applicant eligibility, types of financial assistance, loan rates and terms, borrowing guidelines, public notification process, procurement requirements, contract administration, federal crosscutting requirements and environmental review process.

(3) In addition to this division of administrative rules, the Department shall administer the Fund in compliance with the requirements of CERCLA, as amended, and CERCLA's applicable rules, guidelines and requirements from USEPA.

(4) For purposes of land use coordination, any Project activity paid for with Program funds that affects land use shall comply with the applicable requirements of OAR chapter 123, division 8 and OAR chapter 660.

Stat. Auth.: ORS 285A.190 & 285A.192, Other 285A.075

Stats. Implemented: ORS 285A.190

Hist.: EDD 9-2006, f. 10-30-06, cert. ef. 10-31-06

## 123-140-0050

### Program Rights and Remedies

(1) The Department may exercise certain rights and remedies in the event the Recipient fails to comply with Contract provisions and, if allowed under the Contract, the Recipient fails to correct the deficiency within a reasonable time after the Recipient is notified of the deficiency. The circumstances that may warrant the Department's exercise of rights or remedies include, but are not limited to the following:

(a) None of the Project activities have begun within nine months after an OBCF award;

(b) Any third party agreement relating to the Project is not legally binding within six months of the OBCF award;

(c) Federal or State statutory or regulatory requirements have not been met;

(d) There is a significant deviation from the Contract;

(e) The Department finds that significant corrective actions are necessary to protect the integrity of the Project funds and those corrective actions are not, or will not, be made within a reasonable time; or

(f) A Recipient defaults on loan payments, which may otherwise be made from any source of revenue at the Recipient's disposal, including but not limited to General Fund revenues if the Recipient is a public entity borrower.

(2) The Department may exercise one or more of the following rights and remedies if the Recipient fails to comply with Contract provisions and the Recipient fails to correct the deficiency within a reasonable time after Recipient is notified of the deficiency:

(a) Bar a Recipient from applying for or receiving future Department assistance;

(b) Revoke an existing Department award;

(c) Withhold unexpended Department funds;

(d) Require immediate return of unexpended Department funds;

(e) Require repayment of expended Department funds;

(f) Withhold other state funds otherwise due to the Recipient, such as state-shared revenues; or,

(g) Other remedies that may be incorporated into the Contract.

(3) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the Contract.

(4) The Recipient shall be responsible for ensuring that any subcontractor complies with the applicable terms and conditions of the Contract. Nothing in this rule shall restrict the Department's right to enforce independently the terms of any contract or to recover any sums that may become due as a result of a breach of such Contract.

Stat. Auth.: ORS 285A.190, 285A.192 & 285A.075

Stats. Implemented: ORS 285A.190

Hist.: EDD 9-2006, f. 10-30-06, cert. ef. 10-31-06; OBDD 8-2010, f. 3-30-10, cert. ef. 4-1-10

DIVISION 165

RECOVERY ZONE BONDS

123-165-0010

Purpose and Objectives

The Oregon Business Development Department allocates, reallocates and otherwise manages Oregon's Recovery Zone Economic Development Bonding authority and Recovery Zone Facility Bonding authority. These rules are promulgated under authority granted by enacted 2009 Legislative Session HB 3199, Section 12 (4) and Section 12 (7)(a)–(c).

Stat. Auth.: ORS 286A.630 & 285A.075

Stats. Implemented: ORS 286A.630(4) & 285A.075

Hist.: OBDD 3-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; OBDD 16-2010, f. 4-30-10, cert. ef. 5-1-10

123-165-0020

Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. As used in this division of administrative rules, unless the context requires otherwise the following definitions apply:

(1) "Allocation" means an original allocation or reallocation of recovery zone bond volume cap.

(2) "ARRA" means the American Recovery and Reinvestment Act of 2009, H.R. 1, as amended.

(3) "Code" means the Internal Revenue Code of 1986, as amended.

(4) "Notice" means Notice 2009-50, published by the U.S. Treasury Department on June 12, 2009.

(5) "Notice of Intent" means a notice of intent to issue Recovery Zone Bonds on a form provided by the Department, which shall include the following:

(a) Name of Recipient receiving Allocation;

(b) Name of unit of local government that will issue the Recovery Zone Bonds;

(c) Type of Recovery Zone Bonds to be issued;

(d) Description of area designated as Recovery Zone;

(e) Description of project to be financed;

(f) Dollar amount of the bond issue and amount of Allocation to be used and amount of Allocation (if any) remaining after such issuance;

(g) Any Reallocation requested by the Recipient for the project;

(h) If applicable, that the Recipient does not intend to use some or all of its Allocation, and is waiving such Allocation (or if less than all, the portion of Allocation being waived). In connection with any such waiver, the Recipient may designate a project being undertaken by another unit of local government within the jurisdiction using Recovery Zone Bonds, and request that the waived Allocation be reallocated to such unit of local government in connection with such project.

(i) Such other information as may be prescribed by the Department.

(6) "Original allocation" means the initial authorization for units of local government to issue Recovery Zone Facility Bonds or Recovery Zone Economic Development Bonds pursuant to ARRA. Oregon received \$155,175,000 in Allocation for Recovery Zone Facility Bonds and \$103,450,000 in Allocation for Recovery Zone Economic Development Bonds for 2009 and 2010; the original allocations awarded to counties and municipalities in the State are found in the Notice.

(7) "Originally awarded locality" means a city or county that received an original allocation of recovery zone economic development bond or recovery zone facility bond authority.

(8) "Reallocation" or "Reallocate" means an action by the department to allocate waived Recovery Zone Facility or Recovery Zone Economic Development Bonds volume cap to an eligible unit of local government.

(9) "Recipient" means any unit of local government that received an original allocation or reallocation.

(10) "Recovery Zone" means any area within the jurisdiction of the Recipient, designated as a "recovery zone" in accordance with Code Section 1400U-1(b) by the Internal Revenue Service or local determination in compliance with the Code.

(11) "Recovery Zone Bonds" means Recovery Zone Economic Development Bonds and Recovery Zone Facility Bond, authorized under Section 1401 of Title I of Subtitle B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009), that may be issued by states, counties, certain municipalities and other qualified issuers within each state before January 1, 2011.

(12) "Recovery Zone Economic Development Bonds" means Recovery Zone Economic Development Bonds issued pursuant to Code Section 1400U-2, which in general are governmental bonds issued by a qualified issuer for economic development purposes (as defined in Code Section 1400U-2) that provide for a refundable tax credit paid to the issuer of the bonds in an amount equal to 45% of the taxable interest payable to investors in such bonds.

(13) "Recovery Zone Facility Bonds" means Recovery Zone Facility Bonds issued pursuant to Code Section 1400U-3, which in general are a type of private activity, exempt facility bond that permit financing of recovery zone property (as defined in Code Section 1400U-3) for use in any trade or business other than certain prohibited businesses enumerated in Section 1400U-3(c)(2).

(14) "Volume cap" or "Cap" means the recovery zone bond volume limitation allocated to each state and to counties and municipalities within each state in accordance with Code Section 1400U-1.

Stat. Auth.: ORS 286A.630 & 285A.075

Stats. Implemented: ORS 286A.630(4) & 285A.075

Hist.: OBDD 3-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; OBDD 16-2010, f. 4-30-10, cert. ef. 5-1-10

123-165-0030

Use of Original Allocation and Reallocation

(1) For the purposes of recovery zone economic development bond and recovery zone facility bond allocations, a recipient of an original allocation may use its allocation or designate other issuing localities within the jurisdiction of the originally awarded locality to use all or a portion of its original allocation by any procedure mutually acceptable to both parties subject to federal requirements.

(2) An originally awarded locality that intends to use its original allocation or intends to designate another issuer within the jurisdiction of the originally awarded locality to use the original allocation must file a *Notice of Intent* form by March 1, 2010 with supporting documentation.

(3) An originally awarded locality that has used the *Notice of Intent* form to express its intent to use or designate another issuer within the jurisdiction to use its original allocation may amend the *Notice of Intent* at a later time if it is determined that the locality is unable to use its original allocation in the manner previously stated or has decided to waive all or part of the original allocation for reallocation by the state pursuant to subsection (6) below.

(4) An originally awarded locality intending to use its original allocation and has filed a Notice of Intent pursuant to subsection (2) above must provide the department with project information and supporting documents by April 16, 2010 that shows substantial progress. Supporting documents include bond counsel and underwriter statement of intent documents and a certified copy of a resolution of the governing body of the recipient designating a recovery zone and stating its intent to use its original allocation. A recipient may request a time extension if filed by April 16, 2010.

(5) If an originally awarded locality is not able to or chooses not to use all or a portion of its original allocation or does not offer all or a portion of the original allocation to another issuer within the jurisdiction of the originally awarded locality, the original allocation may be waived. In cases where original allocation is not used, federal code provisions and U.S. Department of Treasury guidance in IRS Notice 2009-50 allow original allocations to be waived by the recipient and then used by the state or reallocated by the state to other issuing localities. The department, as authorized in statute, has accepted the reallocation role on behalf of the state. Waived recovery zone economic development bond or recovery zone facility bond

authority may be used by the state or reallocated by the department to other issuing localities.

(6) Any recipient of original allocation or reallocation may affirmatively waive all or a portion of its allocation to the state pursuant to the following procedure:

(a) Submitting an appropriately completed *Notice of Intent* form; and

(b) The form must be signed by the official(s) of the recipient authorized to execute the form pursuant to a resolution waiving the allocation adopted by the recipient's governing body.

(7) If a recipient of original allocation or reallocation has not provided the department with the *Notice of Intent* to subsection (2) above or supporting documentation pursuant to subsection (4) above or subsection (12) below the department may issue a *Notice of Intent to Reallocate*, informing the recipient of the department's intent to deem the allocation to have been waived to the state and to make such allocation available to reallocate to another locality or use by the state.

(8) A recipient will have fifteen calendar days from receipt of a *Notice of Intent to Reallocate* to respond to the department with the required documentation or to ask the department to reconsider its waiver determination.

(9) The department will respond to the request to reconsider its waiver determination within ten business days with a decision by the department director or the director's designee to grant an extended time in which the issuing jurisdiction must demonstrate substantial progress toward a recovery zone economic development bond or recovery zone facility bond issuance, or a decision to go forward with the waiver of the allocation. The length of the time of the extension shall be determined at the discretion of the department.

(10) Any local government issuer may request a reallocation of recovery zone facility bonds and/or recovery zone economic development bonds authority by submitting a department supplied *Recovery Zone Bonds Request for Reallocation* form to the department. The department will acknowledge the request within five business days and provide a determination on the reallocation of cap within fifteen business days of the acknowledgement.

(11) The department will notify a recipient of its determination to award reallocation of volume cap in writing in a *Reallocation Award Letter*.

(12) A recipient of reallocated cap must provide the department with project information and supporting documents within 45 days of the date of the *Reallocation Award Letter*, or sooner if required by the department, that shows substantial progress. Supporting documents include bond counsel and underwriter statement of intent documents and a certified copy of a resolution of the governing body of the recipient designating a recovery zone and stating its intent to use its allocation.

(13) The department will carry out continual review of the use of recovery zone facility bonds and/or recovery zone economic development bonds authority to determine if original allocations as well as reallocations were used or are likely to be used before year end. To the extent recovery zone bond authority is identified to not be used, a final reallocation will occur late in 2010 for any bonding projects in the state meeting the code qualifications.

(14) Following the issuance of any recovery zone bond, the issuer of such bond shall promptly deliver a copy of the report required to be filed with the Internal Revenue Service (e.g. the Form 8038 for recovery zone facility bonds and the Form 8038G for recovery zone economic development bonds) to the department. The department will maintain a list of all recovery zone bonds issued and all allocations used, waived, and available for full or partial reallocation.

Stat. Auth.: ORS 286A.630 & 285A.075

Stats. Implemented: ORS 286A.630(4) & 285A.075

Hist.: OBDD 3-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; OBDD 16-2010, f. 4-30-10, cert. ef. 5-1-10

### 123-165-0040

#### Criteria for Reallocation Award of Recovery Zone Economic Development Bonds Cap

In accordance with the intent of the code and state priorities, the following criteria will be used to prioritize reallocation requests by the department:

(1) The relative level of economic distress in the local community.

(2) The number of citizens benefiting from the project.

(3) The estimated positive economic, health, or environmental impact of the project on the local community, region, and state.

(4) The number of jobs created or retained by the project as can be best estimated.

(5) Whether the availability of the reallocation is a crucial part of attracting a new company or keeping an existing company in place;

(6) Whether the requested reallocation will benefit a project for which a recipient or other unit of local government is issuing recovery zone bonds;

(7) Whether the requested reallocation will benefit a project that was designated by a recipient in connection with a previous waiver of its allocation.

(8) The readiness of the project to proceed including consideration for the likelihood that the issuer will use the allocation within the timelines.

(9) The amount of other public and private funding leveraged by the recovery zone economic development bond allocation.

(10) The amount of local community support for the project, other agency support, and the degree the project supports efficient use of resources.

Stat. Auth.: ORS 286A.630 & 285A.075

Stats. Implemented: ORS 286A.6304 & 285A.075

Hist.: OBDD 3-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; OBDD 16-2010, f. 4-30-10, cert. ef. 5-1-10

### 123-165-0045

#### Criteria for Reallocation Award of Recovery Zone Facility Bonds Cap

In accordance with the intent of the code and state priorities, the following criteria will be used to prioritize reallocation requests by the department:

(1) The relative level of economic distress in the local community.

(2) The number of citizens benefiting from the project.

(3) The estimated positive economic impact of the project on the local community, region and state.

(4) The number of jobs created or retained by the project as can be best estimated.

(5) Whether the availability of the reallocation is a crucial part of attracting a new company or keeping an existing company in place;

(6) Whether the requested reallocation will benefit a project for which a recipient or other unit of local government is issuing recovery zone bonds;

(7) Whether the requested reallocation will benefit a project that was designated by a recipient in connection with a previous waiver of its allocation.

(8) The readiness of the project to proceed including consideration for the likelihood that the issuer will use the allocation within the timelines.

(9) The amount of other public and private funding leveraged by the recovery zone facility bond allocation.

(10) The amount of local community support for the project, other agency support, and the degree the project supports efficient use of resources.

Stat. Auth.: ORS 286A.630 & 285A.075

Stats. Implemented: ORS 286A.6304 & 285A.075

Hist.: OBDD 3-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; OBDD 16-2010, f. 4-30-10, cert. ef. 5-1-10

**123-165-0050**

**Rule Waiver**

The director may waive any non-statutory requirements of OAR chapter 123, division 165 if it is demonstrated such a waiver will further the goals and objectives of the program.

Stat. Auth.: ORS 286A.630 & 285A.075

Stats. Implemented: ORS 285A.075

Hist.: OBDD 3-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; OBDD 16-2010, f. 4-30-10, cert. ef. 5-1-10

**DIVISION 200**

**CERTIFICATION PROCEDURES**

**123-200-1000**

**Purpose**

(1) The purpose of OAR 123-200-1000 to 123-200-2200 is to adopt a standard application form and procedure designed to provide complete documentation for certification of businesses as minority, woman, or service-disabled veteran owned business or an Emerging Small Business and to adopt a procedure for handling complaints, investigations, and issuing sanctions.

(2) The Certification Office for Business Inclusion and Diversity (COBID) is the sole certification agency for the State of Oregon and all political subdivisions. To the extent there is any reference to the Office of Minority, Women, and Emerging Small Business from the implementation of these rules forward, all references defer to the agency's new name, COBID.

(3) The COBID shall certify Minority Business Enterprises (MBE), Woman Business Enterprises (WBE), and businesses owned by service-disabled veterans (SDV) under the State of Oregon certification program based on ORS 200.055. The COBID shall also certify Emerging Small Businesses (ESB) under the State of Oregon certification program based on ORS 200.170. Any public contracting agency shall consider an enterprise certified by the COBID as eligible to participate in the certification programs pursuant to these rules in the State of Oregon as defined in ORS 279.011(5).

(4) Certified firms are eligible to participate on state funded projects to meet commitment requirements. Any certified firm is eligible to participate in private or non-state funded projects.

(5) These rules also cover publication of a directory, ineligibility complaints, and representation of the COBID in contested case hearings.

(6) In making a determination as to whether a firm qualifies for certification, in addition to the rules contained herein, the COBID defers to the Code of Federal Regulations 49 CFR part 26.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055, ORS 200.170, ORS 279.011

Hist.: OBDD 17-2010, f. 4-30-10, cert. ef. 5-1-10; Renumbered from 123-200-0005, OBDD 7-2013, f. & cert. ef. 9-3-13; OBDD 1-2016, f. & cert. ef. 1-5-16

**123-200-1100**

**Definitions**

As used in these rules, the following terms shall have the following definitions, unless the context requires otherwise:

(1) "Agency" means the Oregon Business Development Department.

(2) "COBID" means the Certification Office for Business Inclusion and Diversity in the Oregon Business Development Department.

(3) "Commercially Useful Function" or "CUF" means function the firm performs when it is responsible for execution of the work of the contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. The firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. 49 CFR § 26.55(c)(1) (e-CFR 2015 Edition)

(4) "Contribution" means a real and substantial contribution of money, tangible personal assets, and expertise to acquire ownership interest in the firm. A contribution is not a promise to contribute, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee.

(5) "Control" or "controlled" means that operational and managerial control of all aspects of the business is true, real, and exercised by one or more socially disadvantaged individual(s) as further defined in 49 CFR § 26.71 (2013 Edition).

(6) "Disadvantaged Business Enterprise" or "DBE" means a business that meets the eligibility standards for participation in United States Department of Transportation (USDOT) federally-funded projects set out in 49 CFR parts 23 and 26 (2013 Edition).

(7) "Emerging Small Business" or "ESB" means an independent business or firm that meets the requirements as defined under OAR 123-200-1600.

(8) "Independence" or "Independent" means the business is not dependent upon any non-disadvantaged, non-minority or non-woman owned firm.

(9) "Management Control" or "Management" means that the applicant has responsibility for the critical areas of business operations and has the demonstrated ability to make independent and unilateral business decisions needed to guide the future of the business.

(10) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is one of the persons described in (a) through (f) below.

(a) Black American includes persons having origins in any of the Black racial groups of Africa;

(b) Hispanic American includes persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;

(c) Native American includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(d) Asian-Pacific American includes persons whose origin is from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the United States Trust Territories of the Pacific Islands, the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(e) Subcontinent Asian Americans includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;

(f) Any additional groups whose members are designated as socially disadvantaged by the Small Business Administration and/or as designated under 49 CFR Part 26 (2013 Edition).

(g) Other minority group membership as established by the applicant. Membership is based on evidence provided by the applicant to support the applicant's claim he or she is a member of a minority group and the particular minority community recognizes the individual to be a member of the community. It is in COBID's discretion to determine if the applicant's claim is valid. If the minority community does not exist in Oregon, the burden of proof shifts to the applicant to prove he or she is a socially and economically disadvantaged individual.

(11) "Minority Business Enterprise" or "MBE" means a business owned and operated by a minority who meets the eligibility standards set out in OAR 123-200-1210 through 123-200-1240. For the purposes of the certification programs, the rules recognize women as a separate group and not as a "minority" group.

(12) "Ownership" or "Owned" has the meaning set out in 49 CFR § 26.69 (e-CFR 2015 Edition).

(13) "Public agency" or "agency" means every government officer, board, commission, department, institution, branch or agency of the government, whose costs are paid wholly or in part from funds held in the federal, state, county, or city treasury.

(14) "Principal place of business" means the place where the firm directs, controls, and coordinates its primary, high-level business activities; the address the firm uses to file Federal income taxes. If the firm uses a P.O. Box, the COBID may request additional documentation to verify location.

(15) "Service Disabled Veteran" or "SDV" means a veteran who possesses either a disability rating letter issued by the United States Department of Veterans Affairs, establishing a service-connected rating between 0 and 100 percent, or a disability determination.

tion from the United States Department of Defense. 38 CFR § 74.1 (e-CFR 2015 Edition)

(16) “Small Business” means a small business as defined pursuant to 13 CFR part 121 (e-CFR 2015 Edition). A small business shall not include any concern or group of concerns controlled by the same socially disadvantaged individual or individuals that have average annual gross receipts over the previous three fiscal years (including its affiliates) that exceed the cap as established yearly by the Small Business Administration (SBA).

(a) Firms seeking certification must also meet the business and NAICS size standards set yearly by the SBA.

(b) The COBID will utilize federal tax information, submitted by the applicant along with new applications, No Change Statements, and certification review applications, to determine annual gross receipts for the business.

(17) “Socially Disadvantaged Individuals” means individuals who are minorities, women, service disabled veterans or any other individuals found to be disadvantaged by the SBA pursuant to Section 8(a)(5) of the Small Business Act and has the meaning set out in 49 CFR § 26.67 (e-CFR 2015 Edition).

(18) “Timely notice” as used in ORS 200.035, shall mean at the time the state agency publicly releases the contract and bid request solicitations.

(19) “Woman Business Enterprise” or “WBE” means a business owned and operated by a woman who meets the eligibility standards set out in OAR 123-200-1210 through 123-200-1240.

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

Stat. Auth.: ORS 200.005

Stats. Implemented: ORS 200.005

Hist.: OBDD 17-2010, f. 4-30-10, cert. ef. 5-1-10; Renumbered from 123-200-0010, OBDD 7-2013, f. & cert. ef. 9-3-13; OBDD 1-2016, f. & cert. ef. 1-5-16

### 123-200-1210

#### Minorities, Women and Service Disabled Veterans Certification — Determination of Socially and Economically Disadvantaged

(1) It is a rebuttable presumption that minorities, women, and service-disabled veterans are socially and economically disadvantaged.

(2) The COBID may also determine on a case-by-case basis other individuals who are socially and economically disadvantaged. These individuals claiming disadvantaged status are required to submit a socially and economically Disadvantaged Questionnaire administered by COBID.

(3) Socially disadvantaged individuals are people subject to racial or ethnic prejudice or cultural bias because of their identity as members of a group without regard to individual qualities.

(a) The social disadvantage must stem from the individual’s color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual’s control.

(b) The applicant must demonstrate:

(A) He or she personally suffered the disadvantage because of treatment in the United States; and

(B) The disadvantage was chronic, long-standing, and substantial, and was not fleeting or insignificant.

(4) Social disadvantage does not include factors common to small business.

Stat. Auth.: ORS 200.005 & 200.055

Stats. Implemented: ORS 200.005 & 200.055

Hist.: OBDD 1-2016, f. & cert. ef. 1-5-16

### 123-200-1220

#### Determination of Ownership

(1) In determining whether the socially disadvantaged individual(s) in a firm owns the firm, the COBID must consider all the facts in record viewed as a whole.

(2) One or more socially disadvantaged individuals must own at least 51% of the business. COBID will apply the standards a criteria for ownership as set out in 49 CFR § 26.69 (e-CFR 2015 Edition).

(a) In the case of a corporation, such individual(s) must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

(b) In the case of a partnership, the socially disadvantaged individual(s) must own 51 percent of each class of partnership interest. The ownership must also reflect in the firm’s partnership agreement.

(3) In the case of a limited liability company, the socially disadvantaged individual(s) must own at least 51 percent of each class of member interest.

(4) If a firm is owned equally (i.e., 50/50) by a combination of socially or economically disadvantaged individuals, the COBID will determine whether a firm is certified as a MBE, WBE, or SDV based on which individual possesses overall management and control of the firm. Evidence in support of management and control may include one or more of the following:

(a) Professional licensing as generally required by the industry (e.g., engineer, architect, plumber, electrician, landscape architect, etc.)

(b) Control of day-to-day operations of the firm

(c) Position held in the firm

(d) Ability to hire and fire staff

(5) The business must be controlled by one or more socially disadvantaged individual(s). COBID will apply the standards and criteria set out in 49 CFR § 26.71 (e-CFR 2015 Edition).

(6) One or more of the socially disadvantaged individual(s) must have made a substantial contribution of capital to the business, which is commensurate with his or her ownership interest.

(a) The COBID may consider differences in compensation between the potentially certified owner(s) and other participants in the firm to determine whether to certify a firm. Such consideration shall encompass the duties of the persons involved, normal industry practices, the firm’s policy, and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm.

(b) A contribution is not a promise to contribute capital, an unsecured note payable to the firm or to an owner who is not a socially disadvantaged individual or mere participation in a firm’s activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor’s ownership interest is security for the loan.

(7) The socially disadvantaged individual’s ownership in the firm must be real, substantial, and continuing, going beyond pro forma ownership and reflected as such in all business documents. The socially disadvantaged owner(s) must enjoy the customary incidents of ownership, and share the risks and profits commensurate with their ownership interest, as demonstrated by the substance, not merely the form, or arrangements.

(8) The socially and economically disadvantaged individuals must directly hold all securities that constitute ownership of a firm.

(a) Except as provided in this paragraph, the COBID does not consider securities or assets held in trust, or by any guardian for a minor, as owned or held by the socially disadvantaged persons in determining the ownership of a firm.

(b) The COBID does recognize securities or assets held in trust by a socially disadvantaged individual for purposes of determining ownership of the firm, if:

(A) The beneficial owner of securities or assets held in trust and the trustee are both socially disadvantaged individuals; or

(B) The beneficial owner of a trust is a socially disadvantaged individual who, rather than the trustee, exercises effective control over the management, policymaking, and daily operational activities of the firm. The applicant may count assets held in a revocable living trust only in the situation where he or she is the sole grantor, beneficiary, and trustee.

(9) If the applicant is relying on his or her expertise for certification, he or she must have a significant financial investment in the firm.

(10) The COBID will consider the following requirements as they apply to situations in which the applicant relies on his or her expertise as a contribution to acquire ownership. The owner’s expertise must be:

(a) In a specialized field;

(b) Of outstanding quality;

- (c) In areas critical to the firm's operations;
- (d) Indispensable to the firm's potential success;
- (e) Specific to the type of work the firm performs; and
- (f) The records of the firm must reflect the applicant's expertise. These records must clearly show the contribution of expertise and its value to the firm. The applicant may quantify his or her expertise in years of experience, education, and accomplishments related to the types of services the firm offers.

(11) When an applicant receives majority stock ownership or control of a firm from a non-qualifying applicant within two years prior to submitting an application and the non-qualifying applicant remains involved in the firm as a stockholder, officer, director, or key employee the COBID will presume that the applicant does not control the firm. The applicant may rebut this presumption by showing that he or she has independent management experience necessary to control the operation of the firm and indeed is participating in the management of the firm.

(12) Assets held by a socially disadvantaged individual(s) as result of a final property settlement; court order in a divorce or, legal separation from a non-socially disadvantaged individual; through inheritance; or following the death of the former owner, are assets of the socially disadvantaged individual. The terms and conditions of legal documentation governing that transaction (i.e. divorce settlement, legal will, etc.) support the transfer of ownership to them.

(13) The COBID will not consider as evidence of ownership interest or assets in a firm obtained by a socially disadvantaged individual through gift or transfer from a non-socially disadvantaged individual unless there is evidence to support the transfer of interest and assets occurred for reasons other than obtaining certification.

(14) To overcome this presumption and permit the COBID to count interests or assets, the socially disadvantaged individual must demonstrate by clear and convincing evidence that:

(a) The gift or transfer to the socially disadvantaged individual was made for reasons other than obtaining certification as a MBE, WBE, and/or SDV; and

(b) The socially disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-socially disadvantaged individual who provided the gift or transfer.

(15) The COBID will closely scrutinize such transfers when the socially disadvantaged individual and non-socially disadvantaged individual are:

(a) Directly affiliated and involved in the same firm for which the socially disadvantaged individual is seeking certification;

(b) Involved in the same or a similar line of business; or

(c) Engaged in an ongoing business relationship related to the types of services in which the socially disadvantaged individual is seeking certification.

(16) In situations in which marital assets form a basis for ownership of a firm, the COBID considers the following:

(a) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, the COBID must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources. In doing so, the other spouse must irrevocably renounce and transfer all rights in the ownership interest of the applicant in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. The COBID does not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially disadvantaged owner of the applicant firm.

(b) The COBID will require a fully executed Non-participation Statement renouncing the non-qualifying spouse or domestic partner's rights in the jointly owned or community asset used to acquire an ownership interest in the firm.

(17) The COBID must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because:

(a) A socially disadvantaged individual acquired his or her ownership interest as the result of a gift or transfer without adequate con-

sideration, other than the types set forth in paragraph (12) of this section;

(b) There is a provision for the co-signature of a spouse who is not a socially disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

(c) An applicant receives ownership of the firm in question or its assets for adequate consideration from a spouse who is not a socially disadvantaged individual to a spouse who is such an individual.

Stat. Auth.: ORS 200.005 & 200.055

Stats. Implemented: ORS 200.005 & 200.055

Hist.: OBDD 1-2016, f. & cert. ef. 1-5-16

## 123-200-1230

### Determination of Independence

(1) The business must be a "for profit" independent, properly licensed and registered with the Secretary of State in the State of Oregon.

(2) In determining whether a certified firm is an independent business, the COBID must scrutinize relationships with non-certified firms in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(3) The COBID may consider whether present or recent employer/employee relationships between the owner(s) of the certified firm and non-certified firms, or persons associated with non-certified firms, compromise the independence of the certified firm.

(a) The COBID may examine the certified firm's relationship with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the certified firm.

(b) While reviewing factors related to the independence of a certified firm, the COBID must consider the consistency of relationships between the firm and non-certified firms with normal industry practice.

(4) The COBID will consider whether owner(s) of the business owns or leases equipment and resources necessary to perform the services provided. If the business leases equipment, leasing must follow normal industry practice and the lease must not involve a relationship with a prime contractor or non-disadvantaged individual that compromises the control and independence of the firm.

(5) The COBID may certify a business operating under a franchise or license agreement if it meets the standards in this subpart and the franchiser or licensor does not have an affiliation with the franchisee or licensee. The franchisor or license issuer must not have the ability to control employees, location, or prevent the certified owners from making any business decision for the firm without the cooperation or vote of any non-certified individual.

Stat. Auth.: ORS 200.005 & 200.055

Stats. Implemented: ORS 200.005 & 200.055

Hist.: OBDD 1-2016, f. & cert. ef. 1-5-16

## 123-200-1240

### Determination of Management Control

(1) All legal documents and financial statements must clearly document that the socially disadvantaged individual has management control of the firm.

(2) A certified owner must hold the highest officer position in the company (e.g. chief executive officer or president).

(a) In a corporation, the certified owner(s) must control the Board of Directors.

(b) In a partnership, one or more certified owner(s) must serve as general partners, with control over all partnership decisions.

(c) In order for a certified individual(s) to control a partnership, any non-certified partners must not have the power, without the specific written concurrence of the certified partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

(d) Certified owners and/or firms must not be subject to any formal or informal restrictions, which limit the customary discretion of the certified owner(s). There can be no restrictions (i.e. through corporate charter provisions, by-laws, contracts, or any other formal or informal devices) preventing the certified owners from making any

business decision for the firm without the cooperation or vote of any non-certified individual. This paragraph does not preclude a spousal co-signature on documents as provided for in 49 CFR § 26.69(j)(2) (2013 Edition).

(3) The socially disadvantaged individual(s) must possess sufficient knowledge, managerial and technical competence, and experience, and have an overall understanding directly related to the type of business in which the firm seeks certification. The socially disadvantaged individual(s) must also be able to maintain day-to-day control over all operational aspects of the business.

(a) The COBID will evaluate the training and experience of the applicant based on a variety of factors. The list is not exclusive and COBID may take additional training and experience into consideration when making a determination regarding the owner's qualifications. Factors include:

- (A) A college degree in the field of expertise;
- (B) Essential license in Oregon in the field in which the firm operates (e.g. electrician, plumber, engineer, or landscape architect, etc.) that is current and up-to-date;
- (C) Experience and/or training in the primary field of expertise;
- (D) Experience in project management in the primary field of expertise;

(E) Individual's presence and activity on work site and ability to determine if work is proceeding in accordance with plans and to supervise field operations, resolve problems, and answer technical questions for subordinates;

(F) Individual's demonstration of knowledge in area of expertise during the certification interview process; and

(G) Additional training and experience related specifically to construction firms.

- (i) Has ability to read and interpret blueprints and specifications.
- (ii) Has independently done take offs and can prepare estimates and bids.

(iii) Can operate necessary equipment (e.g. excavator, backhoe, dump truck, etc.)

(b) Quality of work performed does not determine an applicant's eligibility for certification.

(c) In order to determine that the socially disadvantaged individual(s) has the technical expertise and competence to maintain operational control, the socially disadvantaged individual(s) may be required to submit proof of expertise to include:

- (i) A copy of his or her essential license(s).
- (ii) His or her resume.

(4) The socially disadvantaged applicant(s) must have responsibility for the critical areas of business operations and demonstrate the ability to make independent and unilateral business decisions needed to guide the future of the business.

(5) The certified owner(s) must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy, and operations.

(6) The socially disadvantaged applicant(s) is not required to have hands-on, direct control or expertise in every aspect of the business' affairs so long as the owner is able to intelligently use discretion, critically evaluate, and determine appropriate course of action based on information presented by employees.

(7) In order to substantiate management and control of a firm, a certified owner(s) cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the applicant from devoting sufficient time and attention to the affairs of the firm to control its activities.

(8) If an individual is required to hold a specific license (e.g. engineer, electrician, or plumber, etc.) or other credential in order to legally provide the goods or services in areas of work in which the firm seeks certification, the certified owner(s) who control a firm of that type must possess the required license or credential.

(a) If a trade or industry requires a specific license or credential (e.g., landscape architecture, plumber's license, etc.) in order to provide services in Oregon, general licensing provided by the Construction Contractor's Board (CCB) does not meet this prerequisite without the necessary trade or industry license.

(b) If the CCB requires a firm appoint a Responsible Managing Individual (RMI), this individual can be an owner or a manager of the firm and must be able to manage or supervise its construction activities.

(9) A socially disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity.

(10) When a socially disadvantaged individual obtains ownership or control of a firm and the previous owner or individual in control is not a socially disadvantaged individual but remains active in some role at the firm, the socially disadvantaged individual must demonstrate to the COBID, by clear and convincing evidence, that:

(a) The transfer of ownership or control to the applicant was made for reasons other than obtaining certification; and

(b) The applicant actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-certified individual who formerly owned and/or controlled the firm.

(11) In considering a MBE, WBE, or SDV certification where a non-disadvantaged individual was formerly controlling the firm, the COBID may consider the difference between the compensation of the non-disadvantaged individual and the socially disadvantaged applicant as a factor in determining control.

(12) If the COBID is unable to determine that the socially disadvantaged owner(s) control the firm, as distinct from the family as a whole, then the socially disadvantaged owner(s) have failed to carry their burden of proof concerning control even though they may participate significantly in the firm's activities.

(13) Individuals who are not socially disadvantaged may be involved in a MBE, WBE, and/or SDV firm as owners, managers, employers, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm or be disproportionately responsible for the operation of the firm.

(14) The certified owner(s) of the firm may delegate various areas of management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially disadvantaged individuals. Such delegation of authority must be revocable and the certified owner(s) must retain the power to hire and fire any person to whom they delegate such authority. The managerial role of the certified owner(s) in the firm's overall affairs must be such that the COBID can reasonably conclude that the certified owner(s) actually exercises control over the firm's operations, management, and policy.

(15) The certified individual(s) controlling a firm may use an employee leasing company. The use of such a company does not preclude the certified individual(s) from controlling the firm if he or she continues to maintain an employer-employee relationship with the leased employees.

(16) When a firm contracts out the actual management of the business to individuals other than the owner or delegates the management to employees, those persons who have the power to hire and fire these managers exercise management control.

(17) In determining whether a certified owner(s) controls a firm, the COBID may consider whether the firm owns equipment necessary to perform its work.

(a) The business must own or lease sufficient machinery, equipment, and employees to operate. In making this determination, the COBID shall compare the operations of the certified firm to a non-certified firm in the same or similar business. If leasing, it must be a normal industry practice and the lease must not involve a relationship with a prime contractor or non-disadvantaged individual that compromises the control or independence of the firm as referenced under OAR 123-200-1100(2).

(18) The COBID may grant certification to a firm only for specific types of work in which the certified owner(s) has the ability to control the firm. To gain certification in an additional type of work, the firm needs to demonstrate to the COBID that only its certified owner(s) controls the firm with respect to that type of work.

(a) The North American Industry Classification System (NAICS) codes assigned to the firm must describe the types of work an applicant can control and manage and must directly relate to the services provided.

(b) The applicant bears the burden of providing the necessary, detailed company information to COBID for it to make an appropriate NAICS code designation and is primarily responsible to ensure the codes remain current to reflect services provided.

(c) In order for certified individuals to control a partnership, any non-certified partners must not have the power, without the specific written concurrence of the certified partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

Stat. Auth.: ORS 200.005 & 200.055

Stats. Implemented: ORS 200.005 & 200.055

Hist.: OBDD 1-2016, f. & cert. ef. 1-5-16

### 123-200-1300

#### Certification: Application and Procedure

(1) Businesses seeking certification as a DBE, MBE, WBE, SDV, or ESB must complete the Certification Application provided by the COBID.

(2) Applicants seeking certification as a DBE through COBID must meet the eligibility criteria set out in 49 CFR parts 23 and 26 and any written directives, administrative guidelines, and written decisions of the US Department of Transportation.

(3) The COBID will make certification determinations based on the eligibility standards included in these rules and apply written directives of the administrative guidelines, Oregon Revised Statutes, 49 CFR part 26, and written appeal decisions regarding state certification so long as they are in accord with these rules.

(4) The completed application, together with all required supporting documentation, shall be submitted through the e-application process, by mail or in person to the Certification Office for Business Inclusion and Diversity, 775 Summer St. NE, Suite 200, Salem OR 97301. The COBID will not process incomplete applications.

(5) The COBID will take action on completed applications as promptly as its resources permit. The order of priority for processing applications shall be the date the COBID receives the complete application including all supporting documentation.

(6) The COBID may conduct a phone interview or on-site investigation at the owner's place of business and/or jobsite if applicable. The purpose of the interview and/or site visit is to verify material submitted with the application and to substantiate eligibility.

(7) As part of its investigation, the COBID may require firms to provide information in addition to that requested on the application. The applicant has the burden of proving that he or she is eligible for certification.

(8) The applicant must cooperate fully with the investigation and make available any additional information requested by the COBID.

(9) The COBID shall notify applicants promptly by mail after making a decision. When the COBID denies an application, the letter shall set forth the specific reasons for the denial.

(10) In making certification determinations under this section, the COBID does not consider whether the business has previously performed or would be able to perform a commercially useful function. Repeated failure by a business to perform a commercially useful function may indicate, however, that the business is not independent, owned, or controlled by a socially disadvantaged individual.

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

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: OBDD 17-2010, f. 4-30-10, cert. ef. 5-1-10; Renumbered from 123-200-0040, OBDD 7-2013, f. & cert. ef. 9-3-13; OBDD 1-2016, f. & cert. ef. 1-5-16

### 123-200-1400

#### Certification Review

(1) All certifications are valid for three years.

(2) The COBID will send an annual "no change" statement to firms, approximately 30 days prior to the one-year and two-year anniversaries of the certification date. The applicant must complete the statement, provide federal tax information for the previous year,

and provide documentation supporting any changes prior to the anniversary date, or the COBID will decertify the firm.

(3) The COBID will send a certification review notice to certified firms approximately two months prior to the firm's anniversary date. The applicant shall promptly return the application along with any requested documentation (e.g. by-law amendments, evidence of changes in ownership, etc.). The COBID will review the signed application to determine continued eligibility and may conduct an on-site investigation to verify information submitted.

(4) A firm owner must demonstrate that his or her business currently meets the qualifications for the requested certification. It is the responsibility of the firm to provide the information deemed necessary by the COBID to ascertain eligibility. Failure to return the certification review form or provide supporting documentation may lead to decertification.

Stat. Auth.: ORS 200.005

Stats Implemented: ORS 200.006

Hist.: OBDD 7-2013, f. & cert. ef. 9-3-13; OBDD 1-2016, f. & cert. ef. 1-5-16

### 123-200-1500

#### Denial and Decertification of MBE, WBE, and SDV Firms

(1) The COBID may deny or decertify a firm at any time it determines that the firm does not or no longer meets the eligibility standards set out in OAR 123-200-1000 through 123-200-2300 and ORS 200.005. The procedure is as follows:

(a) In the case of denial of initial certification, the COBID will notify the applicant in writing of the denial and provide a detailed explanation supporting the reasons for denial.

(b) In the case of decertification, the COBID shall issue a Notice of Intent to Decertify the firm 21 days prior to the date of decertification and provide a detailed explanation to support the reasons for the determination.

(c) In the event of a denial or decertification, the applicant or certified firm has 21 calendar days from the date of notice in which to submit a written appeal to the manager of the COBID. Following the review of the applicant's written appeal, the manager of the COBID will issue a decision.

(d) If the applicant or certified firm does not agree with the manager's decision, he or she may request a contested case hearing. The COBID will conduct a contested case hearing in accordance with ORS 183.310 to 183.550. Following the contested case hearing, the Hearings Officer will forward a proposed order to the manager of the COBID for issuance of a final order.

(e) If the applicant or certified firm files an appeal in writing or requests a contested case hearing, the COBID will stay the denial or decertification pending the issuance of the final order. If the applicant or certified firm does not submit a written appeal or request for a contested case hearing to the COBID within the 21-day period, the denial or decertification shall be final.

(2) The COBID may decertify a firm if the socially disadvantaged individual leaves the business or dies.

(3) An individual may withdraw his or her application or certification if he or she no longer wishes to participate in the program. The applicant must complete a notarized withdrawal form provided by the COBID.

(4) Any business denied initial certification is ineligible to reapply for a period of 12 months.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.005

Hist.: OBDD 7-2013, f. & cert. ef. 9-3-13; OBDD 1-2016, f. & cert. ef. 1-5-16

### 123-200-1600

#### Emerging Small Business (ESB) Certification Procedures — Eligibility Standards

(1) The ESB program is race and gender neutral and is based on the size of the business, not the individual applicant.

(2) A firm's certification as an ESB may only last for a maximum of 12 consecutive years from the original certificate date and qualify as a tier one or tier two firm.

(a) A certified firm may only remain in each tier for a period of six years.

(b) If the firm graduates to a tier two status, due to size, before exhausting six years of certification under tier one, the firm's certi-

fication in tier two must not exceed a period of six years, regardless of the firm's certification period as tier one.

(c) If an applicant provides compelling information to show, to the satisfaction of the COBID, that he or she has not received an opportunity to bid on ESB projects during the 12 years of eligibility, the COBID will extend the certification of the firm for one additional year. A firm may receive the extension only once. The firm must provide a written request for an extension to the COBID, including any supporting documentation.

(3) To be eligible for certification as an ESB, a firm must meet the following criteria:

(a) Be in existence, operational, and in business for a profit.

(b) The principal place of business must be located in the State of Oregon as determined by the address used to file federal income taxes. If the business uses a P.O. Box, the COBID may require additional documentation to verify location.

(c) Be properly licensed and legally registered with the Secretary of State in the State of Oregon (i.e. registered as a domestic corporation, limited liability corporation, partnership, or assumed business name, etc.).

(d) Must not be a subsidiary or parent company belonging to a group of firms that are owned or controlled by the same individuals if, taken together, the group of firms do not qualify.

(e) Have average, annual gross receipts over the last three years that do not exceed monetary limitations determined by OBDD/COBID annually based on the Consumer Price Index.

(f) If state or local law requires a person to have a particular license or other credential in order to own and/or control a certain type of firm, then the certified applicant(s) who owns and controls an ESB must possess the required license or credential.

(g) The owner(s) must work a minimum of 20 hours per week for the business.

(h) The business must have 19 or fewer full-time employees to qualify for tier one or have 29 or fewer full-time employees to qualify to tier two. The COBID calculates a full-time employee as follows:

(A) Hours worked by all employees (part-time, seasonal, or full-time) shall be converted into equivalent hours; dividing the total hours worked by 2080.

(B) The COBID does not consider owners of the business in the calculation of the equivalent employees.

(C) The period of calculation shall be the same as the business' tax year.

Stat Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: OBDD 7-2013, f. & cert. ef. 9-3-13; OBDD 1-2016, f. & cert. ef. 1-5-16

### 123-200-1700

#### ESB Certification: Application Form and Procedure

(1) The COBID will utilize ORS 200.170 to review a business' eligibility for certification as an ESB.

(2) A firm wishing to apply for certification in the ESB program shall complete the application provided by the COBID.

(3) The completed application, together with all required supporting documentation, shall be submitted to the Certification Office for Business Inclusion and Diversity at 775 Summer Street NE, Suite 200, Salem, OR 97301. The COBID will not process incomplete applications.

(4) The COBID will conduct a review and take action on completed applications as promptly as resources permit. The order of priority for processing applications shall be the date the COBID receives the completed application with all supporting documentation.

(5) The COBID shall make a determination based on the eligibility standards included in these rules and the applicable laws of the State of Oregon. As part of its investigation, the COBID may require the applicant firm to provide information in addition to that requested on the application. The applicant(s) has the burden of proving the firm is eligible for certification and meets all the requirements of the program. If the COBID certifies the firm, the agency will send a confirmation letter.

(6) The applicable emerging small business size standard for each applicant set out in ORS 123-200-1600 shall be determined by the business' primary service offered.

(7) Registration of the business with the Construction Contractors Board and/or Landscape Contractors Board will establish a firm as a construction firm. For the purposes of this program, the COBID will consider a construction-related trucking business as a construction firm. The COBID does not consider Engineering and Architecture firms as construction firms.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055, 200.170

Hist.: OBDD 7-2013, f. & cert. ef. 9-3-13; OBDD 1-2016, f. & cert. ef. 1-5-16

### 123-200-1800

#### Certification Review

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

(2) The COBID will send an annual "no-change" statement to firms approximately 30 days prior to the one-year and two-year anniversaries of the certification date. The applicant must submit a completed statement, along with federal tax information for the previous year and documentation of any changes, prior to the anniversary date or the firm will be decertified.

(3) The ESB shall notify the COBID within 30 days of any changes, which may affect its continued eligibility in the program. Failure to notify the COBID may result in denial or decertification.

(4) The COBID will send a certification review notice and application to certified firms 60 days prior to expiration of current certification. The applicant shall promptly return the completed application along with any requested documentation (i.e. evidence of change in ownership, federal tax returns for the last year, etc.). Continued certification is not automatic. The applicant must demonstrate that his or her business still meets the criteria set out in OAR 123-200-1600 through 123-200-1700.

(5) The COBID staff shall review the signed application to determine the firm has continued eligibility. The COBID may also request additional information to verify the firm has continued eligibility.

(6) Failure to return the completed review application by the expiration date shall result in decertification.

Stat Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: OBDD 7-2013, f. & cert. ef. 9-3-13; OBDD 1-2016, f. & cert. ef. 1-5-16

### 123-200-1900

#### Denial and Decertification of ESB Firms

(1) This rule applies only to the denial and decertification of a firm's ESB status under Oregon law. The COBID may deny certification or decertify a firm at any time if the agency determines that the firm no longer meets eligibility standards set out in OAR 123-200-1600. The procedure is as follows:

(a) The COBID will issue a Notice of Intent to Deny Certification in the case of denial of initial certification and the reasons therefore.

(b) In the case of decertification, the COBID shall issue a Notice of Intent to Decertify the firm 21 days prior to the date of decertification, and indicate the specific reasons for the decision.

(c) In the event of a denial or decertification, the applicant or firm representative has 21 calendar days from the date of notice in which to submit a written appeal to the manager of the COBID. Following the review of the applicant's written appeal, the manager of COBID will issue a decision.

(d) If the applicant or firm representative does not agree with the manager's decision, he or she may request a contested case hearing. The COBID will conduct a contested case hearing in accordance with ORS 183.310 to 183.550. Following the contested case hearing, the Hearings Officer will forward a proposed order to the COBID. The manager of the COBID will issue a final order.

(e) If the applicant or firm representative files an appeal in writing or requests a contested case hearing, the COBID will stay the denial or decertification pending the issuance of the final order. If the applicant or certified firm does not submit a written appeal or request

for a contested case hearing to the COBID within the 21-day period, the denial or decertification shall be final.

(2) An applicant or firm representative may withdraw an application or certification if there is no longer a desire to participate in the program. The applicant or firm representative must complete a withdrawal form provided by the COBID.

(3) Any business denied initial certification would be ineligible to reapply for a period of 12 months.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055, 183.310 - 183.550

Hist.: OBDD 7-2013, f. & cert. ef. 9-3-13; OBDD 1-2016, f. & cert. ef. 1-5-16

## 123-200-2000

### Complaints of Ineligibility for All Programs

(1) A complainant must submit a Complaint of Ineligibility regarding certification of an individual or firm to the COBID. The COBID will process complaints according to the following procedure:

(a) Any individual or agency who believes that an individual or certified firm does not qualify under the standards of eligibility for certification may file a complaint of ineligibility. The complainant(s) must fill out a formal complaint form provided by the COBID. The purpose of the complaint process is to maintain the transparency of all programs.

(b) The complainant must use the form provided and submit the document to the COBID setting forth facts, which indicate that the applicant or certified firm is not eligible. The complaint must include copies of any supporting documents the complainant(s) may possess. The complainant(s) shall describe the facts in as much detail as possible.

(c) The COBID will only investigate complaints based on first-hand knowledge and those that contain allegations supported by evidence. The COBID will not investigate anonymous or third party complaints. Complaints based on hearsay (i.e. third person account, general assumption, word-of-mouth, and/or speculation) will not be investigated. The COBID does not accept general allegations. The COBID will not investigate unsupported complaints and will return the document to the complainant.

(2) The COBID will notify the complainant(s) in writing when it refuses to investigate a complaint. The notification may include:

(a) The initial complaint filed by the complainant(s);

(b) Explanation of why the complaint is not being investigated; and

(c) A request for additional information, when applicable.

(3) The complainant(s) may submit a revised complaint addressing the COBID's concerns.

(4) The complainant(s) must sign the complaint and provide a physical mailing and email address, and telephone number where the COBID may reach the individual during the investigation.

(5) While responding to requests for information concerning any aspect of the programs, the COBID complies with provisions of the Federal Freedom of Information and Privacy Acts. The COBID may make available to the public any information concerning the programs not prohibited by federal or state law. Information submitted to the COBID is subject to public record law, ORS 192.410, 192.501, 192.502, and 192.505. The public may inspect certain information in the agency's possession. The information may include names of the complainant. Certain other records the COBID may keep confidential, under certain circumstances. These may include, but are not limited to: reports from creditors, employers, customers, suppliers, financial statements, tax returns, business records, employment history and other personal data submitted by the applicant, customer lists, bids, proposals, and contracting information, production, sales or cost data, and marketing strategy information. Although the agency will attempt to keep the information submitted confidential, it cannot guarantee confidentiality in all cases.

(6) The COBID may keep the identity of the complainant(s) confidential, at the complainant(s) election, throughout the course of the investigation. A complainant(s) may waive this privilege of confidentiality at any time. If such confidentiality will hinder the investigation, proceeding, hearing, or result in a denial of appropriate administrative due process to other parties, the COBID will advise

the complainant(s) that, in some circumstances, failure to waive the privilege of confidentiality may result in the closure of the investigation or dismissal of the proceeding or hearing.

(7) The COBID will investigate each complaint as promptly as resources allow. If preliminary investigative results show good cause for in-depth investigation, the COBID will notify the applicant or certified firm identified in the complaint by certified mail. The notice will summarize the grounds for the challenge and will require the applicant or certified firm to provide to the COBID, within a reasonable period of time, information sufficient to permit the agency to evaluate the complaint and the application or certified firm's qualifications for the programs. The applicant, certified firm, and complainant(s) shall cooperate fully in the COBID's investigation.

(8) After the investigation is complete, the COBID will issue a written decision in the form of a rejection of the complaint, Notice of Intent to Deny, or Notice of Intent to Decertify. The decision will address each issue raised in the complaint and throughout the investigation and the reasoning for the decision. The COBID will mail the written decision to the applicant or certified firm and to the complainant(s). The COBID will not deny or decertify a firm based on a complaint without first giving the firm an opportunity to respond.

(9) The applicant or certified firm has 21 calendar days from the date of Notice of Intent to Deny or Notice of Intent to Decertify in which to submit a written appeal to the manager of the COBID. Following the review of the applicant's written appeal, the manager of COBID will issue a decision.

(10) If the applicant or certified firm does not agree with the manager's decision, he or she may request a contested case hearing. The COBID will conduct a contested case hearing in accordance with ORS 183.310 to 183.550. Following the contested case hearing, the Hearings Officer will forward a proposed order to the manager of the COBID for issuance of a final order.

(11) If the applicant or certified firm files an appeal in writing or requests a contested case hearing, the COBID will stay the denial or decertification pending the issuance of the final order. If the applicant or certified firm does not submit a written appeal or request for a contested case hearing to the COBID within the 21-day period, the denial or decertification shall be final.

(12) The COBID will not consider opposing information received about an applicant prior to the initial certification as a complaint, but will consider the information in the investigation of the application for certification.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: OBDD 17-2010, f. 4-30-10, cert. ef. 5-1-10; Renumbered from 123-200-0090, OBDD 7-2013, f. & cert. ef. 9-3-13; OBDD 1-2016, f. & cert. ef. 1-5-16

## 123-200-2100 [Renumbered to 123-200-2300]

### 123-200-2200

#### Representation of the COBID by Officer or Employee in Contested Case Hearings

(1) An officer or employee of the COBID may appear on behalf of the COBID in contested case hearings, subject to the approval and authorization of the Attorney General.

(2) The COBID representative may not make legal argument on behalf of the COBID.

(a) "Legal argument" includes arguments on:

(A) The jurisdiction of the COBID to hear the contested case;

(B) The constitutionality of a statute, rule, or the application of a constitutional requirement to the COBID; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of evidence, examination and cross-examination of witnesses, presentation of factual arguments, or arguments on:

(A) The application of the facts to the statutes or rules directly applicable to the issues in the contested case;

(B) Comparison of prior actions of the COBID in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case; and

(D) The admissibility of evidence of the correctness of procedures followed.

(3) When an officer or employee of the COBID represents the agency, the presiding officer shall advise the representative of the manner in which to make objections and which matters to preserve for appeal. Such advice is of a procedural nature and does not change applicable law on waiver of 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 conclusion of the hearing.

Stat. Auth.: ORS 183.450(7) & 183.450(8)

Stats. Implemented: ORS 183.450(7)(b)

Hist.: OBDD 17-2010, f. 4-30-10, cert. ef. 5-1-10; Renumbered from 123-200-0190, OBDD 7-2013, f. & cert. ef. 9-3-13; OBDD 1-2016, f. & cert. ef. 1-5-16

### 123-200-2210

#### Contracting Agency Responsibilities

(1) It is the public agency's sole responsibility to perform commercially useful function (CUF) reviews.

(2) The COBID may consider and review the CUF reviews completed by the public contracting agency or any other relevant factors when determining whether the certified firm has exhibited a pattern of failing to perform CUFs.

(3) Notwithstanding any other part of this section, the COBID and a public contracting agency may enter into an agreement to share and protect information and otherwise cooperate in order to facilitate the enforcement of ORS 200.065 and ORS 200.075, as permitted by ORS 192.410 to 192.505.

(a) The COBID, for purposes of an investigation regarding certification, will consider CUF reviews under the following circumstances:

- (i) During the course of a project
  - (ii) When multiple reviews occur over an extended period suggesting reoccurring violations
  - (iii) Within three years of the discovery of an alleged CUF failure.
- (4) CUF reviews and investigations shall consider the following:

(a) Whether the certified firm is responsible for execution of the work outlined in the public contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. The public agency may evaluate the amount of work contracted and standard industry practices.

(b) Whether a certified firm is responsible, with respect to materials and supplies used on the contract, for negotiating price; determining quality and quantity; ordering the material and installing (where applicable); and paying for the material.

(c) Whether a certified firm has a role that is limited to that of an extra participant in a transaction, contract, or project through which participants pass funds in order to obtain the appearance of involvement by the certified firm. In determining whether a certified firm is such an extra participant and thus not performing a CUF, the public agency may examine similar transactions, particularly those in which non-certified firms participate.

(d) Whether a certified firm performs or exercises responsibility for at least 30 percent of the total cost of its contract with its own work force or subcontract with another firm certified by the State of Oregon. If it does not, the public agency may presume the certified firm is not performing a CUF. The firm must not subcontract a greater portion of the work of a contract to a non-certified firm than would be expected based on normal industry practice for the type of work involved.

(5) If a public agency determines that a certified firm is not performing a CUF as provided in paragraph (4) (b), (c), and (d) of this section, the certified firm may present evidence to rebut this presumption. The public agency may determine that the firm is performing a CUF given the type of work involved and normal industry practices.

(6) A public agency shall notify the COBID if the agency investigates a certified firm.

(7) The COBID may not decertify a firm based solely on a public agency's investigation.

(8) COBID, at its discretion, may perform its own investigation of a certified firm if it receives a complaint or notification that alleges a certified firm has failed to perform a CUF. As part of its investigation, COBID may request information from the complainant or author of the notification unless such requirements violate an agreement entered into by the public contracting agency and COBID under (3) of this section. If COBID does not receive sufficient information to conduct an investigation, COBID may in its discretion close the investigation without taking further action. Requested information may include:

(a) All documentation gathered by the public contracting agency during the CUF review and any additional documentation related to the complaint or investigation.

(b) Disclosure of all participants in a complaint or investigation.

(c) Confirmation that the public contracting agency notified the firm in question that it failed a CUF review and provided the firm an opportunity to present evidence to rebut the claim.

(d) List of current, open contracts let to the firm in question by the public contracting agency.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055, 200.065 and ORS 075

Hist.: OBDD 1-2016, f. & cert. ef. 1-5-16

### 123-200-2300

#### Directory

The COBID shall maintain a statewide-unified directory of certified firms as follows:

(1) Certified firms shall use the current business name as registered with the Secretary of State, Corporation Division. Businesses operating under the owner's individual name shall use the name listed on the business license. The firm may not use other names when contracting business. A firm may use an Assumed Business Name for contracting purposes, but only if the name is in conjunction with the registered business name.

(2) The directory will be maintained in an electronic format and available on-line. The directory shall indicate the certification status of each firm for all programs. The directory shall also include the firm's telephone numbers, fax number, and mailing address and list the firm's capabilities.

(3) The COBID shall update the directory on a daily basis including changes in business and email addresses and phone number(s).

(4) It is the responsibility of the applicant and certified business to notify the COBID within 30 days of any changes in its ownership or management, which may affect eligibility. Failure to notify the COBID may result in denial or decertification.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: OBDD 17-2010, f. 4-30-10, cert. ef. 5-1-10; Renumbered from 123-200-0180, OBDD 7-2013, f. & cert. ef. 9-3-13; Renumbered from 123-200-2100, OBDD 1-2016, f. & cert. ef. 1-5-16

## DIVISION 450

### OREGON ARTS PROGRAM GRANTS

#### 123-450-0000

##### Definitions

(1) "Commission" means the Oregon Arts Commission.

(2) "Executive Director" means the administrator of the Arts Program of the Oregon Business Development Department.

Stat. Auth.: ORS 359

Stats. Implemented: ORS 359

Hist.: OBDD 2-2011, f. & cert. ef. 1-3-11

#### 123-450-0010

##### Grants

(1) Receipt of Funds. The Commission may receive from state, federal, or local governments or from the community at large, funds for use by the Commission for its own programs or disbursements

deemed worthy by the Commission within the restrictions provided by law.

(2) Purposes and Goals. With funds available to the Commission for such purposes, the Commission may from time to time, on application, approve and disburse grants to encourage and support artistic endeavor in all disciplines and to insure as feasible that the cultural resources of the state are made available to all. In the grant process, the Commission should consider the following goals:

- (a) To support and promote excellence in the arts in Oregon;
- (b) To make artistic activities of high quality available to all;
- (c) To disseminate information about arts and cultural activities in the state, and about resources for the arts that are available, both regionally and nationally;
- (d) To assist Oregon artists who contribute to its economic and cultural development;
- (e) To encourage and aid the development of regional and local councils and organizations that promote cultural development and provide arts related services to the community.

(3) Eligibility. Grants to organizations shall be made only to those groups or organizations which are nonprofit and tax exempt pursuant to the then existing laws. Grants may be made to individual Oregon artists through certain programs, as determined by the Commission; Grants may be matched by a grantee recipient at the discretion of the Commission.

(4) Reporting. The applicant must submit financial information satisfactory to the Commission at the time of application and prior to action by the Commission. In the event a grant is made, the grantee must comply with the budget outlines submitted with the application and make records available from time to time for periodic audit by the Commission.

(5) Action on Grants. All applications submitted to the Commission must be acted upon by the Commission in public meetings; provided, however, the Commission may delegate to the Executive Director authority to authorize grants minimal in nature, subject to ratification by the Commission.

(6) Guidelines. With the approval of the Commission, guidelines shall be written and published that provides the public and applicants with information regarding the grants process and procedures. Appropriate forms and materials designed in accordance with such guidelines shall be made available.

Stat. Auth.: ORS 359

Stats. Implemented:

Hist.: AC 2, f. & ef. 6-2-77; Renumbered from 190-010-0035, OBDD 2-2011, f. & cert. ef. 1-3-11

### DIVISION 475

#### 1% FOR ART IN PUBLIC BUILDINGS

##### 123-475-0000

###### Purpose

The purpose of these rules is to:

- (1) Establish procedures for acquisition of works of art in an amount of 1% of direct construction costs of any project for the construction or alteration of any State Building in an amount of \$100,000 or more.
- (2) Promote placement of visual art of the highest quality where it can be easily viewed by the general public.
- (3) Utilize the talent of artists and craftspeople.
- (4) Preserve, encourage, and promote public awareness and understanding of the arts.

Stat. Auth.: ORS 359.025, 359.142

Stats. Implemented: ORS 276.073 – 276.090

Hist.: AC 1-1979, f. & ef. 7-23-79; AC 1-1991, f. 3-22-91, cert. ef. 3-21-91; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 190-020-0000, OBDD 36-2010, f. 10-14-10, cert. ef. 11-1-10

##### 123-475-0005

###### Definitions

The words and phrases used in these rules have the same meaning given them in ORS 276.073. In addition, as used in these rules, unless the context requires otherwise:

(1) “Architect” means the person or firm (architect, landscape architect, interior designer, or other design professional) designing the project to which the 1% provision applies.

(2) “Artist” means a practitioner in the visual arts, generally recognized by critics and peers as a professional of serious intent, who produces Works of Art and who is not the Project Architect.

(3) “Capitol Area” means the area defined in ORS 276.028.

(4) “Contracting Agency” means the state agency authorized by law to enter into public contracts.

(4) “Deaccession” means removal of a work of art from the public collection as described in OAR 190-020-0080.

(5) “Designated Agencies” means the Oregon Arts Commission, Department of Administrative Services and, for project located outside of the Capitol Area, the Contracting Agency.

(6) “Program” means the 1% for art program described in ORS 276.073 to 276.090.

(7) “Project” means the construction or alteration of a State Building that costs \$100,000 or more.

(8) “Resident Agency” means the state agency or agencies that will occupy or otherwise use State Building. The Resident Agency may be the Contracting Agency.

(9) “State Building” means any structure built or remodeled by the State of Oregon using legislatively appropriated monies except those excluded in the definition of state building in ORS 276.073. “State Building” does not include a building leased by a state agency, unless under a lease-purchase agreement or under any other agreement whereby ultimate state ownership is contemplated or expected.

(10) “Works of Art” means all forms of original creations of visual art, including and not limited to:

(a) Painting: all media, including both portable and permanently-affixed works such as murals.

(b) Sculpture: in the round, bas-relief, high relief, mobile, fountain, kinetic, electronic, and site specific works placed on public lands in any material or combination of materials.

(c) Visual art comprising other two- and three- dimensional media including but not limited to prints, clay, drawings, stained glass, mosaics, photography, fiber and textiles, wood, metal, plastics and other materials or combination of materials, calligraphy, mixed media, film, video, or any combination of forms of media and documented time-based works or installations.

Stat. Auth.: ORS 359.025, 359.142

Stats. Implemented: ORS 276.073 – 276.090

Hist.: AC 1-1979, f. & ef. 7-23-79; AC 1-1991, f. 3-22-91, cert. ef. 3-21-91; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 190-020-0005, OBDD 36-2010, f. 10-14-10, cert. ef. 11-1-10

##### 123-475-0010

###### Overview of Program

(1) The Oregon Arts Commission coordinates the Program. All Oregon State agencies, upon legislative approval of construction budgets, must notify the Oregon Arts Commission in writing of construction budgets or appropriations approved by the Legislative Assembly for any State Building. Upon written authorization by the Oregon Arts Commission, Oregon Arts Commission staff will meet with the Contracting Agency to plan the art selection process.

(2) Each Project will have its own Selection Committee. The Selection Committee is appointed in accordance with, and carries out the functions described in OAR 190-020-0015.

(3) Title for all Works of Art acquired pursuant to ORS 276.073 to 276.090 shall be in the name of the state on behalf of the Contracting Agency or Resident Agency, as determined by the Department of Administrative Services and the Contracting Agency, if the Contracting Agency is an agency other than the Department of Administrative Services.

(4) Works of Art in the state collection are insured by the State Insurance Fund, through the Department of Administrative Services Risk Management Division.

Stat. Auth.: ORS 359.025, 359.142

Stats. Implemented: ORS 276.073 – 276.090

Hist.: AC 1-1979, f. & ef. 7-23-79; AC 1-1991, f. 3-22-91, cert. ef. 3-21-91; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 190-020-0010, OBDD 36-2010, f. 10-14-10, cert. ef. 11-1-10

**123-475-0012**

**Public Art Advisory Committee**

The Oregon Arts Commission may establish a Public Art Advisory Committee consisting of two Oregon Arts Commissioners and up to seven arts professionals designated by the Oregon Arts Commission. The Oregon Arts Commission may use the Public Art Advisory Committee to make recommendations regarding general policies of the Program. The Public Art Advisory Committee will serve as a review panel for creation of a Roster of Prequalified Artists, may nominate and review artists for consideration by individual Art Selection Committees, and will serve as a review panel for Relocation or Deaccession requests. The Public Art Advisory Committee will not make selections for individual Program projects.

Stat. Auth.: ORS 359.025, 359.142

Stats. Implemented: ORS 276.073 – 276.090

Hist.: OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 190-020-0012, OBDD 36-2010, f. 10-14-10, cert. ef. 11-1-10; OBDD 11-2011, f. 12-30-11, cert. ef. 1-1-12

**123-475-0013**

**Prequalified Artist Roster**

Experienced and talented artists may be prequalified by the Oregon Arts Commission for Program projects. The Oregon Arts Commission publishes a prospectus inviting applications. The Public Art Advisory Committee serves as the review panel and makes recommendations to the Oregon Arts Commission for inclusion on the Prequalified Artists Roster. Applications may be filed at any time. All artists must reapply at the end of each three-year cycle. The Roster is available to serve as a resource for other public art programs, architecture firms and others seeking artists for projects.

Stat. Auth.: ORS 359.025; 359.142

Stats. Implemented: ORS 276.073 – 276.090

Hist.: OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 190-020-0013, OBDD 36-2010, f. 10-14-10, cert. ef. 11-1-10

**123-475-0015**

**Selection Committee**

(1)(a) A Selection Committee shall be established for each Program Project. The Selection Committee, on behalf of the Designated Agencies, shall determine the scope, direction, and particular needs of the Project. Except as provided in subsection (b) of this rule, the Selection Committee is solely responsible for artist selection, review of design, execution, placement and acceptance of Works of Art, and shall communicate such progress to the Designated Agencies.

(b) Exception to sole responsibility for review: The Oregon Arts Commission and the Contracting Agency shall identify other review bodies whose oversight may be required by law or agency policy including, without limitation, state or local historic preservation committees, city design review committees and formalized campus design committees. In such cases, the Selection Committee's recommendation will be submitted for review and approval by these bodies prior to execution of any contracts for Works of Art.

(c) Informal committees established by any of the Designated Agencies, such as user groups of a Project, shall be kept informed of Selection Committee progress, but have no role in approval of the Selection Committee's recommendations. The Designated Agency that establishes an informal committee is responsible for notifying the Selection Committee of the establishment of the informal committee.

(2) The Selection Committee shall consist of up to nine members designated by the Oregon Arts Commission as follows:

(a) The Project Architect;

(b) The Director of the Oregon Arts Commission or designee thereof;

(c) Up to three visual artists or other design professionals appointed by the Oregon Arts Commission (the selection of the design professionals will be made after consultation with the resident agency). The Arts Commission shall strive to appoint Selection Committee members with varied perspectives, including multicultural representation;

(d) The Director of the contracting agency, or designee thereof, most appropriately the planning/construction project manager;

(e) The Chair of the Capitol Planning Advisory Board, or the Chair's designee, if the project is in Marion or Polk County area (ORS 276 .028);

(f) Up to one representative of each resident agency, or in the case of a University, each program, college or school with significant use of the facility;

(g) Such other people who qualify and are approved by the Designated Agencies.

(3) Up to 5 Non-Voting Advisors may be appointed by the Contracting Agency and Resident Agency of the facility to serve on the screening committee and may include: students, museum director, curator, educator, art historian, collector, and concerned members of the community, or other qualified individuals

(4) Chairman of the Selection Committee: The Public Arts Coordinator of the Oregon Arts Commission shall serve as non-voting chairman.

(5) Voting: Each member of the Selection Committee designated pursuant to Section (2) of this rule will have one vote. A majority vote of members present shall determine the selection recommendations to be made to the Designated Agencies. At least one-half of the members of the Selection Committee must be present to have a vote.

Stat. Auth.: ORS 359.025, 359.142

Stats. Implemented: ORS 276.073 – 276.090

Hist.: AC 1-1979, f. & ef. 7-23-79; AC 1-1991, f. 3-22-91, cert. ef. 3-21-91; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 190-020-0015, OBDD 36-2010, f. 10-14-10, cert. ef. 11-1-10; OBDD 10-2012, f. 6-29-12, cert. ef. 7-1-12

**123-475-0025**

**Selection Committee Procedure**

(1) The Selection Committee shall meet to consider the particular needs of the Project including budget, suitable art forms, appropriate locations, and method of artist/artwork selection.

(2) The Selection Committee may use any of the following methods for selection of Works of Art for a Project:

(a) Open Competition: A prospectus will be prepared by the Oregon Arts Commission with the approval of the Selection Committee and will be made broadly available to artists. Artists will be asked to submit images or other materials to the Commission. The Selection Committee may commission new work and also may purchase available work.

(b) Two-stage competition. An open competition may occur in two stages whereby a limited number of finalists selected from the first stage of competition will be asked to submit more detailed proposals. Each of the finalists may enter into a contract with the Contracting Agency that provides for payment of a professional fee for preparation of a detailed proposal or consultation interview. The Oregon Arts Commission or Selection Committee may recommend the amount of the professional fee.

(c) Prequalified Artist Roster: The Selection Committee may interview or commission proposals from one or more artists on the Prequalified Artist Roster, or may make direction selection(s) from the Roster.

(d) Nominated Pool: The Selection Committee may designate an informal panel of arts professionals to nominate artists appropriate for consideration for the Project. The resulting pool will be reviewed by the Selection Committee.

(e) The Public Art Advisory Committee may designate an informal panel of arts professionals to nominate artists appropriate for consideration to the State of Oregon Art Collection. The resulting pool(s) may be reviewed by individual Selection Committees.

(f) Limited Competition: In cases when, in the judgment of the Oregon Arts Commission, it is not feasible to conduct an open competition for a specific Work of Art, the Oregon Arts Commission will initiate a Limited Competition by inviting several artists to submit materials to the Selection Committee. If detailed proposals or consultation interviews are requested, each artist will be paid a professional fee for preparation of the detailed proposal or consultation interview. The Oregon Arts Commission or Selection Committee may recommend the amount of the professional fee.

(g) Direct Selection: When budget constraints or construction schedules are such that the Selection Committee determines that an

open competition cannot be held, Direct Selection of the artist(s) or completed work will be made by the Selection Committee.

Stat. Auth.: ORS 359.025, 359.142

Stats. Implemented: ORS 276.073-276.090

Hist.: AC 1-1979, f. & ef. 7-23-79; AC 1-1991, f. 3-22-91, cert. ef. 3-21-91; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 190-020-0025, OBDD 36-2010, f. 10-14-10, cert. ef. 11-1-10; OBDD 11-2011, f. 12-30-11, cert. ef. 1-1-12

### 123-475-0030

#### Criteria for Selecting Works of Art

(1) Style and Nature: Works of Art of any aesthetic persuasion that are compatible in scale, material, form and content with their surroundings may be considered.

(2) Diversity of the Collection: The Oregon Arts Commission seeks to encourage and maintain a diverse collection for the state, including site-specific works developed with collaboration between an artist and design team, existing works of art created by an artist and purchased for permanent installation, and, when appropriate, documented time-based works or installations.

(3) Quality: The inherent quality of the work itself will be the highest priority for selection.

(4) Media: All forms of Works of Art may be considered. Works of Art may be either portable or permanently affixed or integral to the building or structure, or part of a temporary exhibition.

(5) Permanence: Due consideration will be given to structural and surface soundness and to permanence in terms of relative protection against theft, vandalism, weathering, or excessive maintenance or repair costs.

(6) Method of Acquisition: Either existing works or those commissioned for specific Projects may be acquired.

Stat. Auth.: ORS 359.025, 359.142

Stats. Implemented: ORS 276.073 - 276.090

Hist.: AC 1-1979, f. & ef. 7-23-79; AC 1-1991, f. 3-22-91, cert. ef. 3-21-91; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 190-020-0030, OBDD 36-2010, f. 10-14-10, cert. ef. 11-1-10; OBDD 11-2011, f. 12-30-11, cert. ef. 1-1-12

### 123-475-0035

#### Inclusions

Appropriations under ORS 276.080 for the Program may be spent for:

(1) The Work of Art itself which may include but is not limited to:

(a) Artist's professional fee;

(b) Labor of assistants;

(c) Materials required for production of the Work of Art;

(d) Professional services such as engineering and fabrication necessary to create or install the Work of Art;

(e) Artist's studio and operating costs of the artist, including rent, utilities, insurance, and other direct and indirect costs;

(f) Travel costs for the Artist for site visitation and research;

(g) Transportation of the Work of Art to the site;

(h) Installation of the completed Work of Art;

(i) Documentation of the work in progress or completed Work of Art;

(j) Contractual services for professionals engaged to install, maintain or clean Works of Art, and for conservation, restoration, project management or photography.

(2) Identification plaques, labels, and other such educational materials that promote and accurately credit the Artist(s) or project.

(3) Waterworks and electrical and mechanical devices, equipment and site work which are integral parts of the Work of Art.

(4) Frames, mats or pedestals necessary for the security of the Work of Art.

(5) Anchorages, containments and devices necessary for the security of the Work of Art.

(6) Works of Art which may be an integral part of the building.

(7) Expenses described in OAR 190-020-0055(3).

Stat. Auth.: ORS 359.025, 359.142

Stats. Implemented: ORS 276.073 - 276.090

Hist.: AC 1-1979, f. & ef. 7-23-79; AC 1-1991, f. 3-22-91, cert. ef. 3-21-91; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 190-020-0035, OBDD 36-2010, f. 10-14-10, cert. ef. 11-1-10

### 123-475-0040

#### Exclusions

Appropriations for the Program may not be spent for:

(1) Reproductions, by mechanical or other means, of original Works of Art.

(2) Decorative, ornamental, or functional elements that are designed by the Architect or consultants engaged by the Architect, as opposed to an Artist commissioned for this purpose.

(3) "Art objects" which are mass produced of standard design.

(4) Directional or other functional elements such as supergraphics, signage, color coding, maps, or other similar elements, except where an Artist is employed to produce them and has primary creative control over the Final Art.

(5) Those items which are required to fulfill the basic purpose of the Resident Agency. Examples would be works of art in the collection of a state museum, or Works of Art fulfilling an interpretive or educational role in a state park, the state library, or a college or university art museum or gallery.

(6) Preparation of the site necessary to receive the Work of Art, including, but not limited to, structural reinforcement, landscaping and utility service to the site, except to the extent the Work of Art is integrated into the structure or site and costs related to construction budget. Any such inclusion of costs for the Work of Art in the construction budget or costs of site preparation included in the art budget must be negotiated among the Designated Agencies and approved by the Oregon Arts Commission.

(7) Energy and water costs for operation of electrical and mechanical systems.

(8) Architect services to comply with OAR 123-475-0050(3)(d).

Stat. Auth.: ORS 359.025 359.142

Stats. Implemented: ORS 276.073 - 276.090

Hist.: AC 1-1979, f. & ef. 7-23-79; AC 1-1991, f. 3-22-91, cert. ef. 3-21-91; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 190-020-0040, OBDD 36-2010, f. 10-14-10, cert. ef. 11-1-10

### 123-475-0050

#### Responsibilities

(1) The Oregon Arts Commission shall:

(a) In consultation with the Designated Agencies, be responsible for selection, reviewing of design, execution, placement and acceptance of Works of Art", acquired under the Program;

(b) Appoint the members of the Selection Committee to carry out the functions described in OAR 123-475-0015;

(c) Assist the Contracting Agency in contract negotiations with artists;

(d) In consultation with the Resident Agency and Contracting Agency, may transfer Works of Art between public buildings as provided in OAR 123-475-0080;

(e) With the help of professionals, install portable Works of Art and re-hang or relocate Works of Art when it determines such actions are necessary;

(f) In partnership with the Resident Agency, advise regarding necessary maintenance procedures in accordance with the Oregon Arts Commission's Collection Management System.

(g) Maintain complete records and documentation of the collection with the assistance of the Contracting Agency;

(h) Coordinate public information aspects of the project.

(2) The Contracting Agency shall:

(a) Assist the Oregon Arts Commission with identifying new Projects subject to ORS 276.073 - 276.090, and shall notify the Oregon Arts Commission when construction budgets are approved and funds are available.

(b) Contract with the Architect for administrative or design services, or both, to be rendered in connection with the commissioning of Works of Art, notify the Architect of the state law requiring a non-deductible allocation for Works of Art and that the Architect will be a member of and must work closely with the Selection Committee for the Project and with the Artist, and include in its contract with the Architect clauses providing for the Architect's compliance with these rules, including without limitation as provided in section (3) of this rule;

(c) Notify the Oregon Arts Commission of the Project details;

(d) Consult with the Oregon Arts Commission and Screening Committee on the determination of budget and selection procedures;

(e) See that payment is made for all costs, professional fees, purchases and commissions in accordance with all applicable law;

(f) Communicate with the Oregon Arts Commission on Project coordination to assure timeliness of completion of the project;

(g) Contract with the Artist for procurement of Works of Art, including without limitation providing for title to the Works of Art to best in the Contracting Agency or Resident Agency in the name of the state no later than upon completion of installation of the Works of Art.

(h) Together with the Resident Agency, be responsible for security and general maintenance of the Works of Art, including without limitation observing if the Work of Art is in good condition, hanging straight, needs dusting, if labels are missing, or if other measures for security or maintenance are necessary or advisable;

(i) Assist the Oregon Arts Commission with public information aspects of the Project;

(j) Review and authorize all changes proposed involving cost, time, or scope before any changes are made to the Work(s) or Art for the Project;

(k) Assist the Oregon Arts Commission with maintaining an Art Inventory and immediately notify the Oregon Arts Commission if a work needs repair or is missing.

(3) The Architect shall:

(a) Recommend to the Arts Commission and the Contracting Agency specific sites for Works of Art and the scale and type of work thought to be most appropriate;

(b) Act as a member of the Selection Committee;

(c) Work closely with the Artist where required, provide engineering information as it pertains to the building structure and technical assistance to the Artist if requested, and shall supervise the delivery and installation of the Work of Art under contract with the Contracting Agency;

(d) Ensure that all service requirements for the Work of Art are met in the design documents and that the Work of Art may be installed with relative ease.

(4) The Artist shall:

(a) When commissioned by the Contracting Agency to create a Work of Art, execute and complete the Work of Art in a timely and professional manner.

(b) Maintain close contact with the Contracting Agency to assist with Project coordination before and during installation;

(c) Transfer title of newly created or an existing Work of Art to the Contracting Agency;

(d) Deal personally with the other parties in all phases of the negotiations. However, the Artists may designate dealers or other agents to represent them in negotiations;

(e) Maintain a close working relationship with the Architect on commissioned pieces;

(f) Submit all plans drawings, detailed proposals and other required materials related to a proposed Work of Art to the Oregon Arts Commission. All preparatory work remains the property of the Oregon Arts Commission until the final Work of Art is installed, at which time ownership of the preparatory materials reverts to the artist;

(g) Copyright: The artist retains those rights specified in ORS 359.355 unless contract indicates otherwise.

Stat. Auth.: ORS 359.025; 359.142

Stats. Implemented: ORS 276 .073 - 276 .090

Hist.: AC 1-1979, f. & ef. 7-23-79; AC 1-1991, f. 3-22-91, cert. ef. 3-21-91; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 190-020-0050, OBDD 36-2010, f. 10-14-10, cert. ef. 11-1-10

### 123-475-0055

#### Scope and Nature of Expenditures

(1) While no more than 1% of the amount from capital construction appropriations may be dedicated to the Program, a dollar total greater than 1% can be expended for art in a Project if the additional funds are generated from other sources. The 1% figure is a minimum.

(2) If 1% of total state funds appropriated for direct construction costs for a particular building is not required for the Program on that Project, such unrequired amounts can be utilized for either or both of the following as determined by the Oregon Arts Commission in consultation with the Contracting Agency:

(a) Acquiring Works of Art for existing state buildings;

(b) Acquiring Works of Art by transferring the funds to another construction project.

(3) Administrative costs for the Works of Art on any particular Project, up to ten percent of the amounts billed by the Oregon Arts Commission to the Contracting Agency, may be funded through the 1% appropriation areas Administrative Costs may include only:

(a) Supplies and services connected with public information and education;

(b) Artists' prospectuses for specific projects;

(c) Allowable expenses of the Selection Committee;

(d) Salaries of Oregon Arts Commission staff;

(e) Other costs directly related to Program management.

Stat. Auth.: ORS 359.025, 359.142

Stats. Implemented: ORS 276 .073 - 276 .090

Hist.: AC 1-1979, f. & ef. 7-23-79; AC 1-1991, f. 3-22-91, cert. ef. 3-21-91; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 190-020-0055, OBDD 36-2010, f. 10-14-10, cert. ef. 11-1-10

### 123-475-0060

#### General Principles and Procedures

(1) Freedom of Expression: Because of the bold attempt to meld the imaginations and talents of so many individuals and groups, freedom to reach creative solutions must always be maintained. Artists must be sensitive to the unique qualities of public art and the guidelines and parameters which, of necessity, may be required.

(2) Integration of Art and Architecture: So that Artists and Architects can gain from each others' design insights, all parties should strive for engagement of the Artist as soon as possible after the approval of the Architect's schematic design phase.

(3) Exhibitions and Educational Outreach: Contracting Agencies should consider undertaking the following exhibition and educational outreach opportunities. The Oregon Arts Commission is available to provide consultative assistance, but these activities must be funded with monies other than Program funds, unless they are a integral part of the Final Art:

(a) Exhibition of sketches and maquettes created in limited or open competitions;

(b) Involvement of students and art instructors in workshops with Artists creating Works of Art;

(c) Tours of those sites which exhibit many Works of Art, conducted by trained docents;

(d) Use of state educational and other facilities by the Artist in developing concepts and creating the Work of Art, so that state employees and students can better understand the creative process. Such facilities might include studio space, foundries, machine, welding, and woodworking shops, printing and photographic facilities;

(e) Filming or videotaping the creation and installation of the Work of Art.

(4) Accessibility of Information: All parties will strive to publicize widely all aspects of the Program. All meetings of Selection Committees are open to the public.

(5) Community Support and Advice: While firmly committed to the principle of selection of Artists by authorities in the design professions — The Oregon Arts Commission, Department of Administrative Services, and Contracting Agencies welcome participation and advice from the interested public and employees of the Resident Agency.

(6) Conflict of Interest: All procedures will be conducted and all decisions will be made free of any conflict of interest in accordance with ORS chapter 244.

(7) Dedication: If a dedication or "unveiling" of a Work of Art is desired, arrangements shall be the responsibility of the Contracting Agency.

Stat. Auth.: ORS 359.025, 359.142

Stats. Implemented: ORS 276 .073 - 276 .090

Hist.: AC 1-1979, f. & ef. 7-23-79; AC 1-1991, f. 3-22-91, cert. ef. 3-21-91; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 190-020-0060, OBDD 36-2010, f. 10-14-10, cert. ef. 11-1-10

### 123-475-0065

#### Documentation and Evaluation

##### (1) Documentation:

(a) Identification: The Contracting Agency shall assist the Oregon Arts Commission with identification of the Work of Art which may include, without limitation, that plaques or labels identifying the Work of Art, are securely affixed, unobtrusive, and well designed. Plaques, labels or other identifying media shall include the name of the Artist; title of the Work of Art, if any, medium, and year completed;

(b) Registration: The Oregon Arts Commission shall maintain inventory records. The Oregon Arts Commission provides copies of each Contracting Agency's inventory records upon request by the Contracting Agency;

(c) Publications: Contracting Agencies are encouraged to publish informative folders and booklets on the Works of Art, such as those in the State Library and the Department of Administrative Services. The Oregon Arts Commission is available to assist with editorial and technical assistance.

(2) Evaluation: The Oregon Arts Commission shall annually make a public report on the projects of the previous year and shall conduct periodic evaluations of the Program.

Stat. Auth.: ORS 359.025, 359.142

Stats. Implemented: ORS 276 .073 - 276 .090

Hist.: AC 1-1979, f. & ef. 7-23-79; AC 1-1991, f. 3-22-91, cert. ef. 3-21-91; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 190-020-0065, OBDD 36-2010, f. 10-14-10, cert. ef. 11-1-10

### 123-475-0074

#### Relocation and Deaccession

(1) Each Relocation and Deaccession action shall be determined on a case-by-case basis. Standards applied to Deaccession shall be at least as stringent as those applied to the acquisition process.

(2) Changes in fashion, taste, administration or the immediate pressures of public controversy are insufficient to support a Relocation or Deaccession action.

(3) Relocation or Deaccession will not be considered until at least five years have elapsed from the date of completion identified under OAR 123-475-0065(1)(a) of permanent Works of Art and acceptance in the case of portable Works of Art, unless special circumstances exist. Special circumstances include, without limitation, when a Work of Art has been damaged beyond repair.

Stat. Auth.: ORS 359.025, 359.142

Stats. Implemented: ORS 276 .073 - 276 .090

Hist.: OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 190-020-0074, OBDD 36-2010, f. 10-14-10, cert. ef. 11-1-10

### 123-475-0080

#### Criteria for Relocation or Deaccession

The Oregon Arts Commission may approve a request to consider Relocation or Deaccession of a Work of Art for one or more of the following reasons:

(1) The artwork requires unforeseen excessive maintenance or repair, contains failing materials, faults of design or workmanship, or repairing or securing the Work of Art is or becomes impractical or unfeasible;

(2) It would benefit the collection to replace the Work of Art with another more significant Work of Art by the same Artist;

(3) The Work of Art has been the source of significant, documented adverse public reaction over at least five years, and a broad range of people who come into regular contact with the Work of Art support its removal;

(4) The condition or security of the Work of Art cannot reasonably be guaranteed;

(5) The Work of Art has become significantly less appropriate over time, given changes in the function or character of the collection, setting or the community;

(6) The site is going to be demolished or adapted, and it is not possible to successfully incorporate the Work of Art into redevelopment of the site;

(7) The site is no longer publicly accessible;

(8) There is not suitable new site available for the Work of Art in the same facility;

(9) The Work of Art endangers public safety.

Stat. Auth.: ORS 359.025, 359.142

Stats. Implemented: ORS 276 .073 - 276 .090

Hist.: OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 190-020-0080, OBDD 36-2010, f. 10-14-10, cert. ef. 11-1-10

### 123-475-0085

#### Procedure for Relocation or Deaccession

(1) The Public Art Advisory Committee will undertake periodic reviews of the collection and review all Relocation and Deaccession requests submitted to the committee by Oregon Arts Commission staff on behalf of the Arts Commission, a Resident Agency, or the public.

(2) The Public Art Advisory Committee shall make recommendations to the Oregon Arts Commission on all Relocation and Deaccession requests.

##### (3) Sequence of Action.

(a) Upon receipt of a request for Relocation or Deaccession by a Resident Agency, citizen(s), or the Oregon Arts Commission or its staff, Oregon Arts Commission staff shall prepare a report to the Public Arts Advisory Committee that shall include the condition of the Work of Art, recent photographs, estimated value, reasons for considering Relocation or Deaccession and addressing the criteria contained in OAR 123-475-0080, options for relocating or repairing the Work of Art when applicable, opinion of the head of the Resident Agency, and any other supporting or relevant information.

(b) The Public Art Advisory Committee shall review the report and may direct Oregon Arts Commission staff to seek additional information about the Work of Art from the community where it is installed, the Artist, art galleries, curators, conservators, appraisers or other arts professionals.

(c) The Public Art Advisory Committee shall recommend to the Oregon Arts Commission whether the request for Relocation or Deaccession should be denied or granted in whole or in part. The Public Arts Advisory Committee may recommend modifying, relocating, selling, donating, disposing of or storing the Work of Art. The recommendation must address the following:

(A) Criteria contained in OAR 123-475-0075, if any, that have been met;

(B) Most appropriate action and method of action;

(C) Specific recommendation if the Work of Art is to be traded or sold for the purpose of purchasing another Work of Art by the same Artist;

(d) The Oregon Arts Commission staff shall prepare a report for consideration by the Oregon Arts Commission at a regularly scheduled meeting that includes at least the following:

(A) The Public Art Advisory Committee's recommendations;

(B) The opinion of the head of the Resident Agency;

(C) To the extent required by any contract between the Contracting Agency and the Artist, the opinion of the Artist, if living, if the Artist has provided an opinion.

(e) If the Oregon Arts Commission determines that a Relocation or Deaccession request may be granted, the Oregon Arts Commission will notify the Contracting Agency of its approval.

(4) Method for Relocation: On rare occasions, a Work of Art in the State of Oregon Public Art Collection may be removed from its original location in a State Building. Works of Art will be removed only with the approval of the head of the Resident Agency (or designee), and the Oregon Arts Commission. When considering new locations, the following criteria apply:

(a) The new location must be a State Building;

(b) If the new location is a different facility, the new Resident Agency must be willing to accept the Work of Art on long-term loan, for a period of at least five years.

(c) If the new location is a different facility, the new Resident Agency must be willing to provide for security and maintenance of the Work of Art.

(d) The new location must be viewed by a broad range of citizens.

(5) Methods of Deaccession: Works of Art will be deaccessioned only with the approval of the Head of the Resident Agency (or designee) and the Oregon Arts Commission. Deaccession shall be accomplished in one of the following manners as determined by the Oregon Arts Commission to be in the best interests of the citizens of Oregon, the State of Oregon Public Art Collection, and the public trust invested in the Oregon Arts Commission as the steward of the collection:

(a) Sale or Trade.

(A) If the Work of Art has not been appraised in the past five years, a certified appraisal will be conducted.

(B) If stated in the approved recommendation, the Artist will be given first option to purchase or trade the Work of Art.

(C) Sale may be by auction, gallery resale or direct bidding by individuals, in compliance with state law and policies governing surplus property.

(D) Trade may be through the Artist or gallery, museum or other institution for one or more Works of Art of comparable value by the same Artist.

(E) No Works of Art may be sold or traded to members or staff of the Arts Commission or Public Art Advisory Committee or their immediate families.

(F) Proceeds from the sale of a Work of Art shall be used to purchase artwork in keeping with the definitions and limitations of the Program and in accordance with the Oregon Arts Commission's decision to approve Deaccession. Funds may be expended with the oversight of the Public Art Advisory Committee. Any preexisting contractual agreements between the Artist and the state regarding resale shall apply.

(b) Destruction of a Work of Art that is deteriorated or damaged beyond repair, or beyond value of the Work of Art, and therefore deemed to be of negligible value. Alternatively, the Work of Art may be returned, in present condition, to the Artist, if living, to the state or representative of the Artist, or to an art conservation research or training facility as a disposable Work of Art.

(c) If the Oregon Arts Commission is unable to dispose of the Work of Art in a manner described in this section, the Work of Art may be donated to a non-profit organization or otherwise disposed of as the Oregon Arts Commission determines reasonable.

(6) Costs for Relocation or Deaccession. Unless otherwise requested by a person or agency requesting Relocation or Deaccession and approved by the Public Art Advisory Committee, costs for appraising, cleaning or minor repairs to a Work of Art as needed to be suitable for display should be charged to the original Resident Agency. Transportation to storage or a new location should be charged to the original Resident Agency. Installation or any major conservation, reframing, or similar activity should be charged to the new Resident Agency. Costs may be negotiated in the best interests of each entity.

(7) Compliance with Applicable Policies and Regulations. Deaccession of Works of Art shall be done in a manner that complies with all other applicable state and federal law. For example, Deaccession must comply with applicable procedures and laws relating to the disposition of State property and with laws protecting Artists' rights.

Stat. Auth.: ORS 359.025, 359.142

Stats. Implemented: ORS 276.073 - 276.090

Hist.: OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 190-020-0085, OBDD 36-2010, f. 10-14-10, cert. ef. 11-1-10

### DIVISION 500

#### CULTURAL PARTICIPATION GRANTS

##### 123-500-0000

###### Purpose

The Arts Program, under the direction of the Cultural Trust Board, awards grants for the Oregon Cultural Trust through three grant programs: Cultural Development Grants to cultural organizations, Community Cultural Participation Grants to county and tribal cultural coalitions and Cultural Partner Grants to statewide cultural partner entities.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: EDD 3-2009, f. 4-30-09, cert. ef. 5-1-09; OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

##### 123-500-0005

###### Definitions

(1) "Cultural Organization" means an organization defined in ORS 359.400.

(2) "Cultural Trust Board" means the board established by ORS 359.410.

(3) "Cultural Coalition" is a group organized in an Oregon county or within a federally recognized Indian Tribe, in Oregon to identify priorities and specific strategies for building public participation in culture. Each coalition will include representation from the arts, heritage, humanities and other organizations relevant to community cultural participation, including without limitation, educational institutions, libraries, media or businesses, and reflect the diversity of the County or Tribe. The primary purpose of the coalition is to develop a cultural plan for the area served and to award and monitor grant funds awarded to address cultural goals.

(4) "Cultural Plan" means a local plan that identifies priorities and specific strategies to build public participation in cultural disciplines and organizations within the local area. Plans will include benchmarks to measure progress against stated goals.

(5) "Core Partner Agencies" means the agencies described in ORS 359.400(2).

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: EDD 3-2009, f. 4-30-09, cert. ef. 5-1-09; OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

##### 123-500-0010

###### Purpose

(1) The purpose of the Cultural Trust's Cultural Development Grant program is to provide state recognition and support to cultural organizations undertaking significant cultural programs and projects, preserving and enhancing Oregon's diverse arts, heritage and humanities efforts. "Cultural Development Grant Program" means the program created by ORS 359.431.

(2) Cultural Development Grants are awarded annually on a competitive basis pursuant to a process that is initiated when the Cultural Trust Board issues a request for proposals (RFP). The RFP will request proposals that address one or more of the following themes:

(a) Access: Making culture broadly available to Oregonians;

(b) Preservation: Investing in Oregon's cultural heritage by recovering and preserving historic assets and achievements;

(c) Creativity: The making or presentation of artistic or scholarly work, and the development of artists, cultural experts and scholars;

(d) Capacity: The strengthening of cultural organizations to build stability and generate public confidence.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

##### 123-500-0015

###### Applications and Eligibility

(1) Applications must be submitted in the form required, and by a deadline set, in the RFP.

(2) Applicants for Cultural Development Grants must be an Oregon cultural organization.

(3) Proposals submitted by institutions of higher learning must be for programs and activities that focus on, benefit, and are open to the general public, and the general public must form the majority of the total audience.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

**123-500-0035**

**Evaluation Criteria**

Cultural Development Grant applications are evaluated according to how they address the themes described in OAR 123-500-0010(1). Additional evaluation criteria include:

- (1) Significance of the activity or the project, including the quality of the organization(s), structures, works of art, or services that will be involved;
- (2) The potential to broaden or deepen public knowledge, understanding, appreciation of, and access to culture;
- (3) The appropriateness of the budget, the quality and clarity of the project goals and design, the resources involved, and the qualifications of the project's personnel;
- (4) Evidence of sound fiscal management;
- (5) Evidence of public or private matching funds or in-kind services;

- (6) The process by which the project will be evaluated and plans in place to sustain or maintain the activity or project, if appropriate, following the period of the grant.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

**123-500-0045**

**Use of Grant Funds**

- (1) Cultural Development Grant funds must be used:

- (a) To address significant opportunities to advance, preserve or stabilize cultural resources;
- (b) To invest in the development of new resources;
- (c) To support proposals that have a broad cultural impact beyond the applicant itself; and
- (d) To support proposals from applicants with culture as a priority within the mission of the organization.

- (2) Cultural Development Grant funds may not be used for:

- (a) Indirect costs;
- (b) Tuition assistance or scholarships for college, university, or other formal courses of study;
- (c) Projects that have been substantially completed by August 1, the start date of the grant period;
- (d) Grants to offset previous project deficits; and
- (e) Events whose primary focus is to raise funds for a non-cultural cause.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

**123-500-0055**

**Grant Award Process; Administration of Grants**

(1) Applications submitted to the Oregon Cultural Trust pursuant to its RFP will be reviewed by staff to determine whether the applicant is eligible to receive a Cultural Development Grant. Ineligible applications will be returned to applicants with an explanation.

(2) Applications from applicants eligible to receive a Cultural Development Grant will be reviewed by a panel of cultural professionals designated by the Cultural Trust Board who will make funding recommendations to the Cultural Trust Board.

(3) The Cultural Trust Board evaluates qualified proposals and determines final grant awards. Announcement of grants are made as provided in the RFP.

(4) Grants are administered by the Arts Program of the Oregon Business Development Department.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

**123-500-0070**

**Deadline**

Cultural Participation Grant contact information must be submitted to the Oregon Cultural Trust by a postmark deadline that will be established annually.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 359.400 - 359.444

Hist.: EDD 3-2009, f. 4-30-09, cert. ef. 5-1-09

**123-500-0075**

**Grant Contract; Final Reports**

Grant recipients are required to enter into a contract with the Arts Program of the Oregon Business Development Department. Pursuant to that contract, each grant recipient must complete a final expense and narrative report. Final financial reports must reflect the application budget as originally submitted unless the budget is revised with the approval of the Cultural Trust Board or its designee. Grant reports must be submitted within thirty (30) days of the end date of the grant period.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

**123-500-0080**

**Purpose**

The purpose of the Cultural Trust's Community Cultural Participation Grant program is to provide funds to counties and federally recognized Indian Tribes to support local cultural activities involving the arts, heritage and humanities.

(1) This program is intended to increase public participation in culture to actively support and enjoy the cultural resources in their communities and foster the development of a unique cultural identity for counties and tribes.

(2) The program's focus is on local cultural planning, with each county, and each federally-recognized Indian Tribe, building participation in, gaining access to, and shaping priorities of local culture.

(3) The program encourages inter-organization and inter-disciplinary collaboration, along with support for excellence.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

**123-500-0090**

**Eligibility**

(1) Each Oregon county, and each federally-recognized Indian Tribe, may establish a Cultural Coalition responsible for developing, implementing and monitoring a local cultural plan.

(2) The Cultural Trust will award Cultural Participation Grant funds annually to each cultural coalition working within a cultural plan that has been approved by the Cultural Trust Board.

(3) In accordance with its plan, the Cultural Coalition may decide how these funds are allocated locally.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: EDD 3-2009, f. 4-30-09, cert. ef. 5-1-09; Renumbered from 123-500-0020, OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

**123-500-0100**

**Structure of Cultural Coalition**

(1) The structure of the Cultural Coalition reflects the cultural needs, assets and resources of each county and tribe.

(2) To qualify for grant funds, a Cultural Coalition must:

(a) Include representation from the arts, heritage, and humanities activities in their area;

(b) Include representation of other organizations that are relevant to community cultural participation, including without limitation educational institutions, libraries, media or businesses;

(c) Reflect the diversity of the population of the county or tribe.

(3) The size of the Cultural Coalition will vary depending on local needs. There should be sufficient numbers to represent arts, heritage and humanities plus other "at large" members from the community, including but not limited to business, education, media and libraries.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: EDD 3-2009, f. 4-30-09, cert. ef. 5-1-09; Renumbered from 123-500-0030, OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

**123-500-0110**

**Fiscal Oversight**

(1) Coalitions that are recognized by the Internal Revenue Service as a 501-c-3 private non-profit organization, or are a local pub-

lic entity is eligible to receive Community Cultural Participation Grants directly from the Cultural Trust.

(2) Those coalitions that do not have IRS 501-c-3 non-profit status must identify a fiscal sponsor to accept grant funds on behalf of the coalition. The Cultural Trust Board will review and approve the proposed fiscal agent prior to the release of grant funds.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: EDD 3-2009, f. 4-30-09, cert. ef. 5-1-09; Renumbered from 123-500-0040, OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

### 123-500-0120

#### Standards for Cultural Plans

(1) Cultural Participation Grant funds may be awarded to any Oregon cultural coalition that operates under a cultural plan that has been approved by the Cultural Trust Board.

(2) A cultural plan may be approved by the Cultural Trust Board if it has determined that a local cultural plan:

(a) Identifies priorities and specific strategies for building public cultural participation across cultural disciplines and organizations. The strategies may include the involvement of partners outside of the cultural sector such as business organizations, schools and health and human service organizations;

(b) Identifies annual benchmarks to determine the impact of grant funds; and

(c) Specifies local leadership and governance for grant fund management and for ongoing planning and development of benchmarks.

(3) Local cultural plans shall be broadly disseminated within each county or tribe. The local cultural plans shall be used to encourage public discussion, planning and collaboration among cultural entities and to stimulate County and Tribal cultural programs, including collaborations with other entities.

(4) Grant funds received by a county or tribe shall be distributed locally as specified in the approved local cultural plan.

(5) A portion of the grant funds received each fiscal year by a county or tribe may be used for costs associated with grant management, community technical assistance and accounting.

(6) The Trust for Cultural Development Board shall allocate grant amounts for counties and tribes using a base amount, plus a per capita amount for each county or tribe that has adopted a cultural plan approved by the Trust for Cultural Development Board.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: EDD 3-2009, f. 4-30-09, cert. ef. 5-1-09; Renumbered from 123-500-0050, OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

### 123-500-0130

#### Cultural Participation Grant Allocation Process

(1) Annually, on a date established each year by the Cultural Trust Board and on a form or online system provided by the board, a cultural coalition must submit to the board current contact information for the coalition chair, coalition members and fiscal sponsor, if applicable.

(2) The Cultural Trust Board will allocate final grant awards pursuant to a formula determined by the board. The formula includes a base allocation per county and tribe plus an additional amount factored on population.

(3) The Arts Program, under the direction of the Cultural Trust Board, shall distribute the grant amounts to the cultural coalitions.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: EDD 3-2009, f. 4-30-09, cert. ef. 5-1-09; Renumbered from 123-500-0060, OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

### 123-500-0150

#### Purpose

The Arts Program, under the direction of the Cultural Trust Board, awards grant funds to five statewide cultural entities to promote arts, heritage and humanities programs across Oregon and leverage existing resources to benefit more Oregonians.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

### 123-500-0160

#### Distribution of Funds

The Arts Program, under the direction of the Cultural Trust Board, shall distribute the amount disbursed from the Trust for Cultural Development Account under ORS 359.426(3)(c) to the core partner agencies as follows:

(1) 20 percent of the amount disbursed under ORS 359.426(3)(c) for joint efforts by the core partner agencies in fostering cooperative cultural projects, including but not limited to cultural education, cultural tourism and other cultural activities; and

(2) 80 percent of the amount disbursed under ORS 359.426(3)(c) to the core partner agencies for the purposes described in 359.444. The Cultural Trust Board shall determine the amount or percent of available funds that each core partner agency shall receive under this paragraph.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

### 123-500-0170

#### Limitations

The core partner agencies are not eligible to apply for grants from the Community Cultural Participation Grant Program or the Cultural Development Grant Program.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

### 123-500-0175

#### Allowable Uses of Funds by Core Partner Agencies.

(1) A core partner agency may use Cultural Partner Grant funds to:

(a) Carry out the mission and mandate of the agency;

(b) Serve more grantees; and

(c) Encourage new cultural undertakings.

(2) Each core partner agency shall expend a portion of the amount received under ORS 359.426 as determined by the Cultural Trust Board each fiscal year to fund development of qualitative benchmarks and culture within Oregon.

Stat. Auth.: ORS 359.416

Stats. Implemented: ORS 359.400 - 359.444

Hist.: OBDD 6-2010, f. 2-25-10, cert. ef. 3-1-10

## DIVISION 600

### BUSINESS ENERGY TAX CREDITS FOR RENEWABLE ENERGY RESOURCE EQUIPMENT MANUFACTURING BETC (MANUFACTURING BETC)

### 123-600-0100

#### Purpose and Scope

This division of administrative rules applies to all applicants for the Business Energy Tax Credit for Renewable Energy Resource Equipment Manufacturing ("Manufacturing BETC") as provided under Oregon Revised Statutes 285C.540 through 285C.559, and 315.341, 356, Oregon Law 2011 Ch. 474 HB 2523 and 2012 Ch. 45 HB 4079. These rules apply to all applications pending as of the effective date of these rules.

(1) Amount of Tax Credit. Qualified Oregon facilities that manufacture renewable energy resource equipment may be eligible for a tax credit equal to 50% of maximum eligible cost. Costs are limited up to \$2.5 million for a facility used to manufacture electric vehicles or component parts of electric vehicles and up to \$40 million in the case of any other eligible facility.

(2) Application Review. Application for the Manufacturing BETC is subject to detailed technical and financial review of the project. The Applicant is also required to sign a performance contract with measures that include job creation requirements, job retention requirements and other economic or operational benchmarks as determined by the Department.

(3) Certification of Cost for Tax Credit. The Director shall issue a final certificate pursuant to ORS 285C.553 before the tax credit can be claimed. The Director shall determine the dollar amount certified

for any facility and the priority between applications for certification based upon the criteria contained in ORS 285C.540 to 285C.559 and applicable rules and standards adopted under ORS 285C.540 to 285C.559. The Director may consider the status of a facility as a research, development or demonstration facility of new renewable resource generating and conservation technologies in the determination.

(4) Use of Tax Credit. The tax credit may be offset against Oregon income and corporation excise taxes owed pursuant to ORS 315.341. An Applicant qualifying for the tax credit may transfer the tax credit through the pass-through option in return for a discounted cash payment from a qualified pass-through partner.

Stat. Auth.: ORS 285C.540 - 285C.559, ORS 315.341, OL 2011, Ch. 474 HB2523

Stats. Implemented: ORS 285C.540-559, 315.341, OL 2011, Ch. 474 HB2523, OL 2012, Ch. 45 HB 4079

Hist.: OBDD 8-2012, f. & cert. ef. 6-1-12

### 123-600-0105

#### Definitions

The following definitions apply unless the context requires otherwise:

(1) "Applicant" means a person who applies for preliminary certification of a Manufacturing BETC facility under this section including individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies.

(2) "Cost" means the capital costs and expenses necessarily incurred in the erection, construction, installation and acquisition of a facility.

(3) "Completed application" means receipt of payments under OAR 123-600-0140 and all information required in the application form to demonstrate substantive compliance with the provisions of ORS 285C.540 to 285C.559 and any applicable rules or standards adopted by the Director, and all supplemental attachments, exhibits and so forth that the Applicant furnishes at the Department's request under these rules for the Manufacturing BETC.

(4) "Completed Facility" means a manufacturing facility that is operating in accordance with requirements in the Preliminary Certificate and performance agreement between the Department and the Applicant for which all costs have been paid or committed by a binding contract or agreement.

(5) "Component parts of electric vehicles" means component parts that are for exclusive use in electric vehicles and may not be used in both electric and conventional vehicles. A component part of electric vehicles does not include batteries.

(6) "Director" means the Director of the Oregon Business Development Department or designees.

(7) "Department" means the Oregon Business Development Department, aka: Business Oregon.

(8) "Electric vehicles" means vehicles that are designed for use as Class I or Class II all-terrain vehicles, as those terms are defined in ORS 801.190 and 801.193, and that are used for agricultural, commercial, industrial or governmental purposes, or vehicles that are designed for use as modes of transportation on public roads and highways. The Director of the Oregon Business Development Department may further define "agricultural, commercial, industrial or governmental purposes" of electric vehicles.

(9) "Facility operator" means the person or people to whom the Applicant gives authority to manage a facility. Such person or people shall be the Applicant's agent for all reasons related to the facility once its development begins.

(10) "Facility start" means the earliest date on or after the date the application for preliminary certification is received by the Department where a non-refundable deposit will be placed on the facility equipment or; a purchase order will be placed for the equipment or; a contract for the design of the facility will be executed or; a document that obligates the Applicant to proceed with a facility will be executed; or any other type of financial commitment towards the erection, construction, installation or acquisition of the facility.

(11) "Federal grant" means any grant received from the federal government in connection with a facility.

(12) "Final certification" means the review and approval of the application for final certification leading to issuance of a final certificate for a completed facility under ORS 285C.551.

(13) "Lease contract" means a lease-purchase contract in which the lessee owns the facility at the end of the lease and is eligible for the Manufacturing BETC, or a lease or lease-option contract in which the lessor owns the facility through the life of the contract and is eligible for the Manufacturing BETC.

(14) "Pass-through payment" means a minimum cash payment equivalent to the net present value of the Manufacturing BETC as determined under OAR 123-600-0135. This is also referred to as the "pass-through rate."

(15) "Pass-through option" means the option that allows an Applicant a one time only transfer of all or a portion of the facility's tax credit eligibility to certain persons or businesses in return for a cash payment.

(16) "Pass-through partner" means a personal income tax payer, individual, C corporation or S corporation that is transferred a tax credit certificate in return for a cash payment to an Applicant.

(17) "Preliminary certification" means the review and approval of the application for preliminary certification leading to issuance of a preliminary certificate for an eligible facility under ORS 285C.551.

(18) "Renewable energy resource" means energy derived from sources including but not limited to: straw, forest slash, wood waste or other wastes from farm or forest land, nonpetroleum plant or animal based biomass, ocean wave energy, solar energy, wind power, water power or geothermal energy.

(19) "Renewable energy resource equipment manufacturing facility" means any structure, building, installation, excavation, device, machinery or equipment, or an addition, reconstruction or improvement to land, to an existing structure, building, installation, excavation or device or to existing machinery or equipment, that is necessarily acquired, constructed or installed by a person in connection with the conduct of a trade or business and that is used primarily to manufacture:

(a) Component parts of electric vehicles.

(b) Electric vehicles.

(c) Equipment, machinery or other products designed to use a renewable energy resource and that meets the criteria established under ORS 285C.543 and these rules.

(d) Renewable energy storage devices. [2011 c.474 §5]

(20) "Renewable energy storage device" means a device that enables the storage of energy derived from renewable energy resources. A renewable energy storage device facility does not need to be directly connected to a renewable energy resource, but a beneficial relationship shall be demonstrated between the energy output of the resource or resources and the charge and discharge capabilities of the facility. The storage device may be designed to store energy for transmission lines provided that the transmission lines serve, at least in part, renewable energy resources. A renewable energy storage device includes, but is not limited to, batteries or similar devices used to provide propulsive energy in electric vehicles.

(21) "Research, development, or demonstration facility (RDD)" means a facility under ORS 285C.545 (3) and subject to standards adopted by the Director in these rules that is not standard practice and produces or is likely to produce new renewable resource generating and conservation technologies or products in Oregon when commercialized.

Stat. Auth.: ORS 285C.540 - 285C.559, ORS 315.341, OL 2011, Ch. 474 HB2523

Stats. Implemented: ORS 285C.540-559, 315.341, OL 2011, Ch. 474 HB2523, OL 2012, Ch. 45 HB 4079

Hist.: OBDD 8-2012, f. & cert. ef. 6-1-12

### 123-600-0110

#### Process Overview

(1) Application Stages. The Department reviews an application for a Manufacturing BETC in two stages.

(a) The first stage is called preliminary certification. Prior to submitting an application and fee payment, the Applicant must contact the Department to initiate a pre-screening process. Once accepted, the application is subject to in-depth review of the manufactur-

er's technology, financial model and plan, which may be conducted by a third party contractor selected by the Department for the purpose of determining if a preliminary certificate shall be issued. If the Department determines that the Applicant qualifies for a Manufacturing BETC, the Department may issue a preliminary certificate. The preliminary certificate may contain specific criteria and conditions for the facility to meet in order to complete final certification based on the information provided in the application for the BETC and type of facility that is described in the application. In addition, the Department shall require the Applicant to enter into a performance agreement or other similar agreement as a condition of approval.

(b) The second stage is called final certification. During this stage the application is subject to verification of completion of the facility in accordance with conditions and criteria imposed in the preliminary certificate and performance agreement, and the determination of final eligible costs for purpose of issuing the final tax certificate.

(2) Application. To begin the review process for each stage as described in 123-600-0120 and 123-600-0130, or to change the facility during the review process, an Applicant shall submit the information on the application form approved by the Department and additional information as requested by the Department.

(3) Receipt of Applications. Applications shall be considered received on the date marked received by the Department, unless the application is determined to be incomplete.

(4) Pass-through Option Commitment. An Applicant planning to use a pass-through partner should indicate their intention on the application for preliminary certification and shall select the pass-through option on the application for final certification.

(5) Conditions for Approval. The Director may impose conditions in approving a preliminary or final certificate that the facility shall operate in accordance with the representations made by the Applicant, and any applicable rules or standards adopted by the Director in accordance with the provisions of ORS 285C.540 to 285C.559.

(6) Separate and Distinct Facilities. The Director may issue only one Manufacturing BETC for each separate and distinct facility under these rules. To determine if a facility is separate and distinct, the Director will consider such factors as phases of development, expansion of or additions to existing facilities or product lines, increased production and number of jobs created or maintained by an Applicant.

Stat. Auth.: ORS 285C.540 - 285C.559, ORS 315.341, OL 2011, Ch. 474 HB2523  
Stats. Implemented: ORS 285C.540-559, 315.341, OL 2011, Ch. 474 HB2523,  
OL 2012, Ch. 45 HB 4079  
Hist.: OBDD 8-2012, f. & cert. ef. 6-1-12

### 123-600-0120 Preliminary Certification

(1) Pre Screening. Persons interested in applying for a Manufacturing BETC shall first contact the Department to initiate a pre-screening process.

(2) Submission of Application. Persons determined by the Department to have projects for proposed facilities eligible for a Manufacturing BETC shall submit the application form approved by the Department for application for preliminary certification along with the appropriate fee under OAR 123-600-0140. The Applicant shall also provide additional information the Director considers necessary to determine whether the proposed facility is in accordance with the provisions of ORS 285C.540 to 285C.559 and these rules, including but not limited to:

(a) The type of equipment, machinery or other products being manufactured meet related performance and efficiency standards applicable to the manufactured products;

(b) The economic viability of the facility and any other information for consideration of such factors as phases of development, expansion of or additions to existing facilities or product lines, increased production and number of jobs created or maintained by the Applicant;

(c) The minimum levels of increased employment in Oregon for the facility are proportionate to industry standards;

(d) The compensation paid and benefits provided to employees meet or exceed the national average in annual compensation for comparable employment;

(e) Details related to the technology and financial plan that can be independently reviewed by a third party;

(f) The credit worthiness of the Applicant and the likelihood of long-term operation and success of the facility; and

(g) The Applicant's decision to locate or expand a facility in Oregon is based on the allowance of a tax credit under ORS 315.341.

(3) Qualified Applicant. A qualified Applicant shall meet one of the following criteria:

(a) The Applicant is a person to whom a tax credit for the facility has been transferred; or

(b) The Applicant shall be the owner, contract purchaser or lessee of the facility at the time of erection, construction, installation or acquisition of the proposed facility, and:

(A) The Applicant is the owner, contract purchaser or lessee of a trade or business that plans to utilize the facility in connection with Oregon property; or

(B) The Applicant is the owner, contract purchaser or lessee of a trade or business that plans to lease the facility to a person that will utilize the facility in connection with Oregon property.

(C) The Applicant is the owner, contract purchaser or lessee of a trade or business that plans to lease the facility to a person that will utilize the facility in connection with Oregon property.

(4) Eligible Costs. Subject to the facility cost limitations of OAR 123-600-0100(1) and the criteria established under ORS 285C.543:

(a) Eligible costs include land purchase costs, structures, buildings, installations, excavations, machinery, equipment or devices, or any addition, reconstruction or improvements to land or existing structures, buildings, installations, excavations, machinery, equipment or devices, necessarily acquired, constructed or installed by a person in connection with the conduct of a trade or business, that is used to manufacture the equipment, machinery or other products used primarily for:

(A) Component parts of electric vehicles; or

(B) Electric vehicles; or

(C) Renewable energy storage devices; or

(D) Equipment, machinery or other products designed to use a renewable energy resource.

(b) An application shall demonstrate compliance with these provisions to be accepted, including clearly describing the specific characteristics of the equipment, machinery or other products that demonstrate why such equipment, machinery or other products will be used primarily for component parts of electric vehicles or; electric vehicles; renewable energy storage devices or; equipment, machinery or other products designed to use a renewable energy resource that meets the criteria established under ORS 285C.543 and not for other commercial purposes and therefore why the costs of such of such equipment, machinery or other products are eligible costs.

(c) The Department may conduct inspections to verify eligible costs.

(d) Eligible facility costs are limited by costs for a facility, or portion thereof, that has previously received a Business Energy Tax Credit.

(e) The sum of any payments from federal grants and the Manufacturing BETC may not exceed total costs.

(f) Eligible costs do not include fees or costs associated with the review of the application.

(g) Eligible costs cannot be incurred prior to submitting an application for preliminary certification, except as provided for under OAR 123-600-0120(7).

(h) Cost can include payments for:

(A) Fees to finance, design or engineer the facility, including but not limited to debt fees and equity fees;

(B) Title searches, escrow fees, government fees, excluding fees required by OAR 330-091-0150, and shipping;

(C) All materials and supplies needed for the erection, construction, installation or acquisition of the proposed facility; and

(D) Work performed by employees or independent contractors of the applicant based on the following conditions:

(i) Employees or contractors must be certified, accredited, licensed, or otherwise qualified to do the work;

(ii) The work must be associated with the erection, construction, installation or acquisition of the proposed facility or in the case of a research development and demonstration facility, the work shall be directly related to the research, development, demonstration, facility design, monitoring, assessment, evaluation and reporting related to the product or technology;

(iii) Project management and other similar costs may only account for up to 15 percent of the total eligible costs; and

(iv) Costs for employee's or contractor's work on the facility must be detailed and documented as to specific tasks, hours worked, and compensation costs. Donated, in-kind or volunteer labor is not eligible;

(E) Costs for legal counsel that is directly related to the development of a qualifying facility (non-litigation related) or directly linked to the research, development or demonstration facility; and

(F) Other costs the Director includes.

(i) Cost may not include:

(A) Interest;

(B) Litigation or other operational-related legal fees and court costs;

(C) Costs to maintain and operate a facility;

(D) Administrative costs to apply for grants, loans, tax credits or other similar funding for a facility including, but not limited to, the BETC charge, costs associated with the creation and development of the CPA verification letter and costs associated with securing a pass-through partner for the facility;

(E) Routine operational or maintenance costs associated with the facility, including services, supplies and labor;

(F) Expenses that are directly or indirectly offset with federal fee waivers; and

(G) Other costs the Director excludes.

(j) If a facility is built under a lease, lease-option or lease-purchase contract, the lessee's cost to acquire the facility is the value paid for the facility. If that amount is not known, the cost is the sum of:

(A) Tax credits passed-through by the lessor to the lessee;

(B) The amount paid when the facility is transferred; and (C) The lease payments not including taxes, insurance, interest, and operating costs.

(C) Payments to be made in the future must be discounted to present value.

(5) Preliminary Certification Review Process. Except as provided in OAR 123-600-0120(7), an application for preliminary certification shall be received by the Department on or prior to the facility start for the erection, construction, installation or acquisition of a facility.

(a) The application for preliminary certification shall be considered received on the date marked received by the Department, unless the application does not contain all information required in the application form and the payment as required in OAR 123-600-0140.

(b) An application is incomplete if it does not include information needed to demonstrate substantive compliance with the provisions of ORS 285C.540 to 285C.559 and any applicable rules or standards adopted by the Director. The Department shall provide the Applicant a written notice relating to the incomplete application and the information needed to make the application complete. If no action is taken within 30 days by the Applicant, the application shall expire.

(c) After a completed application is received, the Department shall notify the Applicant of the procedures for the Department's due diligence review.

(d) If the application complies with the provisions of ORS 285C.540 to 285C.559, the Director may approve the preliminary certificate. The preliminary certificate shall state the amount of eligible costs for a Manufacturing BETC up to the maximum amount of certifiable costs under ORS 285C.545. It may differ from the amount requested for reasons explained and based on these rules. Also, it shall state any conditions that shall be met before develop-

ment, final certification, or some other event can occur. The Director shall explain why each condition is needed to comply with these rules.

(e) If it does not comply, the Director may deny the application. No later than 60 days after the Director issues an order denying the application, the Applicant may request reconsideration as provided in these rules.

(f) An Applicant can re-submit an application that is denied if features of the facility change, the Applicant provides data the absence of which resulted in the denial, or other changes warrant. An application for preliminary certification can be amended or withdrawn by the Applicant before the Director issues a preliminary certificate. The Applicant may be required to pay additional fee for expenses incurred by the Department in connection with the additional review of the application for preliminary certification or amendment to the preliminary certificate.

(6) Preliminary Certification for Less than Total Eligible Costs. If under the provisions of ORS 285C.545(2), the Department intends to certify less than the total or no amount of eligible costs of renewable energy resource equipment Manufacturing BETC facility, the Department shall notify the Applicant in writing of that intent before approving the preliminary certificate.

(a) The Applicant shall have 30 calendar days from the date notification was issued to inform the Department in writing whether it wishes to withdraw the application or suspend further consideration of the application until a future date specified or submit additional information in support of the application.

(b) If the Department has not received notification or additional information in support of the application within that period of time, the Director may certify less than the total or no amount of eligible costs of the Manufacturing BETC facility.

(c) Once eligible costs are certified and a preliminary certificate is issued under this section, the certified eligible costs may be revised if conditions under ORS 285C.545(2) change or upon notification from the Applicant or other information indicating that the scope of the project or the facility has changed in such a way to impact the preliminary certificate.

(7) Eligibility of Costs Before Facility Start. The Director may approve a preliminary certificate for costs incurred prior to the Department's receipt of the application for preliminary certification if the Applicant files a written request for a waiver in accordance with these rules.

(a) Special circumstances beyond the Applicant's control made application for preliminary certification before facility start impracticable. Such circumstances include process delays, facility funding and energy supplies or markets; and

(b) The Department is in receipt of the application for preliminary certification and receives a waiver request from the Applicant within 90 days of the facility start. Under extraordinary circumstances the Department may extend the waiver period provided the facility serves the aims of the program.

(c) Failing to submit an application for preliminary certification before signing contracts for the facility does not constitute special circumstances supporting a waiver.

(8) Preliminary Certificate. If the Department determines that the application for preliminary certification qualifies the Applicant and the facility for a Manufacturing BETC, the Director may issue a preliminary certificate.

(a) The preliminary certificate may contain specific criteria and conditions for the facility to meet in order to complete final certification based on the information provided in the application for the BETC and type of facility that is described in the application. In addition, the Department shall require the Applicant to enter into a performance agreement or other similar agreement as a condition of approval. The Director may consider a broad range of comparative data sources in determining criteria and conditions for job creation, job maintenance and compensation in the preliminary certificate or performance agreement, including but not limited to:

(A) National Compensation Survey (NCS), US Department of Labor Bureau of Labor Statistics

(B) Quarterly Census of Employment and Wages, US Department of Labor Bureau of Labor Statistics

(C) Oregon Labor Market Information System including the Oregon Employment Department's most current Covered Employment and Wages Summary Report for Total Private Coverage.

(b) If the facility does not proceed the Applicant shall inform the Department in writing if it does not proceed with the facility or intends to proceed without the tax credit. In that case, the Director shall cancel the preliminary certificate.

(9) Applicant's Request to Amend a Preliminary Certificate. An Applicant shall file a written request with the Department prior to the completion of the facility to amend a preliminary certificate.

(a) The request shall describe the change to the facility and reasons for the change. It may include changes in cost, tax credit amount, facility design, and materials. The request may also include changes in the jobs created, project financing, the Applicant, the location, or other matters that demonstrate substantial change in the project's scope. The request shall be accompanied by the appropriate fee.

(b) If a request does not include information needed to demonstrate substantive compliance with the provisions of ORS 285C.540 to 285C.559 and any applicable rules or standards adopted by the Director shall provide the Applicant a written notice relating to the information needed to make the request complete. If the Applicant does not provide all of the requested information to the Department within 30 days, the request shall expire and no changes shall be made to the preliminary certificate.

(c) After the Applicant files the change request, the Department shall decide if the facility as modified complies with ORS 285C.540 to 285C.559 and these rules.

(A) If it complies, the Director may issue an amended preliminary certificate which may contain new or amended criteria, conditions and requirements.

(B) If it does not comply, the Director shall issue an order that denies the change and provide written reasons for the denial.

(10) Director's Amendment or Revocation of a Preliminary Certificate. The Director may issue an order altering, conditioning, suspending or denying preliminary certification if the Director determines that:

(a) The erection, construction, installation or acquisition does not comply with the provisions of ORS 285C.540 to 285C.559 and applicable rules and standards; or

(b) The Applicant has previously received preliminary or final certification for the same costs; or

(c) The Applicant is unable to demonstrate that the facility would be economically viable without the allowance of additional credits under ORS 315.341; or

(d) The Applicant was directly involved in an act for which the Director has levied civil penalties or revoked, canceled or suspended any certification under ORS 285C.540 to 285C.559; or

(e) The Applicant or the principal, director, officer, owner, majority shareholder or member of the Applicant, or the manager of the Applicant if the Applicant is a limited liability company, is in arrears for payments owed to any government agency while in any capacity with direct or indirect control over a business; or

(f) The facility undergoes changes without the changes being approved under these rules;

(g) Any other reason allowed by the amendments to ORS 285C.551(3) in Oregon Laws, 2011, Chapter 474, Section 11.

Stat. Auth.: ORS 285C.540 - 285C.559, ORS 315.341, OL 2011, Ch. 474 HB2523  
Stats. Implemented: ORS 285C.540-559, 315.341, OL 2011, Ch. 474 HB2523,  
OL 2012, Ch. 45 HB 4079

Hist.: OBDD 8-2012, f. & cert. ef. 6-1-12

## 123-600-0130

### Final Certification

(1) Facility Completion. To qualify for a final certificate, the facility shall be completed as described in the preliminary certificate, and in accordance with the performance agreement and these rules. Any changes to the preliminary certificate and/or application for preliminary certification shall be made through the amendment process outlined in these rules and shall be completed prior to the project

completion date. Failure to obtain approval through the amendment process may result in denial of the application for final certification.

#### (2) Application and Review.

(a) Applicants with completed facilities must have a valid preliminary certificate for a Manufacturing BETC in accordance with ORS 285C.547(5) in order to complete final certification including all transactions associated with the pass-through option described in 123-600-0135.

(b) The application shall be considered received for the purposes of ORS 285C.557 on the date marked received by the Department, unless the application is incomplete. If the application for final certification is not complete, the date marked received by the Department on the complete application containing all of the required information shall be considered the received date.

(c) Review of the application for final certification shall include a determination by the Director that the proposed erection, construction, installation or acquisition is technically feasible and should operate in accordance with the representations made by the Applicant, and is in accordance with the provisions of ORS 285C.540 to 285C.559 and any applicable rules or standards adopted by the Director, including but not limited to:

(A) Evidence in a form acceptable to the Department that the conditions of the preliminary certification and performance agreement have been complied with;

(B) Evidence of the costs of the facility. If the actual cost of the facility is less than \$50,000, copies of receipts for purchase and installation of the facility; or if the actual cost of the facility is \$50,000 or more, certified to by a certified public accountant who is not an employee of the Applicant. The certified public accountant shall:

(i) Complete a written review of costs paid or incurred to be reported in the Final Application, related to the facility as described in the Preliminary Application and Preliminary Certificate, based on canceled checks, invoices, or receipts, a binding contract or agreement, or other documentation as may be required under these rules and certify that such costs were properly paid or incurred and represent eligible costs under these rules indicating exceptions as applicable.

(ii) Conduct the review in the form of an agreed-upon procedures engagement that is in accordance with AT Section 201, Agreed-Upon Procedure Engagements (Statements on Standards for Attestation Engagements 10, as amended) of the American Institute of Certified Public Accountants.

(iii) Conduct any sampling of costs in accordance with procedures in the Statement on Auditing Standards in the AICPA Guidelines.

(iv) Review sufficient information if an applicant has an outstanding binding contract or loan agreement, to become satisfied that accounts directly related to the facility are not in default in order to include such costs as eligible costs.

(C) The amount of the credit under ORS 315.341 that is to be claimed and that the costs have not previously received preliminary or final certification;

(D) Information sufficient to demonstrate the number and type of jobs created and maintained by the operation and maintenance of the facility over the five-year period beginning with the year of preliminary certification under ORS 285C.551 and information on the benefits of the facility with regard to overall economic activity in this state will be met;

(E) Information sufficient to demonstrate that the facility shall remain in operation for at least five years, unless the Director by rule specifies a shorter period of operation;

(F) Documentation of compliance with applicable state and local laws and regulations and licensing and permitting requirements as defined by the Department; and

(G) A statement that the Applicant or the principal, director, officer, owner, majority shareholder or member of the Applicant, or the manager of the Applicant if the Applicant is a limited liability company, is not in arrears for payments owed to any government agency while in any capacity with direct or indirect control over a business.

(H) Any other information determined by the Department to be necessary prior to issuance of a final certificate, including inspection of the facility by the Department.

(b) After an application for final certification is received, the Department shall determine whether the application is complete. An application is incomplete if it does not include information needed to demonstrate substantive compliance with the provisions of ORS 285C.540 to 285C.559 and any applicable rules or standards and preliminary certification conditions adopted by the Director. If it is not complete, the Applicant shall be provided a written explanation describing deficiencies. If it is complete, the Department shall process the application. Within 60 days after a completed application for final certification is received the Department shall either approve or deny the application.

(c) If the Department approves the application; the Director shall issue a certified amount letter, which shall state the amount of certified costs, reduced as applicable by any federal grants received, and the amount of the tax credit approved. The certified amount letter may contain additional criteria and conditions that shall be met in order to retain tax credit benefits or the tax credit certificate issued to the Applicant may be subject to revocation. If the facility fails to meet any of the criteria, conditions and requirements established in final certification, the Applicant shall notify the Department within 30 days.

(d) When an Applicant chooses to transfer the tax credit under ORS 285C.549, the Department may hold the application for final certification until pass-through partner(s) information is received by the Department.

(3) Final Certificate. A certificate issued under ORS 285C.553 is required for purposes of obtaining tax credits in accordance with ORS 315.341. Such certification shall be granted for a period not to exceed five years. Unless transferred to a pass-through partner under ORS 285C.549, the five-year period shall begin with the tax year of the Applicant during which the completed application for final certification of the facility under ORS 285C.553 is received by the Department.

(a) If the original owner of the certificate uses any portion of the credit, the certificate becomes nontransferable.

(b) After the Director issues a final certificate, an Applicant shall notify the Department in writing within 30 days of any of the following conditions:

(A) The facility has been moved;  
(B) Title to the facility has been conveyed;  
(C) The facility is subject to or part of a bankruptcy proceeding;

(D) The facility is not operating; or  
(E) The term of a leased facility has ended.

(4)(a) Basis for Denying Tax Credit Benefits. The Department may deny final certification if any of the following conditions exist:

(A) Final certification is not complete before 1,825 days (5 years) after the preliminary certificate was issued.

(B) The Applicant does not provide information about the facility in a reasonable time after the Department requests it;

(C) The facility is significantly different than the proposed facility for which the preliminary certificate was issued;

(D) The Applicant misrepresents or fails to construct or operate the facility;

(E) The Applicant fails to demonstrate that the facility described in the application is separate and distinct from previous or current applications reviewed by the Department;

(F) The facility does not meet all of the conditions and requirements contained in the preliminary certificate or performance agreement; or

(G) The Applicant is unable to demonstrate that the facility complies with all applicable provisions of ORS Chapter 285C.540 to 285C.559 and these rules.

(b) If the Department does not approve the application, the Department shall provide written notice of the action, including a statement of the findings and reasons for the denial by regular and certified mail.

(c) An application for final certification that is denied can be submitted again. An application for final certification can be amended or withdrawn by the Applicant. If an application is submitted again or amended, the time for review of the application for final certification starts over.

(d) If the Director does not issue a certified amount letter for final certified cost or a final certificate within 60 days after an application is filed, the application is denied pursuant to ORS 285C.553 (4).

(5)(a) Basis for Revoking Tax Credit Benefits. The Director shall revoke certificates as provided in ORS 285C.559 and 315.341 (4)(a) if the Director finds that:

(A) The certification was obtained by fraud or misrepresentation. For the purposes of this section, "fraud or misrepresentation" means any misrepresentation made by an Applicant for a preliminary or final certification, including but not limited to, misrepresentations as to the Applicant's financial viability, facility construction and operation, or any other information provided as part of an application for a preliminary or final certification;

(B) The holder of the certificate or the operator of the facility has failed to construct or operate the facility in compliance with the plans, specifications and procedures in the certificate or the performance agreement; or

(C) The facility is no longer in operation.

(b) If all or a part of the tax credit certificate has been transferred to a pass-through partner under ORS 285C.549, the certificate is not considered revoked as to the pass-through partner, but the Applicant is liable for the amount of tax credits claimed or that could be claimed.

(6)(a) Sale or Disposition of the Facility After Final Certification. Pursuant to ORS 315.341(4)(a), upon receiving notice that the facility has been sold or otherwise transferred, the Director shall revoke the final certificate, as of the date of the disposition of the facility, unless the Manufacturing BETC for the facility has already been transferred under ORS 285C.549.

(b) The new owner or new or renewed lessee of a facility may apply for a final certificate. The request shall comply with ORS 285C.540 through 285C.559 and these rules and include information to allow the Department to determine the amount of tax credit not claimed by the former owner or former lessee. If the facility continues to comply with the requirements set out in these rules and any applicable conditions imposed by the Department, the Director shall issue a new final certificate consistent with the provisions of ORS 315.341 (4)(a).

(7) Request for Reconsideration. No later than 60 days after the Director issues an order on preliminary certification, final certification, or canceling or revoking a preliminary or final certificate under these rules, the Applicant may request reconsideration in writing.

(8) Inspections. After an application is filed under ORS 285C.547 or 285C.553 or a tax credit is claimed under these rules, the Department may inspect the facility. The Department shall schedule the inspection during normal working hours, following reasonable notice to the facility operator.

Stat. Auth.: ORS 285C.540 - 285C.559, ORS 315.341, OL 2011, Ch. 474 HB2523  
Stats. Implemented: ORS 285C.540-559, 315.341, OL 2011, Ch. 474 HB2523, OL 2012, Ch. 45 HB 4079  
Hist.: OBDD 8-2012, f. & cert. ef. 6-1-12

## 123-600-0135

### Pass-through Transfer of the Tax Credit

For purposes of ORS 285C.549 and the pass-through rate for discounting the face value of a certified Business Energy Tax Credit to the Net Present Value that is the minimum amount the Applicant shall receive as a cash payment from the Pass-through Partner(s) in exchange for the Credit:

(1) Rate Formula. As set forth by the Department on the first business day of each calendar quarter, the pass-through rate, to be multiplied by the credit amount, equals " $1 \div (1 + R + S + P)^5$ ," where:

(a) "R" is the U.S. Prime Rate as published by The Wall Street Journal newspaper;

(b) “S” is a spread factor greater than zero to account for special transactional and risk elements, and initially set at 3.25 percentage points, but subject to adjustment by the Department based on experience and changing circumstances;

(c) “P” is an estimate of projected price inflation, as determined by the Department, but to be not less than the average of the lower central tendency for core price inflation in the succeeding two years from the latest economic projections of the Federal Reserve Board members and Federal Reserve Bank presidents; and

(d) “5” means to exponentially raise the preceding sum to the fifth power in accordance with the five years over which the credit may be claimed.

(2) Modification of Formula. In addition to modifications of the variables “R” and “S” in subsection (1)(a) of this rule, the Department may alter the formula for purposes of this rule, as announced at the start of the calendar quarter, in response to any greatly changing situation with prevailing market rates of return or projected price inflation, potentially pending a temporary or permanent rulemaking.

(3) Rate Option. The Applicant may elect to use the quarterly pass-through rate as set in section (1) of this rule for the calendar quarter, during which occurs either:

- (a) Preliminary Certification, or
- (b) Transaction of the pass-through payment.

(4) For the Department to issue a tax credit certificate to a pass through partner the Applicant must be in compliance with the conditions and requirements of the Preliminary Certificate, the performance agreement and these rules.

(5) A tax credit may be transferred one time only, from the Applicant to an eligible pass through partner.

(6) Finding Pass-through Partners. The Applicant is responsible for seeking a pass-through partner. The Department cannot guarantee a pass-through partner for any completed project.

(a) The Applicant will notify the Department if a third-party intermediary will be used to assist the Applicant in seeking a pass-through partner.

(b) The Applicant will notify the Department when a pass-through partner(s) is identified. The Department will provide the necessary instructions and forms needed to complete verification of the pass-through payment transaction in order to issue a tax credit certificate.

(7) Transferee’s Certification Period. For a transferee holding a credit that has been transferred under ORS 285C.549, the five-year period begins with the tax year of the transferee in which the transferee pays for the credit.

(8) Expiration of Transferability. The Director may issue a final certificate in the name of the Applicant for any tax credit balance remaining sixty days prior to the expiration of the Preliminary Certificate under ORS 285C.547(5).

Stat. Auth.: ORS 285C.540 - 285C.559, ORS 315.341, OL 2011, Ch. 474 HB2523  
Stats. Implemented: ORS 285C.540-559, 315.341, OL 2011, Ch. 474 HB2523,  
OL 2012, Ch. 45 HB 4079  
Hist.: OBDD 8-2012, f. & cert. ef. 6-1-12

### 123-600-0140

#### Budget Limits and Payments

(1) Amount of Credits Allowed for a Facility. During any calendar year, a Manufacturing BETC preliminary certificate shall not be issued for more than:

(a) \$40 million in maximum eligible facility costs for a renewable energy resource equipment facility, not including those used to manufacture electric vehicles;

(b) \$2.5 million in maximum eligible facility costs for a facility used to manufacture electric vehicles;

(2) Fees for Certification. The Department has established the following schedule for payments to accompany an application as required under 285C.555.

(a) Included with each application for preliminary certification shall be an initial payment payable to the Department. The payment is 0.0060 multiplied by the facility eligible cost and not to exceed a payment amount of \$75,000, and subject to additional expenses incurred by the Department as described in this section.

(A) A refund shall not be granted for any reduced eligible costs that are included in an amended certificate.

(B) An additional application payment shall be paid as specified in (3)(a) of this rule if a request to amend a certificate to increase the eligible cost.

(C) No facilities shall be exempt from these requirements.

(b) Applications for preliminary certification shall not be reviewed or considered complete if not accompanied by the fee payment. Preliminary certificates shall only be issued if the application is complete. In addition, the Applicant may be required to pay for expenses incurred by the Department in connection with the application that exceed these payments and which the Department determines are incurred in connection with processing the application. The Applicant shall be advised of any additional application expenses the Applicant shall pay before the expenses are incurred by the Department.

Stat. Auth.: ORS 285C.540 - 285C.559, ORS 315.341, OL 2011, Ch. 474 HB2523  
Stats. Implemented: ORS 285C.540-559, 315.341, OL 2011, Ch. 474 HB2523,  
OL 2012, Ch. 45 HB 4079  
Hist.: OBDD 8-2012, f. & cert. ef. 6-1-12

### 123-600-0150

#### Prioritization System for Manufacturing BETC Facilities

Applications in Excess of Biennial Limits. In the event that the Department receives applications for preliminary certification with a total amount of potential tax credits in excess of the limitations in ORS 285C.545, the Department shall allocate the potential tax credits according to the order in which the applications are complete.

Stat. Auth.: ORS 285C.540 - 285C.559, ORS 315.341, OL 2011, Ch. 474 HB2523  
Stats. Implemented: ORS 285C.540-559, 315.341, OL 2011, Ch. 474 HB2523,  
OL 2012, Ch. 45 HB 4079  
Hist.: OBDD 8-2012, f. & cert. ef. 6-1-12

### 123-600-0250

#### Research, Development, or Demonstration Facility (RDD)

(1) Criteria. Eligible RDD facilities shall comply with one or more of the following criteria:

(a) Research facilities that include a test bench research, prototype or pilot scale construction of a theoretically proved or primary researched new renewable resource generating or conservation technology;

(b) Development facilities that include the manufacture or initiation of the capability to manufacture new products for renewable resource generating or energy conservation in Oregon;

(c) Demonstration facilities that are likely to resolve questions on how to apply new renewable resource generating or more efficient energy technologies through pilot or production scale applications of technology; and

(d) Facilities that are likely to achieve Department’s goals as determined by the Director and shall demonstrate a reasonable potential to result in benefits in Oregon for which the value is likely to exceed the value of the tax credit, based on information filed with the application for preliminary certification.

(2) Eligible costs. Eligible costs for a RDD facility may include:

(a) Engineering, design and administrative costs

(b) Costs inherent in a research, development or demonstration facility that may not result directly in saved or produced energy. Such costs may include:

(A) Facility design, monitoring, assessment, evaluation and reporting. This includes but is not limited to: the development of standards, specifications, policies and procedures facilitating technology transfer; instruments, and controls.

(B) Other equipment needed to monitor, assess or evaluate the facility and the impacts of the facility.

(c) The following costs related to demonstration model(s) may be considered eligible:

(A) Materials for the demonstration model(s).

(B) The manufacturing, construction, assembly, and/or installation of the demonstration model(s).

(C) Testing and monitoring the demonstration model(s).

(d) Other eligible costs as determined by the Director.

Stat. Auth.: ORS 285C.540 - 285C.559, ORS 315.341, OL 2011, Ch. 474 HB2523

Stats. Implemented: ORS 285C.540-559, 315.341, OL 2011, Ch. 474 HB2523, OL 2012, Ch. 45 HB 4079  
Hist.: OBDD 8-2012, f. & cert. ef. 6-1-12

### DIVISION 623

#### STRATEGIC INVESTMENT PROGRAM

##### 123-623-1000

###### Generally for S.I.P. Projects — Purpose

This division of administrative rules clarifies, specifies and establishes procedures, standards and criteria for operation of the Strategic Investment Program (SIP) under ORS 285C.600 to 285C.635 and 307.123, whether inside or outside of a Strategic Investment Zone (SIZ). It does not control or bind the county assessor or Department of Revenue and does not supersede OAR chapter 150, in matters related to tax administration.

Stat. Auth.: ORS 285A.075 & 285C.615(7)

Stats. Implemented: ORS 285C.600 - 285C.626 & 307.123

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99; EDD 10-2004, f. & cert. ef. 5-24-04, Renumbered from 123-023-0201; EDD 25-2008, f. 7-31-08, cert. ef. 8-1-08; Renumbered from 123-023-1000 by OBDD 18-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 2-2016, f. & cert. ef. 1-29-16

##### 123-623-1100

###### Definitions

For the purposes of this division of administrative rules, additional definitions are found in OAR 123-001 (Procedural Rules). As used in these rules, the following terms have the meanings set forth below, unless the context clearly indicates otherwise.

(1) Abatement means the taxation and assessment of property comprising an eligible project under ORS 307.123.

(2) Applicant means a business firm, including but not limited to a publicly or privately held corporation, people's utility district, or a joint operating agency under ORS 262.005, seeking approval from the Commission for Abatement.

(3) Application means the form, prescribed by the Department and described in OAR 123-623-1400, and all supplemental attachments, exhibits and so forth that the Applicant completes or furnishes to the Department for the Strategic Investment Program.

(4) Approved Project means an investment or investments in taxable property that:

- (a) Is not Existing Property;
- (b) The Applicant owns or leases;
- (c) The Commission has determined shall receive Abatement;

and

(d) Conforms to the project definition established with the determination of the Commission according to OAR 123-326-1700.

(5) County means the government of the county in which the Approved Project is located. (Except with respect to SIZs, "County" also refers to the tribe/tribal government if the Approved Project is anywhere on the reservation of a federally recognized Indian Tribe)

(6) Existing Property means any property:

(a) Comprising all or part of a prior Approved Project, unless the property was never actually subject to Abatement.

(b) That at the time of the Department's receipt of the Application, the Applicant already:

(A) Owns or leases, regardless of location, including but not limited to recently acquired land or other property; or

(B) Has a contractual right or obligation to purchase or lease, including but not limited to doing so upon completion of improvements, construction, reconstruction or installations already underway at the Approved Project's site.

(c) Located in an SIZ, or for which any construction or installation began there, before the effective date of the SIZ's designation or the Department's receipt of the Application, regardless of whether the SIZ is the basis of Abatement under ORS 285C.606(2) and 285C.626.

(7) Retained Jobs means the Total Jobs existing some time before the Approved Project became fully operational or associated with later, intra-firm transfer of operations within this state, according to OAR 123-623-4200.

(8) SIZ means a strategic investment zone designated by the Commission at the request of the County according to OAR 123-623-3000 to 123-623-3400.

(9) Total Jobs means the total number of hours, for which relevant jobs, employees or hires were paid over a year's time, divided by 2,080, consistent with OAR 123-623-4200.

(10) Urban Project means an Approved Project located entirely outside a "rural area" as defined under ORS 285C.600, and hence, at least partially inside the urban growth boundary -- as acknowledged and in effect on the date of the Department's receipt of the Application:

(a) Of the Portland metropolitan region, aside from the exceptions in OAR 123-632-1115; or

(b) That surround any city outside that region, for which the population equals or exceeds 40,000 based on the most recent U.S. Census count or estimate available from the Portland State University Population Research Center (which currently consists of Albany, Bend, Corvallis, Eugene, Medford, Salem—Keizer and Springfield).

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

Stat. Auth.: ORS 285A.075 & 285C.615(7)

Stats. Implemented: ORS 285C.600 - 285C.626 & 307.123

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99; EDD 10-2004, f. & cert. ef. 5-24-04, Renumbered from 123-023-0351; EDD 3-2006(Temp), f. & cert. ef. 5-26-06 thru 11-22-06; Administrative correction 12-16-06; EDD 25-2008, f. 7-31-08, cert. ef. 8-1-08; Renumbered from 123-023-1100 by OBDD 18-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 2-2016, f. & cert. ef. 1-29-16

##### 123-623-1115

###### Grandfathered Rural Areas

On and after October 5, 2015, the following remain rural areas under ORS 285C.600 pursuant to section 2, chapter 515, Oregon Laws 2015:

(1) Any area inside Clackamas Rural SIZ #1, designated September 24, 2010, and sponsored by Clackamas County and the cities of Canby, Estacada, Happy Valley, Molalla and Sandy; and

(2) Tax lot 2900 in the southeast quarter of section 21 of Township 1 North, Range 2 West of the Willamette Meridian (1N221-2900) in Washington County.

Stat. Auth.: ORS 285A.075 & 285C.615(7)

Stats. Implemented: ORS 285C.600; OrLaws 2015 Ch. 515 Sec. 2

Hist.: OBDD 2-2016, f. & cert. ef. 1-29-16

##### 123-623-1250

###### Eligibility Criteria of the Commission

Under the definition of "eligible project" as used in ORS 285C.600:

(1) The Commission may establish criteria in order for property to receive Abatement either by resolution or as described in this division of administrative rules.

(2) The Commission may reject or revoke an Application up to 18 months after its approval and before the Abatement has begun, if the Approved Project will or does take place in conjunction with what the Commission deems to be substantial curtailment of employment at operations under the control of the Applicant (including but not limited to another commonly controlled business firm) anywhere in this state. Mitigating factors include:

(a) Applicant's candidness and cooperation in addressing such conjunction;

(b) Such curtailment's being unrelated and only coincidental to proposed investments; or

(c) Compensating actions by the Applicant.

Stat. Auth.: ORS 285A.075 & 285C.615(7)

Stats. Implemented: ORS 285C.600 & 285C.606

Hist.: EDD 25-2008, f. 7-31-08, cert. ef. 8-1-08; Renumbered from 123-023-1250 by OBDD 18-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 2-2016, f. & cert. ef. 1-29-16

##### 123-623-1300

###### Local Hiring

For purposes of ORS 285C.603:

(1) Prospective Applicants and County/local governments shall consider creative and cooperative means to promote gainful work for persons already residing in the proximate area or region of the Approved Project for:

(a) Jobs associated with the Approved Project's facility or operations; and

(b) Persons employed in the construction or installation of property or by other types of associated contractors, vendors or suppliers.

(2) County/local governments shall incorporate such means in a policy and standards for the designation of an SIZ, as otherwise permissible and administrable, with respect to OAR 123-623-3100.

(3) Such means shall not create any:

(a) Undue burden on the Applicant relative to the nature, needs or competitiveness of the Approved Project; or

(b) Explicit bias against anyone's rights or access to the privilege of employment, such as specifying residency-based hiring criteria proscribed by OP-8236, Oregon Attorney General (April 20, 1995).

Stat. Auth.: ORS 285A.075 & 285C.615(7)

Stats. Implemented: ORS 285C.603, 285C.609 & 285C.623

Hist.: EDD 10-2004, f. & cert. ef. 5-24-04; EDD 25-2008, f. 7-31-08, cert. ef. 8-1-08; Renumbered from 123-023-1300 by OBDD 18-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 2-2016, f. & cert. ef. 1-29-16

### 123-623-1400

#### Making Application

(1) An Applicant desiring approval for Abatement must submit an Application to the Department.

(2) In addition to what is required by the Application or in this division of administrative rules, the Applicant shall submit any information requested by the Department for purposes of evaluating the Application.

(3) Not less than 21 days after having received a complete Application, as described in OAR 123-623-1500, the Department shall arrange for the Commission to initially consider it at a regular or special meeting. Under extenuating circumstances, the Department may dispense with this minimum period.

(4) The Application form is available from and submitted to: Business Development, Business Oregon, State Lands Building Suite 200, 775 Summer Street NE, Salem OR 97301, see [www.oregon4biz.com](http://www.oregon4biz.com).

(5) An Applicant may submit an Application that is incomplete for lack of local agreement/approval, which the Department effectively receives and holds pending completion, in order that subsequently acquired, constructed or installed property avoids classification as Existing Property or for other reasons, so long as the Application includes:

(a) The fee described in OAR 123-623-1800(1);

(b) All required information or documentation currently available to the Applicant; and

(c) What the Department deems to be sufficient evidence that the Applicant has been in contact with the County to initiate steps under ORS 285C.609, including but not limited to local submission of a formal application if the County has previously established such procedures.

(6) Section (5) of this rule is not generally applicable to proposed investments in an SIZ, but the Department may exercise it in the case where an Applicant has encountered what the Department considers significant and undue delays in executing the standardized agreement for the SIZ under the local program established pursuant to OAR 123-623-3100.

Stat. Auth.: ORS 285A.075 & 285C.615(7)

Stats. Implemented: ORS 285C.600 - 285C.626

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99; EDD 10-2004, f. & cert. ef. 5-24-04, Renumbered from 123-023-0401; EDD 25-2008, f. 7-31-08, cert. ef. 8-1-08; Renumbered from 123-023-1400 by OBDD 18-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 2-2016, f. & cert. ef. 1-29-16

### 123-623-1500

#### Contents of Application, Generally

123-623-1550:

(1) A copy of a First Source Hiring Agreement according to OAR 123-070 that takes effect beginning no later than when any hiring for the Approved Project commences and ending no sooner than June 30 of the final tax year of Abatement.

(2) Information required in or with the Application as stated in the form, including but not limited to full company identification, hiring/payroll projections, full description of proposed investment(s) and of any exceptional impact on public services, as well as:

(a) The number of Retained Jobs over the 12 month's preceding the Department's receipt of the Application at the site, facility or operations, to which the proposed investment will be made;

(b) Full disclosure for purposes of OAR 123-623-1250, including but not limited to any probable reduction in the operations, employment or the like at any other facility in this state that is owned or operated by the Applicant or a commonly controlled business firm, within one year after making application, regardless of proximity or relationship to the proposed investment(s); and

(c) Commitments to:

(A) Address the exhortation under ORS 285C.603 consistent with OAR 123-623-1300;

(B) Provide timely notification or evidence to the county assessor or the Department of Revenue, as requested or otherwise necessary under ORS 307.123 or other applicable laws, such as the date when any taxable property is or will be initially occupied, used or operated commercially for specifically intended purposes;

(C) Ensure that any ultimate lessee is responsible for the payment of property taxes levied on leased property that comprises any part of the Approved Project; and

(D) Submit the annual reports of employment required under ORS 285C.615 and described in OAR 123-623-4000 to 123-623-4200.

(3) As described in OAR 123-623-1800:

(a) Full amount of the nonrefundable application fee; and

(b) Commitment to pay additional fee, if approved.

Stat. Auth.: ORS 285A.075 & 285C.615(7)

Stats. Implemented: ORS 285C.600, 285C.606, 285C.609, 285C.626, 307.123

Hist.: EDD 10-2004, f. & cert. ef. 5-24-04; EDD 25-2008, f. 7-31-08, cert. ef. 8-1-08; Renumbered from 123-023-1500 by OBDD 18-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 2-2016, f. & cert. ef. 1-29-16

### 123-623-1525

#### Application within a Strategic Investment Zone

If the proposed investment is subject to approval based on its location inside an SIZ:

(1) A complete Application must also include a locally endorsed and fully executed copy of the SIZ's standardized agreement that unambiguously identifies the Applicant and the proposed investment.

(2) The County may neither negotiate a project-specific agreement nor subject the proposal to approval under discretionary provisions, including but not limited to those under ORS 285C.609.

(3) Material variance between additional requirements established with designation of the SIZ and those found in the agreement submitted by the Applicant shall render such requirements unenforceable.

Stat. Auth.: ORS 285A.075 & 285C.615(7)

Stats. Implemented: ORS 285C.600, 285C.606 & 285C.626

Hist.: EDD 25-2008, f. 7-31-08, cert. ef. 8-1-08; Renumbered from 123-023-1525 by OBDD 18-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 2-2016, f. & cert. ef. 1-29-16

### 123-623-1550

#### Application outside a Strategic Investment Zone

A complete Application must also include all of the following, if the proposed investment is not using an SIZ:

(1) Evidence that the County held a public hearing concerning the Applicant's proposal, before executing the agreement in section (2) of this rule.

(2) A copy of the agreement:

(a) Between the Applicant and the County in partnership with any city in which the investment site is located;

(b) Executed before the official action in section (3) of this rule;

(c) Addressing the community service fee consistent with OAR 123-623-1900; and

(d) Specifying requirements, if any, under ORS 285C.609(5).

(3) With respect to the local official action requesting a Commission determination for Abatement on the Applicant's proposed investment(s):

(a) A copy of the official action by the governing body of the County; and

(b) Evidence that an affirmative vote by a majority of the County governing body (not merely the members present) at a regular or duly called special meeting effected the action.

(4) The latest version of any document submitted to County/local governments in relation to sections (1) to (3) of this rule.

Stat. Auth.: ORS 285A.075 & 285C.615(7)

Stats. Implemented: ORS 285C.600, 285C.606 & 285C.609

Hist.: EDD 25-2008, f. 7-31-08, cert. ef. 8-1-08; Renumbered from 123-023-1550 by OBDD 18-2010, f. 4-30-10, cert. ef. 5-1-10

### 123-623-1600

#### Consideration and Approval

(1) The Department shall review each Application, and only after deeming that information described in OAR 123-623-1500 and 123-623-1525 or 123-623-1550 is completely and accurately provided in it (except potentially for pending materials or information, of which the Department is reasonably assured of receipt), the Department shall make a recommendation to the Commission (subject to actual receipt of any pending material or information).

(2) In evaluating an Application, the Commission shall hold at least one meeting open to the public, at which the matter is an agenda item for discussion, and for which the Department has made appropriate and customary public notice. At the meeting the Commission may:

(a) Invite oral statements or written comments from the public; and

(b) Have the Applicant appear in order to give a statement and to answer questions submitted in advance or posed by Department staff or by members of the Commission, exclusively.

(3) The Commission may dispense with some or all of the elements in section (2) of this rule, as otherwise permitted under ORS Chapter 192, in light of extenuating circumstances.

(4) Pursuant to evaluation of the Application, the Applicant's proposed investment(s) are determined to be an eligible project for Abatement if the Commission finds that:

(a) The project will satisfy the criteria for eligibility as established by prior resolution of the Commission or in this division of administrative rules;

(b) The project will directly benefit a traded sector industry under ORS 285B.280;

(c) The total cost of the project will equal or exceed \$25 million, or \$100 million in the case of any proposed Urban Project;

(d) The project will not consist of any property formerly or currently exempt under ORS 285C.175 and the Applicant is not an authorized business firm for any investment at the exact same location in an enterprise zone, unless there will be a demarcation between such qualified property and property subject to the Abatement that is clear enough for purposes of proper valuation and tax administration; (e) The Applicant is not subject to an outstanding suspension under ORS 285C.615(3) as described in OAR 123-623-4000(4) and (5); and

(f) The Applicant has agreed to comply with any additional reasonable conditions imposed by the Commission related to the Strategic Investment Program, including requirements that continue for the term of the Abatement.

(5) Notwithstanding suspension of the determination as provided under ORS 307.123(6), once the Commission has taken formal action to authorize the Abatement, the Commission's determination is final, and the Commission may reverse, rescind or withdraw it only by formal finding of a material error or omission among submitted Application information or a noncompliance with criteria described or referenced in this rule.

Stat. Auth.: ORS 285A.075 & 285C.615(7)

Stats. Implemented: ORS 285C.600 - 285C.626, 307.123

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99; EDD 12-2002(Temp), f. & cert. ef. 6-5-02 thru 11-29-02; Administrative correction 4-15-03; EDD 10-2004, f. & cert. ef. 5-24-04, Renumbered from 123-023-0451; EDD 25-2008, f. 7-31-08, cert. ef. 8-1-08; Renumbered from 123-023-1600 by OBDD 18-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 2-2016, f. & cert. ef. 1-29-16

### 123-623-1700

#### Establishment of Exempt Property

(1) The Commission's determination pursuant to OAR 123-623-1600 needs to define the Approved Project for purposes of the Abatement, consistent with the Application (and the County agreement with the Applicant if outside an SIZ).

(2) Such a definition shall employ one or more of the following examples or a comparable method that:

(a) Stipulates the site(s) or overall facility at which applicable property must be located, used and occupied for commercial purposes;

(b) Delimits what the Abatement covers in terms of investment cost or property value, or the specific period, in which construction/installation needs to commence, or in which property must be placed in service; or

(c) Identifies applicable real and personal property, including but not limited to:

(A) Referencing the description of investment(s) in the Application or further information from the Applicant (whether requested or not by the Department or Commission); or

(B) Delineating details for improvements, buildings or property items (or representative examples thereof) that the Applicant will acquire, construct or install, or for which the assessed value might increase as a result of additions, reconstruction, modifications, remodeling, renovation, refurbishment, retrofitting or upgrades.

(3) Property of an Approved Project qualifies for Abatement even if built on, installed in or associated with Existing Property:

(a) Outside a SIZ, a (positive) change in the assessed value of already owned or leased property is also subject to Abatement if resulting from modifications, remodeling, renovation, refurbishment, retrofitting or upgrades as part of the Approved Project.

(b) The Abatement excludes any such change in value of any property inside any SIZ, except for newly constructed additions to any existing structure, as well as all land or any other property in existence or in the process of construction or installation before the Department's effective receipt of the Application. This subsection applies regardless if the project is approved based on its location in the SIZ or otherwise under ORS 285C.606(1) as described in OAR 123-623-1550.

(4) As otherwise allowed under the project definition described in this rule, the Abatement shall cover any property comprising the Approved Project, for which construction, installation, modification or the like occurs during or after the first year of Abatement, but only for the remainder of the 15-year period.

(5) If another business firm acquires the Applicant or the Approved Project, the ongoing Abatement shall continue as authorized, such that continuously exempt property is not Existing Property, provided that:

(a) The acquiring firm complies with all terms and conditions under the Application, its approval, and the corresponding local agreement in OAR 123-623-1525 or 123-623-1550, as well as applicable requirements of law and this division of administrative rules, as if the acquiring firm were the Applicant; and

(b) The owner or chief executive officer of the acquiring firm furnishes and authorizes a formal statement to the Department and the parties to the agreement, attesting to the firm's full assumption of relevant obligations and requirements formerly incumbent on the Applicant.

Stat. Auth.: ORS 285A.075 & 285C.615(7)

Stats. Implemented: ORS 285C.600, 285C.606 & 285C.626, 307.123

Hist.: EDD 10-2004, f. & cert. ef. 5-24-04; EDD 25-2008, f. 7-31-08, cert. ef. 8-1-08; Renumbered from 123-023-1700 by OBDD 18-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 2-2016, f. & cert. ef. 1-29-16

### 123-623-1800

#### State Application and Approval Fees

With respect to ORS 285C.612 and the fees payable to and collected by the Department:

(1) The following (non-refundable) amount must accompany the Application:

(a) \$5,000; or

(b) \$10,000 for a proposed Urban Project.

(2) After the Commission decides to approve the Application, but pending formal authorization as such through the Department, the Applicant must pay the following amount (of which the Department shall transfer 50 percent to the Department of Revenue to administer ORS 307.123):

- (a) \$10,000; or
- (b) \$50,000 for a proposed Urban Project.

(3) The Commission or Department will allocate payments collected and retained consistent with relevant provisions in OAR 123-009.

Stat. Auth.: ORS 285A.075 & 285C.615(7)

Stats. Implemented: ORS 285C.612

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99; EDD 10-2004, f. & cert. ef. 5-24-04, Renumbered from 123-023-0501; EDD 25-2008, f. 7-31-08, cert. ef. 8-1-08; Renumbered from 123-023-1800 by OBDD 18-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 2-2016, f. & cert. ef. 1-29-16

### 123-623-1900

#### Community Service Fee

(1) The local agreement included with the Application and described in OAR 123-623-1525 or 123-623-1550 shall specify:

- (a) The community service fee under ORS 285C.609(4)(b) and (c) or 285C.623(4)(b) and (c); and

(b) How the Applicant will annually make payment of the fee to the County, beginning not earlier than December 1 of each of the 15 tax years for which the Applicant claims and receives the Abatement, including arrangements for invoicing or issuance of a receipt to the Applicant.

(2) Depositing of community service fee moneys (under ORS Chapter 294) and their allocation, distribution or transfer by the County or any other entity in OAR 123-623-1950(1) do not affect the Approved Project's eligibility.

Stat. Auth.: ORS 285A.075 & 285C.615(7)

Stats. Implemented: ORS 285C.609 & 285C.623

Hist.: EDD 10-2004, f. & cert. ef. 5-24-04; EDD 25-2008, f. 7-31-08, cert. ef. 8-1-08; Renumbered from 123-023-1900 by OBDD 18-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 2-2016, f. & cert. ef. 1-29-16

### 123-623-1950

#### Local Distribution of Community Service Fee

(1) The County shall see to the entire annual distribution of funds comprising the community service fee including but not limited to some or all of the following:

- (a) The County;
- (b) City government(s), if any part of Approved Project is located within incorporated territory;
- (c) Any (other) local taxing district that levies taxes on property located in a tax code area containing any part of the Approved Project; or
- (d) Local organizations or programs that provide a relevant and significant community service, even without taxing authority.

(2) A distribution formula shall determine the exact percentage of the community service fee received or retained by an entity listed in section (1) of this rule. A schedule of distribution formulae that varies from year to year is allowable.

(3) Establishment of the annual formula may occur in one of only the following two ways:

- (a) By official action of the Commission, if subsection (b) of this section is not satisfied; or
- (b) By formal agreement that the following local parties have at least accepted in principle, and that is effective on or before the same date of the third month after the Commission's determination of the Approved Project:
  - (A) County government;
  - (B) City government described in subsection (1)(b) of this rule; and

(C) Local taxing districts listed in ORS 198.010 or 198.180 and described in subsection (1)(c) of this rule, to the extent that the sum of property tax authority for such participating districts equals or exceeds 75 percent of the total for all such districts (prorated by the anticipated proportion of the Approved Project among tax code areas). Property tax authority consists of the sum of a district's per-

manent and local option (levy) rate authority, whether used and unused, but it excludes the levy/tax rates for bonded indebtedness.

(4) If local parties timely reach and effect such an agreement:

(a) They may mutually amend or revise the agreement at a later time; and

(b) The County shall formally report the annual distribution formula to the Department, to:

(A) Confirm that the Commission need not establish such formula; and

(B) Inform about the redistribution of amounts received under ORS 285C.635(3).

(5) In the event that the parties in subsection (3)(b) of this rule have not concluded an agreement (aside from outstanding signatures) before the requisite three-month period, the Commission:

(a) Shall take necessary steps as soon as reasonably possible for purposes of subsection (3)(a), as described in section (6), of this rule; or

(b) May delay official action, at its sole discretion, upon learning that a sufficient set of the parties described in subsection (3)(b) of this rule are having productive negotiations, with which they wish to continue. Under such circumstances:

(A) The Commission may officially sanction an agreement reached when negotiations successfully conclude; and

(B) The parties may not subsequently amend or revise such an agreement in any way that would effectively modify the established distribution formula.

(6) In determining a distribution formula the Commission, as necessary:

(a) May rely primarily on the relative proportions of prevailing property tax rates among affected local taxing districts;

(b) May consider adjusting such proportions according to the Approved Project's demand or direct impact on the public service(s) provided by each entity, taking account of expected new property tax revenues even with the Abatement, as well as consideration of the goals and purposes of applicable state policies;

(c) Shall set an annual distribution percentage for each entity described in section (1) of this rule that the Commission determines will receive a portion of the distribution; and

(d) Shall in the process of issuing the distribution formula to the County government, notify all entities of this official, final action.

(7) In an SIZ, each Approved Project will entail a separate agreement or Commission action for the distribution of the community service fee arising from it, consistent with this rule. Nevertheless, with respect to any SIZ, the County and affected local parties may agree to a generalized distribution formula and standard agreement for all future Approved Projects.

Stat. Auth.: ORS 285A.075 & 285C.615(7)

Stats. Implemented: ORS 285C.609, 285C.623 & 285C.639

Hist.: EDD 25-2008, f. 7-31-08, cert. ef. 8-1-08; Renumbered from 123-023-1950 by OBDD 18-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 11-2012, f. & cert. ef. 8-15-12; OBDD 2-2016, f. & cert. ef. 1-29-16

### 123-623-2000

#### Confidential Records

As provided under ORS 192.501, 192.502 and 285C.620:

(1) The Department shall not release any information identifying or pertaining to an expected Applicant, or to discussions among it, local governments, or the Department and members of the Commission, before:

(a) Finalization of local approval for the proposed investment based on its being inside an SIZ; or

(b) The County governing body holds the public hearing under ORS 285C.609(4) (or a public notice for the hearing naming an expected Applicant) if not using an SIZ.

(2) The Department shall not release any Application materials submitted by an expected Applicant that specifically describe investment plans, before the Department's deems the received Application to be complete.

(3) The department shall seek to keep confidential certain sensitive records or communications obtained in association with an Application, as otherwise allowable under ORS 192.410 to 192.505, including but not limited to the following:

(a) Reports and analyses of reports bearing on the Applicant's character, finances, management ability and reliability, as obtained in confidence from persons or firms not required by law to submit them, including but not limited to the Applicant, and for which the Department obliged itself in good faith to not disclose;

(b) Financial statements, tax returns, business records, employment history, personnel files and comparable data submitted by or for an Applicant, or analysis of such data;

(c) Intra-departmental advisory memoranda based on or providing preliminary information;

(d) Formulas, plans, designs and related information that constitute trade secrets under ORS Chapter 192;

(e) Personal financial statements;

(f) Information of an Applicant pertaining to litigation that has not concluded, to which the Applicant is a party if the complaint has been filed, or if not, that the Applicant shows is reasonably likely to occur (Nothing in this section shall limit any right or opportunity granted by discovery or deposition statutes to a litigant or defendant);

(g) Production, sales or cost data, customer lists, or detailed descriptions or identifications of business property; or

(h) Marketing strategy information that relates to an Applicant's plan to address specific markets and the Applicant's strategy regarding specific competitors.

(4) Subject to sections (1), (2) and (3) of this rule, the Department shall provide records pertaining to the Strategic Investment Program upon written request, as described in OAR 123-005.

Stat. Auth.: ORS 285A.075 & 285C.615(7)

Stats. Implemented: ORS 285C.620

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99; EDD 10-2004, f. & cert. ef. 5-24-04, Renumbered from 123-023-0551; EDD 25-2008, f. 7-31-08, cert. ef. 8-1-08; Renumbered from 123-023-2000 by OBDD 18-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 2-2016, f. & cert. ef. 1-29-16

### 123-623-3000

#### S.I. Zones — Geography, Duration and Jurisdictions

(1) There is no limit to the number of SIZs under ORS 285C.623, for which any County may seek designation on one or multiple occasions.

(2) The Commission may designate an SIZ that is entirely or partially inside one or more cities that also seek designation as parties with the County to a joint request. The County and any such city do thereby jointly cosponsor the SIZ and are its "sponsor" or "cosponsors."

(3) An SIZ may cover the entire (unincorporated) territory of the County, or it may be as small as a single parcel of land, on which development of an eligible project can feasibly take place, but any SIZ must:

(a) Be entirely contiguous;

(b) Consist of area only in the territory of a single County;

(c) Encompass land exclusive of land inside any other existing SIZ; and

(d) Contain only rural area if including any rural area under ORS 285C.600(5) and section 2, chapter 515, Oregon Laws 2015, consistent with OAR 123-623-1100(10) and 123-623-1115.

(4) Once designated, an SIZ does not expire and may be neither terminated nor geographically amended.

(5) In determining the area to include in a proposed SIZ, local governments shall consider plans and potentialities for city annexations and projections for city population growth, in order to minimize the probability of the following occurrences, which would nevertheless not interrupt the existence or operation of the SIZ:

(a) A city that does not sponsor the SIZ annexes territory inside of it; or

(b) A city, whose urban growth boundary (UGB) crosses the area of the SIZ, increases in population to 40,000 or more, in the case of an otherwise rural SIZ. (An Approved Project, for example, inside such an UGB is an Urban Project, if official release of the relevant increase in the city's population estimate or enumeration occurred before the Department receives the Application)

Stat. Auth.: ORS 285A.075 & 285C.615(7)

Stats. Implemented: ORS 285C.623 & 285C.626

Hist.: EDD 25-2008, f. 7-31-08, cert. ef. 8-1-08; Renumbered from 123-023-3000 by OBDD 18-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 2-2016, f. & cert. ef. 1-29-16

### 123-623-3100

#### Local Request for Designation

In seeking designation of any SIZ:

(1) The sponsor of the proposed SIZ shall prepare information defining the SIZ's boundary including a map clearly showing its entire area in relation to other demarcations, as well as tax lot numbers, metes and bounds, or other data or descriptions, as necessary in order for one to ascertain the area of designation.

(2) The County shall conduct a public hearing on the matter.

(3) Following the hearing, the County and any city, for which any part of the SIZ will be inside its corporate limits, shall execute an intergovernmental agreement to jointly sponsor and operate the proposed SIZ.

(4) The County, or the County and the city/cities as part of the intergovernmental agreement, shall articulate objectives for the proposed SIZ and shall develop a program for business firms to use for Abatement on eligible projects. This local program may differ from the program adopted for any other SIZ sponsored by the County or city, but the sponsor of the SIZ shall officially document the program, including with but not limited to the following:

(a) Any and all criteria for receiving local approval and the requirements for qualification under ORS 285C.623(5), such that the sponsor has clearly delineated administrative procedures, methods of verification and consequences of a firm's failure respective to those criteria or requirements;

(b) Policy and standards to improve the likelihood of local hiring per OAR 123-623-1300, which may consist of a firm's formally accepting to undertake "good faith" efforts;

(c) Ministerial steps and processes setting forth a straightforward path for a firm to request and to receive local approval for the SIZ, in order to subsequently submit a complete Application to the Department; and

(d) Standardized agreement language, which may be a detailed form, that:

(A) Will give the location of the proposed project in the SIZ and general information about the newly constructed or newly installed property that will comprise it;

(B) Stipulates the community service fee in accordance with OAR 123-623-1900;

(C) Spells out all local criteria, requirements and standards intended to obligate a firm's benefiting from the Abatement in some way;

(D) Will identify the particular firm in detail and provide for it to expressly acknowledge and commit to such criteria, requirements and so forth by signature of an authorized representative of the firm; and

(E) Is endorsed by a sponsor representative (either with the County or a city) in approving a proposed project and the firm's use of the SIZ.

(5) Pursuant to and in reference to materials arising from sections (1) to (4) of this rule, the County governing body shall take official action to request designation of the SIZ and shall forward that request to the Department.

Stat. Auth.: ORS 285A.075 & 285C.615(7)

Stats. Implemented: ORS 285C.623

Hist.: EDD 25-2008, f. 7-31-08, cert. ef. 8-1-08; Renumbered from 123-023-3100 by OBDD 18-2010, f. 4-30-10, cert. ef. 5-1-10

### 123-623-3200

#### Department's Receipt of County Request

The Department shall report to the Commission on any complete request that it receives from a County for designation of a proposed SIZ that satisfies OAR 123-623-3000 and 123-623-3100, after concluding that the request contains the following:

(1) Identification of any requisite city that also sponsors the SIZ;

(2) The map and other geographic data establishing the SIZ area and boundary;

(3) Evidence that the SIZ area will conform to OAR 123-623-3000(3);

(4) Information pertaining to the SIZ's inclusion, adjacency and proximity to any current city limit or urban growth boundary and to any urban growth boundary of a city with a population that equals or exceeds 40,000 (or likely will within 10 years);

(5) The agenda, minutes and so forth demonstrating that the County held a public hearing concerning the SIZ;

(6) A copy of the intergovernmental agreement between the County and any and all city cosponsors, as executed on or after the date of the public hearing;

(7) A summary of the locally established objectives for the SIZ;

(8) Documentation of the local program described in OAR 123-623-3100(3), including but not limited to copies of policies, rules, procedural guidelines or administrative plans, but especially, a sample standardized agreement; and

(9) A record that the County governing body took the official action requesting designation of the SIZ with an affirmative vote by a majority of its members (not merely those present) at a regular or duly called special meeting that occurs after the execution or conclusion of material efforts described in sections (1) to (8) of this rule.

Stat. Auth.: ORS 285A.075 & 285C.615(7)

Stats. Implemented: ORS 285C.623

Hist.: EDD 25-2008, f. 7-31-08, cert. ef. 8-1-08; Renumbered from 123-023-3200 by OBDD 18-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 2-2016, f. & cert. ef. 1-29-16

### 123-623-3300

#### Designation by the Commission

In response to a request for designation of an SIZ:

(1) The Commission shall initially consider it by receiving a report from the Department as an agenda item at a regular or special meeting, for which the Department has made appropriate and customary public notice. The Commission shall determine the process by which it will complete its review of the proposed SIZ.

(2) The Commission shall designate the SIZ if finding that:

(a) With a reasonable degree of confidence, the SIZ will contribute to fulfilling the intent of ORS 285C.603 and will generally accomplish the objectives established by the sponsor;

(b) The sponsor has defined its processes to allow for efficient implementation and operation of the SIZ, such that a business firm could expect to have its local request for approval handled expeditiously; and

(c) The SIZ's criteria, requirements, policies, standards and so forth, and the sponsor's plans to administer them are sufficiently clear and straightforward to provide reasonable certainty with respect to any conceivably eligible project, such that a business firm can correctly discern:

(A) The probability of qualifying in that SIZ;

(B) What it must do to comply;

(C) Whether the firm/project actually does qualify at any given point; and

(D) The consequence of noncompliance or disqualification.

(3) When taking action to approve the request, the Commission's shall set the effective date of designation. On or after this date, property may be newly constructed or installed for purposes of Abatement in that SIZ.

Stat. Auth.: ORS 285A.075 & 285C.615(7)

Stats. Implemented: ORS 285C.623

Hist.: EDD 25-2008, f. 7-31-08, cert. ef. 8-1-08; Renumbered from 123-023-3300 by OBDD 18-2010, f. 4-30-10, cert. ef. 5-1-10

### 123-623-3400

#### Operational Changes to Existing Designations

(1) The sponsor of an existing SIZ may revise any of its documentation, procedures or policies, including but not limited to establishing a different standardized agreement, by repeating OAR 123-623-3100(2) to (5) and submitting a request for approval of the revisions to the Department.

(2) The Department may:

(a) Convey the submission for consideration of approval by the Commission in accordance with OAR 123-623-3300; or

(b) Directly approve the request, sending the Commission a report of any such action, if deeming the revisions to be fully consistent with the original designation, and to be:

(A) Merely clarifying or enhancing administrative or technical matters;

(B) Changing a substantive criterion or requirement to only a relative degree; or

(C) Of a similar nature that does not warrant Commission review.

(3) Any such revision does not affect Abatement in the SIZ, for which the Department effectively received the Application on or before the effective date of approved changes, which the Department or Commission may not set earlier than when the Department received the official request from the sponsor.

Stat. Auth.: ORS 285A.075 & 285C.615(7)

Stats. Implemented: ORS 285C.623 & 285C.626

Hist.: EDD 25-2008, f. 7-31-08, cert. ef. 8-1-08; Renumbered from 123-023-3400 by OBDD 18-2010, f. 4-30-10, cert. ef. 5-1-10

### 123-623-4000

#### Annual Project Reporting — Submission to Department

For purposes of ORS 285C.615(1) to (3) & (6) and the report submitted by a business firm benefiting from Abatement in the property tax year concluding as of the prior June 30:

(1) The firm shall complete the prescribed report form available from and furnish it to: Business Development, Business Oregon, State Lands Building Suite 200, 775 Summer Street NE, Salem OR 97301, see [www.oregon4biz.com](http://www.oregon4biz.com).

(2) The firm may send the report form on or after January 1 next following the tax year, but the Department must receive it no later than the immediately subsequent April-1 date or the preceding Friday when April 1 is a Saturday or Sunday.

(3) This reporting requirement applies to any Approved Project, of which any property is actually exempt from taxes under ORS 307.123(1)(b) in the tax year, beginning with the 2009–2010 tax year.

(4) Section (3) of this rule is true regardless that the Approved Project does not pertain to a distribution under ORS 285C.635(3), whether because:

(a) The first tax year of that Abatement was before 2008–2009; or

(b) The most recently concluded tax year is 2023–2024 or later, in that reports will still be required in and after 2025.

(5) If the benefiting business firm has two or more Approved Projects receiving Abatements in a given tax year at more or less the same location(s), for which Total Jobs are the same or overlapping:

(a) The firm shall submit report forms for each project, including but not limited to the respective data for Retained Jobs as applicable according to OAR 123-623-4200(3) to (6).

(b) In transmitting data to the Oregon Department of Administrative Service (DAS), the Department shall adjust the job numbers assigned among the projects to prevent double-counting, which may depend on further information from the firm.

(c) Generally, assuming employment increases with successive projects, these adjustments will:

(A) Assign only Retained Jobs to the less/least recent project as reported for it;

(B) For any less recent project, assign the Retained Jobs of the next more recent project to be its total jobs; and

(C) For the more/most recent project, assign as its total jobs the reported Total Jobs minus the sum of Retained Jobs, as reported for all projects.

(6) The Department shall recommend to the Commission that it suspend its determination for the Approved Project, and any other project materially implicated for purposes of subsection (5) of this rule — effectively revoking any such Abatement for and after the tax year beginning with the very next July 1, until the suspension is ever rescinded under ORS 285C.615(3)(c) — if the benefiting firm has failed to:

(a) Provide information called for by the report form or in OAR 123-623-4100 or 123-623-4200; or

(b) Promptly satisfy a necessary or appropriate request by the Department to further clarify or verify such information. (Therefore, in light of the Department's limited turnaround time to transmit data to DAS, firms are encouraged to submit as early as possible to improve the likelihood that such a request can be timely resolved)

(7) “Tax year” has the same meaning as under ORS 308.007.  
Stat. Auth.: ORS 285A.075 & 285C.615(7)  
Stats. Implemented: ORS 285C.615; OL 2007 Ch. 905 §6  
Hist.: EDD 25-2008, f. 7-31-08, cert. ef. 8-1-08; Renumbered from 123-023-4000  
by OBDD 18-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 2-2016, f. & cert. ef. 1-29-16

### 123-623-4100

#### Reporting Elements

Respective or in addition to items stipulated under ORS 285C.615(2), the report submitted to the Department by a benefiting business firm described in OAR 123-623-4000 must:

(1) State for the applicable tax year, as may be confirmed or corrected through communication with the county assessor:

(a) The real market or assessed value of the entire Approved Project in terms of what was exempt or taxable, as well as corresponding property taxes saved or paid by the firm; and

(b) Which year it was out of the 15 that comprise the Abatement period.

(2) Include the total cumulative cost of investments physically made in the Approved Project through the most recent calendar year (which in effect, are two years removed from any investment affecting values in subsection (1)(a) of this rule).

(3) Breakdown the amounts and recipients of fees or other (non-tax) payments made by or on behalf of the firm that arise from requirements under ORS 285C.609(5) or 285C.623(5), in addition to the amount of the statutory community service fee, in the calendar year preceding the report.

(4) Provide data for Retained Jobs as relevant, Total Jobs, and taxable income and compensation of Total Jobs, in accordance with OAR 123-623-4200 that are broken out for:

(a) The firm itself; and

(b) A single general operator of the Approved Project, if relevant, but the report need not include information formally identifying any such general operator.

Stat. Auth.: ORS 285A.075 & 285C.615(7)

Stats. Implemented: ORS 285C.615

Hist.: EDD 25-2008, f. 7-31-08, cert. ef. 8-1-08; Renumbered from 123-023-4100  
by OBDD 18-2010, f. 4-30-10, cert. ef. 5-1-10; OBDD 2-2016, f. & cert. ef. 1-29-16

### 123-623-4200

#### Applicable Employees and Payroll

For purposes of OAR 123-623-4100(4):

(1) With respect to Total Jobs, the report shall include each of the following totals for the preceding calendar year:

(a) Hours paid;

(b) Taxable income; and

(c) Compensation.

(2) Relevant jobs, hires or employees are persons, regardless of residency in this state:

(a) For whom their employer under ORS chapter 316 is:

(A) The benefiting business firm (or a commonly controlled business firm); or

(B) A general operator, if any, who manages the entire Approved Project for the firm; but

(C) Not any other type of contractor, subcontractor, vendor or supplier of the firm or of such a general operator; and

(b) Who:

(A) Regularly work at a site or location containing property of the Approved Project; and

(B) Are engaged in or directly support business operations of the Approved Project, such that other operations represent not more than 25 percent of the person’s time spent performing work for the employer.

(3) Retained Jobs consist of relevant existing jobs, hires or employees described in section (2) of this rule, who:

(a) Were already at the existing site, facility or operations, to which the Applicant makes the investments that comprise the Approved Project, consistent with sections (4) or (5) of this rule; or

(b) Are associated with the transfer of operations from elsewhere in this state to the Approved Project, after the Application was received by the Department and before the final year of Abatement,

in terms of any increase in Total Jobs that relates to the permanent curtailment of full-time equivalent employment at the former location of the transferred operations.

(4) Pursuant to an Application received by the Department on or after January 1, 2016, the first report shall establish total hours with respect to Retained Jobs already at the Approved Project over:

(a) The 12 months before the Application’s receipt, accounting for any modification from the Application in terms of OAR 123-623-1500(2)(a); or

(b) The calendar year ending 30 months before the first tax year of the Abatement, if that is more recent than the period in subsection (a) of this section.

(5) In the case of Approved Projects, for which Applications were received before January 1, 2016, the Department shall seek to establish with the first such report in or after 2016, the applicable number of Retained Jobs based on information that is or has been submitted by the firm in that or prior reports or upon request of the Department.

(6) Subject to section (4) or (5) of this rule, the number of Retained Jobs becomes fixed and need not be re-reported, but the benefiting business firm shall revise or update it with subsequent reports to:

(a) Correct errors and omissions, if any; or

(b) Account for operations of the firm (or a commonly controlled business firm) that are transferred during the preceding calendar year, in accordance with subsection (3)(b) of this rule, even if the operations became part of the firm through merger or acquisition after the Department received the Application.

(7) The amount of hours assigned to salaried positions is 2,080, or a lower amount as prorated to account for less than full-time or year-round employment.

(8) Taxable income equates to the wages that the employer used in calculating amounts withheld under ORS chapter 316 for Oregon personal income taxes during the calendar year.

(9) Compensation includes total calendar-year remuneration (whether taxable or not) in the form of wages, salary, overtime pay, shift differential, profit-sharing, bonuses, commissions, paid vacation, and associated fringe or financial benefits such as life insurance, medical coverage and retirement plans, but excluding:

(a) Free meals, club membership or comparable workplace amenities;

(b) Payroll-based tax or cost mandated by federal, state or local law, such as worker’s compensation, unemployment insurance or the employer’s share under FICA; and

(c) Gratuities or tips.

Stat. Auth.: ORS 285A.075 & 285C.615(7)

Stats. Implemented: ORS 285C.615

Hist.: OBDD 2-2016, f. & cert. ef. 1-29-16

## DIVISION 630

### OREGON LOW INCOME COMMUNITY JOBS INITIATIVE

#### 123-630-0000

##### Purpose

This division of administrative rules specifies procedures and criteria necessary to administer processes under the Oregon Low Income Community Jobs Initiative for the certification of a qualified equity investment in order to receive a credit allowance for taxes otherwise due under ORS chapter 316, 317 or 318.

Stat. Auth.: ORS 285C.650 - 285C.656 & 315.526 - 315.536

Stats. Implemented: ORS 285C.650 - 285C.656 & 315.526 - 315.536

Hist.: OBDD 9-2012, f. & cert. ef. 6-1-12; OBDD 9-2013(Temp), f. & cert. ef. 10-15-13 thru 4-11-14; OBDD 6-2014, f. & cert. ef. 4-1-14; OBDD 2-2015(Temp), f. & cert. ef. 2-12-15 thru 8-10-15; Administrative correction, 8-18-15; OBDD 8-2015, f. & cert. ef. 9-1-15

#### 123-630-0010

##### Definitions

For the purposes of this division of administrative rules, additional definitions are found in Procedural Rules, OAR chapter 123-001. As used in OAR chapter 123 division 630 the following terms

have the meanings set forth below and in ORS 285C.650-285C.656 and ORS 315.526-315.536, unless the context clearly indicates otherwise.

(1) "Applicable percentage" means zero percent for each of the first two credit allowance dates, seven percent for the third credit allowance date and eight percent for the next four credit allowance dates.

(2) "Credit allowance date" means, with respect to any qualified equity investment:

- (a) The date on which the investment is initially made; and
- (b) Each of the six yearly anniversary dates after that initial date.

(3) "Long-term debt security" means any debt instrument issued by a qualified community development entity, at par value or at a premium, with an original maturity date of at least seven years from the date of its issuance, with no acceleration of repayment, amortization or prepayment features prior to its original maturity date.

(4) "Purchase price" means the amount of cash paid to a qualified community development entity for a qualified equity investment.

(5) "Qualified active low-income community business" has the meaning given that term in section 45D of the Internal Revenue Code and the rules and regulations adopted pursuant thereto. "Qualified active low-income community business" does not include, a business that derives or projects to derive 15 percent or more of its annual revenue from the rental or sale of real estate, unless the business is controlled by, or under common control with, another business that:

(a) Does not derive or project to derive 15 percent or more of its annual gross revenues from the rental or sale of real estate; and

(b) Is the primary tenant of real estate leased from the controlled business.

(6) "Qualified community development entity" has the meaning given that term in section 45D of the Internal Revenue Code, provided that the entity has entered into, or is controlled by an entity that has entered into, an allocation agreement with the Community Development Financial Institutions Fund of the United States Department of the Treasury with respect to credits authorized by section 45D of the Internal Revenue Code, and the State of Oregon is included within the service area set forth in the allocation agreement.

(7) "Qualified equity investment" means any equity investment in, or long-term debt security issued by, a qualified community development entity, that:

(a) Is acquired at its original issuance solely in exchange for cash after July 1, 2012, unless it was a qualified equity investment in the hands of a prior holder; and

(b) Within 12 months of its issuance substantially all of its cash purchase price is used by the issuer to make qualified low-income community investments in qualified active low-income community businesses located in this state and thereafter over the term of the qualified equity investment no less than 85 percent of its cash purchase price is used by the issuer to make qualified low-income community investments in qualified active low-income community businesses located in this state. All reinvestments must be made in this state.

(8) "Qualified low-income community investment" means any capital or equity investment in, or loan to, any qualified active low-income community business made after July 1, 2012.

Stat. Auth.: ORS 315.526 – 315.536

Stats. Implemented: ORS 315.526 – 315.536

Hist.: OBDD 9-2012, f. & cert. ef. 6-1-12; OBDD 9-2013(Temp), f. & cert. ef. 10-15-13 thru 4-11-14; OBDD 6-2014, f. & cert. ef. 4-1-14

## 123-630-0020

### Credit Allowance

(1) A person or entity that makes a qualified equity investment shall, at the time of investment, earn a vested credit against the taxes otherwise due under ORS chapter 316, 317 or 318.

(2) The total amount of the tax credit available to a taxpayer under this section shall equal 39 percent of the purchase price of the qualified equity investment. The applicable percentage is zero percent for years 1 and 2, seven percent for year 3 and eight percent for years 4, 5, 6 and 7. A tax credit allowed under this section may not be sold or transferred, with the exception that tax credits that a part-

nership, limited liability company, S corporation or other pass-through entity is entitled to claim may be allocated to the partners, members or shareholders of the entity for their direct use in accordance with the provisions of any agreement among the partners, members or shareholders.

(3) The holder of a qualified equity investment or any partner, member or shareholder of such holder pursuant to subparagraph 2 above on a particular credit allowance date of the qualified equity investment may claim a portion of the tax credit against its tax liability for the tax year that includes the credit allowance date equal to the applicable percentage for that credit allowance date multiplied by the purchase price of the qualified equity investment.

(4) The credit allowed under this section may not exceed the tax liability of the taxpayer claiming the credit for the tax year in which the credit is claimed.

(5) For qualified low-income community investments made, any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability in any succeeding tax year. Any credit remaining in the next succeeding tax year may be carried forward and used in the second succeeding tax year. Any credit remaining unused in the second succeeding tax year may be carried forward and used in the third succeeding tax year. Any credit remaining unused in the third succeeding tax year may be carried forward and used in the fourth succeeding tax year. Any credit remaining unused in the fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be used in any tax year thereafter. For qualified low-income community investments made prior to January 1, 2014, any tax credit otherwise allowed under this section that is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability in any succeeding tax year.

Stat. Auth.: ORS 315.526 - 315.536

Stats. Implemented: ORS 315.526 - 315.536, ORS 316, 317 or 318

Hist.: OBDD 9-2012, f. & cert. ef. 6-1-12; OBDD 9-2013(Temp), f. & cert. ef. 10-15-13 thru 4-11-14; OBDD 6-2014, f. & cert. ef. 4-1-14

## 123-630-0030

### Eligibility

(1) The following conditions and/or criteria must exist for a taxpayer to be eligible for the credit:

(a) A qualified community development entity that issues a debt instrument may not make cash interest payments on the debt instrument during the period commencing with its issuance and ending on its final credit allowance date in excess of the sum of the cash interest payments and the cumulative operating income, as defined in the regulations promulgated under section 45D of the Internal Revenue Code, of the qualified community development entity for the same period. This limitation shall only apply to long-term debt securities issued by a qualified community development entity that are designated as qualified equity investments and shall not apply to other debt of the qualified community development entity. Neither this paragraph nor the definition of "long-term debt security" provided in ORS 315.529 in any way limits the holder's ability to accelerate payments on the debt instrument in situations where the qualified community development entity has defaulted on covenants designed to ensure compliance with this section or section 45D of the Internal Revenue Code.

(b) A business is considered a qualified active low-income community business for the duration of a qualified community development entity's investment in or loan to the business if it is reasonable to expect that at the time of the qualified community development entity's investment in or loan to a qualified active low-income community business, the business will continue throughout the duration of the investment in or loan to the business.

(c) A qualified equity investment must be designated a qualified equity investment by the qualified community development entity and be certified by the department.

(d) Prior to January 1, 2014, the maximum amount of qualified low-income community investments made in a qualified active low-income community business, together with all of its affiliates, that may count towards the requirement that a qualified community

development entity invest substantially all of the qualified equity investment required by OAR 123-630-0010(7)(b) in qualified active low-income community businesses in this state is \$4 million, whether made by one or several qualified community development entities.

(e) On or after January 1, 2014, the maximum amount of qualified low-income community investments made in a qualified active low-income community business, together with all of its affiliates, that may count towards the requirement that a qualified community development entity invest at least the percentage of the qualified equity investment required by OAR 123-630-0010(7)(b) in qualified active low-income community businesses in this state is \$8 million, whether made by one or several qualified community development entities. Qualified active low-income community businesses that received qualified low-income investments of up to \$4 million prior to January 1, 2014, may receive additional qualified low-income investments, up to a total of \$8 million, on or after January 1, 2014, only if the community development entity first submits a project summary demonstrating that the additional investment complies with the requirements of the applicable statutes and rules.

(f) A qualified equity investment must be made before July 1, 2016. Nothing in this paragraph precludes an entity that makes a qualified equity investment prior to July 1, 2016, from claiming a tax credit relating to that qualified equity investment for each applicable credit allowance date.

(g) No more than 40% of the total project costs that are paid for by the qualified low-income community investment may be for working capital, financing and other fees and other soft costs.

(2) A taxpayer claiming a credit may not claim any other credit under ORS 315 or 285C during the same tax year based on activities related to the same qualified active low-income community business.

Stat. Auth.: ORS 285C.650 - 285C.656 & 315.526 - 315.536

Stats. Implemented: ORS 285C.650-285C.656 & 315.526 - 315.536

Hist.: OBDD 9-2012, f. & cert. ef. 6-1-12; OBDD 9-2013(Temp), f. & cert. ef. 10-15-13 thru 4-11-14; OBDD 6-2014, f. & cert. ef. 4-1-14; OBDD 2-2015(Temp), f. & cert. ef. 2-12-15 thru 8-10-15; Administrative correction, 8-18-15; OBDD 8-2015, f. & cert. ef. 9-1-15

### 123-630-0040

#### Ineligible Activities

Not all projects or businesses will qualify for the Oregon Low Income Community Jobs Initiative. Example businesses that are ineligible include but are not limited to:

- (1) Residential rental;
- (2) Owner occupied housing;
- (3) Farming operations;
- (4) Private or commercial golf courses;
- (5) Country clubs;
- (6) Massage parlors;
- (7) Hot tub facilities;
- (8) Suntan facilities;
- (9) Racetracks or other facilities used for gambling; and
- (10) Any store of which the principal business is the sale of alcoholic beverages for consumption off premises.

Stat. Auth.: ORS 285C.650-285C.656, 315.526 - 315.536

Stats. Implemented: ORS 285C.650-285C.656, 315.526 - 315.536

Hist.: OBDD 9-2012, f. & cert. ef. 6-1-12; OBDD 9-2013(Temp), f. & cert. ef. 10-15-13 thru 4-11-14; OBDD 6-2014, f. & cert. ef. 4-1-14

### 123-630-0050

#### Application and Fees

(1) An applicant seeking to have an equity investment or long-term debt security certified as a qualified equity investment and eligible for a tax credit under ORS 285C.650 and OAR 123-630-0080 must submit an application to the department on a form that the department provides. A complete application must include all of the following:

(a) The entity's name, address, tax identification number and evidence of certification as a qualified community development entity.

(b) A copy of an allocation agreement executed by the entity, or its controlling entity, and the Community Development Financial Institutions Fund that includes the State of Oregon in its service area.

(c) A certificate executed by an executive officer of the entity attesting that the allocation agreement remains in effect and has not been revoked or canceled by the Community Development Financial Institutions Fund.

(d) A description of the proposed purchase price, structure and purchaser of the equity investment or long-term debt security.

(e) The name and tax identification number of any person eligible to claim a tax credit, under ORS 285C.650-285C.656, and ORS 315.526-315.536, allowed as a result of the certification of the qualified equity investment.

(f) Information regarding the proposed use of proceeds from the issuance of the qualified equity investment on a form provided by the department. If the information described in the previous sentence is not submitted with the application, the applicant shall, at least 20 days prior to the date of the applicant proposes to make a qualified low-income community investment, submit to the department for review and approval of the qualified low-income community investment, an updated qualified low-income community investment certification on a form provided by the department. The information will include but is not limited to the following for each proposed qualified low-income community investment:

- (A) Location;
  - (B) Sources and uses of funds;
  - (C) Impacts to communities;
  - (D) Revenues;
  - (E) Number of jobs created and/or retained; and
  - (F) Economic impacts
- (G) Name and contact information for: the investor making the qualified equity investment(s), the investor making the qualified low-income community investment(s), and all qualified active low-income community business receiving the qualified low-income community investment(s).

(g) A nonrefundable application fee of \$20,000. This fee shall be paid to the department and shall be required for each application submitted.

(2) In addition to what is required by the application or in this division of administrative rules, the applicant will submit any information requested by the department for purposes of evaluating the application.

(3) A qualified community development entity submitting an application for certification of an additional equity investment or long-term debt security as a qualified equity investment and eligible for a tax credit under ORS 315.533, must demonstrate to the satisfaction of the department that all previous equity investments and long-term debt securities certified as qualified equity investments have been fully committed and used in compliance with the requirements of the Oregon Low Income Community Jobs Initiative.

(4) A qualified community development entity that is certified under ORS 285C.650 and OAR 123-630-0080 shall pay an annual evaluation fee of \$1,000 to the department with the submission of each report described in OAR 123-630-0070.

(5) Applications will be processed on a first come, first serve basis.

(6) Supplemental documentation or attachments submitted to the department by the applicant along with the application form and required materials are not considered part of the application and will be considered to be separate and distinct information submitted to the department. The department will provide approval or consent only with regard to those submissions for which approval or consent is required from the department by statute or rule. If the department does not provide explicit approval in writing for any supplemental information or documentation submitted by the applicant, then the information or documentation is not approved.

Stat. Auth.: ORS 285C.650 & 315.526 - 315.536

Stats. Implemented: ORS 285C.650 & 315.526 - 315.536

Hist.: OBDD 9-2012, f. & cert. ef. 6-1-12; OBDD 9-2013(Temp), f. & cert. ef. 10-15-13 thru 4-11-14; OBDD 6-2014, f. & cert. ef. 4-1-14; OBDD 2-2015(Temp), f. & cert. ef. 2-12-15 thru 8-10-15; Administrative correction, 8-18-15; OBDD 8-2015, f. & cert. ef. 9-1-15

**123-630-0060**

**Preference**

The department may give preference to applications for projects in traded sectors as identified by the Commission in the Strategic Plan and that demonstrates overall community benefit and have one or more of the following characteristics:

- (1) Produce goods that directly reduce emissions of greenhouse gases or are designed as environmentally sensitive replacements for products in current use;
  - (2) Have a primary purpose of improving the environment or reducing emissions of greenhouse gases;
  - (3) Are operated by businesses with 100 or fewer employees;
  - (4) Are located in rural or distressed areas of the state;
  - (5) Employ displaced workers in the area;
  - (6) Assist in the economic diversification of the area;
  - (7) Contain a significant amount of owner equity capital. At least ten percent of the project costs for established companies and 30 percent of project costs for start-ups should come from equity or subordinated loans from the owners;
  - (8) Encourage the flow of capital from outside the local area;
- or
- (9) Do not cause adverse competitive disadvantages to existing businesses.

Stat. Auth.: ORS 285C.650 , 315.526 – 315.536

Stats. Implemented: ORS 285C.650 & 315.526 – 315.536

Hist.: OBDD 9-2012, f. & cert. ef. 6-1-12; OBDD 6-2014, f. & cert. ef. 4-1-14

**123-630-0070**

**Reporting Requirements**

(1) The qualified community development entity will submit a report by the first anniversary of the initial credit allowance date that provides proof that substantially all of the cash purchase price of its qualified equity investment was used to make qualified low-income community investments in qualified active low-income community businesses located in this state.

(2) Thereafter, the qualified community development entity will submit an annual report within 45 days of the beginning of the state's fiscal year during the compliance period on a form provided by the department. No annual report shall be due prior to the first anniversary of the initial credit allowance date. The form shall be remitted to the department both in electronic and hard copy formats. The information provided in an annual report will be submitted by the department to the Oregon Department of Administrative Services no later than September 30 following submission of the report and will be posted on the Oregon transparency website no later than December 31 of the same year. The report will include but is not limited to the following:

- (a) Number of employment positions created and retained as a result of qualified low-income community investments;
- (b) Annual salary of each position described in subparagraph (a) of this paragraph; and
- (c) Number of positions described in subparagraph (a) of this paragraph that provide health benefits as described in ORS 743.730.
- (d) Proof that substantially all of the cash purchase price of the qualified equity investment continues to be used to make qualified low-income community investments in qualified active low-income community businesses located in this state.
- (e) The costs and expenses of making the qualified low-income community investment, including but not limited to fees paid for professional services, including legal and accounting services, related to the formation of operating entities; and
- (f) Information with respect to the qualified equity investments made for the purpose of making qualified low-income community investments in Oregon that would be reported as part of the institution level report and transaction level reports submitted by qualified community development entities pursuant to section 45D of the Internal Revenue Code.

(3) The qualified community development entity will submit a report, in a format acceptable to the department, within 5 business days of each qualified low-income community investment made in a qualified low-income community business located in this state. The

report will include, but is not limited to, the amount of the investment and the date on which the investment was made to the qualified active low-income community business and will be accompanied by documentation satisfactory to the department regarding the investment.

(4) The qualified community development entity will submit a quarterly report that provides proof that each qualified low-income community investment continues to be invested in qualified active low-income community businesses located in this state. The report will include, but is not limited to, the amount of the original investment, the date on which the original investment was made to the qualified active low-income community business, the current balance of the investment in the qualified active low-income community business, and any reinvestment of capital returned to or recovered from the original investment, exclusive of any profits realized (together with the same type of information regarding said investment as was reported regarding the original investment).

Stat. Auth.: ORS 285C.650 , 315.526 – 315.536

Stats. Implemented: ORS 285C.650 & 315.526 – 315.536

Hist.: OBDD 9-2012, f. & cert. ef. 6-1-12; OBDD 9-2013(Temp), f. & cert. ef. 10-15-13 thru 4-11-14; OBDD 6-2014, f. & cert. ef. 4-1-14

**123-630-0080**

**Certification**

(1) Within 15 days after having received a complete application, the department will grant or deny the application in full or in part and notify the applicant of the decision.

(2) If the application is deemed complete, the department will certify the proposed equity investment or long-term debt security as a qualified equity investment and eligible for a tax credit under ORS 285C.650 and this rule, and subject to the limitations stated in applicable statutes and these rules. The department shall provide written notice of the certification to the qualified community development entity. The notice shall include the names of those taxpayers who are eligible to utilize the credits and their respective credit amounts. If the names of the persons or entities that are eligible to utilize the credits change due to a transfer of a qualified equity investment or a change in an allocation pursuant to OAR 123-630-0020(2), the qualified community development entity shall notify the department of the change.

(3)(a) Except as otherwise provided in paragraph (b) below, within 60 days after receiving notice of certification, the qualified community development entity shall issue the qualified equity investment and receive cash in the amount of the certified purchase price. The qualified community development entity must provide the department with evidence of the receipt of the cash investment within 10 business days after receipt. If the qualified community development entity does not receive the cash investment and issue the qualified equity investment on or before the 60th day following receipt of the certification notice, the certification shall lapse and the entity may not issue the qualified equity investment without reapplying to the department for certification. A certification that lapses reverts to the department and may be reissued only in accordance with the application process outlined in this section.

(b) For a qualified equity investment described in ORS 285C.653(2), a qualified community development entity shall issue the qualified equity investment during the period beginning July 1, 2012, and ending 60 days after receiving notice of certification. If the qualified equity investment is issued prior to the submission of an application for certification under the applicable statutes and rules, the qualified community development entity must provide the department with evidence of the qualified equity investment and of receipt of the cash investment at the time of application for certification.

(4) The department shall certify qualified equity investments in the order applications are received by the department. Applications received on the same day shall be deemed to have been received simultaneously. For applications received on the same day and deemed complete, the department shall certify, consistent with remaining tax credit capacity, qualified equity investments in proportionate percentages based upon the ratio of the amount of qualified equity investment requested in an application to the total amount of qualified equity investments requested in all applications

received on the same day. Applications for certification under ORS 285C.653(2) and OAR 123-630-0090(2) submitted without complete project summaries commensurate with the amount of certification applied for, may be reduced at the sole discretion of the department. Applications must demonstrate the ability to identify projects described in ORS 285C.653(2) and OAR 123-630-0090(2), and failure to identify projects described in ORS 285C.653(2) and OAR 123-630-0090(2) may additionally result in a reduction of the certification. If a pending request cannot be fully certified because of the limitations in the applicable statutes and 123-630-0090, the department shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial credit.

(5) If the department denies any part of the application, the notification to the applicant will include the grounds for denial. The applicant will have 15 days of receipt of the notification to provide additional information to mediate the denial. Within 15 days after the department receives any such additional information, the department will reconsider the application. If the department grants the application upon reconsideration, the approval will be effective as of the original date of submission. If the applicant fails to provide additional information within 15 days of receipt of the denial, the application remains denied.

Stat. Auth.: ORS 285C.650, 315.526 – 315.536

Stats. Implemented: ORS 285C.650 & 315.526 – 315.536

Hist.: OBDD 9-2012, f. & cert. ef. 6-1-12; OBDD 9-2013(Temp), f. & cert. ef. 10-15-13 thru 4-11-14; OBDD 6-2014, f. & cert. ef. 4-1-14

### 123-630-0090

#### Limitations for Certification

(1) Once the department has certified a cumulative amount of qualified equity investments that can result in the utilization of \$16 million of tax credits in any tax year, the department may not certify any more qualified equity investments under ORS 285C.650 and OAR 123-630-0080. This limitation shall be based on the scheduled utilization of tax credits without regard to the potential for taxpayers to carry forward tax credits to later tax years.

(2) The department will reserve \$30 million of qualified equity investment authority for qualified low-income community investments in qualified active low-income community businesses that:

(a) Have a primary purpose of improving the environment or reducing emissions of greenhouse gases; or

(b) Produce goods that directly reduce emissions of greenhouse gases or are designed as environmentally sensitive replacements for products in current use.

(3) The department will reserve \$170 million of qualified equity investment authority for all other qualified active low-income community investments (which may include the types of investments described in ORS 285C.653(s) and OAR 123-630-0090(2)).

(4) All applications will indicate the amount of qualified equity investment authority sought by the applicant under OAR 123-630-0090(2) and 123-630-0090(3). The maximum amount of qualified equity investment authority for which an applicant may apply under 123-630-0090(2) is \$30 million and under 123-630-0090(3) is \$170 million.

(5) The department shall pre-screen a qualified community development entity's proposed investment in a qualified active low-income community business for purposes of determining if the business satisfies the requirements of ORS 285C.653(2) and OAR 123-630-0090(2). The department shall, not later than 15 business days after the date of receipt of all relevant documentation, determine whether the qualified active low-income community business satisfies the requirements of ORS 285C.653(2) and OAR 123-630-0090(2) and notify the qualified community development entity in writing of the determination and an explanation of its determination. If the department fails to notify the qualified community development entity with respect to the proposed investment within the period specified in this paragraph, the business in which the qualified community development entity proposes to invest is considered to satisfy the requirements of ORS 285C.653(2) and OAR 123-630-0090(2).

Stat. Auth.: ORS 285C.650 – 653, 315.526 – 315.536

Stats. Implemented: ORS 315.526 – 315.536

Hist.: OBDD 9-2012, f. & cert. ef. 6-1-12; OBDD 9-2013(Temp), f. & cert. ef. 10-15-13 thru 4-11-14; OBDD 6-2014, f. & cert. ef. 4-1-14; OBDD 11-2014, f. 6-30-14, cert. ef. 7-1-14

### 123-630-0100

#### Recapture of Tax Credit

(1) The Department of Revenue may recapture any portion of a tax credit per ORS 285C.656 and ORS 315.533.

(2) The Department of Revenue may recapture any portion of a tax credit if the qualified community development entity applies for and receives qualified equity investment authority under ORS 285C.653(2) and OAR 123-630-0090(2) and fails to invest at least 85 percent of the cash purchase price of the QEI in qualified active low-income community businesses that satisfy the requirements of ORS 285C.653(2) and OAR 123-630-0090(2) within 12 months of the issuance of the qualified equity investment and maintain such level of investment in qualified active low-income community businesses satisfying such requirements until the last credit allowance date for such qualified equity investment.

Stat. Auth.: ORS 285C.656 & 315.526 – 315.536

Stats. Implemented: ORS 285C.656 & 315.526 – 315.536

Hist.: OBDD 9-2012, f. & cert. ef. 6-1-12; OBDD 9-2013(Temp), f. & cert. ef. 10-15-13 thru 4-11-14; OBDD 6-2014, f. & cert. ef. 4-1-14; OBDD 11-2014, f. 6-30-14, cert. ef. 7-1-14

### 123-630-0110

#### Confidential Records

(1) Upon written request and within a reasonable time, the Director or his designee shall provide program records, for inspection in accordance with ORS Chapter 192.

(2) The person requesting records will be charged for preparing and mailing such records. Costs may include but not be limited to costs incurred in locating records, separating exempt and nonexempt records, having a custodian present during the inspection, preparing lists of data, making photocopies and telefaxing materials. Fees to be collected shall be set forth in the Department's schedule of fees and may be amended from time to time as the Department may determine.

(3) Except as otherwise provided in ORS 192.410-192.595, records exempt from disclosure include but are not limited to:

(a) Reports and analyses of reports which bear on the Applicant's character, finances, management ability and reliability, and which were obtained in confidence from persons or firms not required by law to submit them and the Department has obliged itself in good faith not to disclose the information;

(b) Financial statements, tax returns, business records, employment history and other personal data submitted by or for Applicants, or analysis of such data;

(c) Intra-departmental advisory memoranda preliminary to a decision;

(d) Formulas, plans, designs and related information that constitute trade secrets under ORS 192;

(e) Personal financial statement;

(f) Financial statements of Applicants;

(g) Customer lists;

(h) Information of an Applicant pertaining to litigation to which the Applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the Applicant shows that such litigation is reasonably likely to occur. This exemption does not apply to conclude litigation and nothing in this section shall limit any right or opportunity granted by law to a party involved in litigation;

(i) Production, sales or cost data; and

(j) Marketing strategy information that relates to an Applicant's plan to address specific markets and Applicant's strategy regarding specific competitors.

Stat. Auth.: ORS 285A.075, 192, 285C.656 & 315.526 – 315.536

Stats. Implemented: ORS 192, 285C.656 & 315.526 – 315.536

Hist.: OBDD 6-2014, f. & cert. ef. 4-1-14

DIVISION 635

OREGON INVESTMENT ADVANTAGE

123-635-0000

Purpose and Scope

This division of administrative rules:

(1) Specifies procedures and criteria for certification under the Oregon Investment Advantage Act to exempt the business income of qualified facilities from State income or corporate excise taxation under ORS 316.778 or 317.391, in order to spur investments in new Oregon operations with new full-time employees (earning minimum compensation levels) at qualifying facilities in counties exhibiting the worst per capita incomes and unemployment rates statewide.

(2) Does not control or bind the county assessor or Department of Revenue and does not supersede OAR chapter 150, in matters related to tax administration.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.495, 285C.500 - 285C.506, 316.778 & 317.391  
Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05; EDD 1-2009, f. 2-23-09, cert. ef. 2-24-09; OBDD 5-2010, f. 1-29-10, cert. ef. 2-1-10; Renumbered from 123-155-0000, OBDD 1-2011, f. & cert. ef. 1-3-11; OBDD 4-2011, f. 8-31-11, cert. ef. 9-1-11; OBDD 5-2016, f. & cert. ef. 3-28-16

123-635-0100

Definitions

As used in this division of administrative rules, in addition to definitions in OAR 123-001 (Procedural Rules), unless the context dictates otherwise:

(1) "Business firm" means a person operating or conducting one or more trades or businesses for profit, and does not include any governmental agency, municipal corporation or nonprofit corporation, other than a people's utility district or a joint operating agency under ORS 262.005.

(2) "Facility" has the meaning under ORS 285C.500(4).

(3) "Municipal Corporation" means the following, with respect to the location of a Facility proposed by an application for preliminary certification in OAR 123-635-0200:

(a) The county government of the county, the territory of which contains the Facility, regardless of whether the location is incorporated or not;

(b) A city government, if the Facility will be located within the corporate limits or urban growth boundary of the city; and

(c) A Port for which the Facility will be located within the territorial limits of the port district.

(4) "Qualified Location" means a site for a Facility as described in OAR 123-635-0150.

(5) "Unique Operations" has the meaning described in OAR 123-635-0175.

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

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.500 & 285C.503

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05; OBDD 5-2010, f. 1-29-10, cert. ef. 2-1-10; Renumbered from 123-155-0100, OBDD 1-2011, f. & cert. ef. 1-3-11; OBDD 4-2011, f. 8-31-11, cert. ef. 9-1-11; OBDD 12-2012, f. & cert. ef. 8-15-12; OBDD 5-2016, f. & cert. ef. 3-28-16

123-635-0150

Qualified Locations

A proposed Facility must be inside a county as determined according to section (1) of this rule, and located at a site satisfying the requirements of section (2) of this rule, at the time when the Department receives the application for preliminary certification:

(1) With respect to county eligibility:

(a) With on-line availability of (non-preliminary) annual statistics or data described in this rule, the Department shall analyze the most current and prior two years' revised data, ascertain which counties in the state satisfy ORS 285C.500(5)(b), prepare associated information, and post it on the Department web site for use by the public, business firms and local economic development professionals.

(b) The determination described in subsection (a) of this section shall first take effect at least once a year on January 1 or July 1 following on-line availability of the latest annual data. As the Depart-

ment deems appropriate in response to the release of new annual data or revisions to that data, the Department may reissue or modify the determination, update associated information and set the effective date for changes in county status, as warranted.

(c) A correct, prior determination in accordance with this section is not subject to retroactive change due to subsequent revisions to data for the same or future years.

(2) The specific site of a proposed Facility must meet at least one of the following two requirements:

(a) The site is completely inside the urban growth boundary (UGB) of a city with a population of 15,000 or less (based on the most recent U.S. Census count or estimate available from the Portland State University Population Research Center); or

(b) Regardless of being inside or outside of any city's UGB, the site consists entirely of land zoned for industrial use:

(A) Pursuant to effective municipal zoning ordinances that expressively and generally permit permanent facilities and private operations for heavy or light manufacturing, energy production, fabrication, warehousing, distribution, mineral/agricultural processing or similarly intensive economic uses;

(B) In accordance with applicable state land-use laws, including but not limited to those for unincorporated communities, exceptions from state planning goals, or ORS 197.713, 197.714 or 197.719; and

(C) Such that the Facility's business operations must directly benefit a traded sector industry under ORS 285C.010, regardless of other uses permitted under the particular zoning code ordinance.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.500 & 285C.503

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05; OBDD 5-2010, f. 1-29-10, cert. ef. 2-1-10; Renumbered from 123-155-0150, OBDD 1-2011, f. & cert. ef. 1-3-11; OBDD 12-2012, f. & cert. ef. 8-15-12; OBDD 5-2016, f. & cert. ef. 3-28-16; OBDD 10-2016, f. & cert. ef. 9-16-16

123-635-0175

Unique Operations

Under ORS 285C.503(5)(e), a business firm's operations that comprise a Facility proposed for preliminary certification must be new business operations respective to the site of the Facility and to any other location in this state where the firm also operates, such that:

(1) In the case of the business firm itself, the business operations at the Facility must be categorically different from any operations in which that same firm has recently engaged. (As an example, a business firm may receive certification for a Facility that will manufacture or distribute certain products here for the first time, even if the firm's products were already for sale in this state)

(2) In the case where the business firm has 100-percent common equity interest or is under common control (by way of corporate, familial or similar affiliations) with one or more other business firms operating in this state, the business operations at the Facility must be significantly dissimilar from the operations in which any other such firm has recently engaged. (As an example, a corporate subsidiary is certifiable for a new, first-in-Oregon facility fabricating a laminated wood product, even if another wholly owned subsidiary of the same parent company already makes a similar product in this state, but the new operations utilize an advanced generation of technology with which the product has higher performance standards or weight-bearing specifications)

(3) Irrespective of section (1) or (2) of this rule, the acquisition of a preexisting Facility does not qualify as new business operations, unless both of the following are satisfied:

(a) The business firm invests appreciably in real property or extensively in terms of installing personal property at the Facility after applying for preliminary certification; and

(b) The operations that the firm will undertake pursuant to the new investment are significantly dissimilar from operations recently performed at the Facility.

(4) For purposes of this rule:

(a) "Categorically different" means that the existing, in-state business operations produce, render, deliver or provide essentially another type of good or service for a distinct market segment or customer base.

(b) “Recently” means during the 12 months before the date, on which the Department received the application for preliminary certification.

(c) “Significantly dissimilar” means that the existing, in-state business operations, or the goods or services arising from them, utilize different technology, processes, delivery methods, points in supply chain, marketing, brand names or the like.

(5) How much a Facility’s proposed operations are like those of any other business (even one with partially shared ownership), anywhere in Oregon, does not matter, except as provided under ORS 285C.503(4)(b)(A) and (5)(f) to the extent that the operations will compete with other employers in the local area as addressed in OAR 123-635-0270(4)(b) and (5).

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.500 & 285C.503

Hist.: EDD 9-2005, f. & cert. ef. 11-4-05; EDD 1-2009, f. 2-23-09, cert. ef. 2-24-09; Renumbered from 123-155-0175, OBDD 1-2011, f. & cert. ef. 1-3-11; OBDD 4-2011, f. 8-31-11, cert. ef. 9-1-11; OBDD 5-2016, f. & cert. ef. 3-28-16

### 123-635-0200

#### Preliminary Certification Application

For purposes of ultimately seeking the exemption under ORS 316.778 or 317.391:

(1) A business firm must complete an application for preliminary certification and send it to the Department, as follows:

(a) Using the form prescribed by the Department; and

(b) Before the following:

(A) Commencement of construction, installation or similar activities with respect to any new property or improvements, which excludes site work or preparation other than appreciable improvements to the land, that constitute any part of the proposed Facility; and

(B) Hiring of any employee, who will constitute the five or more required employees at that location.

(2) The preliminary certification application must include a fee of \$500 in the form of a check or money order payable to the Department.

(3) Applications are available at and shall be submitted to: Business Development, Business Oregon, State Lands Building Suite 200, 775 Summer Street NE, Salem OR 97301-1280, see [www.oregon4biz.com](http://www.oregon4biz.com).

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

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.503

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05; OBDD 5-2010, f. 1-29-10, cert. ef. 2-1-10; Renumbered from 123-155-0200, OBDD 1-2011, f. & cert. ef. 1-3-11; OBDD 4-2011, f. 8-31-11, cert. ef. 9-1-11; OBDD 5-2016, f. & cert. ef. 3-28-16

### 123-635-0250

#### Determination of Preliminary Certification

Pursuant to a filing of a preliminary certification application as described in OAR 123-635-0200:

(1) The Department shall:

(a) Review the application for completeness; and

(b) Determine whether the business firm and the applicant’s proposed Facility:

(A) Is at a Qualified Location;

(B) Represents Unique Operations; and

(C) May be reasonably expected to satisfy the employment and other applicable requirements under ORS 285C.503(5).

(2) After receipt of the application, the Department shall do the following:

(a) Notify the applicant in writing whether it is complete; and

(b) Send a copy of the application to the Municipal Corporations, in such a way that the date of sending is recorded, unless officials of the Municipal Corporation have already formally expressed support for the proposed Facility’s use of this program comparable to subsection (3)(b) of this rule.

(3)(a) The Department shall complete the determination described in subsection (1)(b) of this rule, after receiving any additional information requested from the applicant; but

(b) The determination shall not be final sooner than 60 days from the date, on which the Department sent the copy of the appli-

cation to the Municipal Corporations, unless they all have provided sufficient response, such as a written confirmation of “no objection” from local officials based on communication with governing body members.

(4) After fulfillment of section (3) of this rule, the Department shall notify the applicant in writing of its decision, which shall include but is not limited to the following, in the event that the Department:

(a) Denies preliminary certification, it shall send the applicant either notice consistent with OAR 123-001-0725 or only a written statement of explanation if the denial results from an objection as described in OAR 123-635-0270(2).

(b) Approves the preliminary certification, it shall send a letter conferring preliminary certification.

(5) The Department shall send notification of the final determination on preliminary certification to relevant staff of the Department of Revenue.

(6) Subject again to the criteria and procedures in this rule, a preliminary certified business firm may refile in order to renew and advance the date of its preliminary certification for purposes of OAR 123-635-0350(3).

(7) The Department may issue an amended preliminary certification as appropriate, pursuant to revised information about the proposed Facility as formally received from the business firm before the end of the tax year, for which the first filing may be made according to OAR 123-635-0350(2). In determining whether to issue the amended preliminary certification, the Department shall consider:

(a) Issues described in OAR 123-635-0350(6); and

(b) Material implications in terms of ORS 285C.503(4)(b), consulting with the Municipal Corporations beforehand as warranted.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.503

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05; OBDD 5-2010, f. 1-29-10, cert. ef. 2-1-10; Renumbered from 123-155-0250, OBDD 1-2011, f. & cert. ef. 1-3-11; OBDD 5-2016, f. & cert. ef. 3-28-16

### 123-635-0270

#### Local Objection and Relevant Requirements

Respective to a proposed Facility:

(1) For purposes of section (2) of this rule, a Municipal Corporation may object to preliminary certification through a formal submission to the Department, but the Department must receive the objection, a copy of an adopted resolution, and any requisite information, within 60 days from the date the Department sent a copy of the application for preliminary certification to the governing body of the Municipal Corporation in OAR 123-635-0250(2)(b). Otherwise, the Municipal Corporation is deemed to agree to preliminary certification.

(2) In order for the objection to be automatic and not subject to appeal in a contested case, the objection must take the form of a resolution:

(a) Adopted by the governing body during the 60-day period, in accordance with applicable local laws, government charter and practices; and

(b) Containing a statement of the reason(s) for objection under ORS 285C.503(4)(b) and accompanied by information, as described in subsection (5)(b) or section (6) of this rule.

(3) Irrespective of sections (1) and (2) of this rule or the adoption of a resolution, every Municipal Corporation is encouraged and expected to furnish timely evidence to the Department, if local officials believe that the proposed Facility does not satisfy a requirement under ORS 285C.503(5).

(4) Besides entries in the application, the Department shall rely especially on the Municipal Corporations in determining whether:

(a) Health insurance coverage of all Facility employees will be at least equivalent to that of Municipal Corporation employees, if applicable under ORS 285C.503(5)(d)(B).

(b) Business operations will meaningfully compete with one or more existing businesses operating locally and employing persons, who reside in the city, port or county, including competition for:

(A) Local customers;

(B) Skilled workers or managers within the local labor pool;

(C) Other resources or inputs, for which local supplies and accessibility are critical but scarce or problematic; or

(D) Comparable circumstances, which always exclude general inter-firm rivalry within the broader marketplace.

(5) If local competition as described in subsection (4)(b) of this rule is indicated, then it must be either:

(a) Supported with clear evidence furnished by the Municipal Corporation, based on which the Department can independently make a determination under ORS 285C.503(5)(f); or

(b) Identified by type or basic nature in the formal statement of objection with a resolution in accordance with sections (1) and (2) of this rule.

(6) In order for the Department to deny an application for preliminary certification based on incompatibility with local growth or development standards, the Municipal Corporation must make a formal submission in accordance with sections (1) and (2) of this rule that includes a resolution and information documenting the relevant standards and showing that they were established in municipal ordinances already in effect when the business firm submitted the application to the Department.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.503

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05; OBDD 5-2010, f. 1-29-10, cert. ef. 2-1-10; Renumbered from 123-155-0270, OBDD 1-2011, f. & cert. ef. 1-3-11; OBDD 5-2016, f. & cert. ef. 3-28-16

### 123-635-0300

#### Annual Certification

For purposes of annual certification of a Facility for each tax year of the business firm, as allowed under ORS 285C.506:

(1) A preliminarily certified business firm that owns or leases and operates the Facility must file the application for annual certification with the Department:

(a) On or before the 30th day after the end of the income or corporate excise tax year, for which it is seeking to claim or exercise the exemption under ORS 316.778 or 317.391; and

(b) Using the form prescribed by and available from the Department: Business Development, Business Oregon, State Lands Building Suite 200, 775 Summer Street NE, Salem OR 97301-1280, see [www.oregon4biz.com](http://www.oregon4biz.com).

(2) Each application must include a fee of \$100 in the form of a check or money order payable to the Department.

(3) Within 30 days after the date of filing, Department staff shall review the application, consider potential fact-finding about the Facility under ORS 285C.506(5) to (8), as feasible and appropriate, and determine whether it satisfies the applicable requirements for annual certification, then if the Department:

(a) Denies annual certification, it shall send notice consistent with OAR 123-001-0725.

(b) Approves the annual certification, it shall send a letter conferring certification for the just concluded tax year.

(4) The Department shall also copy relevant staff at the Department of Revenue with items as described in section (3) of this rule.

(5) Requirements for annual compensation under ORS 285C.503(5)(d) apply only to a Facility that received preliminary certification on or after January 1, 2011.

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

Stat. Auth.: ORS 285A.075 & 285C.506(4)

Stats. Implemented: ORS 285C.506

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05; OBDD 5-2010, f. 1-29-10, cert. ef. 2-1-10; Renumbered from 123-155-0300, OBDD 1-2011, f. & cert. ef. 1-3-11; OBDD 12-2012, f. & cert. ef. 8-15-12; OBDD 5-2016, f. & cert. ef. 3-28-16

### 123-635-0350

#### Issues of Initial and Subsequent Annual Certifications

For purposes of annual certification as described in OAR 123-635-0300:

(1) The preliminarily certified business firm may file the first such application for annual certification with the Department only after:

(a) The business firm has fully acquired Facility property, and completed it in terms of the construction, reconstruction, modifica-

tion and installation of proposed improvements for purposes of subsection (c) of this section;

(b) Relevant employees have been hired; and

(c) Business operations have commenced at the Facility.

(2) Relative to the date, during the income tax year of the business firm, on which operations commenced and so forth as described in section (1) of this rule, this first filing may occur:

(a) For and within 30 days following the end of that tax year, if the firm applied for preliminary certification on or before June 30, 2011.

(b) Not less than 24 months after that date, if the firm applied for preliminary certification on or after July 1, 2011, such that the exemption on taxable income may not begin at the earliest until:

(A) Two years later than it would as described in subsection (a) of this section (allowing no more than eight consecutive years of exemption); or

(B) Only one tax year later (with up to nine consecutive years of exemption), but only if that date lies within the first 30 days of the tax year.

(3) For purposes of this first filing, the application shall show that after the date, on which the Department approved the preliminary certification:

(a) Business operations commenced at the Facility within:

(A) Six months, if only acquiring existing buildings or structures; or

(B) Eighteen months, if involving substantial construction or reconstruction; and

(b) Facility property did not remain in an unfinished state of construction, reconstruction, modification or installation for more than six months without significant progress toward completion of such activities.

(4) In order for the Department to certify the Facility with the first filing:

(a) Information in the application needs to indicate satisfaction of section (3) of this rule, except as allowed by Department staff through a written finding that any delay or interruption was reasonable and not excessive, given the complexity or extent of the business firm's investment in the Facility or of inadvertent circumstances.

(b) The location and nature of the Facility's business operation need to conform to that represented in the application for preliminary certification, including but not limited to any amendment according to OAR 123-635-0250(7).

(5) For purposes of an application for annual certification:

(a) Its approval shall not depend on any current issue of actual competition with other local businesses, Qualified Location or Unique Operations.

(b) The Department may deny the application if discovering that at the time of application for preliminary certification, the Facility was not at a Qualified Location or did not represent Unique Operations, including but not limited to the case where the preliminary certification application contained false or incomplete information.

(c) The Department may approve the application, even if the nature of the Facility or the business firm/ownership changes after the first filing, including but not limited to changes in:

(A) The composition of Facility property or its exact location; or

(B) The corporate or ownership structure or organization of the business.

(6) To allow a change described in subsection (5)(c) of this rule depends on:

(a) Direct, ongoing continuity with the original facility;

(b) Business operations remaining materially the same; and

(c) Relative to the location identified in the application for preliminary certification, the Facility is located at what was likewise a Qualified Location inside the same urban growth boundary or at a similarly proximate location.

(7) The business firm does not need to make its first filing as soon as permissible according to section (2) of this rule, or it might miss or skip any subsequent opportunity, for which it is allowed to apply for annual certification, such that the firm may still use the exemption for any remaining, eligible tax year that is not more than

nine consecutive tax years after the year, in which operations commenced and so forth as described in section (1) of this rule; however:

(a) Neither postponement of the first filing nor failure to apply in any subsequent tax year shall affect the period for which certification is otherwise allowed.

(b) The business firm may not claim or exercise the exemption under ORS 316.778 or 317.391 for any such tax year, pursuant to which it does not directly make application for annual certification as described in OAR 123-635-0300.

(8) If an application for annual certification is timely filed but denied by the Department, then the exemption is disallowed not only for that year, but also for all other remaining, eligible tax years (but without retroactive effect on any prior exemption).

Stat. Auth.: ORS 285A.075 & 285C.506(6) & (7)

Stats. Implemented: ORS 285C.506, 316.778 & 317.391

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05; OBDD 5-2010, f. 1-29-10, cert. ef. 2-1-10; Renumbered from 123-155-0350, OBDD 1-2011, f. & cert. ef. 1-3-11; OBDD 12-2012, f. & cert. ef. 8-15-12; OBDD 5-2016, f. & cert. ef. 3-28-16

### 123-635-0400

#### Application Fees, Waivers

With respect to application fees as described in this division of administrative rules:

(1) The Department may excuse the fee or reduce the required amount:

(a) If a business firm's Facility readily qualifies for certification, but as determined based on Department experience and expertise relative to general business activity in the county, region or statewide, it:

(A) Is very small in size;

(B) Has minimal employment; or

(C) Will likely have modest revenue prospects and little likelihood of effectively realizing much benefit from the exemption on taxable income; or

(b) If it can be demonstrated that such a waiver will further the goals and objectives of the program and other relevant public policies, for example, when partial or non-imposition of the fee might promote business investments in areas of the state where the exemption has not yet been used.

(2) The Department shall return or refund the amount collected to the applicant, if it rejects the application or denies the preliminary or annual certification, pending a final order to that effect.

(3) The moneys collected would defray administrative costs; in particular, they may be critical for offsetting legal expenses in the event of contested case appeal.

Stat. Auth.: ORS 285A.075, 285C.503(3) & 285C.506(4)

Stats. Implemented: ORS 285C.503 & 285C.506

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05; OBDD 5-2010, f. 1-29-10, cert. ef. 2-1-10; Renumbered from 123-155-0400, OBDD 1-2011, f. & cert. ef. 1-3-11; OBDD 4-2011, f. 8-31-11, cert. ef. 9-1-11

## DIVISION 650

### ENTERPRISE ZONE CREATION AND AMENDMENT

#### 123-650-0001

##### Purpose and Scope

(1) This division of administrative rules governs the existence, modification and termination of regular enterprise zone areas under ORS 285C.050 to 285C.250 (Oregon Enterprise Zone Act) that are:

(a) Sponsored by city, port and county governments; and

(b) Designated initially subject to a measure of economic hardship.

(2) Subsequent divisions in this chapter address related types of designations and the tax incentives for business firms in the various zones, in particular, see OAR 123-656 for tribally and federally related enterprise zones and OAR 123-668 for guidelines respective to local zone sponsorship.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.045 & 285C.050 – 285C.250

Hist.: OBDD 23-2010, f. & cert. ef. 6-14-10; OBDD 15-2015, f. & cert. ef. 11-12-15

#### 123-650-0066

##### Enterprise Zone Existence

(1) On and after October 5, 2015, there is no statewide numerical limit on enterprise zone designations or re-designations under ORS 285C.065 and 285C.250.

(2) In addition, there are allowed:

(a) Designations based on a federal enterprise zone directly under ORS 285C.085; and

(b) Reservation enterprise zones and reservation partnership zones, under ORS 285C.306.

(3) As of October 4, 2015, 68 enterprise zones were in existence by order of the Director in accordance with statutory provisions, as follow:

(a) Eighteen under ORS 285C.065 and former ORS 285C.075 and 285C.080;

(b) Forty-eight under ORS 285C.065 and 285C.250 (one of which was initially designated under ORS 285C.085);

(c) None directly under ORS 285C.085; and

(d) Two reservation enterprise zones under ORS 285C.306(2).

(4) Like enterprise zones described in section (1) or subsection (2)(a) of this rule, the 66 enumerated by subsections (3)(a) and (b) of this rule shall continue to exist and may be amended under ORS 285C.050 to 285C.250 until terminating — and the local zone sponsor may re-designate them as otherwise allowed — before July 1, 2025, at which point such zones are disallowed under ORS 285C.255, as described in OAR 123-650-9100(4).

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.050 - 285C.250 & 285C.255

Hist.: OBDD 13-2012, f. & cert. ef. 8-15-12; Renumbered from 123-650-0075, OBDD 15-2015, f. & cert. ef. 11-12-15

#### 123-650-0100

##### Definitions

ORS 285C.050 and OAR 123-001 (Procedural Rules) contain definitions used in this division of administrative rules. In addition, unless the context requires otherwise:

(1) *Census Statistical Unit* includes any standard geographic area, jurisdictional entity, administrative designation, or parts of one, for which the U.S. Bureau of Census or other federal, state or institutional/academic sources issue recurring economic data, including but not limited to: County, county subdivision, city/place, census tract or census block group.

(2) "Original enterprise zone," as used in ORS 285C.115(2) for purposes of boundary changes, means the area within the boundary of the zone at the time when it was most recently (re-)designated, irrespective of any intervening boundary change.

(3) *Enterprise Zone Population* means:

(a) For rural enterprise zones, the total population of incorporated cities, in which any part of the zone is located, plus the currently estimated population of Census Statistical Units that tightly envelope unincorporated zone areas; or

(b) For urban enterprise zones, the currently estimated population of Census Statistical Units that tightly envelope zone areas, and it may also include any associated residential area or group of such areas proximate to the zone boundary that encompass a populace, whom the Sponsoring Government(s) explicitly intend to help through employment opportunities and relevant public or private efforts or programs in relation to the zone.

(4) *Sponsoring Government* means a county, port or city designating an enterprise zone (or a district that has effectively the same governing body as the county, port or city, and that contains all of the city, port or county territory inside the proposed zone). A Sponsoring Government may be any city, port or county in Oregon, or combination of such jurisdictions as provided in OAR 123-650-0500, except as prohibited in OAR 123-650-4900(2).

(5) *Terminated-by-Statute* means the automatic termination of an enterprise zone by operation of law after more than 10 years under ORS 285C.245(2).

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.066

Stats. Implemented: ORS 285C.050 – 285C.250

## 123-650-0500

### Local Government Sponsorship or Consent

For purposes of enterprise zone designations, re-designations or boundary changes:

(1) The zone shall be sponsored by, and only by, the governing body of every city, port or county, in whose territory the zone is located, with the following exceptions:

(a) A **port** need not cosponsor a zone, if both of the following are true:

(A) The zone is located inside the territory of a sponsoring city, county or two or more such jurisdictions; and

(B) The port granted consent for the zone to exist in its territory through a resolution adopted by the port's governing body.

(b) A **county** need not cosponsor a zone, if:

(A) The zone is located completely in the incorporated territory of the city or cities that sponsor(s) the zone;

(B) The county has consented to the zone in its territory for sponsorship by a port through a resolution adopted by the governing body of the county; or

(C) The county granted consent for the zone in its unincorporated territory through a resolution adopted by the governing body of the county, and the only unincorporated territory inside the zone lies within the urban growth area (UGA) between the corporate limits and the urban growth boundary (UGB) of a city that sponsors the zone. (Inside a regional or metropolitan urban growth boundary, any such UGA must be subject to annexation by the sponsoring city)

(c) A **city** need not cosponsor a zone, if all of the following are true:

(A) The zone is located inside the territory of a sponsoring county or of a sponsoring port;

(B) The city granted consent for the zone to exist in its territory through a resolution adopted by the city's governing body based on port/county sponsorship; and

(C) Less than the zone's entire area lies within less than the entire incorporated territory of the city.

(2) City/county/port sponsorship or consent is permissible in combinations not specifically described by section (1) of this rule.

(3) Resolutions by the governing body of a city, port or county for purposes of consent need simply identify the enterprise zone, and that its containing territory inside the city, port or county is acceptable, supported or the like.

(4) Under ORS 285C.068 a port may become a cosponsor of an existing zone that contains parts of the port district, at any time, by adopting a resolution with applicable elements of OAR 123-650-4800(2) and submitting an executed copy of it to the Department with consent resolutions from all existing cosponsors.

(5) If a city annexes into its jurisdiction any area of an existing zone, of which the city is not a sponsor, or to which the city has not consented:

(a) The tax exemptions under ORS 285C.175 of authorized or qualified business firms in the annexed area shall continue unaffected, enjoying the same protection under relevant provisions of law and this chapter of administrative rules for location in a terminated enterprise zone.

(b) An eligible business firm proposing an investment in qualified property at a location in the annexed area of the zone may be authorized on a contingent basis, such that the firm may neither qualify nor receive a property tax exemption on such property unless and until such time as either the city:

(A) Consents by resolution of the city's governing body that the zone as it currently exists may contain areas that have or may be annexed; or

(B) Becomes a new cosponsor of the zone by resolutions adopted by the city and the zone sponsor and submitted to the Department, in accordance with applicable elements of OAR 123-650-4800(2) and 123-650-4900.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.066

Stats. Implemented: ORS 285C.050, 285C.065, 285C.066, 285C.068, 285C.115 & 285C.250

## 123-650-0600

### Zones Allowed per Jurisdiction

Enterprise zone designations, re-designations and boundary changes are subject to negative determinations under ORS 285C.074 and 285C.117, if needlessly redundant, in that:

(1) Whenever practical, would-be Sponsoring Government(s) are strongly encouraged to join together with other city, port and county cosponsors through mutual re-/designations and boundary changes, in order to:

(a) Complement the standards under ORS 285C.120(2)(b) as addressed in OAR 123-650-1100(5);

(b) Make the most of limited resources among agencies, especially at the local level, for administrating and marketing every enterprise zone in the pursuit of business development; and

(c) More generally raise visibility and foster intercommunity collaboration around regional economic development.

(2) Cities shall actively explore cosponsoring an enterprise zone, as allowable by OAR 123-650-0700 to 123-650-1100, if both cities are interested in including area inside a zone, or if one already sponsors a zone and the other is so interested, and their respective urban growth boundaries (UGBs) are separated:

(a) By 5 miles or less in any case; or

(b) In the case of a rural zone in sparsely populated counties:

(A) By 15 miles or less; or

(B) By more than 15 miles for any city with a population of 2,000 or less, whenever the waiver described in OAR 123-650-1100(4) is feasible and appropriate.

(3) The obligation in section (2) of this rule extends equivalently to ports or counties that are cosponsors or would-be Sponsoring Governments, including but not limited to areas outside of UGBs being brought into an enterprise zone that is (also) sponsored by one or more cities.

(4) Specifically for purposes of ORS 285C.066(2), only one enterprise zone may:

(a) Exist at any one time inside the UGB of any city, whether or not it sponsors the zone, except that two zones are allowed inside the UGB of a city with a population of 100,000 or more.

(b) Be designated per county for a zone containing solely unincorporated territory, as sponsored by the county or a port in that county but not by any city, although the Department may still allow an exception if finding that:

(A) The designation or amendment comprises near areas is two or more counties; or

(B) A second such designation would serve one or more exigent business development opportunities, and that distances within the county or other factors render other options impractical or counter-productive.

Stat. Auth.: ORS 285A.075, 285C.060(1), 285C.066 & 285C.120(2)(b)

Stats. Implemented: ORS 285C.060, 285C.066 & 285C.120

Hist.: OBDD 15-2015, f. & cert. ef. 11-12-15

## 123-650-0700

### Rural and Urban Designations

As defined in ORS 285C.050, an "enterprise zone" is categorized as either "rural" or "urban" under ORS 285C.050(17) or (21), such that:

(1) As used in ORS 285C.050(21), "regional or metropolitan urban growth boundary" means the UGB encompassing the principal Oregon city or cities of a federally established metropolitan statistical area (MSA) based on the MSA's title, and any other city that jointly undertakes comprehensive planning with such a city to determine their mutual UGB(s).

(2) Subject to change in the definition of federal MSAs in Oregon, or in joint arrangements for inter-city planning, section (1) of this rule currently pertains to the UGBs for:

(a) Albany

(b) Bend and Redmond;

(c) Corvallis;

(d) Eugene;

- (e) Grants Pass;
  - (f) Medford;
  - (g) Portland and Hillsboro with all other cities inside the Metro UGB; and
  - (h) Salem with Keizer.
- (3) An enterprise zone may be neither designated, re-designated nor amended to include areas both inside and outside a regional or metropolitan urban growth boundary.

(4) The rural/urban category of any existing enterprise zone may switch according to a change in the circumstances with section (2) of this rule, as determined by the Department.

(5) If such a change, a UGB amendment or some other occurrence causes a regional or metropolitan urban growth boundary to intersect an existing enterprise zone boundary, the zone's categorization as either urban or rural shall remain as it is. If a subsequent modification or occurrence situates the zone entirely outside or inside of that boundary, then the zone's categorization as rural or urban may switch accordingly at that time.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.066

Stats. Implemented: ORS 285C.050 - 285C.250

Hist.: OBDD 23-2010, f. & cert. ef. 6-14-10; OBDD 13-2012, f. & cert. ef. 8-15-12; OBDD 15-2015, f. & cert. ef. 11-12-15

### 123-650-1000

#### Dimensions and Boundaries — Size and Distances

For purposes of an enterprise zone designation, re-designation or boundary change:

(1) Except as allowed in OAR 123-650-1100:

(a) The straight-line distance between any two points within the zone may not exceed 12 miles if it is urban, or 15 miles if it is rural.

(b) A separate area of the zone must be five or fewer miles of straight-line distance away from another area of the zone as measured between the two closest points of each area.

(2) No part of the zone may be inside the boundary of another enterprise zone.

(3) The total area of the zone may not exceed 12 square miles if it is urban, or 15 square miles if it is rural, for which the following are ignored:

(a) Any road, track, transmission line or right of way that nominally connects separate areas of the zone; or

(b) Any area below the ordinary high water mark of navigable bodies of water, including but not limited to this state's border territory that is also within the jurisdiction of the zone sponsor, such as areas of the ocean up to three nautical miles directly from shore. Nevertheless, property located in such area is inside the zone boundary.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.050, 285C.090 & 285C.120

Hist.: OBDD 23-2010, f. & cert. ef. 6-14-10; OBDD 13-2012, f. & cert. ef. 8-15-12; OBDD 15-2015, f. & cert. ef. 11-12-15

### 123-650-1100

#### Extended Rural Distances

For purposes of ORS 285C.050(18), 285C.090(4) and 285C.120:

(1) This rule has no bearing on total enterprise zone area as limited in OAR 123-650-1000(3) and applies only to rural enterprise zones that are or will be at least partially outside a county, for which the latest estimate of the county's total population divided by its area exceeds 100 persons per square mile, known for purposes of this rule as a "densely populated county."

(2) The maximum distance allowed in OAR 123-650-1000(1)(a) increases from 15 to:

(a) Twenty-five lineal miles, if no area of the zone is in a densely populated county; or

(b) Twenty lineal miles, if some but not all of the zone area lies in a densely populated county.

(3) The maximum distance allowed in OAR 123-650-1000(1)(b) increases from 5 to 15 lineal miles if none of the separate area is in a densely populated county.

(4) In accordance with ORS 285C.120(2), the Director may waive a limitation in section (2) or (3) of this rule to allow even greater distance as part of an applicable enterprise zone designation, re-designation or boundary change:

(a) As specifically requested by the Sponsoring Government(s) or zone sponsor in the documentation submitted to the Department as described in OAR 123-650-4100 or 123-650-4400;

(b) Such that the waiver is approved by the Director in the context of the Department's issuing a positive determination as described in OAR 123-650-4900; and

(c) If evidence or indications as evaluated by the Department satisfy points described in section (5) of this rule.

(5) For a waiver in section (4) of this rule, the Director must find that each of the following three points is satisfied:

(a) The prospect of serious challenges or difficulties arising if separate enterprise zones were created, including but not limited to an isolated site or small community that would be less effective or efficient on its own as a zone;

(b) Effective administration within the overall zone boundary appears likely, in that for example, it is located entirely in one county, traversable over relatively direct and efficient road distances, appointed zone management is capable of serving the entire zone, or the zone sponsor will devote sufficient resources for management of the extended zone; and

(c) Furtherance of the goals and purpose of applicable state policies, such as state land use goals, or the opportunity to efficiently and expeditiously site a significant business investment, to assist a community exhibiting particular hardship, or to accommodate the expressed preference of local jurisdictions.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.120(2)(b)

Stats. Implemented: ORS 285C.050, 285C.090 & 285C.120

Hist.: OBDD 23-2010, f. & cert. ef. 6-14-10; OBDD 13-2012, f. & cert. ef. 8-15-12; OBDD 15-2015, f. & cert. ef. 11-12-15

### 123-650-1500

#### Mapping and Defining Zone Boundary

Any enterprise zone designation, re-designation or boundary change shall demonstrate adherence to OAR 123-650-1000 or 123-650-1100 by including all of the following with the documentation submitted to the Department under ORS 285C.074 or 285C.117:

(1) An estimate to the nearest 0.1 square miles of the entire zone area (after accounting for area added or removed due to any boundary change).

(2) Map or set of maps drawn to scale with north directional arrow, legend/scale and title using the zone name, as well as clear representation of the zone boundary, including:

(a) An overview map showing the entire zone on a single page; and

(b) As necessary or appropriate, inset, subsidiary or supplemental maps to:

(A) Provide detail for portions of the zone, as referenced or linked to the overview map; and

(B) Specify areas added or removed.

(3) Narrative description of the overall enterprise zone boundary in a continuous fashion (incorporating any boundary change) that corresponds to the mapping in section (2) of this rule, but which would overrule the mapping in the event of any material discrepancy. The description shall rely on one of the following methods that exactly corresponds to the zone boundary, or a combination of them if fitting together clearly, comprehensively and without redundancy:

(a) Professional metes and bounds surveying;

(b) Permanent landmarks or natural margins such as a waterway, road, track or transmission line;

(c) Official borders or demarcations such as city limit, urban growth boundary, county line or right of way based on specifically dated citations or documents (zone boundary does not change along with any subsequent change to the demarcation);

(d) Whole cadastral sections, quarter sections and so forth; or

(e) Listing of tax lots in relation to specified and dated county assessor maps with full cadastral survey (T-R-S) numbering:

(A) In a table with two or more other data for each tax lot that further identify it, such as street address, legal description, zoning, area, tax code, coordinates or account number; and

(B) Preferably supplemented with copies of the respective assessor maps.

(4) The following items, which are submitted electronically to the Department (even if other items in this rule need not be):

(a) A single set of geo-coded data (geographic information systems (GIS) shape file) specific only to that entire zone (pursuant to any boundary change) and not in combination with any other enterprise zone; and

(b) Image file corresponding to subsection (2)(a) of this rule (silently incorporating any boundary change).

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.060, 285C.065, 285C.074, 285C.085, 285C.090, 285C.115, 285C.117, 285C.120 & 285C.250

Hist.: OBDD 23-2010, f. & cert. ef. 6-14-10; OBDD 15-2015, f. & cert. ef. 11-12-15

### 123-650-4000

#### Designations and Boundary Changes — Initiating Designation

To designate or re-designate an enterprise zone under ORS 285C.065 or 285C.250:

(1) The process begins with the Sponsoring Government(s) sending a formal advisory to the Department of its intent to re-/designate. This may happen at any time for a new designation, but for concurrent re-designation, the local zone sponsor shall timely provide the advisory under ORS 285C.074 after January 1 but no later than on or around April 16, preceding July 1 when the existing zone will have Terminated-by-Statute.

(2) The Department will respond promptly to such an advisory, which if by telephone will be memorialized at least through email, consulting with the Sponsoring Government(s) about:

(a) The utility, impacts and responsibilities of re-/designating and having an enterprise zone;

(b) Steps to re-/designate a zone, including but not limited to formally sending notice to and consulting with local taxing districts, after this consultation by the Department has taken place;

(c) Documentation, as well as sample resolution language, needing to be submitted to the Department;

(d) Economic hardship criteria and possible assistance in identifying measures for the local area;

(e) Prohibitions in OAR 123-650-4900(2); and

(f) Other matters as appropriate or necessary.

(3) Not less than 45 days after advising the Department, the Sponsor Governments may submit the enterprise zone re-/designation, as described in OAR 123-650-4100 (electronically as desired).

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.067(2)

Stats. Implemented: ORS 285C.065, 285C.067, 285C.074, 285C.078 & 285C.250

Hist.: OBDD 15-2015, f. & cert. ef. 11-12-15

### 123-650-4100

#### Documentation Pursuant to Zone Designation

Upon designation or re-designation of an enterprise zone, for purposes of ORS 285C.074:

(1) The Sponsoring Government(s) must complete a form as prescribed by and available from the Department and submit it to the Department (at: Business Development, Business Oregon, State Lands Building Suite 200, 775 Summer Street NE, Salem OR 97301-1280, see [www.oregon4biz.com](http://www.oregon4biz.com)) along with all applicable documentation, respective to:

(a) Contact information and the name of the zone based on place names or common geographic terms (which if the same as a previous or terminating zone's name will include a "II, III, IV, ..." suffix, but only in the context of this submission);

(b)(A) Identifying the Sponsoring Governments and consenting jurisdictions for purposes of OAR 123-650-0500, and hotel/resort elections by city or county sponsors; and

(B) Including an executed copy of the resolution adopted by the governing body of each Sponsoring Government according to OAR 123-650-4800(1) and (2), as well as any consenting jurisdiction, consistent with the charter, by-laws or ordinances of the city, port or county;

(c) Timely notice and consultation with local taxing districts for OAR 123-650-5000 to 123-650-5200;

(d) Zone boundary, size and dimensions consistent with OAR 123-650-1500; and

(e) Data, statistics and so forth on social and economic conditions in OAR 123-650-4200.

(2) The form in section (1) of this rule and associated instructions prepared by the Department are hereby incorporated into and made part of these administrative rules, including but not limited to the proper aggregation and use of economic data.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.060, 285C.065, 285C.066, 285C.067 & 285C.074

Hist.: OBDD 15-2015, f. & cert. ef. 11-12-15

### 123-650-4200

#### Mandatory Economic Need for Zone Designation

For purposes of designation or re-designation, the local area of the enterprise zone must exhibit economic hardship, in that:

(1) Except as allowed in section (2) of this rule, an enterprise zone must meet one of the following relative measures in order to qualify for designation:

(a) The zone's median income per household or mean income per capita is 80 percent or less of the equivalent statewide income;

(b) The zone's unemployment rate is at least 2.0 percentage points higher than the corresponding statewide unemployment rate;

(c) The zone's percentage of persons or families below the poverty level is at least five percentage points higher than the equivalent statewide percentage; or

(d) The change in Enterprise Zone Population during the most recent ten-year period is at least 15 percentage points less than the baseline growth for the statewide population. (For example, if the Enterprise Zone Population increased 10 percent, but the state's population over the same ten-year period grew by 25 percent, the zone would meet this qualification)

(2) An enterprise zone may nevertheless qualify under ORS 285C.090(1)(c), if the Department finds based on evidence documented by the Sponsoring Government(s) that the zone will effectively serve communities with economic needs at least as severe as that represented in section (1) of this rule. This may include a combination of recently available facts and data for social and economic conditions, or for example, permanent closures or curtailments within 30 miles of the zone that are associated with heavy job losses by specified employers during the three years preceding designation.

(3) For purposes of subsections (1)(a), (b) or (c) and section (2) of this rule, economic statistics of the metropolitan statistical area that contains an enterprise zone may substitute for corresponding statewide figures as the basis of comparison.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.060, 285C.074 & 285C.090

Hist.: OBDD 15-2015, f. & cert. ef. 11-12-15

### 123-650-4400

#### Documentation with Boundary Changes

The zone sponsor (including with any new cosponsor) may change the boundary of the enterprise zone under ORS 285C.115 and make submission to the Department (electronically as desired), at any time, for purposes of ORS 285C.117. The submission consists of a memorandum prepared by the sponsor with information and all applicable documentation, respective to:

(1) Submitter-contact, relevant background about the amendments, and any change in the zone name;

(2) Identifying every current and new (co)sponsor or consenter, along with an executed copy of the resolution adopted by the governing body of each sponsoring jurisdiction according to applicable provisions of OAR 123-650-4800(2), as well as any (re-)consenting jurisdiction, consistent with the charter, by-laws or ordinances of the city, port or county;

(3) Timely notice to local taxing districts in OAR 123-650-5300 and related matters;

(4) Zone boundary, size and dimensions in accordance with OAR 123-650-1500;

(5) Data, statistics and so forth on social and economic conditions for OAR 123-650-4500; and

(6) Other issues, as necessary or appropriate, in OAR 123-650-4600.

Stat. Auth.: ORS 285A.075 & 285C.060(1)  
 Stats. Implemented: ORS 285C.060, 285C.066, 285C.115 & 285C.117  
 Hist.: OBDD 15-2015, f. & cert. ef. 11-12-15

### 123-650-4500

#### Economic Conditions for Areas Added by Boundary Changes

Under ORS 285C.115(2)(c), an area may be added to an enterprise zone only if it and adjoining residential areas are economically comparable to the original enterprise zone:

(1) Economic statistics or data for the original enterprise zone and an area to be added shall be either:

(a) From a given data source as most recently available; or

(b) From the time of the latest re-/designation of the zone based on the data source used at the time for purposes of ORS 285C.090.

(2) As part of the boundary change documentation, general commentary shall suffice for this issue if it is readily apparent that any area added to the zone:

(a) Is virtually devoid of and geographically removed from residential areas; or

(b) Contains and borders only residential areas with signs of economic blight or a preponderance of markedly low-income households.

(3) If circumstances are less plain than in section (2) of this rule, then the documentation shall include a suitable comparison based on one or more economic measures of the original enterprise zone to Census Statistical Units that contain, overlap or appropriately abut areas added to the zone.

(4) The comparison in section (3) of this rule must show that such Census Statistical Units in aggregate, based on the most recently available data, have:

(a) Less than 25 percent of their land zoned or used for residential development; or

(b) Generally the same or a lower household or personal income, or a higher unemployment rate, or otherwise equivalent or more severe economic conditions, compared to the original enterprise zone.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.060, 285C.115 & 285C.117

Hist.: OBDD 15-2015, f. & cert. ef. 11-12-15; OBDD 9-2016, f. & cert. ef. 9-16-16

### 123-650-4600

#### Additional Issues with Boundary Changes

With respect to any enterprise zone boundary change under ORS 285C.115:

(1) Usable land described in section (2) of this rule must comprise:

(a) At least 25 percent of what is added (except as specially allowed by the Department); and

(b) None of what is removed (except in the case of a concurrent boundary change or re-/designation that would presently place such land in another enterprise zone).

(2) Usable land for purposes of section (1) of this rule includes sites with qualities respective to eligible business firms under ORS 285C.130, such as being:

(a) Zoned outright for uses germane to such firms consistent with an acknowledged comprehensive land use plan or expected amendments to the plan;

(b) Free of serious impediments to development and use due to cultural or environmental concerns or regulations;

(c) Served or realistically serviceable with infrastructure, road access, utilities and so forth that are at least potentially adequate for such firms' operations; and

(d) Vacant or physically available for substantial new business occupancy, expansions or improvements.

(3) The changes must retain (never remove):

(a) Any site identified as the location for proposed qualified property in an application for authorization that is or will be approved and was submitted before the boundary change took effect, and that is neither inactive under ORS 285C.165 nor fully utilized for exemptions under ORS 285C.175; and

(b) One half of the land or actual area comprising the original enterprise zone.

(4) If a site were removed containing operations or qualified property of any authorized or qualified business firm, such a firm shall enjoy the same protection under relevant provisions of law and this chapter of administrative rules for location in a terminated enterprise zone.

(5) An enterprise zone as amended must still adhere to OAR 123-650-0500 to 123-650-1100. For example with respect to OAR 123-650-0700, if modification of a local, state or federal definition or delineation caused a previously existing regional or metropolitan urban growth boundary to intersect an existing rural zone, subsequent changes to that zone boundary may not add area that was within the former regional or metropolitan urban growth boundary as it existed before intersecting the zone.

(6) A city, port or county that previously consented to including territory inside the zone does not need to be involved with a boundary change that adds area only outside of its jurisdiction, but it does need to consent again in order for any more of its territory to be included in the zone.

(7) Neither such a change nor any comparable procedure allows a sponsoring city, port or county government, to:

(a) Make hotel/resort businesses eligible unless such firms are eligible in the zone already, even in the case of a new city or county cosponsor that is joining the zone; or

(b) Renounce, rescind or terminate its existing sponsorship and inclusion in the zone, which is possible only by termination of the entire zone under ORS 285C.245 or by dissolution of the jurisdiction.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.066

Stats. Implemented: ORS 285C.050, 285C.060, 285C.066, 285C.115 & 285C.117

Hist.: OBDD 15-2015, f. & cert. ef. 11-12-15

### 123-650-4800

#### Local Resolutions and Hotel/Resort Option

For purposes of city, port or county resolutions to designate, re-designate or amend an enterprise zone:

(1) The resolution by a Sponsoring Government shall be adopted at least seven days after the meeting described in OAR 123-650-5100, in the case of re-/designation.

(2) The resolutions shall:

(a) Acknowledge all other cosponsoring parties to the re-/designation or boundary change, if any;

(b) Declare that the sponsor will (jointly) fulfill duties under ORS 285C.050 to 285C.250, including but not limited to observing ORS 285C.105 in accordance with OAR 123-668;

(c) Clarify that the zone does not compromise or override prevailing zoning, regulatory and permitting ordinances, processes or restrictions, or affect acknowledged comprehensive plans for land use;

(d) As deemed significant or appropriate by the sponsoring government, affirm goals in having the zone, recount zone history, underscore key characteristics of the re-/designation or boundary change, or report actions taken for purposes of public involvement, including but not limited to the nature and outcome of communication or interaction with local taxing districts; and

(e) Stipulate any election or restriction for hotel/resort eligibility under ORS 285C.070 by cities and counties, so that a business operating a hotel, motel or destination resort is eligible under ORS 285C.135(5)(c) in the enterprise zone or in restricted parts of the zone, for which:

(A) Any such election or restriction must be reflected in the resolution(s) (jointly) adopted by each sponsoring city or county and by any consenting city or county affected by a restriction.

(B) Any restriction makes such businesses eligible in those parts of the zone throughout the incorporated area of the city or unincorporated area of the county, to which the restriction pertains, which may be a city or county merely consenting to the zone.

(C) With a boundary change, a positive hotel/resort election or restriction may not be made, but the jurisdiction of a city or county newly joining or consenting to an enterprise zone may be excluded from an existing hotel/resort election, and any such negative restriction may not be revised once the boundary change takes effect.

(D) In the case of re-/designation, cities and counties may (jointly) revise an election, restriction or lack of one, regardless of what is in the resolution(s) of re-/designation, by resolution(s) adopted not more than six months after the effective date of re-/designation.

(E) A prior election or restriction for hotel/resort eligibility does not carry over to any re-designation, such that hotel/resorts are ineligible (based on the date of application for authorization) throughout any newly re-designated zone without a positive election or restriction as described in this subsection.

(3) The sponsor of an enterprise zone that has an existing hotel/resort election may at any time revoke that election in its entirety or in a particular city or county jurisdiction (thereby effecting a restriction elsewhere), irreversibly for the remainder of the enterprise zone's current period of designation, but:

(a) For a zone with two or more cosponsors, the revocation must be consistently expressed in resolutions adopted by all of them, including but not limited to any port; and

(b) Copies of the resolution(s) of such revocation must be submitted to the Department to establish its effective date in terms of subsequent applications for authorization by relevant business firms.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.065, 285C.070, 285C.074, 285C.105, 285C.115 & 285C.117

Hist.: OBDD 15-2015, f. & cert. ef. 11-12-15; OBDD 9-2016, f. & cert. ef. 9-16-16

### 123-650-4900

#### Agency Determinations

The Department shall thoroughly review the documentation submitted with an enterprise zone designation, re-designation or boundary change, as described in OAR 123-650-4100 or 123-650-4400, and shall notify the submitter as soon as possible of the determination under ORS 285C.074 or 285C.117, such that:

(1) Subject to procedural matters' being in order and satisfaction of statutory requirements according to applicable parts of these administrative rules, the Department shall issue a notice of positive determination, which will establish salient features of the (amended) enterprise zone, including but not limited to hotel/resort eligibility, as well as the date that the re-/designation or boundary change takes effect, which shall be:

(a) The date that the last resolution of consent or sponsorship was adopted for a designation;

(b) July 1 in the case of concurrent re-designation under ORS 285C.250 if the last sponsoring or consent resolution was adopted on or before June 30;

(c) The date that the last resolution by any cosponsor was adopted for a boundary change; or

(d) For any resubmission pursuant to section (3) of this rule:

(A) The date coinciding with the Department's receipt of a complete resubmission (in terms of all items needing to be revised, modified or redone), inasmuch as the Department deems the extent of necessary revisions or the amount of time that has elapsed to have been significant; or

(B) The date of adoption of the last applicable resolution replacing or supplementing prior resolutions.

(2) The determination is otherwise negative and the enterprise zone or any amendment to the enterprise zone does not take effect, including but not limited to cases otherwise prohibited in accordance with OAR 123-650-0500 to 123-650-0700 or where:

(a) Documentation is inaccurate, inapplicable, incomprehensible, or insufficiently current including but not limited to section (4) of this rule;

(b) The enterprise zone or an amendment encompasses area in any existing enterprise zone that will not have been Terminated-by-Statute or removed by another boundary change before the requisite effective date; or

(c) A Sponsoring Government or new cosponsor is a city, port or county that sponsored an enterprise zone terminated by order of the Director under ORS 285C.245(3) to (5) within the past 10 years by the time of the requisite effective date, other than a county or port if a port/city also sponsored the terminated zone and none of the new enterprise zone area was inside that terminated zone.

(3) The Department shall promptly issue a formal explanation (at least by email) to the Sponsoring Government(s) or zone sponsor subject to a negative determination, regarding unmet requirements or deficiencies with documentation, as well as what might be done for resubmission that entails either:

(a) More or less minor revisions or additions to documentation, with which the Department may assist, and for which a relatively quick resolution would allow the re-/designation or boundary change to take effect as described in subsection (1)(a) to (c) of this rule; or

(b) Fundamental modifications to the re-/designated or amended zone or its associated documentation, which could also necessitate redoing otherwise faultless steps or documentation with respect to the time limits in section (4) of this rule.

(4) Relative to when complete documentation is re/submitted to the Department or the effective date in section (1) of this rule, whichever is later, the following are not acceptable for purposes of a positive determination:

(a) Economic data, statistics and so forth that have been superseded by the release or availability of the very same but newer/annually updated data or statistics;

(b) The notice to local taxing districts and any consequent consultative activities described in OAR 123-650-5000 to 123-650-5500, if the notice was sent more than a year prior; or

(c) Any sponsoring or consent resolution older than nine months in the case of a boundary change or six months in the case of zone re-/designation.

(5) For zone re-/designation, nothing in this rule overrides that the actions in subsections (4)(b) and (c) of this rule and related steps must commence in due order only after the advisory to and consultation with the Department under ORS 285C.074 and 285C.078, which shall occur for re-designations only within six months of when the zone will be Terminated-by-Statute.

Stat. Auth.: ORS 285A.075, 285C.060(1), 285C.066 & 285C.067(2)

Stats. Implemented: ORS 285C.060, 285C.065, 285C.066, 285C.067, 285C.070, 285C.074, 285C.078, 285C.090, 285C.115, 285C.117 & 285C.250

Hist.: OBDD 15-2015, f. & cert. ef. 11-12-15; OBDD 9-2016, f. & cert. ef. 9-16-16

### 123-650-5000

#### Local Taxing Districts — Regular Designation Notice

(1) The designation or re-designation of an enterprise zone under ORS 285C.065 or 285C.250 must entail notice to and consultation with local taxing districts that:

(a) Formally commences only after the Department consults with the Sponsoring Government(s) as described in OAR 123-650-4000; and

(b) Takes place in due order before subsequently submitting documentation to the Department.

(2) The notice goes to each taxing district (including but not limited to any municipal corporation or service district listed under ORS 198.010 and 198.180) that levies or has authority to levy ad valorem taxes on property within the area of zone designation. The county assessor should also receive notice, but it does not need to go to any taxing district that is a Sponsoring Government or a service district, urban renewal district, or the like that effectively has the same governing body as a Sponsoring Government.

(3) The Sponsoring Government(s) must send the notice at least 21 calendar days before the meeting in OAR 123-650-5100, and the notice shall include, but is not limited to:

(a) An invitation for representation from each district;

(b) An established meeting place, date and time, the scheduling of which should be coordinated with district officials known to have special interest in relevant issues;

(c) Brief background about the reasons for seeking an enterprise zone and the potential for (limited-duration) exemption(s) from taxes on future business property inside the zone boundary (subject to certain requirements);

(d) Probable timeline for consideration of resolutions for re-/designation by the Sponsoring Government(s) even if lacking exact dates;

(e) Solicitation for comments on the proposed zone to be directed at a Sponsoring Government; and

(f) Contact details for making such comments or for receiving further information.

(4) The Sponsoring Government(s) must furnish the Department with the following as part of submitted documentation:

(a) Evidence of the notice having been timely sent, including but not limited to:

(A) A list of contact names and mailing addresses for all applicable taxing districts; and

(B) A (template) copy of the notice directed at such taxing districts in accordance with section (3) of this rule; and

(b) Any final materials and the meeting minutes arising from related consultative activities, as well as written comments received in response to the notice from any relevant taxing district.

(5) A taxing district's objection to or lack of support has no bearing on the zone's operation or tax abatements for business firms.

(6) The tasks stipulated in this rule shall not discourage or replace other local efforts and actions to provide/ elicit public information, commentary or involvement, as circumstantially appropriate, or as required by local law, policy, custom or practice.

(7) Copies of items listed in subsection (4)(a) of this rule shall also be furnished to the Special Districts Association of Oregon (Attn: Government Affairs).

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.067(2)

Stats. Implemented: ORS 285C.060, 285C.065, 285C.067, 285C.074, 285C.078 & 285C.250

Hist.: OBDD 23-2010, f. & cert. ef. 6-14-10; OBDD 15-2015, f. & cert. ef. 11-12-15

### 123-650-5100

#### Public Meeting for Regular Designations

For purposes of ORS 285C.067, the Sponsoring Government(s) shall conduct a public meeting (though not necessarily hold a public hearing or issue a public notice for the meeting):

(1) That occurs not less than seven days before the adoption of any resolution of designation or re-designation by a Sponsoring Government.

(2) To which the Sponsoring Government(s) send staff or community partners, who are directly involved with the re-/designation and knowledgeable about the potential of business development in the proposed zone, as well as their elected or executive officials as feasible and appropriate.

(3) At which the Sponsoring Government(s):

(a) Make available and reviews draft copies of a map of the proposed zone boundary and other such materials related to the re-/designation;

(b) Recognize for the record any written commentary already received from a district;

(c) May allot time for opening statements by each district in attendance; and

(d) Have the proceedings transcribed or recorded in some manner.

(4) That involves discussion of relevant issues and may address follow-up steps for analysis or further consultation, as well as plans for adopting resolutions and completing the re-/designation.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.067(2)

Stats. Implemented: ORS 285C.060, 285C.065, 285C.067, 285C.074 & 285C.250

Hist.: OBDD 23-2010, f. & cert. ef. 6-14-10; OBDD 15-2015, f. & cert. ef. 11-12-15

### 123-650-5200

#### Consultations Generally with Taxing Districts

(1) In anticipation of or subsequent to the meeting described in OAR 123-650-5100, or as otherwise warranted with an enterprise zone designation, re-designation or boundary change, the Sponsoring Government(s) or zone sponsor:

(a) May communicate, confer or interact with one or more local taxing districts, including but not limited to additional public or non-public meetings or other means of eliciting feedback and dialogue with districts.

(b) Shall respond within 10 business days to a local taxing district's formal request and make good faith efforts to fulfill any such

a request for a special (one-on-one) meeting or for written answers to specific questions.

(c) Shall assist one or more districts, as requested, to estimate or better understand short or long-term effects on public revenues and service demands under particular assumptions or potentialities about enterprise zone development.

(d) May explore how to effectively resolve relevant, outstanding issues through local government permitting procedures or development standards affecting eligible business firms in the zone, including but not limited to design review, conditional use permits, comprehensive land use planning or zoning ordinances.

(2) As a consequence of consultative activities with local taxing districts, the Sponsoring Government(s) or zone sponsor:

(a) May establish arrangements or agreements with one or more districts, contingent on the zone re-/designation or boundary amendment.

(b) Shall describe any such arrangements in materials submitted to the Department, including but not limited to follow-up steps, timelines or outstanding points still subject to refinement or finalization.

(c) May formally execute and document any such arrangement or agreement, but any description of verbal pledges or understandings do not themselves create or represent an obligation by the zone sponsor.

(3) This rule does not create any authority over property tax collection or any right to obligate or burden the county assessor.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.067(2)

Stats. Implemented: ORS 285C.060, 285C.067, 285C.074, 285C.115 & 285C.117

Hist.: OBDD 23-2010, f. & cert. ef. 6-14-10; OBDD 15-2015, f. & cert. ef. 11-12-15

### 123-650-5500

#### Notice for Boundary Changes

A change to an existing enterprise zone boundary must entail notice to local taxing districts before the submission under ORS 285C.117 to the Department that generally conforms to that described in OAR 123-650-5000, except:

(1) The notice goes not only to each taxing district in any area to be added, but also to those inside the entire, current zone area (aside from any jurisdiction joining the zone).

(2) The notice shall be sent at least 21 calendar days before adoption of the requisite resolution by the governing body of the sponsoring county. If there is no sponsoring county, notice must precede the resolution by every sponsoring city or port by 21 calendar days.

(3) There is no mandatory public meeting or other type of special consultation, but circumstances such as the addition of a new cosponsor or of extensive areas could demand further communication along the lines of OAR 123-650-5200.

(4) The submission to the Department is not complete without inclusion of relevant items listed in OAR 123-650-5000(4).

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.115 & 285C.117

Hist.: OBDD 23-2010, f. & cert. ef. 6-14-10; OBDD 15-2015, f. & cert. ef. 11-12-15

### 123-650-9100

#### Zone Termination — Events and Timing

(1) Enterprise zones that are Terminated-by-Statute or are re-designated concurrently under ORS 285C.250(1) shall be terminated or designated effective at 12 midnight of July 1.

(2) Any zone that is timely re-designated as described in section (1) of this rule and OAR 123-650-4900(1)(b) shall not itself terminate under ORS 285C.245(2) until, in effect 11 years after its designation, except as preempted by section (4) of this rule.

(3) Following the termination of an enterprise zone:

(a) The local policies adopted by the zone sponsor under ORS 285C.105 or other statutory provisions shall remain in force as they were at the time of termination.

(b) The only change that the sponsor of the terminated zone may make to the zone's local policies is to appoint a replacement as need-

ed for the local zone manager, if the position previously held by the local zone manager lacks qualified personnel.

(4) Termination by programmatic sunset under ORS 285C.255(1)(c) occurs at 5:00 PM (Pacific Time) on June 30, 2025.  
Stat. Auth.: ORS 285A.075 & 285C.060(1)  
Stats. Implemented: ORS 285C.050 - 285C.250 & 285C.255  
Hist.: OBDD 23-2010, f. & cert. ef. 6-14-10; OBDD 13-2012, f. & cert. ef. 8-15-12; OBDD 15-2015, f. & cert. ef. 11-12-15

## DIVISION 656

### TRIBALLY AND FEDERALLY BASED ZONE DESIGNATIONS

#### 123-656-0001

##### Purpose and Scope

This division of administrative rules addresses the existence of enterprise zones in addition to OAR 123-650, as provided under:

(1) ORS 285C.300 to 285C.320 respective to Oregon-based Tribes; and

(2) ORS 285C.085 based on special federal designations.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.085 & 285C.300 - 285C.320

Hist.: OBDD 24-2010, f. & cert. ef. 6-14-10; OBDD 14-2015, f. & cert. ef. 11-12-15

#### 123-656-0100

##### Definitions

OAR 123-001 (Procedural Rules) and 123-650 define terms used in this division of administrative rules. In addition:

(1) As used in ORS 285C.085(4)(b), “all areas within both the federal enterprise zone and the city, county or port are included in a state enterprise zone” means that the state enterprise zone will need to encompass all of the Federal Enterprise Zone inside the territory of any city, port or county that will sponsor the zone. This is true regardless that such territory is also inside an overlapping city, port or county that neither sponsors nor consents to the zone, in that not every city, port or county needs to sponsor or consent as required under ORS 285C.065, 285C.066 or 285C.068, but other jurisdictions may consent to include parts of the Federal Enterprise Zone that are outside sponsor territory in the state enterprise zone consistent with OAR 123-650-0500.

(2) As used in these administrative rules, unless the context dictates otherwise:

(a) *Federal Enterprise Zone* is a designation by an agency of the U.S. government that is:

(A) Not terminated;

(B) Located at least partially in this state;

(C) Delimited by formal boundaries and an established period of existence lasting five or more years;

(D) Intended at least in part to create or improve economic opportunities and development within the local community;

(E) Provided for by federal law that includes congressionally authorized benefits for purposes of paragraph (D) of this subsection;

(F) Qualified based on federal guidelines, including but not limited to criteria for a level of economic hardship generally comparable to that indicated under ORS 285C.090;

(G) Subject to a significant degree of national selectivity and uniqueness, in relation to paragraph (F) of this subsection, such that having more than five of any designation type awarded to this state at any one time would be unlikely; and

(H) For example, comparable historically to federal Renewal Communities, Empowerment Zones or Enterprise Communities (but not a Recovery Zone, which many municipalities might easily self-designate).

(b) *RENZ* means a reservation enterprise zone under ORS 285C.306(2).

(c) *RPRZ* means a reservation partnership zone under ORS 285C.306(3).

(d) *Tribes* means one of the federally recognized Indian tribes in Oregon listed under ORS 285C.306(1).

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.050, 285C.085 & 285C.300 - 285C.320

Hist.: OBDD 24-2010, f. & cert. ef. 6-14-10; OBDD 14-2015, f. & cert. ef. 11-12-15

#### 123-656-1000

##### Tribal Zones — Applicability of Regular Parameters

For purposes of RENZs and RPRZs:

(1) Their creation does not depend on any measure of local economic hardship or on consultation with local taxing districts.

(2) They do not need to satisfy the following requirements in OAR 123-650, except pursuant to a boundary change under ORS 285C.115(3), including but not limited to:

(a) Maximum distances overall or between an RENZ’s separate areas; or

(b) General co-sponsorship or consent by applicable city, port or county governments as described in OAR 123-650-0500.

(3) Each may have total area within its boundary of up to but not more than 12 square miles, for which:

(a) An RENZ shall conform to OAR 123-650-1000(3), but it may include separate, noncontiguous areas anywhere in this state.

(b) The cosponsors of an RPRZ shall determine how to define, map and describe the zone’s area, which however, must be contiguous.

(4) Either may designate itself for electronic commerce status under ORS 285C.095 (see OAR 123-662).

(5) The zone sponsor shall fulfill the duties incumbent on it under ORS 285C.105 or elsewhere in ORS chapter 285C, including but not limited to those addressed in OAR 123-668.

(6) They are invariably ‘rural’ enterprise zones:

(a) Even if entirely or partially inside a regional or metropolitan urban growth boundary, notwithstanding OAR 123-650-0700.

(b) For purposes of the standard exemption under ORS 285C.175 (see OAR 123-674) and long-term tax incentives under ORS 285C.409 and 317.124 (see OAR 123-690), regardless of where any part of the zone exists, but:

(A) The facility must nevertheless be in an applicable county for the long-term tax incentives; and

(B) Neither an RENZ (designated after 2003) nor an RPRZ sponsor may elect or allow a hotel, motel or destination resort business to be eligible for the standard exemption.

(7) They are not subject to premature termination by order of the Director under ORS 285C.245(3) to (5) or to programmatic sunset under ORS 285C.255.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.050 - 285C.250, 285C.255, 285C.300 - 285C.320, 285C.403 & 317.124

Hist.: OBDD 24-2010, f. & cert. ef. 6-14-10; OBDD 14-2015, f. & cert. ef. 11-12-15

#### 123-656-1200

##### Reservation Enterprise Zone Designations

For purposes of RENZs, consistent with OAR 123-656-1000:

(1) To apply for designation of an RENZ, the Tribe shall furnish the Department with the following:

(a) A copy of the resolution requesting designation, as duly adopted by the Tribe’s governing body within the past six months;

(b) Map and so forth as applicable in accordance with OAR 123-650-1500;

(c) A formal statement or evidence to the effect that the proposed zone area contains only such land of the Tribe under ORS 285C.306(2)(b) – that is, the following based on current laws, authority or treaties with the U.S. government:

(A) Land held in trust;

(B) Land officially pending trust status;

(C) Any on-reservation area; or

(D) Any combination of these; and

(d) As necessary or appropriate:

(A) Copies of federal documents attesting to relevant status; and

(B) A map of the zone showing and labeling the respective nature of the tribal lands comprising the designated area.

(2) Subject to the accuracy and completeness of materials provided in section (1) of this rule, the Department shall approve the designation to take effect as early as when either the Department received a complete application or the Tribe’s governing body adopt-

ed its resolution, depending on the preference of the Tribe and determination of the Department.

(3) At any one time, the Department may not approve more than one RENZ respective to each Tribe or effectively no more than nine RENZs in total.

(4) In conformance with sections (1) and (2) of this rule, the Tribe may seek to have the RENZ:

(a) Amended through a boundary change at any time without triggering provisions under ORS 285C.115(3) consistent with OAR 123-656-1000(2).

(b) Re-designated concurrent with or after the July-1 date once the RENZ has Terminated-by-Statute under ORS 285C.245(6).

(5) An RENZ may not include area inside any other existing enterprise zone.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.306

Hist.: OBDD 24-2010, f. & cert. ef. 6-14-10; OBDD 14-2015, f. & cert. ef. 11-12-15

### 123-656-1400

#### Reservation Partnership Zone Co-sponsorships

For purposes of RPRZs, consistent with OAR 123-656-1000 and pursuant to a co-sponsorship agreement:

(1) The zone's effective beginning, equivalent to designation, is the execution of the agreement or a specified, later date in the agreement.

(2) The agreement shall be between a single Tribe and at least one or more cities, ports or counties, but it may include only one or two such local governments, in terms of their jurisdictional territory inside the RPRZ, regardless of provisions for joint sponsorship or consent by any other such government under ORS 285C.065, 285C.066 or 285C.068.

(3) The RPRZ shall consist of contiguous area inside the jurisdictional territory of its city, port or county cosponsor(s), and such area may also be (but does not need to be) land of the Tribe under ORS 285C.306(2)(b)(A) or (C) or both.

(4) The Tribe and any cosponsoring city, port and county are the "zone sponsor" of the RPRZ, and their agreement shall contain appropriate and necessary provisions under ORS 190.110, regarding their mutual and respective roles and responsibility as the zone sponsor including but not limited to provisions under ORS 285C.105. Any other party to the agreement as allowed under ORS 190.110 would not be part of the zone sponsor.

(5) The zone sponsor of the RPRZ is urged in the process of executing the co-sponsorship agreement to:

(a) Consult with other cities, ports or counties that have territory in the zone;

(b) Communicate with other local taxing districts that have territory in the zone; and

(c) Formally apprise the Department of its existence, area and sponsorship.

(6) With respect to altering the RPRZ, the zone sponsor may mutually amend the agreement to add or remove contiguous land as described in section (3) of this rule at any time without triggering provisions under ORS 285C.115(3) consistent with OAR 123-662-1000(2).

(7) With respect to RPRZ termination:

(a) The agreement shall recognize that the zone does terminate by operation of law (is Terminated-by-Statute) under ORS 285C.245(6) after June 30 immediately following 10 years since the effective date of its beginning, and the term of the agreement shall be for at least that long.

(b) It may occur sooner due to the effective dissolution of the agreement by mutual consent of its parties. In the event of such dissolution, any business firm shall enjoy the same protection under relevant provisions of law and this chapter of administrative rules for location in a terminated enterprise zone.

(c) The Tribe and city, port or county may create a new RPRZ pursuant to or in replacement of a terminated one, based on a newly executed co-sponsorship agreement consistent with this rule.

(8) There is no particular limit on the number of RPRZs that may exist statewide, or that any city, port, county or Tribe may

cosponsor. A city, port or county cosponsor of an RPRZ may also sponsor another enterprise zone, and as originally cosponsored, an RPRZ may contain area of an existing regular enterprise zone (other than an RENZ or another RPRZ), which shall remove or exclude the RPRZ area with the earlier of its next boundary change or re-designation.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.105 & 285C.306

Hist.: OBDD 24-2010, f. & cert. ef. 6-14-10; OBDD 14-2015, f. & cert. ef. 11-12-15

### 123-656-1600

#### Tribal Credit against State Income Taxes

For purposes of the credit under ORS 285C.309 to offset state personal or corporate income/excise tax liabilities based on tribal taxes incurred or paid to the Tribe for an applicable business facility in any RENZ or RPRZ:

(1) It is available to a business engaged in any type of income-furthering activity, other than leasing the facility itself, irrespective of receipt or qualification for any other enterprise-zone tax abatement by the business or the facility.

(2) The business must have acquired the facility (by purchase or lease) or completed its construction, erection or installation, only since January 1, 2002. In addition, for a previously existing facility:

(a) If located on the Tribe's reservation, the business operations need to be significantly different from and not in any way the continuation of what was undertaken at the facility before its latest acquisition; and

(b) The facility, for purposes of applicable tribal property taxes, comprises new investments (completed and placed in service since January 1, 2002) only to the extent that they have enlarged or extended the ability of the business to generate revenue at the facility, as opposed to existing property or the replacement of existing property.

(3) The credit equals:

(a) The total amount of tribal taxes under ORS 285C.300 incurred or paid by the business in or respective to the first income/excise tax year, in which it operates in the RENZ or RPRZ; or

(b) For any other tax year, only the annual property taxes imposed by the Tribe on facility property consistent with section (2) of this rule.

(4) An applicable tribal property tax for purposes of section (3) of this rule shall be:

(a) Levied in an area encompassing an entire district, in which multiple businesses might generally develop and operate, and throughout which the Tribe has authority to impose and collect such a tax on non-Indian businesses, regardless of the area's general correspondence to or coverage by the RENZ or RPRZ;

(b) Computed based on a rate or schedule of rates multiplied by the valuation of certain types of tangible property in the area of taxation, even if the methods, definitions and so forth differ from ad valorem taxation under state law; and

(c) Uniformly assessed and imposed on any non-Indian business, as well as Indian enterprises if they too are subject to the same tax and not exempt in any way due to location in the RENZ or RPRZ.

(5) To claim the tax credit, the business/taxpayer shall fill out the latest revision of the Department of Revenue form 150-102-046, Reservation Enterprise Zone Tax Credit Worksheet, but not submit it with the tax return, for each applicable income/excise tax year beginning before the date prescribed under section 21, chapter 913, Oregon Laws 2009, as amended in 2010 (c.76 §28) or in the future.

**NOTE:** Department of Revenue forms referenced in this rule are available from the Department of Revenue, Property Tax Division, 955 Center St NE, PO Box 14380, Salem OR 97309-5075, phone 503-378-4988, 800-356-4222, TTY 800-886-7204, fax 503-945-8737, and web <http://www.oregon.gov/DOR/PTD/enterform.shtml>.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.309

Hist.: OBDD 24-2010, f. & cert. ef. 6-14-10; OBDD 14-2015, f. & cert. ef. 11-12-15; OBDD 11-2016, f. & cert. ef. 9-16-16

**123-656-2000**

**Federal Enterprise Zones — Federally Based Designation**

For purposes of applying for and designating an enterprise zone under ORS 285C.085(2):

(1) City, port or county governments may seek designation of a zone corresponding to the boundary of a single Federal Enterprise Zone located in the government's territory:

(a) Submission may be made to the Department at any time without regard to an application form;

(b) Besides a map and so forth of the proposed enterprise zone consistent with OAR 123-650-1500, the submission must document the Federal Enterprise Zone's official existence, location and satisfaction of OAR 123-656-0100(2)(a), except to the extent that the Department is fully aware of such satisfaction;

(c) Information related to local economic hardship is not necessary;

(d) The governments must send notice and engage in timely communication with local taxing districts in accordance with OAR 123-650-5500;

(e) A cosponsor of a zone terminated by order of the Director under ORS 285C.245(3) to (5) is not excluded from applying;

(f) Zone sponsor may not elect under ORS 285C.070 for hotels, motels or destination resorts to be eligible business firms in the zone; and

(g) The designation may not be the re-designation of an existing or previously existing enterprise zone.

(2) The designation of the zone may be made without regard to any limitation on size or dimensions as described in OAR 123-650-1000 and 123-650-1100.

(3) The zone must still conform to requirements for:

(a) Being either urban or rural as described in OAR 123-650-0700, except through a special dispensation in the Director's Order;

(b) Not containing any area inside any other existing enterprise zone consistent with OAR 123-650-1000(2); and

(c) Inclusion of all area in each cosponsor that is inside the Federal Enterprise Zone according to OAR 123-656-0100(1).

(4) The Director shall issue an order to effect the designation.

(5) A (co)sponsor of an existing enterprise zone may not seek designation as described in this rule, if the Federal Enterprise Zone overlaps with a portion of the existing enterprise zone, but rather should avail itself of a boundary change as described in OAR 123-656-2100.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.085

Hist.: OBDD 24-2010, f. & cert. ef. 6-14-10; OBDD 14-2015, f. & cert. ef. 11-12-15

**123-656-2100**

**Boundary Changes to Conform to Federal Zone**

For purposes of a local request to change the boundary of an existing enterprise zone under ORS 285C.085(3):

(1) The request is generally comparable to submission as described in OAR 123-650-4400 and OAR 123-656-2000.

(2) Such a boundary change may add an area to the existing zone, only if the area is located in a county, in which the zone is already located, or in a contiguous county.

(3) Following the change in the zone boundary, the existing zone shall be Terminated-by-Statute or may be terminated by order of the Director, as normal under ORS 285C.245, irrespective of the boundary change.

(4) If the Federal Enterprise Zone terminates prematurely for nonperformance, violation of federal guidelines or similarly unusual circumstances, then the Director may rescind the order changing the boundary of the zone, as if that boundary change had never occurred. Any business firm located in an area consequently left out of the zone shall enjoy the same protection under the relevant provisions of law and this chapter of administrative rules for location in a terminated enterprise zone.

(5) Once an enterprise zone has been designated or amended as described in OAR 123-656-2000 or this rule, a (further) change in the boundary of the zone may be requested and done under ORS 285C.115, as otherwise allowed, with the following clarifications:

(a) If the total area of the enterprise zone equals or exceeds the relevant 12 or 15 square miles, additional area may be included only if located:

(A) In parts of the Federal Enterprise Zone within a city, port or county that would become a cosponsor of the zone with the boundary change;

(B) In new parts of the Federal Enterprise Zone, as amended by authority of the federal government; or

(C) In another Federal Enterprise Zone that is located in a city, port or county that already sponsors the zone.

(b) If the zone exceeds the maximum overall allowed distance applicable to the zone, additional areas may be included in one of the following ways:

(A) Consistent with subsection (a) of this section;

(B) Where such areas do not increase the overall distance within the zone consistent with provisions under ORS 285C.120(1)(b) and (c); or

(C) By virtue of a waiver under ORS 285C.120(2) as described in OAR 123-650-1100(4).

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.085 & 285C.115

Hist.: OBDD 24-2010, f. & cert. ef. 6-14-10; OBDD 14-2015, f. & cert. ef. 11-12-15

**123-656-2300**

**Terminations**

For an enterprise zone designated as described in OAR 123-656-2000:

(1) The zone is Terminated-by-Statute as normal under ORS 285C.245(2), subsequent to the effective date of designation by order of the Director, regardless of any intervening termination of the Federal Enterprise Zone due to programmed operation under federal statutes or repeal of the operative federal law.

(2) The zone may terminate prematurely by order of the Director under ORS 285C.245(3) to (5) and shall terminate by programmatic sunset under ORS 285C.255 consistent with OAR 123-650-9100(4).

(3) With respect to termination in section (1) of this rule, the local zone sponsor may re-designate it as a regular enterprise zone under ORS 285C.250 but only in conformance with all applicable requirements including but not limited to ORS 285C.090.

(4) In addition, the zone may also terminate by order of the Director under ORS 285C.085(5), effectively rescinding the order designating the zone, as if it had never existed, in the event that the federal government prematurely terminates the Federal Enterprise Zone for nonperformance, violation of federal guidelines or similarly unusual circumstances. In this case, there is no provision for a re-designation under ORS 285C.250, but any business firm located in the zone shall enjoy the same protection under relevant provisions of law and this chapter of administrative rules for location in a terminated enterprise zone.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.085, 285C.245, 285C.250 & 285C.255

Hist.: OBDD 24-2010, f. & cert. ef. 6-14-10; OBDD 14-2015, f. & cert. ef. 11-12-15

**DIVISION 662**

**ELECTRONIC COMMERCE ENTERPRISE ZONES**

**123-662-0001**

**Purpose and Scope**

This division of administrative rules specifies matters related to areas designated for electronic commerce and the business tax incentives especially available in them, including but not limited to the electronic commerce overlay of an enterprise zone:

(1) In such areas businesses engaged in Electronic Commerce are not only eligible for the standard enterprise zone exemption, but they may also qualify for a state income tax credit based on their Electronic Commerce investment.

(2) These administrative rules:

(a) Have no bearing on any enterprise zone aside from its having electronic commerce status;

(b) Do not control or bind the county assessor or Department of Revenue, and they do not supersede OAR chapter 150, in matters related to tax administration.

Stat. Auth.: ORS 285A.075, 285C.050(5), 285C.060(1) & 285C.102(3)(c)  
Stats. Implemented: ORS 285C.050, 285C.078, 285C.095, 285C.100, 285C.102, 285C.135, 285C.180, 285C.185, 315.507 & 315.508  
Hist.: OBDD 25-2010, f. & cert. ef. 6-14-10; OBDD 10-2015, f. & cert. ef. 10-5-15

### 123-662-0100

#### Definition of Electronic Commerce

OAR 123-001 (Procedural Rules) defines terms used in this division of administrative rules, unless the context clearly indicates otherwise; in addition, for purposes of Electronic Commerce as defined under ORS 285C.050(5):

(1) E-commerce zone means any of the enterprise zones designated for electronic commerce under ORS 285C.095 or a city so designated under ORS 285C.100 in accordance with OAR 123-662-1200(4) or (5) and 123-662-2000(2).

(2) "Predominantly" means that more than 50 percent of applicable transactional activity is Internet-based in terms of receipts, number of orders, clients served or like measures, as opposed to activity handled directly or primarily through other means such as by telephone or e-mail.

(3) Applicable business activity and related investments must:

(a) Locate and occur inside the E-commerce zone;

(b) Involve dealings with customers, suppliers, clients or other transactional entities that are external to the eligible business firm, predominantly over the Internet itself or on a computer network that utilizes the Internet as a platform; and

(c) Entail, support or relate to the sale or purchase of goods, property or services, whether conducted on a wholesale, commercial, business-to-business, retail or other basis.

(4) It also includes facilities, equipment, services, networks, software, broadband infrastructure, or the like that are produced or operated inside the E-commerce zone by a third party, who facilitates, fosters or makes possible business transactions by means consistent with sections (2) and (3) of this rule. Such a third party is eligible for purposes of tax abatement if other businesses or organizations represent 75 percent or more of its customers or gross receipts as opposed to households or the general public.

(5) Beyond the initiation or consummation of the sale, purchase or arms-length exchange, it also encompasses elements of the transaction's overall completion or delivery, if that element:

(a) Is conducted in the E-commerce zone by means consistent with sections (2) and (3) of this rule, including but not limited to customer service, technical support, claims processing, client evaluation, performance measurement or the like, even if the actual sale, purchase or contract originated outside the zone or through other means; or

(b) Naturally serves, underpins or arises from the sale or purchase of goods, property or services inside the E-commerce zone by means consistent with sections (2) and (3) of this rule, including but not limited to distribution, made-to-order assemblage, direct after-sale support, shipping, warehousing, warranty service or any similar operation or order fulfillment-type activity.

(6) One way to understand subsection (5)(b) of this rule is by means of a flowchart representing the totality of Electronic Commerce operations in the zone, such that if a critical node in that flowchart is handled by means consistent with sections (2) and (3) of this rule, then:

(a) Substantially related activities both upstream and downstream of the node are also included for purposes of this rule; and

(b) Associated qualified property or investments in capital assets shall receive respective tax benefits subject to other applicable requirements.

Stat. Auth.: ORS 285A.075, 285C.050(5) & 285C.060(1)  
Stats. Implemented: ORS 285C.050, 285C.135, 285C.180, 285C.185 & 315.507  
Hist.: OBDD 25-2010, f. & cert. ef. 6-14-10; OBDD 10-2015, f. & cert. ef. 10-5-15

### 123-662-1000

#### Electronic Commerce Status

(1) An E-commerce zone may be any enterprise zone, whether urban or rural, except as described in section (3) of this rule, that is already designated in accordance with OAR 123-650 or 123-656 and has not terminated.

(2) Electronic commerce status fully overlays the entire area of the enterprise zone designated as an E-commerce zone inclusive of areas added by a subsequent change to the zone's boundary.

(3) The sponsor of an enterprise zone may revoke its status as an E-commerce zone by resolution(s), at any time, pursuant to which the Department shall establish the effective date of revocation, but that enterprise zone designation is not eligible to be an E-commerce zone.

(4) To designate an E-commerce zone:

(a) The process begins with a zone sponsor's sending a formal, preferably email advisory to the Department of its intent to so designate, which must occur on or after an effective date in OAR 123-662-1200;

(b) The Department shall respond promptly to such an advisory, consulting with the sponsor's representative preferably by telephone about the availability of any designation and other pertinent information as the Department will memorialize through an email reply;

(c) Not less than 31 days after advising the Department, the sponsor may submit its E-commerce designation, consisting of an executed (potentially scanned/electronic) copy of a resolution that designates the zone an E-commerce zone, as adopted after consultation with the Department by each governing body of the zone sponsor consistent with its charter, by-laws or ordinances; and

(d) Subject to the resolution(s) in subsection (c) of this section and other procedural matters being in order, as well as E-commerce zone availability under the law, the Department shall issue a positive determination confirming the designation and establishing its effective date.

(5)(a) Pursuant to advisories and so forth in section (4) of this rule, if the Department receives more submissions than the number of available electronic commerce designations, on effectively the same day, then the positive determination(s) shall go to the zone with the earlier date of resolution adoption by any cosponsor.

(b) If subsection (a) of this section results in a tie, tiebreakers shall be employed in the following order:

(A) The enterprise zone that less recently had electronic commerce status;

(B) The formal advisory received on the earlier date;

(C) The zone with the greater number of cosponsors; or

(D) Special determination of the Director.

(c) If the Department receives fewer submissions than there are available E-commerce zone designations, despite excess advisories in subsection (a) of this section, then pursuant to advisories from other zone sponsors, the Department shall process additional submissions consistent with this section, until all available designations are positively determined to have been made.

(6) The Department shall promptly give written notification and explanation to any zone sponsor subject to a negative determination of its electronic commerce designation and shall counsel the sponsor about the viability and timing of resubmission.

(7) As otherwise permissible, the Department may allow a zone sponsor of an E-commerce zone to re-designate itself as an E-commerce zone at the time it re-designates the enterprise zone under ORS 285C.250, if the zone was designated for electronic commerce within one year of the enterprise zone's termination date.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.102(3)(c)

Stats. Implemented: ORS 285C.078, 285C.095 & 285C.102

Hist.: OBDD 25-2010, f. & cert. ef. 6-14-10; OBDD 10-2015, f. & cert. ef. 10-5-15; OBDD 13-2016, f. & cert. ef. 9-16-16

### 123-662-1200

#### Designated Areas

(1) If the Legislature allows additional electronic commerce designations under ORS 285C.095 for enterprise zones, which are currently limited to 15, the sponsor of any eligible existing enterprise

zone that is not already an E-commerce zone may designate itself as an E-commerce zone in accordance with OAR 123-662-1000, pursuant to the date that the legislation took effect.

(2) The Department shall maintain and publicize information identifying which enterprise zones are currently E-commerce zones.

(3) If an enterprise zone that has been an E-commerce zone for more than one year terminates under ORS 285C.245, or if a zone sponsor revokes its electronic commerce designation, the sponsor of any eligible existing enterprise zone that is not already or is no longer an E-commerce zone may designate itself as an E-commerce zone in accordance with OAR 123-662-1000, pursuant to the date that the termination and revocation took effect.

(4) The City of North Plains in Washington County is a city designated for electronic commerce under ORS 285C.100 effective on March 4, 2002, such that

(a) All areas then or later inside the city limits or urban growth boundary of the City of North Plains are the same as an "E-commerce zone," as used in this division of administrative rules, but only for purposes of Electronic Commerce and business firms that are eligible on that basis under ORS 285C.050 to 285C.250 and 315.507.

(b) The city shall act as the effective zone sponsor and take responsibility for all duties of a zone sponsor as they apply to an Electronic Commerce business firm seeking to utilize areas of the city for special benefits.

(5) If the Legislature provides additional electronic commerce designations under ORS 285C.100 for cities, of which only one is currently allowed, the governing body of any city that is not already an E-commerce city may designate itself as an E-commerce city in a manner equivalent to OAR 123-662-1000(4) to (6), except as prescribed by the legislation, pursuant to the date that the legislation took effect.

Stat. Auth.: ORS 285A.075, 285C.050(5), 285C.060(1) & 285C.102(3)(c)  
Stats. Implemented: ORS 285C.095, 285C.100, 285C.102 & 285C.135  
Hist.: OBDD 25-2010, f. & cert. ef. 6-14-10; OBDD 14-2012, f. & cert. ef. 8-15-12; OBDD 10-2015, f. & cert. ef. 10-5-15

### 123-662-2000

#### Enterprise Zone Business Eligibility

Respective to the standard exemption from property taxes under ORS 285C.175:

(1) A business firm engaged in Electronic Commerce will likely be eligible in other ways under ORS 285C.135, but it shall not be subject to the requirements or restrictions of those other ways once the enterprise zone is effectively an E-commerce zone.

(2) If an eligible business firm that originally sought eligibility based on Electronic Commerce does not satisfy that definition, it may still receive authorization and exemption subject to another way's requirements or restrictions, except in an area described in OAR 123-662-1200(4) or (5).

(3) The following may occur only once the enterprise zone is effectively an E-commerce zone:

(a) Authorization and qualification of a firm that is eligible only by virtue of Electronic Commerce; or

(b) Exemption of personal property permissible only under ORS 285C.185(1)(b)(B).

(4) Property that due to section (3) of this rule does not qualify for exemption by January 1 of the first year, for which a business firm may claim the exemption, is not allowed to qualify later, even if the enterprise zone becomes an E-commerce zone.

(5) After an area's status as an E-commerce zone effectively ceases, a business firm shall enjoy the following protection for exemption on qualified property respective to Electronic Commerce eligibility, notwithstanding that the firm might be eligible in another way:

(a) Under ORS 285C.245(1), consistent with applicable elements of OAR 123-674-8100 and 123-674-8200, if for whatever reason the underlying enterprise zone terminates and the location of the qualified property is outside of a subsequent enterprise zone.

(b) Only under ORS 285C.245(1)(a), consistent with OAR 123-674-8100(1)(b) regardless that the firm was already authorized or qualified, upon:

(A) Revocation of the zone's electronic commerce designation; or

(B) Termination of the underlying enterprise zone and designation of the location of qualified property in another enterprise zone without electronic commerce status.

Stat. Auth.: ORS 285A.075, 285C.050(5) & 285C.060(1)  
Stats. Implemented: ORS 285C.095, 285C.100, 285C.135, 285C.140, 285C.180, 285C.185 & 285C.245  
Hist.: OBDD 25-2010, f. & cert. ef. 6-14-10; OBDD 10-2015, f. & cert. ef. 10-5-15

### 123-662-2500

#### State Income Tax Credit for E-commerce Investment

For purposes of a business firm receiving and using the credit under ORS 315.507 to offset state personal or corporate income/excise tax liabilities:

(1) Respective to an enterprise zone's designation as an E-commerce zone, relevant investments in Electronic Commerce capital assets under ORS 315.507(2) must be:

(a) Made in an income or corporate excise tax year, during or after which the designation took effect.

(b) In use, placed in service or completed in terms of construction or installation only on or after the effective date of designation.

(2) The business firm must make:

(a) Application for authorization before the effective date of revocation of the zone's electronic commerce designation or termination of the underlying enterprise zone.

(b) The relevant investment on or before the date, on which the enterprise zone terminates, irrespective of:

(A) Prior revocation of the zone's electronic commerce status; or

(B) Any continuing receipt or access to the standard property tax exemption after termination.

(3) The business firm engaged or preparing to engage in Electronic Commerce may make relevant investments only:

(a) During or after an income/excise tax year, in which the firm applies for authorization by submission of its application to the zone sponsor, that ends before July 1 of the first property tax year of exemption; or

(b) In an income/excise tax year that begins on or within less than a year's time preceding July 1 of any property tax year, in which the business firm remains qualified and associated qualified property is subject to exemption under ORS 285C.175.

(4) The third year after a credit was claimed for a year described in subsection (3)(a) of this rule must be a year described in subsection (3)(b) of this rule, in order for the firm to receive and keep the tax credit.

(5) Aside from their relation to Electronic Commerce and other requirements, the capital assets that generate the tax credit:

(a) Comprise new acquisitions, investments or costs of the business firm that are depreciable for purposes of federal income taxation, even if they are allowed to be and are, in fact, expensed on the corresponding tax return.

(b) Must, consistent with sections (3) and (4) of this rule, be associated concurrently with qualified property that is successfully claimed for exemption from property taxes under ORS 285C.175, and inasmuch as such assets are qualified property and are actually used to earn the credit, they must in general (aside from incidental oversights) also subsequently qualify for the exemption; nevertheless:

(A) Such assets may consist entirely or partially of items or costs that are not qualified property or otherwise not allowed for exemption, including but not limited to property exempt under another law such as certain intangible personal property (though not ORS 307.123 or 285C.409), as well as property previously used inside the E-commerce zone, or items located elsewhere in the zone apart from the site identified in the authorization application but connected to on-site Electronic Commerce activities; and

(B) Associated qualified property may consist entirely or partially of items or costs that are unusable for the credit, including but not limited to property distinct from Electronic Commerce activities,

in excess of the annual limit in subsection (7)(c) of this rule, or subject to use and occupancy by the qualified business firm through a (non-capitalized) lease.

(6) The business firm will claim the credit as an amount entered with “other credits” on the taxpayer’s state tax return for an income/excise tax year, in which it makes the Electronic Commerce investment (there is no prescribed form or worksheet). That tax year must begin before the date prescribed under section 3, chapter 913, Oregon Laws 2009, as amended in 2011 [c.730 §5] and in the future.

(7) The firm shall be responsible for maintaining tax records under ORS 315.508, including but not limited to:

(a) Annual qualification for exemption under ORS 285C.175, such as copies of forms filed with the county assessor and evidence of avoided property taxes, sufficient zone employment, and so forth;

(b) Methods used to determine the basis and extent, by which the firm/taxpayer attributes capital assets to Electronic Commerce for purposes of calculating the credit; and

(c) The actual cost of investments in terms of such calculations, as well as the annual limit under ORS 315.507(4) of effectively up to \$8 million in relevant costs in any one income/excise tax year.

(8) The tax credit is inapplicable with the exemption under ORS 285C.409 (Long-Term Rural Tax Enterprise Zone Facility Incentives).

(9) In terms of capital assets for Electronic Commerce (in contrast to property taxes, which typically relate to new physical vesting), to “make an investment” means:

(a) As a matter of timing, to financially incur costs or binding liability in payment for the asset, for example, by entering into a construction contract or by having booked an order to buy equipment.

(b) Not only capital that is new to the E-commerce zone, but it may also include the firm’s acquisition of assets already existing and previously subject to use and occupancy in the enterprise zone.

Stat. Auth.: ORS 285A.075, 285C.050(5) & 285C.060(1)

Stats. Implemented: ORS 285C.060, 285C.095, 285C.100, 315.507 & 315.508

Hist.: OBDD 25-2010, f. & cert. ef. 6-14-10; OBDD 10-2015, f. & cert. ef. 10-5-15

## DIVISION 668

### LOCAL ENTERPRISE ZONE SPONSORSHIP

#### 123-668-0001

##### Purpose and Scope

This division of administrative rules provides guidance and parameters applicable to:

(1) Selected issues regarding how the local sponsor operates and controls an enterprise zone, including with respect to business tax incentives (primarily for the standard property tax exemption as addressed in OAR 123-674); and

(2) Any situation provided by law, under which the local government or governments that sponsor an enterprise zone may (jointly) impose additional requirements or conditions on a business firm for receiving tax benefits associated with an investment in the enterprise zone.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.050 - 285C.250

Hist.: OBDD 26-2010, f. & cert. ef. 6-14-10; OBDD 13-2015, f. & cert. ef. 11-12-15

#### 123-668-0100

##### Sponsor of a Zone

OAR 123-001 (Procedural Rules) contains definitions used in this division of administrative rules unless the context demands otherwise. In addition, as used in ORS 285C.050 to 285C.250:

(1) “Sponsor” or “zone sponsor” includes the single city, port or county, or the cities, ports or counties, or any combination of these, collectively, as described in OAR 123-650 that:

(a) Most recently designated or re-designated the enterprise zone under ORS 285C.065 or 285C.250; or

(b) Joined the zone with a change to the zone boundary under ORS 285C.115.

(2) Sponsor also refers to:

(a) The tribal government and any city, port or county cosponsor of a reservation enterprise zone or a reservation partnership zone under ORS 285C.306 (see OAR 123-656).

(b) The county, multiple counties or city that sought designation of a rural renewable energy development zone under ORS 285C.353 (see OAR 123-680).

(3) Depending on the particular context, “a sponsor” or “a zone sponsor” may refer to a single sponsoring entity or “cosponsor” of the enterprise zone included in section (1) or (2) of this rule. Such reference neither supersedes nor interferes with ORS 285C.105(2), which compels all cosponsors to act jointly in fulfilling the duties of the zone sponsor and in taking any action with respect to the zone, with the exception of:

(a) Restriction on hotel/resort eligibility by a city or county at designation, in joining with boundary change or partial revocation, consistent with OAR 123-650-4800(2)(e) and (3); or

(b) Provision of local incentives as described in OAR 123-668-1300.

(4) The zone sponsor does not include and is not any city, port or county that simply consented to having part of its territory contained in the zone as described in OAR 123-650-0500.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.370

Stats. Implemented: ORS 285C.050 - 285C.250, 285C.320 & 285C.353

Hist.: OBDD 26-2010, f. & cert. ef. 6-14-10; OBDD 13-2015, f. & cert. ef. 11-12-15

#### 123-668-1000

##### Duties and Options — Local Zone Manager

For purposes of ORS 285C.105(1)(a):

(1) The sponsor of an enterprise zone shall appoint and maintain a local zone manager, though not necessarily by resolution, which must be done no more than 90 days after the zone’s re-/designation if one was not appointed through the documentation submitted under ORS 285C.074.

(2) The sponsor or a particular cosponsor may delegate the authority to appoint the local zone manager to a person or body including but not limited to the current local zone manager.

(3) The sponsor may make appointment of a local zone manager by way of an established position at a local agency or organization, whether public or private, as opposed to a named person.

(4) The sponsor may appoint up to but not more than two persons to serve as local co-managers of the zone, which may not be treated as officially bifurcating the zone in any way.

(5) Except as explicitly proscribed by the zone sponsor, the local zone manager shall act as the agent and representative of the enterprise zone in regard to any and all ministerial, intergovernmental, technical or promotional functions of the zone sponsor.

(6) The local zone manager may be empowered by and on behalf of the zone sponsor or a cosponsor to make discretionary decisions or enter into agreements, for which the law does not stipulate adoption of a resolution by the governing body or bodies of the sponsor.

(7) Whenever a local zone manager is appointed or a new person fills the appointed position, the sponsor needs to give written notice to the Department, the Department of Revenue and the county assessor soon afterwards.

(8) Anyone may serve as local zone manager, but it behooves the sponsor to:

(a) Select a person/position with complementary responsibilities, such as working regularly and locally with eligible business firms; and

(b) Formalize zone manager duties in the person/position’s job description or contract.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.105

Hist.: OBDD 26-2010, f. & cert. ef. 6-14-10; OBDD 13-2015, f. & cert. ef. 11-12-15

#### 123-668-1100

##### Reports by Sponsor at Beginning and End of an Enterprise Zone

(1) Within six months after re-/designation of any enterprise zone, the zone sponsor shall provide the following information, unless fully completed as part of documentation submitted with re-

/designation, to the Department and any other organization deemed appropriate by the sponsor for purposes of ORS 285C.105:

(a) A description and examples of marketing plans, efforts or materials for the zone;

(b) A list, map or other information necessary for identifying publicly owned land or buildings that are available for lease or purchase by an eligible business firm within the zone under ORS 285C.110 according to OAR 123-668-1400;

(c) For an urban zone, indices identifying all land within the zone, which for example, may be accomplished by on-line locator software, and for which specific tax lots or street addresses are needed only for properties at which eligible development may occur;

(d) Description of adopted policies and reasonable requirements that the sponsor will seek to impose under ORS 285C.150, 285C.155, 285C.160 or 285C.203 on authorized business firms, which must also be reported to the county assessor, Department of Revenue, and contact agency for publicly funded job training providers and First Source Hiring Agreements;

(e) Confirmation of having appointed the local zone manager consistent with OAR 123-668-1000; and

(f) The final form of any change in the election or restrictions to allow hotel, motel or destination resorts as eligible business firms in all or certain city or county jurisdictions of the enterprise zones, for which newly adopted resolution(s) are necessary as described in OAR 123-650-4800(2)(e).

(2) The sponsor shall periodically update and repeat the reporting of information described in section (1) of this rule, as applicable or necessary under ORS 285C.105.

(3) Within six months following the termination of an enterprise zone unless re-designated in its entirety, the sponsor of the terminated zone and the county assessor shall jointly submit to the Department of Revenue, Department and contact agency, a complete list of:

(a) The names of all business firms authorized, certified or qualified in the zone at the time of termination and located outside of any currently designated enterprise zone;

(b) The dates of submission and approval for each authorization or certification application;

(c) The anticipated initial first year of each exemption; and

(d) The status of each investment or exemption of the authorized, certified or qualified business firm (for example, "under construction").

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.060, 285C.070, 285C.105 & 285C.110

Hist.: OBDD 26-2010, f. & cert. ef. 6-14-10; OBDD 13-2015, f. & cert. ef. 11-12-15

### 123-668-1300

#### Enhanced Public Services and Other Local Incentives

For purposes of ORS 285C.105(1)(b) and local incentives that an enterprise zone sponsor or cosponsor elects by policy to provide to authorized business firms qualifying for the standard property tax exemption (see OAR 123-674) within its jurisdiction or service territory:

(1) Such local incentives include but are not limited to:

(a) Enhanced availability or efficiency of local public services, such as utilities, transportation access and public safety protection;

(b) Waivers, discounts or credits from local fees, charges, business/license taxes and so forth; or

(c) Regulatory flexibility, expedited/simplified permitting, special zoning designations, exceptions from ordinances, or the like that do not significantly undermine regulations pertaining to health and safety.

(2) Unless clearly stipulated in the sponsor policy as discretionary, any such incentive is binding on that sponsoring government and must be implemented (for example, by ordinance) and made regularly available for any business firm that makes application for authorization on or after the effective date, on which the co/sponsor adopted its policy to provide the incentive.

(3) With respect to any binding incentive, as opposed to one that is discretionary:

(a) It shall be available or provided to any authorized or qualified business firm on an equal basis within that portion of the enter-

prise zone exclusive to the relevant jurisdiction or service territory, except that a city or county cosponsor may formally differentiate the incentives available to authorized business firms operated as a hotel, motel or destination resort;

(b) The zone sponsor shall actively help such firms to understand, access and use any such incentive;

(c) The Department may recognize it in the context of benefits customarily associated with the enterprise zone for purposes of generally marketing the zone;

(d) That an incentive is generally offered or available to other business firms within the sponsor's jurisdiction or service territory does not affect its status as binding for purposes of the zone; and

(e) By virtue of the sponsor's policy for further inducing authorized or qualified business firms at locations inside the enterprise zone under ORS 285C.105(1)(b): Relative exceptions or variance from the normal provision of services, charging of fees, imposition of regulations, etc. are allowable within the zone. In contrast, any discretionary incentive (even if exclusively for qualified business firms in the zone) needs to fully conform to standard implementation of the applicable state or local laws, charters, ordinances or conventions.

(4) For purposes of ORS 285C.245(5), in the case where the zone sponsor proposes one or more new incentives to replace an incentive or incentives that are binding according to this rule, in order to avoid termination of the zone:

(a) "Comparable value" means that the new incentives or incentives, as a whole, need to provide not only an equivalent level of direct financial benefit to business firms, but also exhibit similarity in terms of other factors such as convenience.

(b) In determining whether "reasonable corrections of shortcomings in existing local incentives" are being made, the Department may consider and take into account the extent to which an existing incentive inordinately:

(A) Benefits some or all authorized or qualified firms; or

(B) Burdens local budgetary resources or utility capacity.

(5) A local incentive offered or binding in a cosponsor's jurisdiction or territory has no bearing on the incentives:

(a) Of any other cosponsor in the same zone; or

(b) That the jurisdiction may offer in another enterprise zone that it also sponsors.

(6) Applicable policies also include but are not limited to any formal proposal for local incentives that was made before October 5, 2015, as part of an application for zone re-/designation or of a request for a boundary change by a cosponsor seeking to join the zone.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.105 & 285C.245

Hist.: OBDD 26-2010, f. & cert. ef. 6-14-10; OBDD 13-2015, f. & cert. ef. 11-12-15

### 123-668-1400

#### Locally Available, Public Real Estate

For purposes of ORS 285C.105(1)(g) and 285C.110:

(1) The zone sponsor shall:

(a) Prepare and maintain a list and map of land, buildings and structures within the zone that are:

(A) Owned by any agency on behalf of the state government or by any municipal corporation;

(B) Not in use or officially designated for some public purpose; and

(C) Suitable for an eligible business firm in terms of land use zoning ordinances.

(b) Undertake reasonable efforts to make the real estate identified in subsection (a) of this section available for lease or purchase by authorized or qualified business firms for purposes of the standard exemption on qualified property under ORS 285C.175 (see OAR 123-674).

(2) Except as otherwise precluded under Oregon or federal law/constitutional provisions, such firms are entitled to acquire the real estate identified in section (1) of this rule at a fair market rate/price, subject to the leasing or purchasing firm's prompt development or redevelopment of the property pursuant to an approved application for authorization.

(3) As used in ORS 285C.110 and for purposes of this rule, “municipal corporation” has the same meaning as found under ORS 294.311, including but not limited to any special or local service district, a people’s utility district or a joint operating agency under ORS 262.005.

Stat. Auth.: ORS 285A.075 & 285C.060(1)  
Stats. Implemented: ORS 285C.105 & 285C.110  
Hist.: OBDD 26-2010, f. & cert. ef. 6-14-10; OBDD 13-2015, f. & cert. ef. 11-12-15

### 123-668-1600

#### Funds Derived through an Enterprise Zone

Moneys received by the sponsor from business firms represent a special but publicly accountable resource for the enterprise zone sponsor, which are likely to be substantial in only unusual cases, and include:

(1) As specified in statute or law:

(a) The authorization filing fee under ORS 285C.140(1)(c) consistent with OAR 123-668-1700;

(b) The payback of one year’s tax savings in lieu of disqualification under ORS 285C.240(6), as described in OAR 123-674-6600 to 123-674-6630; or

(c) The distribution to the sponsor and other taxing districts of 30 percent of the corporate income or excise taxes paid by a corporation under ORS 317.131, as addressed in OAR 123-690-8500.

(2) Additional requirements imposed by the sponsor on a business firm, in conformance with OAR 123-668-2000 to 123-668-2500.

Stat. Auth.: ORS 285A.075 & 285C.060(1)  
Stats. Implemented: ORS 285C.105, 285C.140, 285C.150, 285C.155, 285C.160, 285C.203, 285C.240, 285C.403 & 317.131  
Hist.: OBDD 26-2010, f. & cert. ef. 6-14-10; OBDD 13-2015, f. & cert. ef. 11-12-15

### 123-668-1700

#### Authorization Filing Fee

For purposes of ORS 285C.140(1)(c):

(1)(a) When applying for authorization under ORS 285C.140, an eligible business firm may be required to pay a fee that the sponsor of the enterprise zone has set, up to the greater of:

(A) \$200; or

(B) An amount not exceeding 0.1 percent of the total estimated cost of the firm’s proposed investment in qualified property.

(b) In other words, the amount of the fee may always be as much as \$200 for proposed investments of \$200,000 or less and 1/1000th of the estimated cost for larger investments, even though sponsors may charge a fee that is less than the maximum allowed.

(2) The sponsor shall uniformly implement the requirement of an authorization filing fee according to a policy in place before receipt of an affected application, though not necessarily through written guidelines if the policy is simply and consistently executed.

(3) Written guidelines, however, are necessary for purposes of section (9) of this rule, or to define factors under which the requirement, waiver or amount of an authorization filing fee may fluctuate, such that the sponsor may vary the fee consistent with section (1) of this rule according to certain criteria or situational factors, such as the size or nature of the eligible business firm or its proposed investment.

(4) Failure by an eligible business firm to pay the required filing fee at the time of the firm’s submitting an application for authorization may be grounds for the local zone manager’s refusal to process it on the sponsor’s behalf.

(5) A zone sponsor that requires an authorization filing fee shall collect payment in U.S. funds with the application for authorization and issue a receipt.

(6) If either the zone sponsor or the county assessor deny the application of an eligible business firm for authorization under ORS 285C.140, the sponsor shall refund any payment of an authorization filing fee in full to the eligible business firm.

(7) If both the zone sponsor and the county assessor have approved an eligible business firm’s application for authorization under ORS 285C.140, neither the zone sponsor nor the county assessor may later deny the eligible business firm’s authorization, quali-

fication or exemption because of failure to receive or collect payment of an authorization filing fee.

(8) If a business firm is denied an exemption under ORS 285C.170 or 285C.175, the zone sponsor is under no obligation to refund any amount of an authorization filing fee that was paid by the business firm, unless the business firm is ineligible under ORS 285C.135 or was otherwise authorized improperly or by mistake.

(9) A sponsor may formally provide that in paying the fee, all eligible business firms applying for authorization are required to commit in writing to later reconcile the fee amount, in the event that the actual cost of qualified property differs from the estimated cost by 25 percent or more, either by receiving a partial refund or by paying the sponsor an additional amount.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.140(1)  
Stats. Implemented: ORS 285C.140  
Hist.: OBDD 26-2010, f. & cert. ef. 6-14-10; OBDD 13-2015, f. & cert. ef. 11-12-15

### 123-668-2000

#### Requirements on Businesses — Applicable Situations

OAR 123-668-2000 to 123-668-2500 govern the following situations of locally imposed requirements in an enterprise zone:

(1) The written agreement by a certified business firm with the zone sponsor for the long-term rural tax incentive under ORS 285C.403(3)(c) and described in OAR 123-690-2000.

(2) Standard property tax exemption in OAR 123-674 involving:

(a) A written agreement for the extended abatement of four or five consecutive years in total under ORS 285C.160 between the sponsor and an authorized business firm;

(b) Adoption of zone sponsor resolution(s), by which the statutorily required increase in zone employment of the firm is:

(A) Waived under ORS 285C.155 and 285C.200(2), including criteria under ORS 285C.205 as applicable and the sponsor’s requisite setting of a minimum level of employment; or

(B) Deferred under ORS 285C.203; or

(c) A policy and standards adopted by the sponsor of an urban enterprise zone under ORS 285C.150 imposing local conditions on authorized business firms, as addressed in OAR 123-668-2500.

(3) For which the county assessor is excused from any enforcement role unless presented by the sponsor with documentation or evidence of a business firm’s noncompliance and of how that effectively invalidates the firm’s abatement of property taxes.

Stat. Auth.: ORS 285A.075 & 285C.060(1)  
Stats. Implemented: ORS 285C.105, 285C.150, 285C.155, 285C.160, 285C.203 & 285C.403  
Hist.: OBDD 26-2010, f. & cert. ef. 6-14-10; OBDD 13-2015, f. & cert. ef. 11-12-15

### 123-668-2100

#### Basic Parameters

For purposes of local, additional requirements imposed by an enterprise zone sponsor:

(1) They shall apply to a qualified business firm’s direct receipt of the tax abatement, only:

(a) With respect to operations inside (or nearby and affected by operations in) the enterprise zone; and

(b) Between the time when:

(A) The firm receives authorization (certification in the case of the long-term rural tax incentives); and

(B) December 31 of the final year when the overall enterprise zone exemption expires. (A zone sponsor, however, might require through contractual agreement, as otherwise permissible by law, that if the business firm were later to shut down its eligible operations in the zone, it would be obligated to pay the sponsor a portion of the tax benefit that the firm had earlier received. For example, this amount might reasonably relate or vary according to how soon permanent stoppage of zone operations occurred after expiration of the exemption.)

(2) Notwithstanding section (1) of this rule, the zone sponsor and the business firm may mutually agree, possibly with certain contingencies, to apply current requirements or provisions of an agreement to future situations described in OAR 123-668-2000.

(3) They shall not require that the eligible business firm's hiring, recruitment, promotion, training, compensation or treatment of its actual or potential employees, suppliers, contractors or customers be based on:

(a) Those persons' or businesses' explicit residency or geographic location, consistent with OP-8236, Oregon Attorney General (April 20, 1995); or

(b) Other legally impermissible criteria.

(4)(a) The consequence of a qualified business firm's failing to satisfy an additional requirement is not necessarily disqualification or loss of property tax benefits;

(b) If that is the expected consequence, then it behooves the zone sponsor to stipulate as much, especially in the case of any such requirement respective to OAR 123-668-2000(1); and

(c) Pursuant to the agreement, resolution or final supporting documentation:

(A) The firm's failure may result rather in other penalties or repercussions through breach of contract or as otherwise stipulated; or

(B) The firm might fulfill an alternative requirement to avoid disqualification. (An alternative requirement shall not preclude the firm's disqualification, if the firm later fails to fulfill the alternative requirement or any other requirement)

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.105, 285C.150, 285C.155, 285C.160 & 285C.403

Hist.: OBDD 26-2010, f. & cert. ef. 6-14-10; OBDD 13-2015, f. & cert. ef. 11-12-15

### 123-668-2200

#### Additional to Statutory Provisions

(1) A requirement imposed on a business firm by an enterprise zone sponsor is strictly supplemental to the provisions under applicable statutes or state laws, and it shall neither alter nor undermine their effect or intent.

(2) With respect to the following, as established by relevant state provisions, a requirement may in no way:

(a) Affect the basic eligibility or ineligibility of certain business activities or uses of relevant property;

(b) Modify any specified minimum level of investment by the firm; or

(c) Alter the coverage, extent, period or any other direct aspect of tax benefits, although:

(A) Alternative types of payment or financial contributions by the firm are possible; and

(B) The sponsor shall set the total period of tax benefit as provided by the relevant law or statute.

(3) The requirements may neither modify nor in any way effectively decrease or increase the stringency of state requirements for hiring, general employment levels or average pay/compensation associated with jobs or persons employed by the firm, and they shall not even address such issues, except for local requirements that:

(a) Deal with employment other than what is affected or covered by the relevant state requirement (for example, construction or temporary workers, part-time employees, or remuneration in a Portland-area urban zone);

(b) Set an alternative employment level under ORS 285C.155;

(c) Specify extra demands within the context of a First Source Hiring Agreement that the firm is otherwise required to enter into, as described in OAR 123-674-7700 to 123-674-7730; or

(d) Obligate the firm in a reasonable manner with respect to workforce development, hiring/retention from certain sources or groups, the particular nature of employee benefits, or other employment-related matters that are completely distinct from requirements under ORS 285C.050 to 285C.250 or 285C.412.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.105, 285C.150, 285C.155, 285C.160 & 285C.403

Hist.: OBDD 26-2010, f. & cert. ef. 6-14-10; OBDD 13-2015, f. & cert. ef. 11-12-15

### 123-668-2300

#### Reasonableness

This rule offers guidance for evaluating whether local additional enterprise zone requirements are reasonable, such that:

(1) The requirements shall not vary dramatically or erratically over time for business firms interested in investing in the zone and seeking special benefits or waivers.

(2) The requirements shall not be arbitrarily applied, implemented or enforced, in that the sponsor shall be consistent in not only setting conditions, but also in how to handle compliance issues.

(3) The requirements may differentiate among relevant business firms for a given situation as described in OAR 123-668-2000 in terms of investment size, the firm's industry and so forth, but such differentiation shall be:

(a) Based on definable characteristics;

(b) Consistently applied in its own regard; and

(c) Related to an apparent or expressed public purpose.

(4) The requirements may entail economic costs to the firm because of payments to the sponsor or other entities, or of actions undertaken by the firm, but these costs (less any other consequent benefit to the firm) in relation to OAR 123-668-2000(2)(b) or (c) shall not exceed one-third of the tax savings associated with the entire property tax abatement. With a written agreement, however, in the case of OAR 123-668-2000(1) or (2)(a) the firm may accept higher costs based on its own considerations.

(5) The requirements shall not demand procedures, practices or investments in excess of anything undertaken in the firm's industry or related industries throughout the world, such that the sponsor shall be prepared to show that such a demand has been accomplished in the normal course of business elsewhere without apparent, extenuating circumstances.

(6) No requirement may cause or compel actions by the firm that have the potential to pose a significant other legal, financial or business threat to the firm, including but not limited to:

(a) Surrendering significant rights, privileges or immunities under state or federal law;

(b) Labor relations that may compromise practices by the firm in other locations where it operates in the United States; or

(c) The release of information that is proprietary, confidential or otherwise threatening to the firm's market competitiveness or contractual obligations or that of any third party.

(7) The criteria in this rule will typically concern a zone sponsor's underlying policy, hence the recommendations in OAR 123-668-2400 for deliberate and explicit policy-making to cover certain potentialities.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.105, 285C.150, 285C.155, 285C.160 & 285C.403

Hist.: OBDD 26-2010, f. & cert. ef. 6-14-10; OBDD 13-2015, f. & cert. ef. 11-12-15

### 123-668-2400

#### Zone Sponsor Policies

In terms of the means and authority by which local additional requirements are put into effect:

(1) An enterprise zone sponsor shall consider a policy-making approach to achieve accountability and maintain consistency in imposing or setting such a requirement on business firms, especially in view of the following:

(a) Constitutional or other legal protections for business firms; and

(b) General principles of fairness and clarity regarding public purposes and intent.

(2) Such a policy may apply uniformly to the situations as described in OAR 123-668-2000, or it may pertain to only certain situations.

(3) Such a policy is relevant to the sponsor's rationale in granting or refusing special benefits or waivers, as well as the additional requirements imposed or sought when granting the benefit or waiver to a business firm.

(4) Except for conditions imposed by an urban enterprise zone under ORS 285C.150, such a policy does not need to be prospec-

tively adopted, nor does it need to be based on formal documentation, and it may reflect the cumulative effect of the sponsor's relevant past actions. A formal, explicit and prospective policy is preferable, especially whenever the following or comparable circumstances arise:

- (a) Relevant requests by business firms are common or expected to become increasingly frequent;
  - (b) Sponsor would differentiate the basic decision to grant or refuse a special benefit or waiver, or to impose additional requirements, in terms of business or investment size or other factors;
  - (c) The requirements imposed are numerous, complicated or otherwise entail various contingencies or matters of judgment that definite standards would facilitate; or
  - (d) The sponsor would depart from an apparent pattern in terms of granting a special benefit or waiver or imposing certain corresponding requirements.
- (5) In an urban enterprise zone that has adopted a policy under ORS 285C.150, as described in OAR 123-668-2500, any additional requirements imposed with other situations described in OAR 123-668-2000(2) must:
- (a) Formally relate to the policy and standards adopted by the zone sponsor; and
  - (b) Effectively supplement and not replace any condition normally imposed.
- (6) A city, port or county government that sponsors two or more enterprise zones is free to have different policies or to seek different local additional requirements among those zones.
- (7) In an enterprise zone sponsored by more than one city, port or county, the cosponsors must all jointly:
- (a) Adopt the same policy, standards, established local conditions and so forth under equivalent authority or method for purposes of this rule and the enterprise zone; and
  - (b) Approve the same requisite written agreement in each case.
- Stat. Auth.: ORS 285A.075 & 285C.060(1)  
 Stats. Implemented: ORS 285C.105, 285C.150, 285C.155, 285C.160 & 285C.403  
 Hist.: OBDD 26-2010, f. & cert. ef. 6-14-10; OBDD 13-2015, f. & cert. ef. 11-12-15

### 123-668-2450

#### Approving Agreements

The sponsoring city, port or county governments of an enterprise zone may authorize the written agreement with a business firm in the case of OAR 123-668-2000(1) or (2)(a) through a number of approaches, which may differ among the cosponsors, including but not limited to the following examples:

- (1) Approval by an official normally empowered to enter into such an agreement under the laws, charters, ordinances and conventions of the cosponsor;
- (2) Approval by the person or persons formally and specifically recognized to conclude the agreement, pursuant to a previous accord between the firm and the sponsor;
- (3) A specific resolution by the governing body authorizing a preliminary or final written agreement;
- (4) A specific resolution by the governing body that authorizes an agent to conclude such an agreement;
- (5) A standing policy adopted by the cosponsor that empowers a particular agent to negotiate such an agreement with all or some firms on behalf of the cosponsor (for example, the local zone manager); or
- (6) An intergovernmental agreement that delegates to the cosponsor(s), in whose jurisdiction the firm will locate its exempt property, the right to execute the agreement on behalf of the entire zone sponsor.

Stat. Auth.: ORS 285A.075 & 285C.060(1)  
 Stats. Implemented: ORS 285C.105, 285C.160 & 285C.403; OBDD 13-2015, f. & cert. ef. 11-12-15  
 Hist.: OBDD 13-2015, f. & cert. ef. 11-12-15

### 123-668-2500

#### Additional Conditions in an Urban Zone

For purposes of additional conditions imposed on eligible business firms by the sponsor of an urban enterprise zone under ORS 285C.150:

- (1) The sponsor of the enterprise zone shall abide by OAR 123-668-2000 to 123-668-2400.
- (2) "Groups of persons" as used in ORS 285C.150(2) may comprise the general populace or labor force or any lesser number of persons that is not explicitly defined in terms of geography/residency.
- (3) In order to effect and enforce compliance, the sponsor of an urban zone must include formal information in approving the application for authorization that lists and clearly explains the specific additional conditions to which the firm is committing, or to which it may be obligated under certain contingencies.
- (4) The written information as described in section (3) of this rule shall appear in a standardized format that conforms to the policy that the zone sponsor has adopted for imposition of such additional conditions, and that is used for all eligible business firms authorized in that urban enterprise zone, including but not limited to a standard performance contract to which firms agrees.
- (5) Failure by a firm to satisfy such additional local conditions of an urban zone may affect the exemption in the following ways:
  - (a) Denial of the authorization under ORS 285C.140(2)(e), but only if the firm does not formally "commit" to meet the conditions;
  - (b) Refusal of initial qualification for exemption under ORS 285C.175; or
  - (c) Disqualification of an ongoing exemption in accordance with ORS 285C.240(1)(d), except as provided under 285C.240(6).
- (6) The county assessor has an obligation to effect actions described in subsection (5)(b) or (c) of this rule only insofar as the zone sponsor has provided timely and written evidence of such failure.
- (7) An eligible business firm shall have the same rights of appeal as provided elsewhere in ORS 285C.050 to 285C.250 for authorization and receipt of the enterprise zone exemption.
- (8) The policy and standards adopted by the sponsor affect only proposed investments for which an eligible business firm applies for authorization after the date of adoption.
- (9) The sponsor may impose the additional conditions only pursuant to a policy and standards, such that:
  - (a) The policy entails the adoption by the zone sponsor of formal documentation outlining the sponsor's purposes, process, factors of consideration and so forth; and
  - (b) The policy contains standards consisting of established and transparent measures, methods or criteria to implement the policy and define the conditions, as well as specific consequences for the firm's failure to satisfy those conditions.
- (10) Any imposed additional condition must relate in some way to employment opportunities for one or more groups of persons, through:
  - (a) Actions by the eligible business firm;
  - (b) Use of funds or resources from the firm;
  - (c) Other efforts supported by the firm; or
  - (d) Other means, for which the result is employment-related benefits for groups of persons, consistent with 47 OTR 557 (TC 4167, 1999).
- (11) Only urban zone sponsors that have established and implemented a policy and standards described in this rule shall submit a report under ORS 285C.150(6), on or about anniversary date of the policy's adoption every four years, through the offices of the State Senate President and the Speaker of the Oregon House of Representatives.

Stat. Auth.: ORS 285A.075 & 285C.060(1)  
 Stats. Implemented: ORS 285C.150  
 Hist.: OBDD 26-2010, f. & cert. ef. 6-14-10; OBDD 13-2015, f. & cert. ef. 11-12-15

DIVISION 674

STANDARD EXEMPTION ON TAXABLE ENTERPRISE ZONE PROPERTY

**NOTE:** Department of Revenue forms referenced in this division are available from the Department of Revenue, Property Tax Division, 955 Center St NE, PO Box 14380, Salem OR 97309-5075, phone 503-378-4988, 800-356-4222, TTY 800-886-7204, fax 503-945-8737, and web <http://www.oregon.gov/DOR/PTD/enterform.shtml>.

123-674-0001

**Purpose, Scope and General Process for Businesses Seeking Exemption**

(1) This division of administrative rules clarifies, specifies and establishes elements of ORS 285C.050 to 285C.250 (Oregon Enterprise Zone Act) for the determinations, procedures and requirements relevant to the three- to five-year exemption from property taxes under ORS 285C.175 on qualified property of eligible business firms in any enterprise zone.

(2) The outline of these rules, regarding a business firm's receipt of this exemption, is that:

(a) The sponsor of the enterprise zone may extend the usually three-year period to four or five consecutive years in total by executing a written agreement with the firm before approval of the application in subsection (c) of this section.

(b) The firm must be engaged in eligible activities as primarily determined with authorization.

(c) The firm must apply for authorization, generally before any work begins on the new investment, and the local zone manager and the county assessor need to authorize the firm.

(d) The firm must initially satisfy certain hiring criteria and then maintain corresponding employment minimums during the entire exemption period in order to first become and then stay qualified.

(e) The exemption is primarily on certain new property and only for an authorized firm that timely claims the exemption with the assessor after it has placed the property in service; before that, it may be exempt under ORS 285C.170.

(3) These administrative rules do not control or bind the county assessor or Department of Revenue and do not supersede OAR chapter 150 in matters related to tax administration including but not limited to rules for purposes of the statutory sections listed in ORS 285C.125(1).

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.045 & 285C.050 – 285C.250

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

123-674-0100

**Definitions**

OAR 123-001 (Procedural Rules) contains definitions in addition to the following, as used in this division of administrative rules along with terms under ORS 285C.050, such that unless the context clearly indicates otherwise:

(1) Annual Employment means the number of employees as averaged over the course of a year of exemption under ORS 285C.175 based on OAR 123-674-4000.

(2) Application means the latest revision of the Department of Revenue form 150-303-029, Oregon Enterprise Zone Authorization Application (inclusive of attachments) as filled out and submitted by a business firm.

(3) Approval Form means the latest revision of the Department of Revenue form 150-303-082, Oregon Enterprise Zone Authorization Approval that documents authorization of the Firm/applicant.

(4) Claim Employment means the total number of employees on the date when an authorized business firm files its exemption claim under ORS 285C.220 or on the corresponding April 1, whichever is earlier.

(5) County Wage is the final average annual figure under ORS 285C.050(4) for all industries in the county as released at the time when one of the following effectively occurs (whichever is later), according to the transition from one year's figure to the next as established by the Department:

(a) Application is approved (Firm/applicant is authorized) under ORS 285C.140(6); or

(b) As described in OAR 123-674-3700:

(A) Statement of authorization renewal is submitted under ORS 285C.165(1); or

(B) Exemption claim is initially filed under ORS 285C.220 and 285C.225 by an inactively authorized business firm.

(6) Estimate and estimated, as used in ORS 285C.140, mean current expectations of the owners, managers and executives of an eligible business firm based on the best information available at the time and shall not be construed as binding.

(7) Existing Employment means the number of employees averaged over the entire 12-month period preceding the date on which the Application is submitted under ORS 285C.140 based on OAR 123-674-4000.

(8) Firm/applicant means a business firm that is seeking to have an Application approved in order to be authorized in an enterprise zone, or that has received approval but not yet begun exemption under ORS 285C.175.

(9) Preauthorization Conference refers to the consultation between a Firm/applicant and enterprise zone sponsor/local zone manager, to which the county assessor is invited, and to the associated written summary under ORS 285C.140(4) to (6), as required to take place after submission of the Application and before completion of the Approval Form. The Department shall set forth further guidelines for the Preauthorization Conference, which are hereby incorporated into and made part of these administrative rules by reference.

(10) Year (including 'exemption year') means a calendar year or assessment year from January 1 to December 31 (and not a property tax or government fiscal year) consistent with the definitions under ORS 285C.050(1) and (22).

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

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: 285C.050 – 285C.250

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

123-674-0200

**General Employment Terminology and Issues**

As used in OAR 123-674-0100, with respect to counting the 'number of employees' for purposes of this division of administrative rules, especially 123-674-4000 to 123-674-4800:

(1) It does not involve averaging based on hours worked, such as full-time equivalency, but rather relies on counting full-time, year-round jobs associated with relevant business operations throughout the enterprise zone, either at a particular time or on average over a year or 12-month period.

(2) It relates primarily to "employees of the firm" or "employment of the firm," as used in ORS 285C.200 and 285C.210, which:

(a) Includes positions or persons who are:

(A) Employed and working directly by the business firm, as well as retained through lease or contract with the person or with a third party serving such a leasing or payroll function for the firm, if the firm nevertheless selected and directly manages them, but excluding any employee of an independent contractor, or anyone whom the firm leases or contracts out to another business;

(B) Engaged a majority of their time in eligible operations under ORS 285C.135, including but not limited to persons who perform eligible activities as described in OAR 123-674-1100 or 123-674-1200(3) or (4); and

(C) Located anywhere inside the enterprise zone in terms of where they spend at least 75 percent of their time on the job, as well as official work site.

(b) Excludes positions or persons who are employed or performing work:

(A) In temporary or seasonal jobs;

(B) For 32 or fewer hours per week;

(C) Solely in the construction, modification or installation of qualified property;

(D) Regularly outside the zone boundary;

(E) With ineligible operations at least half of their time; or

(F) At any other business firm, including but not limited to affiliates or commonly owned companies.

(3) Consistent with subsection (2) of this rule, only full-time jobs with the firm that are filled indefinitely and exist year-round at the firm's eligible operations inside the zone are normally counted. The following are exceptions:

(a) Only employees who work at the particular headquarter-type facility (see OAR 123-674-1700) matter, irrespective of other eligible employees inside the zone and paragraph (2)(a)(C) of this rule;

(b) For the transfer of eligible operations within 30 miles of zone boundary, further requirements described in OAR 123-674-4100(3) and 123-674-4600(2) also cover employees at affected sites outside the zone, irrespective of paragraph (2)(b)(D) of this rule.

(c) The prohibition on jobs losses in Oregon more than 30 miles outside the zone also encompasses persons employed by any commonly controlled company and potentially in ineligible operations (see 123-674-4200), irrespective of paragraphs (2)(b)(D) or (F) of this rule.

(d) Jointly owned firms may combine their employment throughout the zone subject to section (4) of this rule, irrespective of paragraph (2)(b)(F) of this rule.

(e) Temporary workers filling permanent positions are acceptable, if the county assessor and the local zone manager conclude that:

(A) The qualified business firm is making every reasonable effort to fill such positions with permanent, regular hires; and

(B) The temporary workers and other potentially available job applicants do not meet reasonable, minimum standards of the firm for permanent hire, such as a high school diploma or equivalency.

(4) Under ORS 285C.135(4), two or more eligible business firms with 100-percent common ownership may elect to be treated as a single firm for combining zone employment, if authorized representative(s) of the firms or a parent company formally notify the local zone manager and county assessor to that effect before or with the initial exemption claim under 285C.220. Such an election affects all applicable provisions under 285C.050 to 285C.250 and this division of administrative rules, including but not limited to rendering moot any inter-firm lease of qualified property (which would then all be simply owned by the Firm/applicant), but it does not carry over to any subsequent authorization except in a terminated zone.

(5) Only newly created jobs may satisfy required increases in employment levels, as opposed to any employee associated with the merger or acquisition of another business firm or its existing operations or property, except positions inside the zone that were vacant for 60 or more days at the time of Application, and for whom rehiring or reemployment was otherwise unlikely.

(6) As used in this rule and under ORS 285C.050:

(a) "Person" may mean two or more part-time employees who together perform a single job involving more than 32 hours of work per week by virtue of an established (job-sharing) arrangement.

(b) "32 hours per week" is computed by taking the total number of hours over the course of a year, for which the person is reimbursed in the form of wage or salary, excluding holidays, vacation and other paid leave, and dividing by 52.

(c) "Temporary or seasonal jobs" are nonpermanent positions, including but not limited to persons recruited and receiving compensation through the firm or an outside agency on a short-term, ad hoc or as-needed basis, or where the firm hires, leases or contractually employs a persons for any anticipated period of less than 12 consecutive months.

(7) There is no necessary relationship between minimum employment requirements and the requisite First Source Hiring Agreement, as addressed in OAR 123-070 and 123-674-7700 to 123-674-7730.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.050, 285C.135, 285C.200 & 285C.210

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 31-2010, f. 6-30-10, cert. ef. 7-1-10; OBDD 15-2012, f. & cert. ef. 8-15-12; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-0500

#### General Points

With respect to an extended period of property tax abatement longer than three years under ORS 285C.160 and 285C.175(2)(b):

(1) The extended period effectively exposes a qualified business firm to needing to comply for one or two more years with all regular enterprise zone requirements, and to pay back all four or five years of exemption as a consequence of noncompliance and regular disqualification.

(2) The exemption shall revert to the basic three-year period upon failure to satisfy applicable requirements described in OAR 123-674-0600 or 123-674-0700 during any of the four or five years, as well as repayment of taxes abated (only) in the fourth or fifth year.

(3) Even as other property continues to receive the extended abatement, a qualified business firm may elect to have certain property terminate its exemption after the third year, such that it is then subject to taxation but not to retroactive disqualification under ORS 285C.240(1)(a), (e) or (f). What property is exempt for only three years or may receive additional years of exemption shall be described in:

(a) The written agreement in OAR 123-674-0700; or

(b) Specific notice provided to the county assessor from the firm or property owner no later than before April 1 directly following the third exemption year.

(4) An eligible business firm has the same rights of appeal as provided elsewhere in ORS 285C.050 to 285C.250 for the enterprise zone exemption, and no part of this division of administrative rules shall interfere with those rights, subject to the determination of appellate authorities.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.050, 285C.160 & 285C.165

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-0600

#### Compensation Standard

For purposes of ORS 285C.160:

(1) To qualify for the additional one or two years of exemption on qualified property in a rural enterprise zone or an urban enterprise zone outside the Metro/Portland-area regional urban growth boundary:

(a) All of an eligible business firm's affected employees must on average receive compensation of not less than 150 percent of the County Wage; and

(b) This requirement must be satisfied for and during each year throughout the exemption's first three years and the additional one or two years in order to receive any additional year.

(2) The County Wage is established for the enterprise zone exemption period according to OAR 123-674-0100(5).

(3) For purposes of this rule, the regular yearly compensation (excluding bonuses and so forth) of any applicable position temporarily vacant due to unforeseen circumstances at any time during the year may be used in computing the annual average compensation for all such affected employees.

(4) As used in this rule, "affected employees" means persons, positions or jobs under ORS 285C.050(13) that are both:

(a) Included as "employment of the firm" in accordance with OAR 123-065-0200; and

(b) New jobs filled for the first time:

(A) After the date of Application under ORS 285C.140(1), even if an individual filling the job is already employed by the eligible business firm in another position that is refilled within the zone; and

(B) On or before December 31 at the end of the initial exemption year.

(5) As used in ORS 285C.160 and in this rule, "compensation" includes total calendar-year remuneration (whether taxable or not) in the form of wages, salary, overtime pay, shift differential, profit-sharing, bonuses, commissions, paid vacation, and associated fringe or financial benefits such as life insurance, medical coverage and retirement plans, but excluding:

(a) Free meals, club membership or comparable workplace amenities;

(b) Payroll-based tax or cost mandated by federal, state or local law, such as worker's compensation, unemployment insurance or the employer's share under FICA; and

(c) Gratuities or tips (except in association with eligible hotel, motel or destination resort operations).

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.160, 285C.165 & 285C.240

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-0700

#### Written Agreement between Sponsor and Eligible Business Firm

For purposes of the written agreement that is required between the sponsor of an enterprise zone and an eligible business firm under ORS 285C.160:

(1) To receive an additional one or two years of exemption, the written agreement must be finalized no later than completion of the Approval Form.

(2) Both the Firm/applicant seeking an extended abatement and the sponsor of the zone (see OAR 123-668-2450) must formally authorize the written agreement.

(3) The written agreement shall specify whether:

(a) The total period of abatement is four or five consecutive years; and

(b) The Firm/applicant needs to fulfill additional requirements, as well as what they are exactly, in accordance with OAR 123-668.

(4) Adherence to or satisfaction of such additional requirements shall in no way condition the first three years of an eligible business firm's enterprise zone exemption under ORS 285C.175(2)(a).

(5) Notwithstanding section (1) of this rule, if the zone sponsor rejected a Firm/applicant's request for an extended tax abatement, and the Application was subsequently approved, but commencement of construction, modification or installation of qualified property has not yet occurred, then the sponsor may reverse its decision and enter into a written agreement based on a resubmitted Application

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.160 & 285C.175

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-1000

#### Special Business Distinctions

(1) As used in ORS 285C.050 to 285C.250, "hotel, motel or destination resort" means any "hotel or motel" facility as defined in OAR 150-285-3200.

(2) As used in ORS 285C.050(3):

(a) "Municipal corporation" has the same meaning as found under ORS 294.311, including but not limited to any special or local service district, but excluding a people's utility district or a joint operating agency under ORS 262.005.

(b) "Operating or conducting one or more trades or businesses" means to manage or undertake commercial affairs, as evidenced by the following:

(A) Establishment of a place of business and acquisition of property that is necessary to perform business operations through ownership, renting or leasing;

(B) Approval to do business from the appropriate regulatory authorities, as documented by required licenses or permits;

(C) Capital investment or financing, including self-financing, and procurement of supplies or services from other businesses or operations within the firm;

(D) Maintenance of business records such as those related to sales, shipments, personnel or payroll; and

(E) Ultimate pursuit is producing or furthering the production of income.

(3) "Separate" as used in ORS 285C.135(3) and for these administrative rules means a definitive and physical demarcation, including but not limited to a wall between eligible and ineligible activities sufficient to distinguish the employees and qualified property pertaining to either one.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.070 & 285C.135

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-1100

#### Basic Eligibility of Firms and Operations

For purposes of determining the business eligibility under ORS 285C.135(1) in an enterprise zone:

(1) The Firm/applicant (when qualified) must:

(a) Be a business firm consistent with OAR 123-674-1000(2); and

(b) Produce, sell or provide goods, commodities, products, merchandise, work or services to other businesses, business operations or organizations, or be capable of doing so, through eligible activities.

(2) A business firm's relevant operations will indicate such eligibility if they are:

(a) Performed for internal purposes of the firm;

(b) Reimbursed through sales to another business firm;

(c) Equivalent to what is done for other business firms, even if the actual customer is a government agency or a public or nonprofit corporation/organization; or

(d) Undertaken to create or add value to goods, products or services for ultimate exchange with persons or entities residing beyond the local economy.

(3) Besides manufacturing, assembly, fabrication, processing, shipping or storage, eligible activities include:

(a) Industrial processes or services such as cleaning, coating, curing, kiting, labeling, laminating, packaging, refining, smelting, sorting or treating;

(b) Generation or co-generation of electricity, steam or heat;

(c) Recycling of post-consumer or post-production materials or wastes;

(d) Nonretail, in-shop refurbishment or restoration of equipment or machinery;

(e) Maintenance service or repair work on vehicles, products, parts or devices, performed on a nonretail (e.g., contract) basis at a permanent location, facility or shop, including but not limited to warranty service contracted or paid for by the manufacturer;

(f) Technical/customer support performed for internal purposes of the firm, or for which a nonretail third party such as the product's distributor or manufacturer contracts or pays;

(g) Standardized product testing, quality control or laboratory work;

(h) Bulk clerical processing or data center operation for internal or external business services;

(i) Development of standardized computer software products or customized products for business users;

(j) Printing or mass document production;

(k) General production of molds, forms, models, prototypes or similar items for other businesses that does not, in and of itself, merely fulfill an architectural, design or similarly advanced professional service;

(l) Distribution;

(m) Wholesaling, which may include complex transactions for single-item purchases by other businesses of large equipment involving contracts, factory-ordered specifications or other attributes distinguishing the sale from retail;

(n) Production of agricultural, mineral, timber or other primary goods or commodities; or

(o) Similar types of business operations.

(4) As a matter of principle, eligibility and ineligibility are mutually exclusive under ORS 285C.135.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.135

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-1200

#### Ineligible Activities

For purposes of ORS 285C.135(2), (3) and (5):

(1) The following activities are ineligible, and property used in any such activity may not qualify for an enterprise zone exemption, regardless that it serves other businesses:

(a) Retail sales of goods or services;

(b) Retail food service or serving of meals;

- (c) Tourism attractions or similar services;
  - (d) Entertainment or recreation provided directly to the patron or user;
  - (e) Child care or similar services;
  - (f) Provision of health care, medical services or similar services to patients;
  - (g) Professional services, such as accounting, communications, design, engineering, legal advice or management;
  - (h) Actuary, appraisal, banking, brokerage, extension of credit, insurance, investment, money lending or similar financial services;
  - (i) Leasing or management of real estate;
  - (j) Provision of residential housing for purchase or lease;
  - (k) Construction or modification of real property;
  - (l) Installation of fixtures, machinery or equipment;
  - (m) Leasing or contracting out employees to work even in eligible activities for another business;
  - (n) Recreational vehicle parks; or
  - (o) Other similar types of business operations.
- (2) A business firm is eligible, regardless of the presence within the enterprise zone of one or more activities listed in section (1) of this rule, if they are:
- (a) Separate consistent with OAR 123-674-1000(3) and OAR 123-674-1300; or
  - (b) Insignificant in accordance with 123-674-1400.
- (3) Activities described in or comparable to subsections (1)(b) through (i) of this rule, as well as associated employees and property, are eligible if performed by the business firm:
- (a) Within the same enterprise zone; and
  - (b) To directly support, benefit or provide amenities to eligible operations or associated personnel located mostly inside the zone. If, however, more than 25 percent of the activity supports or benefits the firm's operations outside the zone in terms of person-time or costs, then the requirements of OAR 123-674-1700 for headquarter-type facilities must be fulfilled.
- (4) Notwithstanding OAR 123-674-1100, an activity is eligible in the following cases:
- (a) Subsection (1)(a) to (i) of this rule or similar activities with electronic commerce operations located in an area designated as such, in accordance with OAR 123-662.
  - (b) Subsection (1)(a) to (e) of this rule or similar activities with a hotel, motel or destination resort if:
    - (A) Such businesses are eligible in that (part of the) enterprise zone as established in the Department's determination in OAR 123-650-4900 (or previously in a Director's Order) consistent with the zone sponsor's election or restriction(s) as described in OAR 123-650-4800(2)(e); and
    - (B) The activity is at the same location, and owned and operated in common with the hotel, motel or destination resort, and 50 percent or more of the activity's receipts are derived from guests staying overnight there.
  - (c) Subsection (1)(a), (g), (h) or (i) of this rule or similar activities with operations described in OAR 123-674-1600 (Call Centers).
  - (d) Subsection (1)(g) to (i) of this rule or similar activities with a facility described in OAR 123-674-1700 (Headquarter Facilities).
- Stat. Auth.: ORS 285A.075 & 285C.060(1)  
 Stats. Implemented: ORS 285C.135 & 285C.185  
 Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-1300

#### Eligible Business Firm with Ineligible Activities

For purposes of ORS 285C.135(3):

- (1) A Firm/applicant is eligible:
  - (a) If when qualified, it engages in an eligible activity in the enterprise zone;
  - (b) Provided that any ineligible activity of the Firm/applicant is at a separate business operation; and
  - (c) Regardless of the degree to which an ineligible activity represents the Firm/applicant's main commercial pursuit.
- (2) Any requirement to hire, maintain or compensate employees under ORS 285C.050 to 285C.250 applies only to "eligible

employees," as used in ORS 285C.140(1)(a), consistent with OAR 123-674-0200.

(3) Firm/applicant and the local zone manager shall see that the Preauthorization Conference addresses distinctions relevant to this rule, and the local zone manager shall assist the firm and the county assessor in determining such portions of the firm's property that will qualify.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.135, 285C.200 & 285C.210

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10

### 123-674-1400

#### Gross Receipts Test

(1) A gross receipts test shall determine the eligibility of a business firm or business operation that partially involves an ineligible activity only when:

- (a) There are Applicable Gross Receipts;
- (b) The firm is not eligible as described in OAR 123-674-1200(4); and
- (c) For lack of definitive or physical separation, the ineligible activity cannot be effectively isolated from eligible activities for purposes of OAR 123-674-1300.

(2) The Firm/applicant or operation passes the gross receipts test and is otherwise eligible for authorization and qualification in the enterprise zone, if the ratio of Applicable Gross Receipts to Ineligible Receipts equals or exceeds 4.0.

(3) For purposes of this rule, the local zone manager shall see as part of the Preauthorization Conference that the authorization includes:

- (a) An explanation of the eligibility of the firm or operation consistent with this rule; and
  - (b) Arrangements to substantiate this for the firm's future qualification, as appropriate.
- (4) "Applicable Gross Receipts" as used in this rule are based on:

- (a) Sales revenue derived directly from a party external to the firm in exchange for goods, products, commodities, merchandise, work or services;
- (b) Operations located entirely inside the enterprise zone;
- (c) All activities of the firm within the enterprise zone;
- (d) An annual total for the most recent fiscal year or calendar year; and
- (e) The commercial state of affairs, as realized when the firm is qualified for the property tax exemption being sought, which is estimated for purposes of the Application or Preauthorization Conference.

(5) "Ineligible Receipts" as used in this rule are that subset of the same Applicable Gross Receipts that arise from an ineligible activity described in OAR 123-674-1200(1), including but not limited to receipts that entail:

- (a) Consumption by an end-user among the public;
- (b) Sales directly to a household or individual that is neither another business firm nor operating as such; or
- (c) No subsequent resale of the applicable goods or products by the firm's customer.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.135 & 285C.140

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10

### 123-674-1600

#### Call Centers

For purposes of ORS 285C.135(5)(a):

(1) A Firm/applicant and its operations are eligible, regardless of retail or financial services, if:

- (a) They serve the firm or its clients exclusively through computer, electronic, telephony or other telecommunication methods;
- (b) No more than 10 percent of the customers or business transactions come from inside the local calling area, in which telephone calls are normally made to and from the firm's location in the enterprise zone without long distance telephone charges or service; and
- (c) Not engaged in telemarketing, but rather the firm is taking unsolicited orders or responding to prior instruction, including but not limited to:

(A) Following-up on pledges or expressions of interest to the firm or its client;

(B) Checking with users of client-supplied goods or services, for example, to continue or renew recently expired membership, contract, *etc.*; or

(C) Collection of voluntarily incurred dues, fees or other charges payable to the client.

(2) The percentage in subsection (1)(b) of this rule is:

(a) First substantiated by the Firm/applicant or local zone manager with the Application or Preauthorization Conference;

(b) Not predicated on the actual transaction or customer communication through a landline telephone call, but only on relative location as if it were;

(c) Calculated by dividing the number of customers or transactions in the local calling area by the firm's total, arising from the operations in the zone; and

(d) Not dependent on precise calculation or verification, if the generally regional or national extent of the firm's activities allow for a reasonable assumption of compliance.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.135

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10

### 123-674-1700

#### Headquarter Facilities

For purposes of ORS 285C.135(5)(b):

(1) A Firm/applicant and its operations are eligible, regardless of retail, financial, professional or other such ineligible activities, if:

(a) The business is operating substantially at two or more other locations including at least one place outside of the enterprise zone;

(b) The operations in the zone support and serve the firm's other operations or commercial pursuits throughout this state or throughout a multiple-state or larger region; and

(c) In approving the Application, the local zone manager includes a formal finding on behalf of the sponsor pursuant to the Preauthorization Conference under ORS 285C.140(7).

(2) The formal finding in subsection (1)(c) of this rule shall:

(a) Describe how the proposed investment and the business firm will satisfy subsections (1)(a) and (b) of this rule, including indications of applicable services, relevant region and the relationship among intra-firm operations; and

(b) State that the proposed investment is significant for the enterprise zone and the local economy, succinctly explaining the reasons for this significance, such as size of anticipated operations relative to local measures of commerce, special job opportunities, diversification, strategic, marketing or visibility objectives of the zone, or other impacts.

(3) As required under ORS 285C.180(2)(g), the business firm may not qualify for the exemption under ORS 285C.175, if the actual investment in qualified property does not essentially conform to the proposed investment as described in the Application and section (2) of this rule.

(4) The local zone manager may modify the formal finding prior to an authorized business firm qualifying for the exemption, consistent with an Application amendment in OAR 123-674-3200.

(5) For purposes of OAR 123-674-4000 to 123-674-4800, as provided under ORS 285C.200(8)(b)(B), only the employees working at a facility described in this rule are counted consistent with OAR 123-674-0200(3)(a), and as such, employees of the firm that transferred to the facility from locations already in the zone may count toward the facility's requisite increase in employment.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.135, 285C.140, 285C.180 & 285C.200

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 15-2012, f. & cert. ef. 8-15-12; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-2000

#### Authorization Process — Timely Submission

For purposes of ORS 285C.140(1):

(1) In applying for authorization with the sponsor of an enterprise zone and the county assessor, the Firm/applicant shall:

(a) Fill out the Application as completely as the Firm/applicant is capable of doing;

(b) Have the Application signed and dated by an owner, executive officer or legally authorized representative of such an owner or officer of the Firm/applicant; and

(c) Submit the Application by mail or otherwise to the local zone manager.

(2) In order for the sponsor to accept the Application from the Firm/applicant for potential approval, all of the actions described in section (1) of this rule must happen before:

(a) The Firm/applicant's hiring of any eligible employee to qualify under ORS 285C.200; and

(b) Any physical work or vesting in the project, such as construction or reconstruction of a building or structure, construction of an addition or modifications to an existing building or structure, or installation of machinery and equipment, comprising all or part of the qualified property, on which the Firm/applicant will claim exemption under ORS 285C.175.

(3) Physical work for purposes of subsection (2)(b) of this rule includes site preparation that leads directly to construction, modification or installation of qualified property, such as fill, grading or leveling on raw land or the installation of underground utilities and utility connections, except the following:

(a) Offsite development; or

(b) On-site preparations that are incidental or unrelated to subsequent work on qualified property, such as improvements to prepare land for sale or for another project that did not go forward, to prevent erosion or otherwise maintain the land in good condition, or to accommodate or comply with government regulations or public improvements for roadways, trunk lines or the like.

(4) A faxed, e-mailed or similarly furnished copy of the Application is acceptable, if the copy is:

(a) Received by the zone sponsor before the time described in section (2) of this rule; and

(b) Promptly followed up by signed original to the local zone manager.

(5) Zone officials may verify conformity with this rule, as necessary, through:

(a) Final documents for transfer of ownership, sale closing or execution of a lease;

(b) Building permit or contract;

(c) Written statement/affidavit from someone other than an owner or employee of the Firm/applicant; or

(d) Similar forms of written and independently substantiated proof.

(6) The Firm/applicant shall pay an authorization filing fee, if directed to do so by the local zone manager, as described in OAR 123-668-1700.

(7) In the event that the local zone manager does not timely receive an Application as described in this rule, the manager may still accept it if the Firm/applicant produces dated evidence to the satisfaction of the zone manager and assessor that the Application was sent in a timely manner.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.140(1) & (12)

Stats. Implemented: ORS 285C.140 & 285C.145

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10

### 123-674-2100

#### Allowably Late Applications

Notwithstanding OAR 123-674-2000(2), the zone manager may accept an Application after:

(1) Certain physical work that consists only of:

(a) Demolition, cleanup, environmental remediation, removal of hazardous materials, and so forth;

(b) On-site delivery, storage or upkeep of materials or elements of qualified property prior to their use for construction or installation; or

(c) Construction or the like that occurred and completely ceased six months or longer before Application, consistent with OAR 150-285-3200(3)(b), insofar as the property was not placed in service and is not assessed for the current tax year, and the Application precedes the resumption of work.

(2) The commencement of hiring or physical work, if the Application wholly replaces a previously submitted Application by

December 31 immediately before the initial year of exemption consistent with OAR 123-674-3200, such that in this case, the originally submission date is used.

(3) The commencement of hiring or physical work pursuant to a waiver issued by the Department of Revenue according to OAR 150-285-3100, or as otherwise allowed under ORS 285C.140(11) and (12).

(4) The commencement of physical work on a qualified building or structure (aside from associated machinery & equipment) under 285C.145(2), if the following are true:

(a) Firm/applicant did not own or lease any such building or structure, or have a binding obligation to do so, at any time before the commencement of construction, reconstruction or modifications;

(b) Firm/applicant includes a copy of an executed lease or purchase agreement for the qualified building or structure with the Application;

(c) Firm/applicant does not have any familial, employment, corporate or other such entity relationship with the owner or previous owner of the building or structure; and

(d) Approval of the Application occurs before the Firm/applicant begins to use or occupy the building or structure for commercial operations.

(5) The commencement of physical work on one type of property that will not qualify, but before work begins on other property that may qualify, as differentiated under ORS 285C.180(1) consistent with OAR 123-674-3100(3).

(6) Even the completion of construction, modifications or installations as otherwise allowed in sections (2) to (5) of this rule.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.140(12)

Stats. Implemented: ORS 285C.140 & 285C.145

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 15-2012, f. & cert. ef. 8-15-12; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-2300

#### Initial Processing by Local Zone Manager

Following submission of an Application:

(1) The local zone manager may collect an authorization filing fee as described in OAR 123-668-1700.

(2) The local zone manager shall deny the Application if finding:

(a) The Firm/applicant does not fulfill any basis for eligibility under ORS 285C.135;

(b) The Firm/applicant is unwilling or unable to unambiguously commit to an action/obligation as required under ORS 285C.140(2);

(c) The Application was submitted too late as described in OAR 123-674-2000 and 123-674-2100;

(d) The location of proposed qualified property is outside the enterprise zone boundary and no relevant boundary change is pending (or possible); or

(e) Any other reason that precludes authorization.

(3) Within 15 business days of denial in section (2) of this rule, the local zone manager shall:

(a) Refund any authorization filing fee that was paid;

(b) Write a letter to the Firm/applicant that justifies the denial;

(c) Send copies of the letter to the county assessor, Department of Revenue and the Department; and

(d) Ensure that the letter:

(A) Is sent to the Firm/applicant through certified mail or in such a way that the date of receipt can be verified; and

(B) Contains information on the Firm/applicant's rights of appeal under ORS 305.404 to 305.560 to the Magistrate Division of the Oregon Tax Court.

(4) If there is no apparent reason to deny authorization, according to section (2) of this rule, then the local zone manager shall undertake the Preauthorization Conference, inviting the county assessor, to explore any outstanding eligibility issue, extended abatement criteria, matters related to OAR 123-674-4000 through 123-674-4600, and so forth.

(5) With respect to a sponsor's failing to authorize under ORS 285C.140(9), a Firm/applicant may proceed with an appeal after 30 days following the submission of the Application, if no formal action

is yet to be taken as described in this rule or in response to special circumstances in OAR 123-674-2500(4).

(6) After the Preauthorization Conference, the local zone manager shall approve the Application in order to authorize the Firm/applicant under ORS 285C.140(6), unless determining to deny it as described in sections (2) and (3) of this rule.

(7) If the Firm/applicant's will locate in an urban enterprise zone that imposes additional conditions under ORS 285C.150 in effect at the time of authorization, the local zone manager shall:

(a) Approve the Firm/applicant for authorization only if the Firm/applicant has made acceptable commitments to satisfy such conditions; and

(b) Include a standardized attachment to the Application documenting the commitments of the Firm/applicant consistent with OAR 123-668-2500.

(8) In five or fewer business days after approval, the local zone manager shall:

(a) Fill out and sign the Approval Form except for the section pertaining to the county assessor;

(b) See that the county assessor has the Approval Form and a copy of the Application (with all current attachments);

(c) Notify the Firm/applicant of the status of the Application, as appropriate; and

(d) Inform the local contact agency for the First Source Hiring Agreement for purposes of OAR 123-070 and 123-674-7000 to 123-674-7730.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.140

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-2500

#### Final Processing

Pursuant to OAR 123-674-2300:

(1) The county assessor or county assessment staff to whom the assessor delegates enterprise zone duties shall:

(a) Accept any requisite invitation to a Preauthorization Conference, as feasible and warranted;

(b) Approve or deny the Application within a reasonable time after receiving the Approval Form from the local zone manager;

(c) Fill out and sign the pertinent section of the Approval Form, retain copy for assessor's records, and return the form to or process it on behalf of the local zone manager, within five or fewer business days after making a decision in subsection (b) of this section; and

(d) Include a written explanation with the materials returned to the local zone manager if denying authorization for any reason in OAR 123-674-2300(2).

(2) The assessor or staff may refuse to approve the Application on condition of receiving reasonably critical information from the Firm/applicant or zone sponsor, including but not limited to resolving a concern raised with the Preauthorization Conference, or of holding an additional meeting if not properly notified of any prior meeting.

(3) If the county assessor denies the Firm/applicant's authorization, the local zone manager or county assessor shall within 15 or fewer business days after denial:

(a) Refund any authorization filing fee that was paid.

(b) Have the Approval Form and the county assessor's written explanation sent to the Firm/applicant through certified mail or in such a way that the date of receipt can be verified and have copies distributed to the other entities listed in subsection (5)(a) of this rule.

(4) Pending the completion and inclusion of the following documents as part of the Application (to which they shall be attached), the local zone manager and county assessor shall delay final processing of the Approval Form notwithstanding subsection (1)(c) of this rule:

(a) Written agreement in OAR 123-674-0700 for an extended abatement;

(b) Resolution or resolutions of the governing body or bodies of the zone sponsor for a local waiver of the employment increase requirement in OAR 123-674-4300; or

(c) Executed lease or purchase agreement as necessary for OAR 123-674-2100(4).

(5) Subject to both the local zone manager and county assessor approving the Application, as well as wrapping up special circumstances related to section (4) of this rule, the local zone manager or county assessor shall have the completed Approval Form furnished to the Firm/applicant and copies of it and the Application promptly distributed to the:

(a) Department of Revenue and the Department with any attachment to the Application; and

(b) Local contact agency for the First Source Hiring Agreement without Application attachments.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.145, 285C.155 & 285C.160

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-3000

#### Effect of Authorization — Being An Authorized Firm

(1) For purposes of ORS 285C.050 to 285C.250 and this division of administrative rules, the Firm/applicant becomes “authorized” only upon fulfillment of OAR 123-674-2500(5). (As applicable, County Wage is primarily established at that point)

(2) Authorization serves to establish and address critical issues related to a Firm/applicant’s knowledge of the enterprise zone, the eligibility of its business activity, Existing Employment, clarity in the unlikely event of concurrent Applications, and so forth.

(3) Authorization does not as such govern the qualified property subject to exemption under ORS 285C.170 or 285C.175, other than the basic, general parameters described in OAR 123-674-3100, in that:

(a) The anticipated timing, estimates and descriptions of the investment in qualified property in the Application are not in and of themselves binding and do not serve a regulatory function.

(b) The two exceptions to this section are qualified property of a headquarter-type facility (see OAR 123-674-1700) or in a rural renewable energy development zone (see OAR 123-680), in that the actual, completed project or facility must conform substantially to representations in the Application (aside from anticipated timing) to enjoy the standard exemption under ORS 285C.175.

(4) Such authorization must already be in effect for the Firm/applicant to use the exemption on qualified property under ORS 285C.170 for work in progress, as described in OAR 123-674-6000, although the Firm/applicant may apply for and receive exemption on property as otherwise allowed under ORS 307.330.

(5) In order to receive exemption under ORS 285C.175 on qualified property that is in service:

(a) The zone sponsor/county assessor shall authorize the Firm/applicant, at the absolute latest, before it files its initial claim for exemption with property schedule under ORS 285C.220 and 285C.225.

(b) Such an exemption claim may be provisionally filed pending authorization delayed for extenuating circumstances through no fault of the Firm/applicant, but authorization must occur before the firm may qualify for the exemption.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.170, 285C.175, 285C.220 & 285C.225

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10

### 123-674-3100

#### Limitations on Exemption Relative to Authorization

The Application and the information in it restrict what qualified property may receive exemption under ORS 285C.170 or 285C.175 in only the following four ways under ORS 285C.180(2)(d) to (f) and 285C.225(3), in that any qualified property must be:

(1) Possessed for use by the Firm/applicant or qualified business firm:

(a) In that the firm must either own the property or lease it consistent with OAR 123-674-5500.

(b) Except as allowably transferred to another eligible business firm acquiring the authorized firm or the property, including but not limited to OAR 123-674-4800.

(2) At the same general location:

(a) That encompasses a single, coherent area of business operations;

(b) Which may consist of a complex of lots or parcels of land or of a comparably proximate set of multiple sites, such that each lot, parcel or site is separated one from the other by commonly owned land, and not otherwise broken up except by roads, easements and so forth; and

(c) Which the Firm/applicant need not describe in whole, such that inclusion in the Application of a street address or tax lot within the overall area is sufficient.

(3) Generically identified in terms of:

(a) Any building or structure, which has construction, reconstruction or modification costs of \$50,000 or more; reference with the Application to a project, for which associated improvements are implicit, may be treated as adequate for this subsection.

(b) The basic category of property, regardless of cost, as represented in some way with respect to:

(A) Newly constructed buildings/structures;

(B) Additions to or modifications to existing buildings, structures or portions thereof;

(C) Newly installed real property machinery & equipment;

(D) Modifications to real property machinery & equipment under ORS 285C.190; or

(E) Newly installed personal property.

(4) Placed in service over not more than three successive years, such that:

(a) Once the business firm successfully claims any exemption pursuant to the Application (whether later or earlier than anticipated), subsequent exemptions may be claimed based on the same Application only in one or both of the next two years. This is true regardless of an extended abatement or the length of the underlying periods of exemption.

(b) Additional qualified property covered by each subsequent exemption necessitates its being:

(A) Placed in service during the first or second year of the initial exemption; and

(B) Listed in a new property schedule under ORS 285C.225, as filed with the same exemption claim for that and prior property (see OAR 123-674-6100 and 123-674-6200).

(c) Each exemption as described in this section shall enjoy its own three to five-year exemption period, which will overlap.

(d) All overlapping and ongoing exemptions for purposes of this section are subject to disqualification for noncompliance of the business firm based on only the requirements arising from that Application.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.170, 285C.175, 285C.180, 285C.185, 285C.190, 285C.220 & 285C.225

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-3200

#### Amending the Application/Authorization

For purposes of amending an application before or after its approval:

(1) To substantively modify the Application, such that it reestablishes what might be exempt as described in OAR 123-674-3100, the Firm/applicant must formally deliver the amendment on or before December 31 preceding the initial year of exemption, including but not limited to:

(a) Changing the Firm/applicant to that of another eligible business firm that has or is purchasing or leasing only qualified property of the Firm/applicant in contrast to subsection (3)(c) of this rule;

(b) Revising the location of the property inside the same enterprise zone; or

(c) Adding a structure or basic type of property absent from the Application, or distinct projects or operations entailing substantial new development.

(2) The Firm/applicant may do so through written explanation delivered to the local zone manager and county assessor that is identified as an amendment, addendum, correction or the like in refer-

ence to the Application, without directly altering previously submitted materials, or for example, a Firm/applicant may submit a new, replacement Application as provided in OAR 123-674-2100(2).

(3) Amendment is strongly encouraged at any time, even if unnecessary to secure exemption on particular property, whenever information in the submitted Application is significantly inaccurate due to:

(a) An error or omission;

(b) A change in plans; or

(c) New name or mailing address of the Firm/application, because of the company's restructuring or its ownership changing hands, in which case the relevant rights and requirements of authorization automatically transfer along with ownership of the firm; or

(d) Similar reasons.

(4) An authorization renewal statement under ORS 285C.165 shall revise all information in the Application that is no longer accurate, especially with respect to anticipated timing for the investment (see 123-674-3700).

(5) Once the Firm/applicant is authorized, an amendment may not be used to make or alter a determination, waiver, extension or the like under ORS 285C.150, 285C.155, 285C.160, 285C.200(2) or 285C.205.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.145, 285C.165, 285C.180 & 285C.220

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-3500

#### Additional, Concurrent Authorizations

While amendment to an outstanding Application as described in OAR 123-674-3200 is generally preferable for reasons of simplicity, approval of two or more outstanding Applications for the same Firm/applicant in the same enterprise zone is allowable, and in some cases, desirable or necessary:

(1) The Firm/applicant must make another Application for any case that goes beyond what a single Application may cover, according to OAR 123-674-3100, such as investments in qualified property:

(a) At more than one general location inside the zone;

(b) Inadequately indicated in the Application in terms of a basic type of property or major improvement, once the first year of the initial exemption has already begun; or

(c) That will not be in service until the third or later year following the first exemption year of initial property covered by a current authorization.

(2) For any additional Application even if for proposed qualified property at the same site identified in another Application:

(a) It must be timely submitted according to OAR 123-674-2000 and 123-674-2100 before the commencement of work on that newly proposed property; and

(b) It establishes unique Existing Employment and resulting criteria under ORS 285C.200 and 285C.210.

(3) In the event of concurrent exemptions under ORS 285C.175 on qualified property covered by two or more Applications even for the same location, the authorized business firm shall file separate exemption claims and property schedules, as described in OAR 123-674-6100 and 123-674-6200, corresponding to each Application and associated qualified property, such that qualification depends on satisfying:

(a) Criteria arising from the Application most clearly associated with the particular property (including but not limited to consideration of when work on such property actually commenced).

(b) The effectively most stringent requirement among outstanding Applications for any qualified property that does not definitively relate to any particular Application.

(c) The effectively least stringent requirement among the outstanding Applications for qualified property that specifically relates to two or more Applications.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.170, 285C.175, 285C.220 & 285C.225

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-3700

#### Renewal of Active Status and Inactive Authorization

Under ORS 285C.165 an eligible business firm's authorization in an enterprise zone becomes 'inactive' after more than two years:

(1) The authorization remains active over:

(a) The remainder of the year after approval of the Application;

(b) The two-year period immediately following; and

(c) Each two-year period directly thereafter, subject to a statement of renewal as described in subsection (2)(b) of this rule.

(2) Authorization is still active if immediately after any period described in section (1) of this rule, the firm:

(a) Files successfully under ORS 285C.220 and 285C.225 to initially claim exemption on qualified property placed in service during such a period, at which point this rule is no longer operative; or

(b) Submits a written statement between January 1 and April 1 (as presently received by both the local zone manager and the county assessor's office) that:

(A) Comes from the firm consistent with authority required for making Application;

(B) Informs or indicates that the firm still intends to complete its proposed investment in qualified property inside the zone and to claim the exemption; and

(C) Revises or amends any relevant information in the Application.

(3) With respect to a statement in subsection (2)(b) of this rule:

(a) Whether acknowledged by the firm or not, the County Wage applicable to any compensation standard is reset to the most recently available figure at the time of the statement's submission.

(b) Neither filing for any construction-in-process exemption nor filing a claim under ORS 285C.220 for an exemption that is denied substitutes for the requisite statement.

(4) An inactively authorized business firm retains its right to claim the exemption after the periods described in section (1) of this rule, but letting active status lapse has the following consequences:

(a) With the initial exemption claim in a still unexpired enterprise zone:

(A) Filing fee under ORS 285C.165(3) is assessed; and

(B) County Wage with any compensation standard is updated/revised based on the most recently available figure at the time of filing the claim;

(b) Prior to that claim, even if the zone is currently designated, the firm may not receive exemption under ORS 285C.170, while qualified property is in the process of construction, modification or installation, but it may still seek exemption under applicable comparable provisions of ORS 307.330 and 307.340; and

(c) The firm is not effectively authorized under ORS 285C.245(1) for purposes of OAR 123-674-8100 and 123-674-8200 at the time of the zone's termination.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.170, 285C.175, 285C.220 & 285C.225

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

### Employment of Firms

### 123-674-4000

#### Computation of Average Employment

(1) Annual Employment or Existing Employment is calculated such that:

(a) The actual employment of the firm at the end of each period (for example, pay periods or calendar months) that concludes during any exemption year or the entire 12 months before Application shall be summed and then divided by the total number of periods.

(b) Periods shall not be longer than a quarter of a year, and such quarters shall begin on January 1, April 1, July 1 and October 1.

(c) Results are rounded mathematically to a natural number that is not less than one.

(2) For purposes of determining Existing Employment relative to the submission of the Application:

(a) The time when applicable physical work began shall be used instead of the submission date, as necessary for situations when timely submission has been waived.

(b) If such physical work has not yet begun, an authorized business firm may submit a replacement Application to establish a lower level of Existing Employment; otherwise, the number from the original submission date stands.

(c) The Firm/applicant may correct for a miscalculation by amending the Application under ORS 285C.140(3) consistent with OAR 123-674-3200, including but not limited to erroneously counting of part-time, temporary, seasonal or ineligible employees.

(d) After the first (January-1) assessment date for exemption under ORS 285C.175, Existing Employment may be altered only to correct for a fundamental mistake, subject to a formal finding of good cause by the Department.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.140(12)

Stats. Implemented: ORS 285C.140, 285C.200 & 285C.210

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

### **123-674-4100**

#### **Employment Requirement to Qualify Initially**

To receive and begin an enterprise zone exemption under ORS 285C.175, an authorized business firm must qualify by filing under ORS 285C.220 and 285C.225 as described in OAR 123-674-6100:

(1) The first Claim Employment must equal or exceed the greater of one plus or 1.1 times the Existing Employment:

(a) If at the time of filing, however, the actual Claim Employment is insufficient, the requirement under ORS 285C.200(1)(c) and this section is nevertheless satisfied, provided that employment was high enough at some time prior to April 1 but after making Application as documented with the claim form.

(b) For a subsequent exemption on additional qualified property pursuant to the same Application, as described in OAR 123-674-3100(4), the requirement of this section has effectively already been satisfied.

(2) If section (1) of this rule is not satisfied, then the county assessor shall deny the exemption claim and not grant any exemption under ORS 285C.175 on qualified property, except with a waiver by the zone sponsor and qualification as described in OAR 123-674-4300. Such denial does not directly affect the firm's authorization status and its ability to qualify other (later) property under ORS 285C.170 or 285C.175.

(3) Under ORS 285C.200(6), any transfer of eligible employees, jobs or positions into the zone from a site within 30 miles outside the zone boundary, occurring between the time of the Application's approval (authorization) and the end of the initial year of exemption, triggers an additional requirement in terms of section (1) of this rule, in that the definitions of Claim Employment and Existing Employment expand to also include the number of employees located at any such site, as well as those inside the zone.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.050, 285C.175, 285C.200, 285C.220 & 285C.225

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 15-2012, f. & cert. ef. 8-15-12; OBDD 14-2016, f. & cert. ef. 9-16-16

### **123-674-4200**

#### **Diminishing Employment Well beyond the Zone**

Under ORS 285C.200(1)(d) and (5), an authorized business firm seeking an exemption in any enterprise zone may not qualify or remain qualified, if the firm transfers operations into the zone involving the closure or curtailment of operations and a drop in employment (job losses) elsewhere in this state:

(1) Unless the originating location is 30 miles or less from the boundary of the zone, and the firm meets the requirements under ORS 285C.200(6) and 285C.210(2)(c) described in OAR 123-674-4100(3) and 123-674-4600(2).

(2) Except if the firm demonstrates, with or without the assistance of the zone sponsor, to the satisfaction of the county assessor or the Department that the curtailment/job losses:

(a) Occurred entirely before the Application's approval (authorization);

(b) Occur entirely after the initial year of exemption on qualified property;

(c) Will not be permanent, such that restoration of the jobs is reasonably likely and does in fact happen on or before December 31 of the initial year of exemption;

(d) Pertain to business operations that the firm does not control in any way through common ownership, corporate affiliation, contracts governing relevant operations, or the like;

(e) Are completely unrelated to any new investment or expansion of activity in the zone, so that there is effectively no transfer of curtailed operations or jobs into the zone; or

(f) Have only de minimis impact, which the Department may deem true if job losses will amount to less than one one-hundredth of 1 percent (0.01%) of the most recently available figure from the State Employment Department for annual average total nonfarm, private employment in the county experiencing curtailed operations.

(3) Such that for purposes of this rule, transferred operations may comprise any type of business activity, including but not limited to what is itself ineligible in an enterprise zone, even if only indirectly associated with the investment in qualified property.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.200, 285C.210 & 285C.240

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 15-2012, f. & cert. ef. 8-15-12; OBDD 14-2016, f. & cert. ef. 9-16-16

### **123-674-4300**

#### **Local Waiver of Employment Increase inside Zone**

For purposes of ORS 285C.200(2), in which the local enterprise zone sponsor waives the required increase in the employment of the firm:

(1) The requirements as described in OAR 123-674-4100(1) or 123-674-4600(1) do not apply, but those related to not decreasing employment outside the zone still do (if relevant), consistent with OAR 123-674-4100(3), 123-674-4200 and 123-674-4600(2).

(2) Each governing body of the sponsor must adopt a resolution under ORS 285C.155:

(a) Before authorization of the eligible business firm;

(b) Stipulating the minimum employment level to be maintained during the exemption as described in section (4) of this rule; and

(c) Identifying any other reasonable condition in accordance with OAR 123-668.

(3) The resolution(s) described in section (2) of this rule shall incorporate either:

(a) The minimum amount of investment according to section (5) of this rule; or

(b) Specifications and methods for managing, measuring and enforcing the requirements under ORS 285C.205, by which the authorized business firm shall effectively:

(A) Increase productivity by 10 percent; and

(B) Dedicate an amount at least equal to 25 percent of the property tax savings to employee training.

(4) The minimum employment as stipulated in the resolution(s):

(a) Is a single, stated number of employees;

(b) May be determined, as indicated in the resolution(s), by way of either Annual Employment or Claim Employment; and

(c) Relative to Existing Employment, it:

(A) May be lower for a waiver under ORS 285C.200(2)(b)(A); or

(B) Shall be at least the same in using the productivity and workforce training provisions for a waiver under ORS 285C.200(2)(b)(B) according to subsection (3)(b) of this rule.

(5) For a waiver based on ORS 285C.200(2)(b)(A), the authorized business firm must make an investment in qualified property under ORS 285C.050:

(a) That is placed in service over as many as three successive years, at one or more locations inside the same enterprise zone pursuant to as many Applications;

(b) Regardless that some such qualified property is not actually exempt under ORS 285C.175, including but not limited, for example, to the property's not being used in eligible activities; and

(c) The total cost of which consistent with OAR 123-674-5000 is at least \$25,000,000.

(6) Prior to July 1 of the initial exemption year, the sponsor may (jointly) modify its resolution in accordance with sections (2) to (4) of this rule, but only if so requested by the firm.

(7) Failure to satisfy the minimums, requirements or conditions, as described in this rule, shall result in the exemption's denial or disqualification consistent with OAR 123-674-4100(2) and 123-674-6400, although the county assessor is in no way obligated to consider compliance with any requirement arising from subsection (2)(c) or (3)(b) of this rule without formal confirmation from the zone sponsor.

Stat. Auth.: ORS 285A.075 & 285C.060(1)  
 Stats. Implemented: ORS 285C.155, 285C.200, 285C.205, 285C.230 & 285C.240  
 Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-4600

#### Maintaining Sufficient Employment

For purposes ORS 285C.200(1)(e) and 285C.210:

(1) Failure occurs (unless waived in OAR 123-674-4300) if:

(a) The latest Annual Employment is less than the greater of one plus or 1.1 times the Existing Employment;

(b) The current Claim Employment is less than 15 percent of any previous Claim Employment; or

(c) Both the current Claim Employment and the one from the prior year are less than 50 percent of any previous Claim Employment.

(2) Subject to OAR 123-674-4100(3)'s being effective, a qualified business firm must likewise meet an additional requirement in terms of section (1) of this rule but only for the initial year of exemption, in that the definitions of Annual Employment, Claim Employment and Existing Employment expand to include employees located at any relevant site outside but within 30 miles of the zone boundary, as well as jobs inside the zone.

Stat. Auth.: ORS 285A.075 & 285C.060(1)  
 Stats. Implemented: ORS 285C.200, 285C.210, 285C.220, 285C.230 & 285C.240  
 Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-4800

#### Sale or Leasing of Exempt Property

For purposes of ORS 285C.175(2)(c), a qualified business firm may sell or lease qualified property, such that an exemption that is about to begin or is ongoing may continue for the remainder of its normal period. This rule depends on all of the following, otherwise the exemption is subject to denial or an event under ORS 285C.240(1)(a) and repayment of back taxes, as applicable:

(1) The qualified property continues to be located and eligibly used inside the enterprise zone.

(2) The purchaser or lessee is an eligible business firm.

(3) Requirements in OAR 123-674-4000 to 123-674-4600 are effectively satisfied, including that the combined Annual Employment of the purchaser/lessee and of the originally qualified business firm equal or exceed the sum of:

(a) The minimum Annual Employment required of the firm in OAR 123-674-4600(1)(a); and

(b) The annual average employment of the purchaser/lessee in the zone immediately prior to the change in ownership/lease.

(4) That the purchaser/lessee and the qualified property comply with all other applicable requirements.

Stat. Auth.: ORS 285A.075 & 285C.060(1)  
 Stats. Implemented: ORS 285C.050, 285C.175, 285C.210 & 285C.240  
 Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-5000

#### Critical Property Terms

As used in 285C.050 to 285C.250 and in this division of administrative rules, consistent with relevant definitions in ORS Chapter 307 and OAR 150-285-3200, unless the context dictates otherwise:

(1) Addition includes one or both of the following as indicated by the context:

(a) The re-construction of an existing building or structure to expand or enlarge its area, volume, dimensions or structural capacity; or

(b) The newly erected or created space, enclosure or annex of the building or structure, pursuant to the re/construction described in subsection (a) of this section.

(2) Building includes a real property improvement erected on the land, mostly enclosed by walls and roofing, and designed for human use, occupancy or shelter, along with structural components necessary to make the building usable and habitable such as wiring, plumbing, foundation, fixtures, lighting and heating and cooling system.

(3) Commercial relates to the principal undertaking by a qualified business firm in the direct furtherance of the production of income through the handling, making or provision of goods, products or services for ultimate (though not typically direct) sale.

(4) Completion of construction, addition, modification or installation has the same meaning as placing property 'in service' under ORS 285C.050(11), in that the property is legally and physically ready for commercial operations as specifically intended, following interconnected installations, testing or proving of safety, information and other systems essential to produce saleable output, as well as necessary occupancy or other permits. Excluded are training of personnel and other similarly intangible activities or managerial issues, however critical they might be for business operations in general.

(5) Cost means expenses documentable through existing records or retrospective compilation of evidence as incurred for:

(a) Construction, reconstruction, modification or installation of qualified property, including but not limited to materials, supplies, labor, paint, contractor charges, equipment usage, engineering, architectural fees, building or land use permits and associated legal costs, and physical connections to utilities and other property, but excluding the costs of maintenance, financing, atypical legal fees, off-site improvements, the authorized business firm's own management and so forth; or

(b) Purchase of real or personal property machinery & equipment or of ready-made buildings or structures directly prior to installation or occupancy. Estimated fair market value shall substitute for purchase price in the case of existing property, for which there has not been a recent sale (for example, leasing of used property).

(6) Installation is the actual placement, affixing, connection or integration of machinery & equipment or personal property in or with a building, structure or other machinery & equipment for purposes of being used and does not mean the purchase, onsite delivery or storage of such property.

(7) Item, subject to further definition in OAR chapter 150 under ORS 285C.185(6)(b), includes any personal property that may be effectively appraised or assessed as a unit, including but not limited to an entire conveyance, information or other system, the various components of which are mechanically, electrically or similarly integrated.

(8) Land includes raw undeveloped land and any improvements to the land for site development.

(9) Located in/inside the enterprise zone means the use or operation of qualified property for trade or business operations within the current boundary of the enterprise zone, from which it is not removed during the standard exemption period other than incidental or temporary reasons of repair, maintenance and so forth.

(10) Modification under ORS 285C.050 comprises:

(a) Reconditioning, refurbishment, retrofitting or upgrading of real property machinery & equipment for purposes of ORS 285C.190; or

(b) The alteration or reconstruction of all or part of an existing building or structure, as distinct from an addition to the building or structure.

(11) Personal property includes any tangible property (readily movable as opposed to effectively fixed or very heavy) that is used in the business process or activity and is otherwise subject to ad valorem taxation, including but not limited to devices, tools and (former) spare parts that are put to use (see OAR 123-674-5200).

(12) Production of tangible goods means any physical process or manipulation of materials, commodities or products, including but not limited to manufacturing, assembly, sorting, cooking, heating, freezing, mixing, sorting, wrapping, onsite conveyance, packaging or bulk printing.

(13) Real property machinery & equipment (fixed or stationary in contrast to personal property due to weight, size or attachment to or integration with other real property) is real property used in the business process or activity and not otherwise described in this rule, including but not limited to major machines, specialized pipes, air filtration systems, wiring, electrical panels or switches, or other non-structural, assembled apparatuses. (This type of property may be classified as 'tangible personal property' for income tax or other purposes)

(14) Structure includes a real property improvement on or under the land other than buildings, machinery or equipment, including but not limited to ramps, docks, parking lots, outdoor freestanding signs, subterranean compartments and outdoor lighting, as well as associated fixtures, paving, wiring, pipes, foundations and so forth.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.050 - 285C.250

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-5100

#### Eligible Utilization

For purposes of property to be exempt in an enterprise zone under ORS 285C.170 or 285C.175:

(1) It must be exclusively for use in one or more eligible activities described in OAR 123-674-1100 and not an activity listed in 123-674-1200(1).

(2) Consistent with section (1) of this rule, some property will typically not qualify for the exemption, including but not limited to the following examples:

(a) Commercial fixtures and space in a retail setting;

(b) A commercially operated kitchen and associated fixtures and appliances for retail food service;

(c) Entertainment, recreational and exercise facilities or equipment;

(d) Medical devices; or

(e) Construction equipment.

(3) Sections (1) and (2) of this rule are excepted in the case of otherwise qualified property that is used for operations and at facilities described in OAR 123-674-1200(3) or (4), including but not limited to electronic commerce operations in a so-designated area as described in OAR 123-662.

(4) Any such property must also:

(a) Relate to the Application consistent with OAR 123-674-3000 through 123-674-3500; and

(b) Be constructed, added to, modified or installed in the zone to serve essentially only commercial/non-personal purposes.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.135, 285C.180, 285C.185 & 285C.240

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10

### 123-674-5200

#### Mechanical, Personal and Unqualified Property

For purposes of enterprise zone property to be exempt under ORS 285C.170 or 285C.175:

(1) Real property machinery & equipment or personal property may qualify despite prior usage outside the zone, such that the exempt value is based on the usual factors of appraisal, such as age, deterioration and obsolescence, as well as any reconditioning, refurbishment or restoration.

(2) More than three months before submission of the Application, any personal property or real property machinery & equipment, except for OAR 123-674-5300(5), must not be both:

(a) Owned or leased by the business firm; and

(b) Located in the county containing the site of the property inside the zone.

(3) Newly acquired qualified property of a Firm/applicant that conforms to section (2) of this rule may even be used in the county outside the enterprise zone, before it is placed in service and subse-

quently exempted in the zone, subject to compliance with other applicable provisions, and provided that it is not subject to assessment at any location outside the zone more than once.

(4) An item of personal property with a cost of less than \$50,000 qualifies for the exemption only if used:

(a) Exclusively in the production of tangible goods, which by itself will usually preclude furniture or decorations and most communication, office, video or comparable devices; or

(b) In electronic commerce at a location in a so-designated area as described in OAR 123-662.

(5) Subsection (4)(a) of this rule with respect to tangible goods production also covers personal property items of machinery & equipment:

(a) Even if the tangible good in question is not actually created or manufactured from raw inputs, but is instead modified, processed, restored, repaired, measured, sized, imprinted, packaged, conveyed, shipped or comparably affected in a physical manner.

(b) That maintain, calibrate, adjust, monitor, test or fix qualified property directly involved with tangible output or production, or that assure quality control of tangible output or production, including but not limited to research and development equipment incorporated into production activities.

(6) For purposes of qualification, the following may be considered equivalent to newly installing machinery & equipment after making Application:

(a) Connection or attachment to existing machinery & equipment of an item that is separately assessed in its own right; or

(b) Comprehensive rebuilding in place of what effectively constitutes a new item for valuation or assessment as distinct from modification.

(7) Regardless of any other provision of this division of administrative rules, the following property does not qualify for the exemption:

(a) Land or improvements "to" raw land, such as site preparation.

(b) Any item of personal property with a cost of less than \$1,000.

(c) Fuel, lubricants and other non-inventory supplies.

(d) Any machinery, equipment or device that can roam freely by its own motive power under the control of an operator/driver, including but not limited to forklifts.

(e) Any other similarly self-propelled motorized vehicle, including by remote control.

(f) Any device or item that is pulled, pushed or carried by a vehicle and designed to hold and transport people, goods or property on highways, waterways or railways beyond the zone boundaries, including but not limited to trailers, rolling stock, barges, carriages or railroad cars.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.180, 285C.185 & 285C.190

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-5300

#### Buildings, Structures and Other Real Property

For purposes of real property in an enterprise zone to be exempt under ORS 285C.170 or 285C.175:

(1) The following do not qualify, unless the cost of all such property collectively in a single property schedule under ORS 285C.225 equals or exceeds \$50,000 in total:

(a) New construction of or additions, modifications or improvements to a building or structure; or

(b) Real property machinery & equipment as newly installed or as modified according to section (5) of this rule.

(2) Qualified property, including but not limited to a building or structure, is severable under ORS 285C.180(5), which does not pertain to the matter of timely Application, such that:

(a) A part of the building or structure may be exempt, even if another part of the same building or structure is owned or leased by a different business firm, used for ineligible activities, or otherwise not subject to the same exemption; and

(b) The amount of property value that is exempt shall be determined through pro rata calculation based on floor area or other reasonable method, as preferably considered with the Preauthorization Conference, and verified by the zone sponsor as necessary.

(3) Landscaping or comparable elements may qualify, for example, at a golf course in the case of a hotel, motel or destination resort under ORS 285C.185(4), if classified by the county assessor as structural improvements rather than enhancements to the land.

(4) The exemption on qualified additions, modifications, reconditioning, refurbishment, retrofits or upgrades under ORS 285C.175(3)(b) is measured in each year by:

(a) Computing the assessed value of such taxable property (lessor of real market value or maximum assessed value in each case):

(A) With such qualified improvements or changes; and

(B) As if such qualified improvements or changes had not happened (that is, the assessed value that would have been subject to taxation) but accounting for other concurrent changes to the property.

(b) Taking the difference between the values described in paragraphs (a)(A) and (a)(B) of this section, such that any negative difference equates to zero.

(5) Modification of an item machinery & equipment, for which work to modify the item commences on or after the date of Application and the enterprise zone's designation or amendment, qualifies only under ORS 285C.190 if it is real property, and all of the following are true:

(a) Descriptions in the Application (including as amended) recognize such modifications as a basic property type;

(b) On the date of Application the property was idle or not in use;

(c) That period of idleness already has or ultimately does encompass 18 or more consecutive months;

(d) Previously, the item had been in actual use for 12 or more consecutive months in the same county or zone as where it is placed back into service;

(e) The total cost of modification equals \$50,000 or more; and

(f) It is placed back into service no more than 12 months before the first exemption year pursuant to modification.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.175, 285C.180, 285C.185 & 285C.190

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 15-2012, f. & cert. ef. 8-15-12; OBDD 14-2016, f. & cert. ef. 9-16-16

## 123-674-5400

### Property Already Entered on Rolls

Other than the qualifying value of later modifications, property already entered on the assessment roll of the county before the effective date of the zone's designation or amendment of the property's location into the zone may not receive exemption under ORS 285C.170 and 285C.175. Qualified property that is assessed in the county after the zone's designation or amendment may be exempt under certain circumstances, including but not limited to the following examples, which might occur in combination:

(1) Assessment occurred while in the process of re/construction, modification or installation, and the taxpayer was not allowed to file or simply did not apply in a timely or acceptable fashion under ORS 285C.170 or 307.330 and 307.340.

(2) The Firm/applicant acquired machinery & equipment located elsewhere in the county and subsequently installed it in the enterprise zone as permitted by OAR 123-674-5200(2).

(3) While an administrative or judicial appeal is pending the property is assessed.

(4) The authorized business firm misses the first-year filing deadline but receives the remaining years of the exemption as described in OAR 123-674-6100(5)(b).

(5) A building or structure acquired from an unrelated third party and authorized as described in OAR 123-674-2100(4) (provided, of course, that the building, structure, the applicable portion of it, or improvement to it was not in use or occupancy for more than a year preceding the first year of exemption).

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.170, 285C.175, 285C.180 & 285C.220

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

## 123-674-5500

### Obligations for All Leases, Lessors and Lessees

(1) Qualified property that is not owned by the authorized business firm is exempt in an enterprise zone under ORS 285C.185(3) subject to all other applicable requirements, if used, occupied or operated by the firm under a lease agreement executed no later than July 1 of the first year of exemption on the leased property under ORS 285C.175.

(2) The term of the lease must also extend until at least the end of the tax year that begins in the last exemption year, unless the qualified business firm will or does assume ownership of the property by such time. In certain cases where the term of a lease is technically too short, mitigating circumstances include but are not limited to where:

(a) The firm has the option to unilaterally renew the lease; or

(b) The firm:

(A) Retains effective prerogatives of ownership under an unconventional or nontraditional lease that serves mainly as a financial instrument; and

(B) Would have an unfettered right to retain title to the property in the event that the lease were not mutually renewed before the expected end of the exemption period.

(3) The owner of leased qualified property may be any person or corporation, including but not limited to a public body or an owner of the firm.

(4) The lease agreement must effectively operate as a net lease, inasmuch as:

(a) The firm/lessee directly pays all ad valorem taxes assessed against any qualified property covered by the lease agreement; or

(b) The firm/lessee will compensate the owner of such property in full for the property taxes in addition to rent or other costs throughout the period of the lease.

(5) The stipulation of a net lease is irrelevant if the owner and lessee have common ownership and are subject to treatment as a single eligible business firm according to OAR 123-674-0200(4).

(6) The owner of any such qualified property (even machinery & equipment) must join the firm in filing the property schedule as an attachment to the exemption claim form under ORS 285C.225(4)(d) for the first exemption year, such that the owner or the owner's authorized legal agent signs one of the following:

(a) The same property schedule that has the original signature of the firm's representative; or

(b) An attachment to the schedule that provides for equivalent acknowledgment by the owner.

(7) For purposes of this rule, a lessee that sub-leases property to the firm may substitute for the owner.

(8) The owner has the same right as the firm to timely notify the county assessor and the zone sponsor under ORS 285C.240(1) if a requirement is not met, in order to avoid penalties under ORS 285C.240(4).

(9) A copy of the lease agreement is not required with Application or with the exemption claim, except as described in OAR 123-674-2100(4) or as requested by the county assessor.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.170, 285C.175, 285C.180 & 285C.220

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

## 123-674-6000

### Filing And Compliance — Exemption Prior To 'In Service'

Under ORS 285C.170 qualified property of an actively authorized business firm in the enterprise zone is exempt from *ad valorem* taxation for up to two years, such that:

(1) Consistent with OAR 123-674-6100(4), this exemption precedes and complements the one under ORS 285C.175, in that

(a) It applies only to property that is not yet placed in service before the (January-1) assessment date; and

(b) The property is thus not qualified to start the three- to five-year exemption period in the present assessment year.

(2) This exemption is largely interchangeable with the one under ORS 307.330 and 307.340 (Commercial Facilities Under Construction); common elements are that:

(a) The firm must file with the county assessor, as described in section (3) of this rule, no later than April 1 of *each* assessment year when the property exists in the zone/county;

(b) Any (utility) property subject to central assessment by the Department of Revenue is disallowed;

(c) Exemption is permissible for not more than two consecutive years; and

(d) The relationship to ORS 285C.175 as described in section (1) of this rule is the same in terms of the property being in service or not.

(3) The firm shall file the latest revision of the Department of Revenue form 150-310-021, **Application for Construction-in-Process Enterprise Zone Exemption**. An eligible business firm that instead files form 150-310-020, **Application for Cancellation Of Assessment On Commercial Facilities Under Construction**, will:

(a) Receive only the treatment allowed under ORS 307.330; but

(b) It needs to do so in any case for situations described in section (5) and (6) of this rule.

(4) The following may be exempt in the zone, but would not be under ORS 307.330:

(a) Property at a project site where there is no construction of or additions to a building or structure;

(b) Mere modifications to a building or structure;

(c) A nonmanufacturing facility with re/construction taking less than a year's time to complete and to put the facility in service;

(d) Additional property that is not yet placed in service, even though a portion or element of the project, facility or structure has been completed, consistent with OAR 123-674-5300(2); or

(e) Machinery and equipment, even if it will:

(A) Not be installed in or affixed to a building, structure or addition thereto; or

(B) Remain personal property after installation.

(5) Irrespective that property might qualify under ORS 285C.175, the following situations may not use this exemption, although exemption under 307.330 is possible:

(a) Property had been exempt already at the same site in the zone under ORS 307.330 even if for only one year;

(b) The business firm is a hotel, motel or destination resort, regardless of the zone;

(c) The authorized business firm does not or will not necessarily own or lease the property;

(d) The business firm has applied but is not yet authorized, consistent with OAR 123-674-3000 by the April-1 filing deadline in this rule; or

(e) As of the January 1 assessment date:

(A) Authorization is inactive under ORS 285C.165 unless also renewed by April 1;

(B) Property is not yet located inside the boundary of the designated zone; or

(C) The zone has terminated.

(6) Pending approval of the Application, the firm may file and have property exempted as allowed under ORS 307.330, such that:

(a) After approval/authorization, the assessor may extend exemption under ORS 285C.170 to other qualified property subject to this rule; but

(b) The ongoing exemption of property may continue only under ORS 307.330.

(7) The county assessor shall not exempt property specifically under ORS 285C.170, if the assessor has a reasonable and definitive reason to believe that:

(a) The property is or will not be qualified property when placed in service;

(b) The authorized business firm will not qualify under ORS 285C.200; or

(c) Other applicable requirements under ORS 285C.175 will not be met.

(8) In the face of significant doubts about conformance with the requirements of ORS 285C.170, the assessor may depend on reasonably requested information or confirmation from the firm or zone sponsor, before determining to the grant the exemption.

(9) Consistent with subsection (2)(c) of this rule, property exempted under ORS 285C.170 may not receive further exemption under 307.330 beyond the cumulative two-year period.

(10) In the event that the anticipated exemption under ORS 285C.175 is unclaimed under 285C.220, denied, or disqualified under 285C.240, the exemption as described in this rule is not necessarily jeopardized in any way, even for such property that would not normally be exempt under 307.330.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.165, 285C.170 & 307.330

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10

### 123-674-6100

#### Mandatory First-year Claim with Property Schedule

For purposes of an enterprise zone exemption on qualified property under ORS 285C.175:

(1) The authorized business firm:

(a) Must file the latest revision of the following Department of Revenue forms with the county assessor under ORS 285C.220 and 285C.225 to begin the exemption period:

(A) 150-310-075, Oregon Enterprise Zone Exemption Claim; and

(B) 150-310-076, Oregon Enterprise Zone Property Schedule (as an attachment that lists and identifies the property to be exempt);

(b) May do so only after December 31 of the year, in which the re/construction, modification or installation of qualified property is completed; and

(c) Shall send copies of the forms to the zone sponsor.

(2) The property must not have been in service at a location inside the zone before January 1 of the year directly prior to claiming the exemption as described in section (1) of this rule.

(3) Subsection (1)(b) of this rule is synonymous with qualified property having been 'placed in service' during that year, which:

(a) May be only a portion of the entire investment proposed with authorization; and

(b) Does not include property (even if physically operable or finished) that pending completion of the overall facility or investment is still:

(A) Incapable of effective use or occupancy due to commercial or regulatory reason consistent with OAR 123-674-5000(4); or

(B) Not yet intended for use or operation, subject to testing, shakedown or other general startup steps.

(4) Sections (1) to (3) of this rule dovetail and are mutually exclusive with criteria for exemption under ORS 285C.170, as described in OAR 123-674-6000.

(5) The filing as described in section (1) of this rule shall be due no later than the corresponding April 1, but:

(a) By June 1, the authorized business firm may submit it with a late fee under ORS 285C.220(7) or amend a timely filed property schedule form under ORS 285C.225(5); or

(b) On or before April 1 (but after January 1) of the next year, the authorized business firm may file very late under ORS 285C.220(10) without a fee to receive the remainder of an exemption minus the first year, provided the firm was in compliance with all applicable requirements in order for the exemption to have been in effect during that first year.

(6) The county assessor may deny the exemption under ORS 285C.175(6) if unable to obtain critical and reasonably requested clarification, confirmation or substantiation of information missing from or supplemental to the filed forms from the:

(a) Firm under ORS 285C.220(3); or

(b) Zone sponsor under ORS 285C.230, or as arranged with the Preauthorization Conference.

(7) The county assessor shall deny the exemption:

(a) To any authorized business firm with inactive status, as described in OAR 123-674-3700, if the filing does not include the fee under ORS 285C.165(3), which would be in addition to the fee, if any, in subsection (5)(a) of this rule.

(b) On any property that is not actually in use or occupancy between January 1 and June 30 of the first year that the exemption is claimed, notwithstanding its being in service by January 1 or even in use or occupancy during that preceding year.

Stat. Auth.: ORS 285A.075 & 285C.060(1)  
 Stats. Implemented: ORS 285C.165, 285C.170, 285C.175, 285C.220, 285C.225 & 285C.230  
 Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-6200

#### Filing Latter-year Claims

For qualified property to continue to be exempt in an enterprise zone throughout the entire period under ORS 285C.175:

(1) The qualified business firm must file annually under ORS 285C.220:

(a) Using the latest revision of Department of Revenue form 150-310-075, **Oregon Enterprise Zone Exemption Claim**;

(b) With the county assessor and a copy to the zone sponsor;

(c) On or before April 1 directly after every assessment year of exemption; and

(d) In addition to the first-year filing described in OAR 123-674-6100.

(2) The claim form also covers other property pursuant to the same authorization, consistent with OAR 123-674-3100(4), including but not limited to the attachment of another property schedule for any new, additional qualified property.

(3) For a claim form filed by itself for purposes of compliance in maintaining an ongoing exemption or exemptions, the assessor's office may accept it late until August 31 under ORS 285C.220(8) but only if:

(a) Furnished to the zone sponsor, as well; and

(b) Accompanied with the progressively larger late filing fee.

(4) The assessor may henceforth deny the exemption for the remainder of the period, subject to notice under ORS 285C.175(6) without further procedure, if the claim form is not received (at the latest on August 31) or it lacks for the late filing fee.

(5) Besides arrangements from the Preauthorization Conference, the zone sponsor and the county assessor shall consider and rely on the duties and options under ORS 285C.230, as well as exercise the procedure under 285C.235 to demand corroborating evidence of the firm by time/receipt-verified mail whenever warranted, which:

(a) Would be the only recourse if the firm refuses to submit a claim form after the final year of exemption;

(b) Is always available if the submitted information and the compliance of the firm with employment/other requirements is suspect; and

(c) Causes disqualification:

(A) Automatically, if the firm does not satisfactorily respond within 60 days, but without extra penalty; or

(B) With the 20-percent penalty on back taxes under ORS 285C.240(4), in the event that any provided evidence shows that the qualified business was required to have given notice under ORS 285C.240(1).

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.175, 285C.220, 285C.225, 285C.230, 285C.235 & 285C.240

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10

### 123-674-6300

#### Disqualification of Particular Property

A qualified business firm does not lose its ongoing enterprise zone exemption under ORS 285C.175 on all qualified property if only certain property fails to satisfy a relevant requirement:

(1) Disqualification (including back taxes) shall ensue under ORS 285C.240 only on such property, and the one-year payback of tax savings under ORS 285C.240(6) does not apply

(2) Such disqualification pertains when the exempt property no longer satisfies a relevant criterion under ORS 285C.175, 285C.180, 285C.185 or 285C.190, including but not limited to property during an exemption year that is:

(a) Removed from the enterprise zone;

(b) Sold, exchanged or leased to another business firm, except as described in OAR 123-674-4800;

(c) Used ineligibly or by an ineligible business firm in violation of OAR 123-674-5100; or

(d) Not actually in use or occupancy (notwithstanding its being in service) for at least 180 consecutive days concluding in the preceding exemption year.

(3) In order for the qualified business firm to avoid the 20-percent penalty on the back taxes associated with such property-specific disqualification, notice under ORS 285C.240(1)(a), (e) or (f) is due by July 1 after the year in which failure occurred. The owner of leased, exempt property may give such notice, and the firm may do so through a timely exemption claim as described in 123-674-6200.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.175, 285C.220, 285C.225, 285C.230, 285C.235 & 285C.240

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10

### 123-674-6400

#### General Firm Disqualification

(1) Loss of exemption under ORS 285C.175 applies to all qualified property of a firm that is exempt in the year when an event occurs, for which notice is due under ORS 285C.240(1)(b), (c) or (d), including but not limited to:

(a) Substantial curtailment, consistent with OAR 123-674-4600;

(b) Failure to satisfy an applicable local additional requirement, according to OAR 123-668, and pursuant to written notification to the assessor from the zone sponsor;

(c) Noncompliance with any general law in accordance with OAR 123-674-7200 to 123-674-7250; or

(d) What is described in OAR 123-674-0500(2) for the requirements specific to an extended abatement.

(2) If an event occurs relative to section (1) of this rule, then the qualified business firm shall notify both the local zone manager and the county assessor in writing as such at the latest by July 1 of the following year, which may also be done:

(a) Through timely filing of the exemption claim in 123-674-6200 that discloses the event.

(b) By the owner of any qualified property that the qualified business firm leases.

(3) Notice as described in section (2) of this rule shall result in either:

(a) The firm reimbursing the enterprise zone sponsor for an amount equal to all associated property taxes abated in that exemption year, as described in OAR 123-674-6600 to 123-674-6630; or

(b) The assessor disqualifying the firm under ORS 285C.240, including loss of future years of the exemption and retroactive payment of applicable back taxes with the next tax bill.

(4) If the assessor or zone sponsor discovers a failure, for which there was not timely notice as described in section (2) of this rule, then subsection (3)(a) of this rule is inapplicable, and disqualification as described in subsection (3)(b) of this rule shall include the 20-percent penalty or surcharge on back taxes.

(5) Disqualification for purposes of this rule does not affect property covered by any other Application, for which the particular requirements are still satisfied, consistent with OAR 123-674-3500, except for another Application made after the zone terminated as described in OAR 123-674-8200, in which case the other such Application is nullified, and associated property, also disqualified.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.200, 285C.220, 285C.225, 285C.230, 285C.235 & 285C.240

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-6600

#### Applicability of Payback Provisions

For purposes of ORS 285C.240(6) and OAR 123-674-6600 to 123-674-6630, a qualified business firm's avoidance of disqualification through payment to the zone sponsor of the firm's tax savings for one year is allowed, only if:

(1) The firm fails to meet an employment, compensation, waiver, locally established condition or other requirement under ORS 285C.240(1)(b), (c) or (d), and not for any requirement pertaining to particular qualified property in OAR 123-674-6300 or to the firm's eligibility under ORS 285C.135;

(2) The firm provides written notice under ORS 285C.240 to the zone sponsor or the county assessor by not later than July 1 of the year following the year that failure as described in section (1) of this rule occurred consistent with OAR 123-674-6400(2);

(3) The firm maintains the business operations pertaining to the qualified property, unless the firm can demonstrate that any discontinuation (shutdown) is only temporary;

(4) The firm has not previously used ORS 285C.240(6) for any failure covered by section (1) of this rule to avoid disqualification of the same exemption, respective to property actually first qualifying in the same year, but not in other years even if covered by the same authorization and no longer exempt; and

(5) The firm provides written proof to the county assessor that it has made a nonrefundable payment of the full amount of the preceding year's tax savings to the zone sponsor, not later than August 31 of the year following:

(a) The exemption year in which the failure occurred; or

(b) The fourth year of exemption, in the case of failure to meet a requirement for an additional two years of exemption under ORS 285C.160, during (only) one of the first four exemption years.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.240

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-6610

#### Payment of Tax Savings

For purposes of the payment by a qualified business firm described in OAR 123-674-6600(5):

(1) The firm shall pay to the sponsor of the enterprise zone an amount equal to the additional taxes due, as the county assessor computed under ORS 285C.175(7), on all of the qualified property receiving the exemption.

(2) The sponsor of the enterprise zone is responsible for enabling the firm to make the payment, by doing the following in a timely manner:

(a) Issuing an invoice for such payment to the firm (as necessary);

(b) Receiving such moneys; and

(c) Issuing a receipt or equivalent evidence of the amount paid by the firm.

(3) In collecting, invoicing, holding or spending any money paid by the firm, the zone sponsor shall establish the necessary accounts, special funds, procedures or documentation in accordance with ORS chapter 294 and applicable local laws.

(4) If the county assessor does not receive proof that sufficient and timely payment has been made by the firm, the assessor shall disqualify the exemption or exemptions covered by the requirement consistent with OAR 123-674-6400(3)(b).

(5) If the assessor later disqualifies the firm respective to the same exemption, the assessor shall reduce the back taxes by any amount previously paid in accordance with this rule.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.240

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10

### 123-674-6620

#### Distribution of Payment among Cosponsors

In the case of an enterprise zone sponsor comprising two or more city or county governments or port districts:

(1) Any cosponsor may act as the initial depository for collecting the qualified business firm's payment as described in OAR 123-674-6610 and providing the firm with the requisite proof of payment, but at least one cosponsor must do so.

(2) The cosponsors may create joint mechanisms and arrangements to receive, hold or use such payments.

(3) The cosponsors may distribute the amount of any such payment among themselves through any mutually agreed method or formula, including but not limited to proportional receipt only by cosponsors that levy taxes where the property is located.

(4) If distribution does not happen within six months of receipt of payment, unless pending a joint effort among the cosponsors as described in OAR 123-674-6630, the government or entity holding

the funds shall distribute the full amount in equal portions to each city, port or county government that sponsors the zone without assessing any administrative fee. If more than one county sponsors the zone, then the cosponsors in the county containing the qualified property shall receive and divide among themselves not less than half of the total payment.

(5) There is no obligation to maintain or repeat for future payments any of the sponsor's elections and methods utilized in accordance with this rule for a given payment.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.240

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10

### 123-674-6630

#### Utilization of Payments

In accordance with ORS 285C.240(6)(b), the expenditure of moneys collected from a qualified business firm shall benefit residents of the enterprise zone and its immediate vicinity, such that:

(1) For a rural zone, the immediate vicinity will generally encompass (but is not necessarily limited to) the entire incorporated and urban growth area of any city sponsoring the zone, unless the city is relatively large, and only some parts of the zone boundary are in or near the city.

(2) Public, public/private or community-based activities, efforts or programs that acceptably serve residents of the zone and its local area include but are not limited to:

(a) Job training, placement, skill development, career counseling and similar programs predominately involving such residents;

(b) Better educational opportunities, facilities and so forth that serve such residents;

(c) Planning, analyses or support for infrastructure, public safety or other public/community services or facilities that have the potential to stimulate commerce and employment growth in association with the zone;

(d) Programs that assist with financing or other matters for businesses largely started by or employing such residents;

(e) Improvements to environmental conditions, recreational resources or other qualities of the community; or

(f) Reasonable contributions to the management, marketing or other needs of the enterprise zone itself.

(3) Combining these moneys with funds obtained from authorization filing fees or from other resources associated with the enterprise zone (see 123-668), or otherwise belonging to the local community is allowable.

(4) If the payment per cosponsor is less than \$5,000, the zone sponsor may:

(a) Delay spending the moneys for an indefinite period of time, pending complementary opportunities or resources; and

(b) Allocate the moneys to existing programs and projects that are likely to benefit such residents, even if not exclusively.

(5) If the payment per cosponsor is between \$5,000 and \$25,000, the zone sponsor may:

(a) Postpone spending the moneys for up to two years; and

(b) Allocate the moneys to existing programs and projects, but the sponsor shall make reasonable efforts to ensure that relevant residents in particular are beneficiaries of additional expenditures.

(6) If the payment per cosponsor exceeds \$25,000, the zone sponsor shall see that the moneys go to ongoing programs, special projects and so forth, but only if such expenditures have a direct and particular impact on relevant residents.

(7) There is no obligation to maintain or repeat for future payments any of the elections and methods utilized in accordance with this rule for a given payment.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.240

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10

### 123-674-6880

#### Deferral during Recession

For purposes of ORS 285C.203, and deferring the standard enterprise zone exemption, during which time the qualified business firm shall pay taxes on qualified property:

(1) It pertains to a firm facing denial or disqualification for substantial curtailment or other noncompliance (see OAR 123-674-4100, 123-674-4600, 123-674-6100 and 123-674-6400).

(2) The total cost of the investment, consistent with OAR 123-674-4300(5)(a) and (b), must equal or exceed the amounts under ORS 285C.200(3)(c) for the respective type of enterprise zone.

(3) If electing to do so, the zone sponsor must take an action to grant the deferral, such as formal notification from the local zone manager to the firm, that:

(a) Indicates whether the deferral is for one year or two consecutive years;

(b) Sets a minimum level of employment of the firm (below which the firm may not fall even during a year of deferral) that is a single, stated number of employees equal to or less than the latest Annual and Claim Employment figures, and possibly less than the Existing Employment; and

(c) Occurs at a time when under ORS 285C.203, as determined by the Department:

(A) Seasonally adjusted state employment has declined over at least two successive quarters during the prior 12 months; and

(B) The unemployment rate for any county containing the zone is two percentage points greater than the state on average for:

(i) The entire previous year (annual average unemployment rates); or

(ii) Any of the three most recent three-month periods, including the latest calendar quarter, based on the most recently available seasonally adjusted data.

(4) No later than 60 days after the action in section (3) of this rule or July 1 of the first year of deferral, whichever is earlier, the sponsor shall adopt resolution(s) confirming the grant of deferral.

(5) Regardless that an exemption claim is filed in a year of deferral, it may be withdrawn or ignored, and the county assessor shall deny the exemption under ORS 285C.175 (without necessarily giving notice) and all qualified property covered by the authorization is subject to normal taxation for that year.

(6) At the conclusion of the deferral period:

(a) The firm shall reclaim and resume the remainder of exemption under ORS 285C.175 on any qualified property, provided that the firm's employment in reclaiming the exemption does not constitute substantial curtailment, and it is otherwise qualified.

(b) If the firm continues to have substantially curtailed its operations or fell below the minimum level in subsection (3)(b) of this rule, or the sponsor has revoked the resolution, then the property is subject to disqualification under ORS 285C.240, including but not limited to repayment for every year of exemption before the deferral period.

(7) In the case of an exemption already approved and received, the one-year payment in lieu of disqualification under ORS 285C.240(6) may occur with respect to a year before or after the deferral period as described in this rule (see OAR 123-674-6600 to 123-674-6630).

(8) The noncompliance and the year(s) of deferral shall correspond, but the exact relationship is subject to the determination of the local zone sponsor in consultation with the county assessor, preferably in preparing the resolution.

(9) The sponsor may:

(a) Modify the resolution(s) on or before the next year's August 31 to retract or insert the second consecutive year of deferral.

(b) Grant two one-year deferrals, if separately done in complete conformance with sections (3) and (4) of this rule.

(10) The local zone manager shall forward to the county assessor by August 31 of the tax year a copy of any resolution or revocation in this rule.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.203

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

## General Lawfulness

### 123-674-7200

#### Special Terminology

For purposes of OAR 123-674-7200 to 123-674-7250, with respect to an eligible business firm compliance with other laws under ORS 285C.200(1)(f):

(1) "Determination" means either of the following:

(a) A rightfully available written admission by the firm of a Noncompliance; or

(b) The issuance of an order, ruling or similar action by a duly empowered court, regulatory authority or similar entity that is:

(A) An official finding of Noncompliance that has the force of law under the jurisdiction of the court, regulatory authority or similar entity; and

(B) The final action by the particular regulatory or judicial process, even if prior to potential appeals.

(2) "Event of Noncompliance" means a Determination corresponding to an Illegal Act, for which the underlying Noncompliance is both:

(a) Material, as described in OAR 123-674-7230; and

(b) Not cured in accordance with OAR 123-674-7240.

(3) "Illegal Act" means an action, omission, chain of occurrences or similar failings by the firm or by an officer or agent in the conduct of the firm's operations and activities, effectively occurring after the Application but before January 1 of the last year of exemption, that cause the Noncompliance corresponding to the relevant Determination. (An Illegal Act may also result from Noncompliance with a Determination related to an earlier act)

(4) "Noncompliance" means a violation of a law, as enacted by one of the following, or the violation of any of the rules or regulations duly promulgated under such law:

(a) The United States Congress;

(b) The Oregon Legislative Assembly; or

(c) The governing body of a city or county that sponsors the enterprise zone.

(5) "Substantial Falsification" means that information in an enterprise zone form, filing or associated documentation by the firm, subject to declaration under penalties of false swearing, does one or both of the following:

(a) Misreports or omits required information, such that the enterprise zone exemption would have been denied or disqualified had the information been correctly or completely reported, which by itself shall be considered an Illegal Act in addition to any penalties resulting from false swearing under ORS 305.990; or

(b) Contradicts OAR 123-674-7210(1), in that at the time of the relevant declaration, the firm failed to disclose an Illegal Act, of which it should reasonably have been aware, including but not limited to one that is pending a Determination at the time of authorization.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.200(7)

Stats. Implemented: ORS 285C.200

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 15-2012, f. & cert. ef. 8-15-12; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-7210

#### Declarations and Responsibilities

(1) Any Department of Revenue form for an enterprise zone tax abatement shall also have the firm declare that it is in compliance with applicable laws described in OAR 123-674-7200(4), as part of the declaration made under penalties of false swearing (as to the truth and correctness of the form or document under ORS 305.810 and 305.815).

(2) Without clear evidence of a Determination:

(a) The county assessor is under no obligation to undertake any effort for purposes of ORS 285C.200(1)(f); and

(b) The exemption on qualified property of an otherwise qualified business firm is unaffected.

(3) Regardless of expertise or jurisdiction, any entity or person may present evidence of a Determination to the county assessor.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.200(7)

Stats. Implemented: ORS 285C.125 & 285C.200

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 15-2012, f. & cert. ef. 8-15-12

### 123-674-7220

#### Effect of Event of Noncompliance

Upon an Event of Noncompliance:

(1) In the case where an authorized business firm is not yet qualified, the county assessor shall deny exemption under ORS 285C.170 or 285C.175.

(2) In the case where the firm is receiving or has received the exemption, the Event of Noncompliance shall cause retroactive disqualification (see OAR 123-674-6400).

(3) In response to or in anticipation of such denial or disqualification, the assessor shall give notice that:

(a) Is sent to the firm and is copied to the zone sponsor, the Department of Revenue and the Department;

(b) Provides the firm with an explanation of the action and includes copies or descriptions of the evidence for the Determination; and

(c) Explains how the firm may appeal the action, anticipated action or tax collections to the Tax Court under ORS 305.404 to 305.560, for which the firm's right to directly do so is in no way infringed by this or any administrative rule or prevented under ORS 285C.200(7).

(4) The county assessor may reverse a decision or action in section (1) or (2) of this rule, for reconsideration of an issue listed in OAR 123-674-7250(1) or a successful appeal that negates the Determination. As necessary to effect a reversal for this section, the assessor may reinstate the exemption and refund taxes paid on qualified property to the firm consistent with provisions of ORS Chapter 311.

(5) If the Determination is appealed by the business firm through administrative or judicial channels under the law in question, then the assessor may indefinitely suspend disqualification in section (2) of this rule, such that:

(a) If the business firm prevails in the appeal, then the exemption is unaffected; or

(b) If the business exhausts, withdraws or effectively fails in its pursuit of such appeal, then the action takes effect. In such a case, the assessor may add interest to any back taxes during the intervening period for the appeals process, until the next general property tax roll, as provided under ORS 311.206.

(6) In addition, if the firm is taking good faith actions to fully cure the Noncompliance in accordance with OAR 123-674-7240, the firm may make a one-year (nonrefundable) payment in lieu of disqualification in section (2) of this rule, as described in OAR 123-674-6600 to 123-674-6630, while the effectiveness of such cure is still pending.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.200(7)

Stats. Implemented: ORS 285C.125 & 285C.200

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 15-2012, f. & cert. ef. 8-15-12; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-7230

#### Materiality

An eligible business firm's Noncompliance is material for purposes of ORS 285C.200(1)(f), only if all of the following are true:

(1) Zone-Applicable. It is related to or part of actual operations of and by the business firm within the enterprise zone boundary, including firm-wide activities that actually influence affairs in the zone, as well as elsewhere that the firm operates, such that:

(a) The Illegal Act(s) might still occur outside the zone and be material if derivable from or directly beneficial to operations of the firm in the zone; but

(b) Even if the Determination circumstantially indicates illicit intent by firm personnel or decisions, it is still be immaterial, if lacking evident effect on tangible activities or behavior at zone locations.

(2) Significant. It has or could conceivably harm, threaten, disrupt or undermine any of the following: An individual person, fair and honest commerce, government revenue collection, others' property rights, environmental protection, public health and safety, the general welfare and so forth, in contrast to a Noncompliance that results only in inconveniences (e.g., parking violations), aesthetical problems (e.g., poor landscape maintenance), etc.

(3) Substantive. It relates to the actual behavior or effects that the law in question is intended to control or prevent, as opposed to failings or missteps in terms of procedural matters, data reporting or similar technicalities, unless such failings or missteps exhibit willfulness, perniciousness or a history of repetition.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.200(7)

Stats. Implemented: ORS 285C.200

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 15-2012, f. & cert. ef. 8-15-12

### 123-674-7240

#### Cure

As a consequence of actions taken by an eligible business firm in response to a Determination, it may still comply with the law and, in effect, cure the Noncompliance for purposes of ORS 285C.200(1)(f), such that:

(1) A Noncompliance is not curable if, in the presence of clear and convincing evidence, the Illegal Act in question is:

(a) Heinous, reckless or knowingly perpetrated or allowed to happen as a matter of firm policy; or

(b) Committed within five years of a previous determination relating to the same or similar violation of the law, regardless if the prior violation occurred:

(A) Before authorization;

(B) At a location outside the enterprise zone; or

(C) Under another U.S. state's or locality's laws or regulations.

(2) A Noncompliance is also incurable if the total monetary penalty as described in subsection (3)(a) of this rule exceeds a level publicly declared for purposes of this rule and established by the zone sponsor before the Determination became final. According to stipulations in the sponsor's declaration, this level or levels shall be equal to or greater than:

(a) For a fine or fines levied by a regulatory agency under a single citation or for closely related violations, \$100,000; and

(b) Overall, including but not limited to court-imposed damages, \$500,000.

(3) A Noncompliance, except as precluded by section (1) or (2) of this rule, may be cured insofar as the firm fully and clearly documents or demonstrates for the county assessor that:

(a) All fines, damages and so forth arising from the Determination have been paid in full, according to the final regulatory or judicial assessment imposed;

(b) The firm promptly submitted to and fulfilled all other applicable penalties and has taken or has demonstrable plans to take all other actions, as required by the court, regulatory authority or similar entity;

(c) The circumstances that led to the Noncompliance have been eliminated and resolved, such that further Noncompliance by the firm of a comparable or more serious nature is not expected to occur; and

(d) It or associated entities have undertaken reasonable efforts to compensate other substantially harmed parties uninvolved with any court action.

(4) The decision to consider a Noncompliance cured happens on a one-time basis and shall not necessarily be subject to neither ongoing action by the firm nor continual verification.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.200(7)

Stats. Implemented: ORS 285C.200

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 15-2012, f. & cert. ef. 8-15-12

### 123-674-7250

#### Interpretation

With respect to the interpretation of OAR 123-674-7200 to 123-674-7250 for purposes of ORS 285C.200(1)(f):

(1) There are five primary issues related to the conclusion that there is an Event of Noncompliance:

(a) Is there a Determination as defined?

(b) Did the Illegal Act occur as defined? ..., after Application?

(c) Is the Noncompliance of a material nature?

(d) Is the Noncompliance curable ..., and if so, has it been cured?; or

(e) Has there been Substantial Falsification, and what are the implications of it?

(2) In deciding whether there is an Event of Noncompliance, the county assessor may do as follows at the assessor's initiative or in response to issues raised by a business firm's response to notice in OAR 123-674-7220(3):

(a) The assessor may submit the question at issue to the sponsor of the enterprise zone whether through the local zone manager or otherwise, such that:

(A) The submission is made in writing with a summary of the matter and copies sent to the affected business firm, the Department of Revenue and the Department; and

(B) The assessor may consider a written decision from the zone sponsor only within a prescribed period not exceeding 60 days after the submission.

(b) Either in lieu of or subsequent to the request of the zone sponsor, the assessor may submit the question or questions to the Director, such that:

(A) The submission is in writing with a summary of the matter, and the affected business firm, the Department of Revenue and the zone sponsor receive copies;

(B) The assessor certifies whether a conclusive response by the Director shall bind the assessor's action in OAR 123-674-7220;

(C) The Director may request additional information from the assessor, the firm, the sponsor, the Department of Revenue or the Department of Justice; and

(D) The Director shall respond in writing to the question or questions submitted by the assessor, who shall treat it as official state interpretation of this division of administrative rules.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.200(7)

Stats. Implemented: ORS 285C.200

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 15-2012, f. & cert. ef. 8-15-12

### 123-674-7700

#### First Source Hiring Agreements — Coverage

For purposes of an authorized or qualified business firm's entering into a First Source Hiring Agreement in an enterprise zone:

(1) "Contact agency" means the entity that represents publicly funded job training providers, consistent with OAR 123-070, which is exclusively the local office of Worksource Oregon (State Employment Department).

(2) The agreement shall apply to all of the firm's sites of operation within the enterprise zone but only for that zone, except for "job openings" that do not matter directly under ORS 285C.050 and 285C.200 (see OAR 123-674-0200).

(3) Whenever the firm intends to fill a job opening with someone, who in a voluntary, temporary, part-time or other capacity, has been working at the business or job site for at least 30 days prior to closure date of the job opening:

(a) The firm must indicate this situation and include the name of the prospective hire in its notification to the contact agency.

(b) With receipt of such notification, the contact agency is in no way obligated to send job applicants.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.215(3)

Stats. Implemented: ORS 285C.050, 285C.060, 285C.200 & 285C.215

Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05; Renumbered from 123-070-2100 by OBDD 31-2010, f. 6-30-10, cert. ef. 7-1-10

### 123-674-7710

#### First-Source Procedures

(1) A Firm/applicant shall enter into an agreement as described in OAR 123-070 either:

(a) After the local zone manager approves the application for authorization as provided in 123-674-2300(8)(d);

(b) Before hiring new employees to qualify under ORS 285C.200; or

(c) Both as possible.

(2) The local zone manager shall:

(a) Advise every Firm/applicant to promptly seek such an agreement;

(b) Notify the contact agency about the Application and about how to contact the business firm; and

(c) See that the contact agency receives a copy of the completed Approval Form and Application pursuant to OAR 123-674-2500(5)(b).

(3) Upon learning of the Firm/applicant, the contact agency shall arrange an opportunity for it to execute an agreement. A Firm/applicant shall have the right to initiate such contact and to enter promptly into an agreement.

(4) The contact agency shall:

(a) Provide a copy of each executed agreement to the respective local zone manager within 10 business days of entering into it with a Firm/Applicant; or

(b) Notify the local zone manager of any problem that arises in association with executing it.

(5) The local zone manager shall:

(a) See that each authorized business firm has entered into a timely, valid and accurate agreement, in accordance with OAR 123-070; and

(b) Inform the county assessor under ORS 285C.215(2)(a) of any such firm that might have failed to enter into such an agreement.

(6) The local zone manager shall assist in advising and explaining to business firms their obligations under the agreement, including but not limited to requests by the contact agency or any publicly funded job training provider.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.215(3)

Stats. Implemented: ORS 285C.050, 285C.060, 285C.200 & 285C.215

Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 22-1990(Temp), f. & cert. ef. 8-9-90; EDD 3-1992(Temp), f. 3-12-92, cert. ef. 3-13-92; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0370; EDD 1-2005, f. & cert. ef. 2-25-05; Renumbered from 123-070-2200 by OBDD 31-2010, f. 6-30-10, cert. ef. 7-1-10; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-7720

#### Handling Exemption Claims

For purposes of the First Source Hiring Agreement and the county assessor's processing of an initial exemption claim with property schedule as described in OAR 123-674-6100, except in the case of a general waiver under ORS 285C.215(3) (see OAR 123-070):

(1) An authorized business firm may attach a copy of the agreement to the claim form.

(2) For purposes of ORS 285C.175(1)(c), the assessor shall rely principally on the zone sponsor and contact agency to inform the assessor's office under ORS 285C.215(2) if a requisite agreement is lacking.

(3) To verify the existence, effectiveness or general suitability of the agreement, the assessor may do the following:

(a) Request and receive an agreement copy from the local zone manager, contact agency or Firm/applicant; or

(b) Seek assistance under ORS 285C.230(1)(b) before approving the exemption claim, as a mandatory duty of the zone sponsor.

(4) If learning of a problem with execution of a suitable agreement by the Firm/applicant, then pending a corrective waiver by the Director, the county assessor:

(a) May deny the exemption claim, if the agreement was not executed as described in OAR 123-674-7710.

(b) Shall deny the exemption claim, if the agreement was not executed on or before December 31 directly preceding the first exemption year under ORS 285C.175, does not cover at least all years of exemption, or is otherwise deficient.

(5) The assessor shall deny the exemption under ORS 285C.175(6), if by August 31 of the first tax year of exemption, a problem as described in subsection (4) of this rule is not resolved through copies/documentation of the following:

(a) A (revised/replacement) agreement;

(b) Applicable waiver as allowed in OAR 123-070 or 123-674-7730; or

(c) Both, as necessary.

(6) Once a business firm is qualified and approved to receive the exemption, the exemption is not subject to later revocation or disqualification for lack of an agreement, except for the case of fraudulent representations.

(7) Subject to requisite resolution of the outstanding problem, the assessor may reverse a denial as described in section (5) of this

rule and grant the exemption, as otherwise allowed under the laws and rules governing the procedures and authority of the assessor.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.215(3)

Stats. Implemented: ORS 285C.060, 285C.105, 285C.175, 285C.215, 285C.220, 285C.240

Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09; Renumbered from 123-070-2300 by OBDD 31-2010, f. 6-30-10, cert. ef. 7-1-10

### 123-674-7730

#### Allowing Late Execution of First-Source Agreement

For purposes of an authorized business firm's needing to have entered into a First Source Hiring Agreement:

(1) The Director may issue a waiver that excuses the requirement until the time when the agreement is actually executed or takes effect, such that the firm is not required to have been entered into the agreement:

(a) At the time of applicable hiring; or

(b) On or before December 31 of the year when qualified property is placed in service, directly before the first exemption year, as otherwise required under ORS 285C.215(1).

(2) The Director may issue waiver as described in section (1) of this rule for the following reasons:

(a) The Firm/applicant was using first-source services in a timely fashion, without having a formal agreement;

(b) Mistaken communications, an absence of local contacts or the like hampered the ability or understanding of the Firm/applicant as to the agreement or the need to enter into it;

(c) The Firm/applicant made a good faith effort to obtain an agreement, but it was misled or otherwise unable to readily obtain it through no fault of its own; or

(d) Similar circumstances.

(3) The local zone manager, county assessor or contact agency on behalf of the authorized business firm or the firm itself may seek a waiver under this rule by contacting the Department after authorization, whether before or after an action by the county assessor as described in OAR 123-674-7720.

(4) A waiver under this rule shall take the form of a written recommendation from staff to the Director that the Director approves. The written recommendation shall describe:

(a) The justification for the waiver pursuant to this rule;

(b) The basis or source of evidence for such justification or determinations, including but not limited to verbal communications with the contact agency, the county assessor or other local parties;

(c) The status of the Firm/applicant's entering into an agreement; and

(d) The date by which the agreement must be in effect.

(5) The Department shall provide notice of the Director's decision and distribute copies of any approved waiver, as well as any waiver as described in OAR 123-070 affecting an enterprise zone exemption, to the:

(a) Firm/applicant;

(b) County assessor;

(c) Contact agency;

(d) Local zone manager; and

(e) Department of Revenue (Attention: Exemptions Specialist, Property Tax Division).

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.215(3)

Stats. Implemented: ORS 285C.050, 285C.060, 285C.200 & 285C.215

Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09; Renumbered from 123-070-2400 by OBDD 31-2010, f. 6-30-10, cert. ef. 7-1-10

### 123-674-8000

#### Designation/Amendment of an Enterprise Zone

Respective to an enterprise zone exemption on qualified property under ORS 285C.170 or 285C.175:

(1) Property or its existing value may not be exempt if prior to the effective date of the zone's designation or the location's inclusion in the zone through a boundary change, that value was already:

(a) On the assessment rolls of the county irrespective of location or of ownership/lease; or

(b) Located in the zone or in the process of actual construction, improvement, modification or installation there, excluding what is described in:

(A) OAR 123-674-2000(3) such as site preparation; or

(B) OAR 123-674-2100(1) such as demolition.

(2) A Firm/applicant may make Application and even have it approved before but pending an effective date in section (1) of this rule.

(3) Section (1) of this rule does not pertain, if the site of an authorized business firm's (proposed) qualified property was inside a terminated zone under ORS 285C.245(1)(a)(B) or (b) and becomes part of a newly designated or amended zone. In such a case:

(a) The outstanding authorization is automatically transferred to the new zone, if it is otherwise still valid in accordance with OAR 123-674-8100 or 123-674-8200 on the effective date in section (1) of this rule; and

(b) The active or inactive status of the authorization still depends on ORS 285C.165 and the date of the Application's approval or of any statement consistent with OAR 123-674-3700.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.175

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-8100

#### Authorization and Zone Termination

In relation to OAR 123-650-9100:

(1) For purposes of exemption under ORS 285C.175 in a sun-setting or terminating enterprise zone, an eligible business firm is authorized and may claim the exemption—subject to section (2) of this rule, OAR 123-674-8300 and other applicable requirements—if:

(a) Its outstanding authorization was still active under ORS 285C.165 at the time of termination; or

(b) The local zone manager received the Application before the effective date of the zone's termination, and the zone sponsor and the county assessor subsequently approved the Application under ORS 285C.140 after termination, but:

(A) In this case, if the firm is not otherwise qualified or actively authorized in the terminated zone, it may not grandfather in the zone under ORS 285C.245(1)(b) according to OAR 123-674-8200.

(B) This subsection is superseded by section (5) of this rule in any enterprise zone that would otherwise sunset under ORS 285C.245(2) on or after July 1, 2025.

(2) For any authorized business firm described in section (1) of this rule, its authorization expires on January 1 directly after the 30th month following the zone's termination, such that only if qualified property proposed pursuant to the Application is in service before that date may the firm claim and receive the exemption under ORS 285C.245(1)(a)(B). (As such, the authorization also remains active but may not be extended, irrespective of ORS 285C.165, for qualified property remaining outside of a current enterprise zone)

(3) In order for an Application to be approved with respect to any investment in qualified property at a location anywhere in the terminated zone that remains outside a currently designated enterprise zone, the Firm/applicant must satisfy the grand-fathering provisions in accordance with OAR 123-674-8200.

(4) For purposes of this rule and OAR 123-674-8200, an actively authorized business firm that has the site of its (proposed) qualified property in the zone (inadvertently) removed by a boundary change, notwithstanding ORS 285C.115(2)(b), has the same rights and privileges as if the zone had terminated.

(5) Respective to termination of any existing enterprise zone under ORS 285C.255 (programmatic sunset of the standard enterprise zone program):

(a) Application must be made on or before June 29, 2025, and approved no later than the very next day;

(b) Any such authorized business firm may avail itself of the grand-fathering provisions in accordance with OAR 123-674-8200; and

(c) Ongoing use of such grandfather provisions in any previously terminated zone is unaffected.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.175, 285C.245 & 285C.255  
Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 15-2012, f. & cert. ef. 8-15-12; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-8200

#### Grandfathering in a Terminated Zone

Under ORS 285C.245(1)(b) and (c) after termination of an enterprise zone:

(1) Qualified property owned or leased by an eligible business firm is exempt, if all of the following requirements are true:

(a) On the effective date of the zone's termination, the firm:

(A) Was a qualified business firm; or

(B) Had had an Application approved and was still actively authorized consistent with OAR 123-674-8100(1)(a) in that same zone;

(b) Within 10 years after that effective date, the firm submits a complete Application under ORS 285C.140, in accordance with OAR 123-674-2000 and 123-674-2100;

(c) The qualified property is to be located entirely within the boundaries of the terminated zone, as they existed at the time of termination, and not inside any currently designated enterprise zone;

(d) Neither the eligible business firm nor all of its qualified property has been disqualified in the terminated zone consistent with section (2) of this rule;

(e) Construction, modification or installation of the qualified property commences on or before June 30 immediately following the last year of the firm's final outstanding exemption in the zone (that is, by the end of the corresponding tax year);

(f) The eligible business firm's Application receives approval from the county assessor and the local manager of the terminated zone or, lacking a local zone manager, from the county assessor and either through the Department or by formal action of the zone sponsor, or on appeal;

(g) Completion of construction, additions, modification or installation occurs in accordance with OAR 123-674-8300;

(h) Timely exemption claim is made to the county assessor under ORS 285C.220 and 285C.225; and

(i) The authorized business firm complies with all applicable requirements of ORS 285C.050 to 285C.250 in effect when the zone terminated, including but not limited to any requirement arising from or associated with authorization.

(2) Disqualification for purposes of ORS 285C.245(1)(c) does not include:

(a) Loss of an extended abatement under ORS 285C.240(3)(b) as described in OAR 123-674-0500(2);

(b) Payment to the zone sponsor of the equivalent of one year's tax savings under ORS 285C.240(6); or

(c) Failure to meet a requirement pertaining to some but not all property as described in OAR 123-674-6300.

(3) The sponsor of a terminated enterprise zone may enter into a written agreement with an eligible business firm for an extended abatement under ORS 285C.160, prior to final action in subsection (1)(f) of this rule.

(4) An authorized or qualified business firm may not make Application as described in this rule, if since termination, another business or corporation has bought or absorbed the firm, except if the firm remains essentially intact as a corporate entity, such as becoming a subsidiary to the purchasing corporation and continuing to operate substantially as it had prior to its being acquired.

(5) If the eligible business firm is not qualified but only actively authorized at the time of the zone's termination according to subsection (1)(a) of this rule, then no subsequent Application may be approved in accordance with this rule, until an exemption is successfully claimed on qualified property pursuant to an outstanding authorization as described in OAR 123-674-8100(2).

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.175 & 285C.245

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

### 123-674-8300

#### Timely Completion of Construction

For purposes of a proposed investment in qualified property by a business firm that is or becomes authorized in a terminated enterprise zone under ORS 285C.245(1)(a)(B)(iii) and (b):

(1) Completion of construction, addition, modification or installation within a reasonable time "means the property is in service no later than 18 months after the date on which any relevant construction, reconstruction, modification or installation activity commenced.

(2) "Without interruption" means that the property does not remain in an unfinished state for more than six months without significant progress toward the completion of activities as described in section (1) of this rule.

(3) The property may not qualify and receive the exemption under ORS 285C.175, if section (1) or (2) of this rule is violated, except if the Department issues a written finding to the county assessor that the violation is reasonable and not excessive, given the nature and extent of the authorized business firm's investment or of inadvertent circumstances.

(4) Nothing in this rule shall influence or restrict the qualification of an exemption in an enterprise zone that still exists and has not terminated.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.175 & 285C.245

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 14-2016, f. & cert. ef. 9-16-16

## DIVISION 680

### RURAL RENEWABLE ENERGY DEVELOPMENT ZONES

**NOTE:** Department of Revenue forms referenced in this division are available from the Department of Revenue, 955 Center St NE, Salem OR 97301-2555, phone 503-378-4988, 800-356-4222, TTY 800-886-7204, fax 503-945-8738, and web <http://www.oregon.gov/DOR/forms/Pages/default.aspx>.

### 123-680-0001

#### Purpose and Scope

This division of administrative rules specifies matters related to the creation and operation of an **RREDZ**, which as used in these administrative rules, means a rural renewable energy development zone under ORS 285C.350 to 285C.370:

(1) For an eligible business firm in an RREDZ, the standard (3–5-year) enterprise zone exemption and associated provisions under ORS 285C.050 to 285C.250 apply as they would inside an enterprise zone, as addressed in OAR 123-674, for which:

(a) The firm and the firm's property qualify, however, only insofar as they relate to "renewable energy" facilities and activities under ORS 285C.350, such that for purposes of the first clause under ORS 285C.350(2), in order to be exempt, qualified property must generate electricity to a significant degree from the combustion, harnessing or utilization of the renewable energy resource, but it may also produce (even for the most part) other energy forms, including but not limited to steam, heat or mechanical power; and

(b) The sponsor of the RREDZ is equivalently responsible for the same applicable duties as a local enterprise zone sponsor, including but not limited to those covered in OAR 123-668.

(2) The primary purpose of RREDZs is the extension of this enterprise zone incentive to renewable energy projects, especially those that are far-flung or widely dispersed, in lieu of potentially infeasible or physically complex amendment to the boundary of an existing enterprise zone.

(3) These administrative rules:

(a) Have no bearing on true enterprise zones, including but not limited to an enterprise zone, or to an eligible business firm or qualified property in an enterprise zone, encompassed by an RREDZ;

(b) Do not control or bind the county assessor or Department of Revenue, and they do not supersede OAR chapter 150, in matters related to tax administration; and

(c) Utilize definitions found in OAR 123-001 (Procedural Rules) and 123-674, except where the context dictates otherwise.

Stat. Auth.: ORS 285A.075 & 285C.370  
Stats. Implemented: ORS 285C.350 - 285C.370  
Hist.: OBDD 28-2010, f. & cert. ef. 6-14-10; OBDD 12-2015, f. & cert. ef. 10-5-15

### 123-680-1000

#### Basic Points about RREDZs

(1) Like an enterprise zone, an RREDZ terminates by operation of law as otherwise provided under ORS 285C.245(1) and (2), with equivalent protection and allowances for relevant business firms in the RREDZ, but it does not terminate by programmatic sunset under ORS 285C.255.

(2) An RREDZ (irrespective of OAR 123-650-1000) covers the entire territory of the designated:

(a) City including subsequent annexations; or

(b) County or counties whether outside corporate limits or not, but excluding any area inside an urban growth boundary (UGB) described in section (3) of this rule.

(3) An RREDZ is permitted anywhere in this state, except within the UGB of a city with a population of 30,000 or more, including but not limited to the entire (Portland-area) Metro UGB.

(4) RREDZs come in one of only the following three types:

(a) City RREDZ, in that the governing body of a single city applies to the Department for designation, and the city is the sponsor of the RREDZ;

(b) County RREDZ, in that the governing body of a single county applies to the Department for designation, and the county is the sponsor of the RREDZ; or

(c) Multi-county RREDZ, in that each governing body of two or more counties jointly apply to the Department for designation, for which:

(A) The counties are contiguous one to another, but do not necessarily all share a single common border in the case of three or more counties; and

(B) Only one of the counties serves as the zone sponsor.

(5) In appointing the local RREDZ manager, the sponsor is encouraged to select someone, who also serves as the local zone manager for an enterprise zone whenever possible.

(6) There is no particular limit on the number of RREDZs statewide, although a city or county may not have two or more concurrent designations, with the following distinctions:

(a) A city may have a designation, even if inside a county designated as an RREDZ; or

(b) A county may itself be designated an RREDZ and be part of an RREDZ with one or more other counties, but it may not concurrently belong to two or more different, multi-county RREDZs.

(7) The RREDZ exemption under ORS 285C.362 on the qualified property of a qualified business firm may not be derived from more than one overlapping RREDZ designation, except if there are two or more authorizations covering property in different tax lots.

Stat. Auth.: ORS 285A.075 & 285C.370

Stats. Implemented: ORS 285C.350 - 285C.370

Hist.: OBDD 28-2010, f. & cert. ef. 6-14-10; OBDD 12-2015, f. & cert. ef. 10-5-15

### 123-680-1200

#### Designation of a RRED Zone

(1) To apply for designation of an RREDZ under ORS 285C.353, the city, county or multiple counties shall furnish the Department with:

(a) A copy of the resolution(s) requesting designation duly adopted by each jurisdiction within the past six months, which among other things, would specify the designation's exemption limitation amount under ORS 285C.353(4) as described OAR 123-680-1400;

(b) Evidence of timely notice and communication with local taxing districts consistent with OAR 123-650-5500; and

(c) A formal statement that specifies the following:

(A) The county that will serve as the sponsor in the case of a multi-county RREDZ; and

(B) The status of any previous or otherwise ongoing RREDZ designation in the jurisdiction(s), including but not limited to the

unused portion of an exemption limitation for purposes of section (4) of this rule.

(2) Subject to the accuracy and completeness of the furnished materials and any other information as the Department may request, as well as applicable laws and these administrative rules:

(a) The Director will approve designation of the requested RREDZ; and

(b) The Department shall issue documentation of the designation, including but not limited to establishing its:

(A) Effective date, which may be as early as when the zone sponsor adopted its resolution in the case of a new RREDZ if so requested by the applicant; and

(B) Exemption limitation amount.

(3) Premature termination of the RREDZ under ORS 285C.245(3) to (5) shall occur only if the Director issues an order to that effect, such that with a multi-county RREDZ, all of the counties must adopt a resolution requesting termination under ORS 285C.245(4) not only the sponsor. The Director shall not approve any RREDZ that corresponds to one so terminated for the next 10 years.

(4) If the application is for a subsequent additional designation corresponding to an existing RREDZ under ORS 285C.353(4)(b) and (c), then the existing RREDZ ceases, and the new designation replaces it, effective on January 1 directly following the last date on which a resolution of application was adopted, so that:

(a) Any authorized business firm in the previously existing RREDZ belongs to the newly designated RREDZ for the initial qualification of any property first placed in service in an assessment year immediately preceding that January-1 date (regardless of the application of authorization's date of submission or approval); and

(b) Any unused portion of the previous RREDZ's exemption limitation under ORS 285C.353(4) ceases to exist, and only the new RREDZ's exemption limitation, consistent with OAR 123-680-1400(3)(c), is available for future exemptions.

Stat. Auth.: ORS 285A.075 & 285C.370

Stats. Implemented: ORS 285C.350 - 285C.370

Hist.: OBDD 28-2010, f. & cert. ef. 6-14-10; OBDD 12-2015, f. & cert. ef. 10-5-15

### 123-680-1400

#### Limitation of Exempt Real Market Value

Under ORS 285C.353(4), each RREDZ designation has a cap on the total value in qualified property allowed, which is cumulatively exhausted with each exempt project over the life of the designation:

(1) Such value is the property's real market value (RMV) on the assessment date of the first year that the authorized business firm may claim the exemption, not the amount exempted each year.

(2) The zone sponsor shall coordinate with the county assessor to track the amount of this limitation that former/ongoing exemptions have used and the remaining, unused portion. (If the assessor later disqualifies affected property and collects the property taxes back, then the initial RMV of the disqualified property increases the unused portion for future use in the same RREDZ)

(3) The exemption limitation described in this rule equals the amount specified in the resolution(s) adopted by the city, county or counties in applying for the RREDZ, and any such specified amount must be:

(a) Less than or equal to the maximum permitted under ORS 285C.353(4)(d);

(b) Evenly divisible by \$5 million; and

(c) Greater than the unused portion of the previous RREDZ's exemption limitation with a subsequent additional RREDZ as described in OAR 123-680-1200(4).

(4) If any such resolution fails to specify an exemption limitation for the RREDZ, or if two or more such resolutions comprising a joint application disagree as to the amount, then the limitation for that RREDZ defaults to the maximum permitted.

(5)(a) If new qualified property of an authorized business firm first subject to exemption in a single year will exhaust the exemption limitation, then the exemption or exemptions are allowed only up to the point at which the property's RMV equals the unused portion; and

(b) In the case of two or more such firms subject to simultaneous exemptions, the assessor shall pro-rate the unused portion among them commensurate with the total value of each one's applicable qualified property.

Stat. Auth.: ORS 285A.075 & 285C.370

Stats. Implemented: ORS 285C.350 - 285C.370

Hist.: OBDD 28-2010, f. & cert. ef. 6-14-10; OBDD 12-2015, f. & cert. ef. 10-5-15

### 123-680-1600

#### Further Distinctions from an Enterprise Zone Exemption

For an RREDZ exemption, in contrast to a business firms' using an enterprise zone:

(1) The application for authorization shall give special attention to characterizing the proposed investment in qualified property, clarifying how it relates to renewable energy, and estimating its real market value by January 1 of the first full calendar year of operations.

(2) To be exempt, the qualified property must effectively and substantively correspond to the description in the application.

(3) For purposes of a business firm's receiving authorization and then qualifying:

(a) An "eligible business firm" under ORS 285C.135 relates only to such operations or business activities that are engaged in renewable energy.

(b) The "employment of the firm" under ORS 285C.200 and 285C.210:

(A) Relates only to employees engaged a majority of their time in eligible renewable energy operations within the RREDZ.

(B) Satisfies requirements for the addition of one or more employees respective to the existing number of employees, who work throughout the entire city, county or counties, as applicable.

(4) The exemption is essentially the same as that under ORS 285C.175, once property has been placed in service. There is, however, no special exemption during construction like under ORS 285C.170, although the exemption under ORS 307.330 may be used as otherwise permissible.

(5) For purposes of an additional one or two years of exemption (following the basic three-year period) on qualified property to be located inside a county that is part of a multi-county RREDZ but not its sponsor:

(a) At least 21 calendar days before execution of the requisite written agreement between the sponsor and the eligible business firm, which may contain additional local requirements that the business firm would need to satisfy, the sponsor shall give the county's governing body formal notice of the potential extension to the tax abatement period; and

(b) If before the date, on which the firm and sponsor would execute the written agreement, the county's governing body adopts a resolution electing not to participate, then there shall be no extended abatement for the proposed investment in qualified property in that county.

(6) For purposes of local waivers to statutory employment requirements:

(a) Only the sponsoring county of a multi-county RREDZ needs to adopt the requisite resolution by the time of authorization, regardless of the proposed location of qualified property;

(b) Provisions under ORS 285C.155 and 285C.200(2) otherwise pertain to RREDZs, including as described in OAR 123-674-4300; and

(c) Another type of waiver unique to RREDZs is allowed under ORS 285C.362(2), if the total investment in qualified property pursuant to the application equals or exceeds \$5 million, but in this case the sponsor resolution shall not establish:

(A) An alternative minimum employment level, but rather it simply waives the requirements; or

(B) Other conditions to be imposed on the business firm.

Stat. Auth.: ORS 285A.075 & 285C.370

Stats. Implemented: OR 285C.350 - 285C.370

Hist.: OBDD 28-2010, f. & cert. ef. 6-14-10; OBDD 16-2012, f. & cert. ef. 8-15-12; OBDD 12-2015, f. & cert. ef. 10-5-15

## DIVISION 690

### LONG-TERM RURAL ENTERPRISE ZONE INCENTIVES

**NOTE:** Department of Revenue forms referenced in this division are available from the Department of Revenue, Property Tax Division, 955 Center St NE, PO Box 14380, Salem OR 97309-5075, phone 503-378-4988, 800-356-4222, TTY 800-886-7204, fax 503-945-8737, and web <http://www.oregon.gov/DOR/PTD/enterform.shtml>

### 123-690-0001

#### Purpose and Scope

This division of administrative rules specifies the effect of provisions under ORS 285C.400 to 285C.420, 317.124 and 317.131. As such, these administrative rules:

(1) Address determinations, procedures and requirements of the up to 15 years of exemption from property taxes and of corporate excise tax credits for a facility inside a rural enterprise zone in a county experiencing particular economic hardship.

(2) Do not control or bind the county assessor or Department of Revenue, and they do not supersede OAR chapter 150, in matters related to tax administration.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.400 - 285C.420 & 317.124 & 317.131

Hist.: OBDD 29-2010, f. & cert. ef. 6-14-10; OBDD 11-2015, f. & cert. ef. 10-5-15

### 123-690-0100

#### Terminology

OAR 123-001 (Procedural Rules) contains definitions that are used in this division of administrative rules, unless the context dictates otherwise. In addition:

(1) "Facility Site" means a location consisting of one or more parcels of land and buildings that:

(a) Contain the 'facility,' as used in ORS 285C.400(4), and all (but not only) property of a certified business firm subject to an exemption under ORS 285C.409; and

(b) Are contiguous or have comparable proximity to each other, inside the boundary of a single rural enterprise zone, although it may also include one or more ancillary locations of interrelated investment and operations inside the same zone that are specifically identified as such in the agreement under ORS 285C.403(3)(c) between the business firm and the zone sponsor.

(2) "In service" has the meaning described in OAR 150-285-3400, or the one used under ORS 285C.050(11) in the absence of an applicable permit requirement.

(3) "Sponsor" or "zone sponsor" has the same meaning as described in OAR 123-668, including but not limited to all of the zone's cosponsors' needing to jointly approve or exercise any and all actions under ORS 285C.400 to 285C.420.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.400 - 285C.420 & 317.124 & 317.131

Hist.: OBDD 29-2010, f. & cert. ef. 6-14-10; OBDD 11-2015, f. & cert. ef. 10-5-15; OBDD 12-2016, f. & cert. ef. 9-16-16

### 123-690-0500

#### Eligible Rural Enterprise Zones

In determining annually if a county meets the definition under ORS 285C.400(3) of a 'county with chronically low income or chronic unemployment':

(1) With on-line availability of (non-preliminary) annual statistics or data described in this rule, the Department shall analyze the data for all relevant prior years, ascertain which counties in the state satisfy the definition, identify existing rural enterprise zones in those counties, prepare associated information, and post it on the Department web site for use by the public and business firms, as well as local zone managers and county assessors.

(2) The determination described in section (1) of this rule shall first take effect at least once a year on January 1 or July 1 following on-line availability of the latest annual data. As the Department deems appropriate in response to the release of new annual data or revisions to that data, the Department may reissue or modify the determination, update associated information and set the effective date for changes in county status, as warranted.

(3) A correct, prior determination in accordance with this rule is not subject to retroactive change due to revisions to data for the same or future years.

(4) A county is a 'county with chronically low income or chronic unemployment' if subsection (a), (b) or (c) of this section is true:

(a) The median derived per subsection (5)(c) of this rule for the most recent 10 or 20 consecutive years is at least 1.3 rounded to the nearest tenth, based on unemployment rates as described in subsection (5)(a) of this rule.

(b) The median derived per subsection (5)(c) of this rule for the most recent 10 consecutive years is equal to or less than 0.75 rounded to the nearest hundredth, based on per capita income levels as described in subsection (5)(b) of this rule.

(c) The county's change in total population minus natural population change is equal to or less than negative one (-1), based on the most recent estimates available from the Portland State University Population Research Center, in comparison to the latest U.S. decennial census population count of not less than three years earlier.

(5) As used in ORS 285C.400(3):

(a) "Most recently revised annual average unemployment rate available" means the estimated percent of the civilian labor force that is unemployed on average according to the Oregon Employment Department for each of the most recent calendar years available.

(b) "Most recently revised ... annual per capita income levels available" means the average annual per capita personal income level as estimated and revised by the Bureau of Economic Analysis of the U.S. Department of Commerce for each of the most recent calendar years available.

(c) "Median ratio of the county to the equivalent of the entire United States for each year" means the average for the two middle-most quotients that result from dividing the county figures described in subsection (a) or (b) of this section by each year's corresponding national figure over 10 or 20 years.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.400 & 285C.403

Hist.: OBDD 29-2010, f. & cert. ef. 6-14-10; OBDD 11-2015, f. & cert. ef. 10-5-15; OBDD 12-2016, f. & cert. ef. 9-16-16

## 123-690-2000

### Local Approval — Written Agreement

For purposes of the written agreement between a business firm and the sponsor of the rural enterprise zone under ORS 285C.403(3)(c) and (d):

(1) The agreement shall consist of a minimum of the following:

(a) Acknowledgment of the planned or pending application for certification under ORS 285C.403;

(b) Concise description of the firm's proposed investments, Facility Site and workforce;

(c) Specification of the obligations that the proposed investments and workforce must satisfy under ORS 285C.412, which the agreement in no way supersedes;

(d) Identification of all the parties to the agreement and their representatives;

(e) Zone sponsor's explicit approval for the firm to receive the exemption under ORS 285C.409 on qualifying facility property;

(f) The sponsor's statement as to the number of consecutive tax years that will comprise the period of exemption beginning after facility property is placed in service, which is not less than 7 and not more than 15 years, but which is only seven years if the agreement is silent about the period of exemption. The agreement may also provide that the exemption period, at the election of the business firm or upon fulfillment of a certain local additional condition or criterion:

(A) Expires prematurely after at least seven years but before the stated number of years, such that the firm does not henceforth need to comply further with any statutory or local additional requirement; or

(B) Extends a certain number of years beyond the stated number of years, but not more than 15 years in total; and

(g) With respect to additional conditions or requirements by the zone sponsor under ORS 285C.403(2)(e) and (3)(c), either:

(A) Indication that the sponsor is not imposing or requesting any such condition or requirement; or

(B) Specification of any such condition or requirement, in accordance with OAR 123-668, including but not limited to standards and methods for demonstrating satisfaction of the condition or requirement, as well as consequences of noncompliance, such that the business firm expressly acknowledges when noncompliance shall result in retroactive disqualification of the exemption, termination of the remaining exemption period or an alternative consequence.

(2) The agreement may be:

(a) Part of a broader accord involving parties other than the business firm and the sponsor, insofar as the accord still conforms to section (1) of this rule.

(b) Preapproved or subsequently authorized by resolution or by other means of the zone sponsor, or of each cosponsor, consistent with OAR 123-668-2400.

(3) An authorized representative or representatives of the business firm and of the zone sponsor must execute the agreement:

(a) On or after the effective date on which:

(A) The zone is designated or some or all of the Facility Site is amended into the zone through a change in the boundary of the zone; and

(B) The county containing the Facility Site is determined to meet the definition under ORS 285C.400(3) consistent with OAR 123-690-0500; and

(b) Effectively before:

(A) The zone has terminated; or

(B) The county is not subject to a positive determination as described in paragraph (a)(B) of this section.

(4) The sponsor shall provide a copy of the signed and dated written agreement to the Department, which shall review the agreement, and if the following are accurate, the Department shall issue a letter for attachment to the written agreement confirming that:

(a) On the date of its execution it effectively satisfied section (3) of this rule, and one party to the agreement is the sponsor of the rural enterprise zone; and

(b) The agreement appears to satisfy section (1) of this rule.

(5) Following the effective date of the enterprise zone's termination, the agreement may not be substantially modified, replaced, amended, supplemented or terminated.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.403, 285C.406 & 285C.409

Hist.: OBDD 29-2010, f. & cert. ef. 6-14-10; OBDD 11-2015, f. & cert. ef. 10-5-15

## 123-690-2100

### Requisite County/City Resolutions

For purposes of resolutions adopted under ORS 285C.403(3)(a):

(1) A requirement for certification is the adoption of a resolution expressly approving the exemption of facility property by the county and by any city in which the Facility Site is located, as follows:

(a) Both the county and the city must adopt such a resolution if any part of the Facility Site is located in incorporated territory, but only the county must adopt such a resolution if the Facility Site is located entirely in unincorporated territory.

(b) Authorization or approval of a written agreement described in OAR 123-690-2000 by formal resolution of the governing body of a city or county sponsor of the zone automatically fulfills this requirement for that city or county, as the case may be.

(c) If the county or city does not sponsor the zone, it may nevertheless be a party to the written agreement in accordance with OAR 123-690-2000(2), but the necessity of a formal resolution remains.

(2) Adoption may occur at any time irrespective of when the agreement is executed or of an effective date in OAR 123-690-2000(3) for the sake of then certifying the business firm. If, however, the resolution also substantially implements all or part of the agreement by the zone sponsor, as opposed to merely authorizing or endorsing execution of an otherwise operable agreement, its adoption must occur after the agreement's execution and before the zone terminates.

Stat. Auth.: ORS 285A.075  
 Stats. Implemented: ORS 285C.403  
 Hist.: OBDD 29-2010, f. & cert. ef. 6-14-10; OBDD 11-2015, f. & cert. ef. 10-5-15

### 123-690-2300

#### Applying for Certification

For purposes of the application for certification under ORS 285C.403(1) and (2):

(1) In order for a business firm to receive the exemption on facility property under ORS 285C.409:

(a) The firm must do the following before hiring new employees at the Facility Site and before commencing any physical work, as described in OAR 123-690-4000(1)(a), on property that would be subject to the exemption:

(A) Fill out the latest revision of the Department of Revenue form 150-310-073, **Certification Application: Long-Term Rural Oregon Tax Incentive**, as completely as the firm is capable of doing;

(B) Have the form signed and dated by the owner or authorized representative of the firm; and

(C) Submit a signed original of the form to either the local zone manager representing the sponsor of the enterprise zone or the county assessor of the county in which the Facility Site is located, and an executed copy to the other.

(b) Submission of the application form as described in subsection (a) of this section must occur before the effective date of the rural enterprise zone's termination.

(2) Submission of the application form may occur before or after any relevant resolution, commitment, written agreement or effective date of determination that the county meets the definition under ORS 285C.400(3).

(3) Estimated numbers, anticipated dates or other expectations as indicated in the application form are not binding. The business firm shall base them on the best and most current information available to it at the time and shall inform the local zone manager and county assessor in writing of any significant changes to such expectations.

(4) The commitments made by the business firm (as required in the application form or otherwise during the certification process) shall be accepted at face value for purposes of certifying the firm, but such a commitment shall not relieve the firm of actually needing to meet any applicable requirement under ORS 285C.400 to 285C.420 and 307.124.

[Forms: Forms referenced are available from the agency]

Stat. Auth.: ORS 285A.075  
 Stats. Implemented: ORS 285C.403  
 Hist.: OBDD 29-2010, f. & cert. ef. 6-14-10; OBDD 11-2015, f. & cert. ef. 10-5-15

### 123-690-2400

#### Certification

For purposes of ORS 285C.403(3) to (6), following submission of the application for certification as described in OAR 123-690-2300:

(1) The signatures of the local zone manager and county assessor approving the certification application are not valid if either one occurs:

(a) After any facility property subject to the exemption under ORS 285C.409(1) has been placed in service;

(b) After the operational sunset date prescribed under ORS 285C.406(2)(a); or

(c) Before any of the following (unless formally reaffirmed afterwards):

(A) The commitments by the firm in the application to meet requirements under ORS 285C.412;

(B) The relevant written agreement and the corresponding letter of confirmation by the Department as described in OAR 123-690-2000;

(C) Any resolution by the sponsor or a cosponsor of the zone that authorizes or effects the written agreement in paragraph (B) of this subsection; or

(D) The requisite resolution or resolutions under ORS 285C.403(3)(a) by the county/city in which the Facility Site is located.

(2) Approval of the certification application may occur after:

(a) The effective date of the termination of the enterprise zone; or

(b) Commencement of applicable hiring or physical work on exempt facility property.

(3) Except as qualified in this rule and OAR 123-690-5200(2)(a), the local zone manager and the county assessor shall approve the certification application upon satisfaction of the criteria under ORS 285C.403(3), at which point:

(a) The business firm is "certified," such that it is eligible for any of the exemptions under ORS 285C.409(1); and

(b) The zone manager and assessor shall send copies of the signed original certification application form with all relevant attachments to the firm, the Department and the Department of Revenue.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.403, 285C.406, 285C.409 & 285C.412

Hist.: OBDD 29-2010, f. & cert. ef. 6-14-10; OBDD 11-2015, f. & cert. ef. 10-5-15

### 123-690-4000

#### Facility Criteria — Minimum Investment Size

For purposes of the required minimum investment under ORS 285C.412(1)(a), (2)(a), (3)(a), (4)(b) or (5)(a) in property that is owned or leased by a certified business firm and located at the Facility Site:

(1) Subject to section (2) of this rule, the following costs count toward the minimum investment:

(a) Construction, reconstruction, modification, refurbishing, reconditioning, retrofitting, upgrading and installations that commence after the application for certification, including but not limited to the costs of materials, supplies, labor, building contractors, engineering, physical connections to utilities, on-site development or site preparation; or

(b) Property acquired or moved to the Facility Site after the application for certification. (Current fair market value substitutes for price if the property is not subject to a recent transaction, such as leased or newly transferred property in certain cases)

(2) Costs due to activities or actions described in section (1) of this rule count toward the minimum investment only if incurred for:

(a) The following types of property or change in property value, which would be subject to exemption under ORS 285C.409:

(A) One or more newly constructed buildings or structures;

(B) Additions or modifications to any previously constructed or occupied building or structure; and

(C) Newly installed or newly upgraded, reconditioned, refurbished or retrofitted real property machinery & equipment or personal property, whether or not it is inside or on a building or structure described in this subsection, including non-inventory supplies, spare parts or otherwise taxable vehicles operated within the confines of the Facility Site.

(b) Land, improvements to the land, or the existing value of any property already at the Facility Site, notwithstanding that under ORS 285C.409(5) it is not subject to exemption.

(c) Property leased by the firm and described in subsection (a) or (b) of this section, which in the case of subsection-(a) property or property value may be exempt only if the firm is fully responsible for any ad valorem tax through explicit provisions of a lease agreement.

(d) Any whole category of property as otherwise described in subsection (a) or (c) of this section, even though the certified business firm, in first claiming an exemption under ORS 285C.409(1)(a) or (c), formally and irreversibly elects to exclude it from any further exemption, including but not limited to an exclusion made pursuant to the agreement under ORS 285C.403(3)(c) with the zone sponsor.

(3) Regardless of their association with the Facility Site or exemption under ORS 285C.409, the following do not count toward the minimum investment:

(a) Cost of financing (including but not limited to debt service), legal fees (except as necessary in obtaining government permission

for facility development), ongoing management and maintenance, and similar expenses;

(b) Cost or value of property that at the time of the application for certification is already owned or leased by the firm and located at the Facility Site;

(c) Cost or value of inventory, including but not limited to raw materials or work in progress; or

(d) Any vehicle or device pulled, pushed or carried by a vehicle that is designed to hold and transport people, goods or property beyond the Facility Site, including but not limited to aircraft, barges, carriages, railcars, trailers, trucks or ships (which are also not exemptible in any case); or

(e) Expenses associated with activities or actions described in section (1) of this rule that are incurred only after the calendar year in which exempt facility property is first placed in service, although the property associated with those activities or actions may be exempt for the remainder of the period under ORS 285C.409(1)(c).

(4) The firm shall provide notice to the assessor in writing as soon as possible after satisfaction of this requirement is verifiable, to be documented through existing project expense records or retrospective compilation of evidence as necessary or appropriate.

(5) In determining 'real market value of all nonexempt taxable property in the county,' as used in ORS 285C.412, the most recently available fiscal year of "Oregon Property Tax Statistics" (150-303-405) from the Department of Revenue at the time of certification shall be used.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.412 & 285C.415

Hist.: OBDD 29-2010, f. & cert. ef. 6-14-10; OBDD 11-2015, f. & cert. ef. 10-5-15

### 123-690-4200

#### Minimum Hiring

For purposes of the minimum hiring and employment requirements to be met and maintained under ORS 285C.412(1)(b), (2)(c), (3)(d), (4)(d) or (5)(c) by a certified business firm:

(1) Employees are persons:

(a) Working for the firm at the Facility Site more than 32 hours per week in an established, year-round position (as opposed to any form of averaging hours worked, such as full-time equivalency); and

(b) Whom the business firm, an affiliated company, or a third party fully charged with general facility operations:

(A) Employs under ORS chapter 316 respective to Oregon personal income tax withholding, contracts with or leases; or

(B) Directs on a daily basis and has significant control over personnel decisions, although an independent contractor employs the person to deliver or perform specific services at the Facility Site (as opposed, for example, to workers who are assigned at the discretion of a vendor or contractor).

(2) The number of employees located and performing their jobs at the Facility Site, less the base number of employees as calculated in sections (4) to (7) of this rule, must equal or exceed the applicable minimum under ORS 285C.412.

(3) The firm shall provide notice to the assessor in writing, with payroll records or other evidence as necessary or appropriate, as soon as possible after satisfaction of section (2) of this rule is achieved. This must occur in a calendar year that is not more than the applicable number of years set forth below after the calendar year in which exempt facility property is first placed in service:

(a) Five years for ORS 285C.412(1) or (4); or

(b) Three years for ORS 285C.412(2), (3) or (5).

(4) The base number of employees is one of the following figures, adjusted in accordance with sections (5) and (6) of this rule:

(a) The total number of employees working at the Facility Site on the date 12 months before the date that property subject to exemption under ORS 285C.409(1)(c) is first placed in service, if the agreement under ORS 285C.403(3)(c) with the zone sponsor does not otherwise stipulate; or

(b) As stipulated in the agreement, the total or annual average number of employees working at the Facility Site as of the date:

(A) The firm submitted its application for certification pursuant to OAR 123-690-2300;

(B) The application was fully approved and the firm certified pursuant OAR 123-690-2400; or

(C) Specified in the agreement, which may be after the date of application but not less than 12 months before the date property is first placed in service.

(5) The base number includes employees engaged in equivalent occupations/operations of the certified business firm or any other firm under common ownership or control that are transferred to the Facility Site from another location within this state that undergoes corresponding job losses, at any time after the application is made but before the end of the applicable calendar year in section (3) of this rule.

(6) The base number excludes current or former employees of the certified business firm who are transferred or rehired, and whose employment at the Facility Site is unrelated to the transfer of existing operations or occupations from elsewhere in this state.

(7) If so specified in the agreement under ORS 285C.403(3)(c) with the zone sponsor, the base number also excludes:

(a) Employment in excess of what is required on previously exempt investment(s) as described in OAR 123-690-6200(4).

(b) Employment located within the Facility Site but engaged in distinct operations and working in separate areas that are not involved with any property subject to the exemption under ORS 285C.409.

(c) Employment to be transferred to the Facility Site as described in section (5) of this rule, if the zone sponsor formally accepts the firm's public assertion that the operations and jobs would be otherwise transferred somewhere outside this state but for the exemption, and:

(A) The existing location is within a governmental jurisdiction of the zone sponsor; or

(B) The Department concurs with the sponsor in the letter described in OAR 123-690-2000(4) for elsewhere in Oregon.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.412 & 285C.415

Hist.: OBDD 29-2010, f. & cert. ef. 6-14-10; OBDD 11-2015, f. & cert. ef. 10-5-15

### 123-690-4400

#### Minimum Distance from I-5

For purposes of the minimum distance from the Facility Site of a certified business firm to Interstate Highway 5 (I-5) under ORS 285C.412(3)(b) or (5)(b):

(1) Measure the distance as:

(a) A straight line; and

(b) The shortest possible gap between any part of the Facility Site and a point along the median of the highway, regardless if that point is in this state or offers access on/off the highway.

(2) Exclude any spur or bypass such as I-105 or I-205.

(3) Round distances to the nearest whole number, such that an applicable location must be effectively farther than 10.4 miles from I-5.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.412 & 285C.415

Hist.: OBDD 29-2010, f. & cert. ef. 6-14-10; OBDD 11-2015, f. & cert. ef. 10-5-15

### 123-690-4600

#### Minimum Average Annual Compensation

For purposes of the minimum average annual compensation to be met and maintained under ORS 285C.412(1)(c), (2)(b), (3)(c), (4)(c) or (5)(d) by a certified business firm:

(1) Compensation includes total calendar-year remuneration that is:

(a) In the form of wages, salary, bonuses, commissions, shift differential, overtime pay, profit-sharing, paid vacation, and associated fringe or financial benefits (whether taxable or not) such as life insurance, medical coverage or retirement plans, but excluding:

(A) Free meals, club membership or comparable workplace amenities;

(B) Payroll-based tax or cost mandated by federal, state or local law, such as worker's compensation or unemployment insurance or the employer's share under FICA; and

(C) Gratuities or tips.

(b) Paid to any employee located and performing work for the certified business firm at the Facility Site, consistent with OAR 123-690-4200(1), regardless of hours worked per week or the permanence or newness of the employee's position, except if excluded by OAR 123-690-4200(7)(b).

(2) Actual compensation described in section (1) of this rule shall be annualized in the case of jobs at the Facility Site, in which the employee works less than 40 hours per week or for less than the entire calendar year, by dividing 1,820 by the hours of actual time worked on the job for the calendar year and multiplying that quotient by the employee's actual compensation.

(3) The firm shall add all employees' total annual compensation under section (1) or (2) of this rule, as applicable, and divide that sum by the number of applicable (annualized) employees or positions to derive average annual compensation.

(4) In a calendar year after the calendar year in which exempt facility property is first placed in service — but in or before the fifth such year — this computed average annual compensation must equal or exceed 1.5 times the most recently finalized average annual wage by the Oregon Employment Department for all industries or ownerships in the county containing the Facility Site.

(5) The firm shall provide notice to the assessor in writing as soon as possible after satisfaction of section (4) of this rule is achieved, with payroll records or other evidence as necessary or appropriate.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.412 & 285C.415

Hist.: OBDD 29-2010, f. & cert. ef. 6-14-10; OBDD 11-2015, f. & cert. ef. 10-5-15

### 123-690-5000

#### Maintaining Employment and Compensation

(1) After initial satisfaction of the minimum requirement for total employment or average annual compensation, until after the final calendar year of the exemption period, the applicable employment or average annual compensation of employees of the certified business firm at the Facility Site may not be less than the mandatory minimum level. Otherwise, the exemption is disqualified consistent with OAR 150-285-3410, including but not limited to the imposition of property taxes that would have been assessed against facility property for a year in the which such property was not yet in service but was exempt under ORS 285C.409(1)(a) and (b).

(2) The mandatory minimum level for average annual compensation of employees at the Facility Site remains fixed, regardless of how much:

(a) Such compensation initially exceeded the county's applicable average annual wage level; or

(b) The county's average annual wage subsequently changes during the exemption period.

(3) Notwithstanding section (1) of this rule, the applicable employment or average annual compensation of employees at the Facility Site may fall below the mandatory minimum level under certain extenuating circumstances, including but not limited to the following:

(a) A natural disaster, conflagration or the like substantially disrupting the relevant operations of the certified business firm;

(b) Six or more months of severe economic troubles or military conflict significantly affecting the United States and other major foreign economies or the certified business firm's industry;

(c) Unforeseen coincidence of vacant positions at the Facility Site, such as the case in which employees die, quit or have been fired for cause; or

(d) Temporary curtailment in operations at the Facility Site lasting no longer than twelve months to undertake major repairs in response to mechanical breakdowns that are unusual and unexpected within normal engineering parameters and maintenance program for exempt facility property.

(4) For separate exemptions at two or more separate Facility Sites of the same certified business firm in the same enterprise zone, the zone sponsor may allow that employees, who work at and regularly move between sites, to be counted proportionally among the

sites according to an explicated method for purposes of satisfying the respective requirements of each exemption.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285C.412, 285C.415 & 285C.420

Hist.: OBDD 29-2010, f. & cert. ef. 6-14-10; OBDD 11-2015, f. & cert. ef. 10-5-15; OBDD 12-2016, f. & cert. ef. 9-16-16

### 123-690-5200

#### Post-Certification Verification

Pursuant to certification as described in OAR 123-690-2400 for purposes of qualifying for and continuing to receive exemption under ORS 285C.409(1)(c):

(1) The firm shall submit in writing to the county assessor (and to the zone sponsor, Department or Department of Revenue) as requested, relevant, understandable documentation on the following:

(a) Property at the Facility Site as described in OAR 123-690-4000(2), including but not limited to the particulars of any leased property;

(b) The date on which facility property subject to exemption under ORS 285C.409(1) is fully permitted for occupancy/operations or is otherwise first placed in service; and

(c) The date on which and the method by which each applicable requirement under ORS 285C.412 is initially satisfied, including but not limited to the notice required to be sent to the county assessor under ORS 285C.415.

(2) For purposes of section (1) of this rule and ongoing compliance with applicable requirements under ORS 285C.412:

(a) The county assessor may agree with the business firm in writing regarding certain methods and mechanisms to be implemented by the firm, as a condition of the county assessor's approval of the certification application.

(b) The written agreement under ORS 285C.403(3)(c) with the zone sponsor may (also) contain such provisions.

(3) Any lack of the arrangements described in section (2) of this rule does not relieve the business firm of its obligation to demonstrate compliance with and satisfaction of any applicable requirement, as the assessor or Department of Revenue may demand.

(4) The Department shall prepare a worksheet, which is:

(a) Available at the Department web site; and

(b) Hereby incorporated and made part of these administrative rules by reference, in order for business firms to readily report recent employment and compensation for purposes of ongoing compliance under ORS 285C.412.

(5) The zone sponsor may annually give notice to all certified business firms in its enterprise zone that they must fill out and return the worksheet (whether in the absence of, in addition to or as part of arrangements in section (2) of this rule), whereby:

(a) The sponsor shall specify a due date for its receipt of the worksheet, which shall be between April 1 and June 1 of each year but never less than 60 days after sending notice;

(b) If the sponsor's notice also asks for additional information to corroborate the worksheet that a certified business provides with a good faith request that the information not be publicly released because of its sensitive, proprietary or similar nature, the sponsor may honor the request as otherwise allowed under ORS 192.502(4) or other applicable laws;

(c) The sponsor shall share copies of returned worksheets and corroborating information with the Department, the county assessor or other relevant officials, as appropriate and in accordance with subsection (b) of this section; and

(d) The sponsor shall report the failure by any business firm to fulfill this requirement to the Department and the county assessor.

(6) If a certified business firm fails to return a worksheet pursuant to section (5) of this rule, or if the zone sponsor strongly doubts the information reported in the worksheet and suspects noncompliance, the sponsor and county assessor may jointly demand by registered/certified mail that the firm substantiate its employment, compensation or other compliance issue under ORS 285C.412. If the firm does not respond within 60 days of such mailing, then the zone sponsor shall assume noncompliance under ORS 285.412, and the assessor may retroactively disqualify the exemption under ORS 285C.420.

(7) This rule does not pertain to any additional local condition or requirement, for which verification of compliance is solely the responsibility of the zone sponsor pursuant to arrangements in the agreement between the zone sponsor and the certified business firm under ORS 285C.403(3)(c), consistent with OAR 123-690-2000(1)(g).

[Publications: Publications referenced are available from the agency]  
Stat. Auth.: ORS 285A.075  
Stats. Implemented: ORS 285C.409, 285C.412, 285C.415 & 285C.420  
Hist.: OBDD 29-2010, f. & cert. ef. 6-14-10; OBDD 11-2015, f. & cert. ef. 10-5-15

### 123-690-6000

#### Property Tax Contingencies — Other Exemptions

For purposes of the exemption under ORS 285C.409:

(1) An eligible business firm may seek and receive approval for authorization under ORS 285C.140 according to OAR 123-674, while applying for and being certified under ORS 285C.403, although the zone sponsor and business firm shall clarify and resolve the situation as soon as possible.

(2) However, any property exempted under ORS 285C.170 or 285C.175, whether in the same or another enterprise zone, may not concurrently or subsequently be exempt under any paragraph of ORS 285C.409(1), and exemption under ORS 285C.409(1)(a) or (b) could complicate the use of ORS 285C.175. Therefore, a certified business firm still contemplating either the exemption under ORS 285C.409(1)(c) or the one under ORS 285C.175 might best avail itself of the exemption under ORS 307.330 as applicable during construction at the Facility Site.

(3) This rule does not relieve a taxpayer of any requirement to timely file forms, evidence or notice with the county assessor for purposes of (or to reserve the taxpayer's right to) an exemption on property under ORS 285C.170 or 307.330, as well as 285C.409.

Stat. Auth.: ORS 285A.075 & 285C.060(1)  
Stats. Implemented: ORS 285C.403, 285C.409 & 285C.420  
Hist.: OBDD 29-2010, f. & cert. ef. 6-14-10; OBDD 11-2015, f. & cert. ef. 10-5-15

### 123-690-6200

#### Subsequent Facility Site Investments

For property newly placed in service at the same Facility Site on or after the 'assessment date' of an ongoing exemption under ORS 285C.409(1)(c):

(1) Any such property may also receive the exemption but only for the remainder of the 7 to 15 tax years available, and neither additional operations nor the introduction of such property at the Facility Site shall lengthen or add to the ongoing period of exemption on that or any property at the Facility Site, except as addressed in OAR 123-690-6400.

(2) A certified business firm may receive another (potentially overlapping) period of exemption under ORS 285C.409(1) on such additional property constituting another facility under ORS 285C.400(4) at the same Facility Site, but only if independent of the respective actions and investments pertaining to the firm's certification or qualification for any previously granted exemption, the firm again:

(a) Applies and receives approval for certification;

(b) Respectively undertakes additional operations at the Facility Site; and

(c) Satisfies the applicable requirements to qualify for the exemption, including but not limited to the firm's having submitted the final notice under ORS 285C.415 to the county assessor of having timely met all applicable requirements under ORS 285C.412.

(3)(a) A business firm certified for another exemption on additional property, as described in subsections (2)(a) and (b) of this rule, may formally submit a formal request to the county assessor that the property revert to a preexisting exemption, and the assessor may treat the additional property as a part of that remaining period of exemption, as described in section (1) of this rule, but only if the request is made before:

(A) The end of that ongoing exemption's final tax year; and

(B) Submission of the final notice described in subsection (2)(c) of this rule.

(b) Upon fulfillment of either paragraph (a)(A) or (B) of this section, without a preceding request to the county assessor, the additional property stays exempt until the end of its own period of exemption, subject to the operation of ORS 285C.420 (retroactive disqualification for failure to meet or maintain an applicable requirement).

(4) In the case of any subsequent exemption according to section (2) of this rule that begins within seven years after the first year of the most recent ongoing exemption under ORS 285C.409(1)(c), the agreement with the zone sponsor under ORS 285C.403(3)(c) may give the certified business firm credit for some or all of its existing employees at the Facility Site, who were hired in excess of minimum requirements for a previous, ongoing exemption, in meeting the newer exemption's required hiring.

Stat. Auth.: ORS 285A.075  
Stats. Implemented: ORS 285C.403, 285C.409 & 285C.412  
Hist.: OBDD 29-2010, f. & cert. ef. 6-14-10; OBDD 11-2015, f. & cert. ef. 10-5-15

### 123-690-6400

#### Multiple, Joint Facilities

For purposes of two or more exemptions under ORS 285C.409(1)(c) as provided under ORS 285C.412(4), for which exempt facility property in each case is first placed in service over not more than four consecutive calendar years:

(1) Not only may the exemption periods start in different years, but their lengths may also vary respective to each agreement between the zone sponsor and certified business firm under ORS 285C.403(3)(c).

(2) If involving different Facility Sites, including but not limited to inside the same enterprise zone, the number of employees shall be determined separately subject to any base number at each Facility Site, consistent with OAR 123-690-4200, before being combined for purposes of ORS 285C.412(4)(d).

(3) If at the same Facility Site, each exemption must pertain to distinct investments or operations, but a common base number of employees shall be used.

Stat. Auth.: ORS 285A.075  
Stats. Implemented: ORS 285C.412  
Hist.: OBDD 11-2015, f. & cert. ef. 10-5-15

### 123-690-8000

#### Corporate Payroll Tax Credit — State Request

For purposes of approval for a business firm to receive the credit under ORS 317.124(3), to offset state corporate excise tax liabilities, unless otherwise directed by the Governor or by the Director:

(1) A request for the credit shall be formally submitted to the Director from an authorized executive of the corporation, preferably pursuant to relevant local approval and certification under ORS 285C.403.

(2) Official consideration of the request shall happen only after certification.

(3) The request must explicitly indicate:

(a) That the corporation is seeking gubernatorial approval;

(b) When it would expect to begin claiming such credits; and

(c) Any preferred length of time during for which credits may be claimable.

(4) The request shall contain the best possible information about the corporation's future income and plans to use the credit, as necessary and appropriate to evaluate the impact and applicability of the tax credit, which may be in response to follow-up inquiry by the Department.

(5) The Director will forward the request to the Governor and may include a recommendation, and as warranted, the following:

(a) Background information and analysis about the corporation, the proposed facility, tax impacts, the local community and other relevant information; and

(b) Summary of consultations with other state agencies including but not limited to the Department of Revenue.

(6) Approval of the request may be conditioned on additional commitments by the corporation as contained in a formal agreement between the State and the business firm.

(7) Information received from the corporation as described in section (4) of this rule may be exempt from public release if otherwise allowed under ORS 192.502(17)(a) or other applicable laws.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 317.124

Hist.: OBDD 29-2010, f. & cert. ef. 6-14-10; OBDD 11-2015, f. & cert. ef. 10-5-15

### 123-690-8100

#### Excise/income Tax Credit

(1) To be effective, the Governor's approval of a corporate excise or income tax credit under ORS 317.124 may take the form of a letter, memo or similarly official document that:

(a) Names the corporation and refers to its facility that is subject to certification and exemption under ORS 285C.400 to 285C.420;

(b) Simply grants the tax credit, approves the corporation's request or directs necessary action by State officials;

(c) Defines the number of years during which the tax credit may be claimed; and

(d) Is done and effective by the ultimate due date (including normal extensions) to file a tax return for the corporation's fourth income/excise tax year, in which exempt facility property is in service.

(2) To claim the tax credit, certification must occur on or before the operational sunset date prescribed under ORS 285C.406(2)(b), and the certified business firm must:

(a) Own facility property exempt under ORS 285C.409 and not lease it from other than a commonly owned company; and

(b) Fill out the latest revision of the Department of Revenue form 150-102-043, Long-Term Enterprise Zone Facilities Credit, and submit it with the tax return for each applicable income/excise tax year of the corporation, starting no later than the final year prescribed under ORS 317.124(3)(a).

(3) For a certified business firm with two or more exemptions under ORS 285C.412(4), the Governor may approve the tax credit jointly for all such facilities and provide that the apportionment factor and tax credit threshold under ORS 317.124(6) and (7) apply collectively to those facilities.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 317.124

Hist.: OBDD 29-2010, f. & cert. ef. 6-14-10; OBDD 11-2015, f. & cert. ef. 10-5-15

### 123-690-8500

#### Revenue Distribution to Local Zone Sponsor

(1) As indicated in OAR 123-668-1600, the sponsor of an enterprise zone containing exempt facility property owned by a corporation that claims the tax credit under ORS 317.124 might receive funds through the Department of Revenue from the Long Term Enterprise Zone Fund established under ORS 317.127.

(2) The sponsor's receipt of such funds depends on:

(a) The qualifying taxpayer's having claimed the credit;

(b) The taxpayer's making applicable tax payments; and

(c) The deposit of such payments for distribution under ORS 317.129 and 317.131.

(3) As to amounts for distribution and the current state fiscal year:

(a) If they exceed the property taxes that relevant taxing districts would otherwise have received in the corresponding property tax year, but for exemption under ORS 285C.409, then that excess goes to the zone sponsor.

(b) If there is no relevant exemption under ORS 285C.409 in the corresponding property tax year, then the entire amount goes to the zone sponsor.

(4) For purposes of section (3) of this rule, the zone sponsor is responsible for making timely arrangements, so that it:

(a) Can receive distributed funds in a way that effectively ensures the Department of Revenue of having made payment to the zone sponsor (including but not limited to a joint mechanism among all cosponsors, or a deposit account administered by a single cosponsor on behalf of the entire zone sponsorship); and

(b) Satisfies applicable provisions of ORS Chapter 294 and other state or local laws with regard to collecting, holding and using such funds.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 317.131

Hist.: OBDD 29-2010, f. & cert. ef. 6-14-10; OBDD 11-2015, f. & cert. ef. 10-5-15