

Chapter 123 Oregon Economic and Community Development Department

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DIVISION 1

PROCEDURAL RULES

123-001-0000

Notice of Proposed Rule

Prior to the adoption, amendment, or repeal of any rule, except Temporary Rules, the Finance Committee or the Economic Development Department shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days prior to the effective date.

(2) By mailing a copy of the notice to persons on the Economic Development Department mailing list established pursuant to ORS 183.335(6).

(3) By mailing a copy of the notice to the following persons, organizations, or publications:

- (a) United Press International;
- (b) Associated Press;
- (c) Associated Oregon Industries;
- (d) National Federation of Independent Businesses;
- (e) Oregon Labor Press;
- (f) Portland Observer;
- (g) The Skanner;
- (h) Daily Journal of Commerce;
- (i) Oregonian Publishing Company;
- (j) The Business Journal;
- (k) Economic Development Districts;
- (l) The Capitol Press Room; and

(m) Such other persons or organizations as the Finance Committee or the Economic Development Department may determine will be directly affected by the rule.

Stat. Auth.: ORS 183 & ORS 184

Stats. Implemented: ORS 59.920 & ORS 183.360

Hist.: EDD 2, f. & ef. 11-20-75; EDD 3-1984, f. & ef. 7-16-84;

EDD 7-1984, f. & ef. 10-30-84; EDD 2-1986, f. & ef. 1-22-86; EDD 7-1988(Temp), f. & cert. ef. 2-29-88; EDD 14-1988, f. & cert. ef. 5-24-88

123-001-0005

Model Rules of Procedure

The Attorney General's Uniform and Model Rules of Procedure under the Administrative Procedures Act (March 1986) are hereby adopted by reference as procedural rules of the Finance Committee for the Economic Development Commission.

Stat. Auth.: ORS 183 & ORS 184

Stats. Implemented: ORS 183.341

Hist.: EDD 4, f. & ef. 12-23-75; EDD 3-1978, f. & ef. 3-21-78, EDD 1-1983, f. & ef. 4-29-83; EDD 3-1984, f. & ef. 7-16-84; EDD 7-1984, f. & ef. 10-30-84; EDD 2-1986, f. & ef. 1-22-88; EDD 1-198 f. & ef. 1-11-82; EDD 3-1988, f. & cert. ef. 2-10-88

123-001-0010

Officers

The Finance Committee shall have the following officers who shall be selected by the Chairperson of the Economic Development Commission with the approval of the Governor:

(1) Chairperson: The Chairperson shall preside at the Finance Committee meetings, shall call special meetings of the Finance Committee, and shall perform such other duties and have such powers as the Chairperson of the Economic Development commission shall determine pursuant to ORS 280.255(4).

(2) Vice Chairperson: The Vice Chairperson shall perform the functions of the Chairperson in the Chairperson's absence.

Stat. Auth.: ORS 183 & ORS 184

Stats. Implemented: ORS 285.030

Hist.: EDD 1-1979, f. & ef. 3-12-79; EDD 2-1981, f. 12-3-81, ef. 1- 1-82;
EDD 7-1984, f. & ef. 10-30-84; EDD 14-1988, f. & cert. ef.5-24-88

DIVISION 5

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

123-005-0000

Applicability of Rules

OAR 123-005-0000 to 123-005-0040 shall apply to all public records for which the Oregon Economic Development Department is custodian.

Stat. Auth.: ORS 192.430 & ORS 285.035(5)

Stats Implemented: ORS 183.315

Hist.: EDD 12-1993, f. & cert. ef. 12-2-93

123-005-0010

Access to Records

The Director, in carrying out responsibilities under ORS 192.430 as custodian of public records:

(1) Shall 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) Shall maintain the confidential nature of records as provided in ORS 285.050(5) and by the Director in OAR 123-017-0040 and 123-070-0210 to 123-070-0250.

(3) Ensures that public records of the Department may be inspected or examined 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 Director.

Stat. Auth.: ORS 192.430 & ORS 285.035(5)

Stats. Implemented: ORS 192.430

Hist.: EDD 12-1993, f. & cert. ef. 12-2-93

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, and shall include:

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

(b) An 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 requested of the record, if copies are requested.

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

Stat. Auth.: ORS 192.430 & ORS 285.035(5)

Stats. Implemented: ORS 192.440

Hist.: EDD 12-1993, f. & cert. ef. 12-2-93

123-005-0030

Payment for Inspection and Copies of Public Records

(1) 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 locate and handle the record, to delete material exempt from disclosure and to supervise the inspection by the requester;

(b) Producing the copy or the information; and

(c) Other supplies or services necessary to furnish the copy or information.

(2) The Director may reduce or waive payment of the fee for access to public record if the Director determines that the reduc-

tion or waiver will aid the effective administration of Department operations or is in the public interest because making the record available primarily benefits the general public.

(3) The requester shall pay all fees for access to a public record in advance unless late payment is approved by the Director.

Stat. Auth.: ORS 192.430 & ORS 285.035(5)

Stats. Implemented: ORS 192.440

Hist.: EDD 12-1993, f. & cert. ef. 12-2-93

123-005-0040

Fee Schedule

(1) The Director shall establish a schedule of fees and miscellaneous charges for providing copies of public records and agency publications based on the department's actual costs for providing the records and preparing the publications.

(2) The schedule of fees shall be established and updated periodically at its central office: Administrative Services Division, Oregon Economic Development Department, 775 Summer Street, N.E., Salem, OR 97310.

Stat. Auth.: ORS 192.430 & ORS 285.035(5)

Stats. Implemented: ORS 192.440

Hist.: EDD 12-1993, f. & cert. ef. 12-2-93

DIVISION 6

SCREENING AND SELECTION PROCEDURES FOR PERSONAL SERVICE CONTRACTS ENTERED INTO BY THE ECONOMIC DEVELOPMENT DEPARTMENT

123-006-0005

Introduction

The Economic Development Department occasionally requires the services of a contractor to accomplish all or part of a project. This rule sets forth screening and selection procedures to be followed by the Economic Development Department for personal service contracts.

Stat. Auth.: ORS 279.051, ORS 285.035(5) & ORS 291

Stats. Implemented: ORS 279.051

Hist.: EDD 4-1991, f. & cert. ef. 5-20-91

123-006-0010

Basic Policy

(1) This procedure will be used in all cases except when the Director or Deputy Director determines that an emergency exists which requires immediate action. Action taken as a result of an emergency will be confirmed later with written findings setting out the emergency with specificity.

(2) The Economic Development Department will contract for consultant services when the specialized skills, knowledge, and resources are not available within the Department; when the work cannot be done in a reasonable time with the Department's own work force; when an independent and impartial evaluation of a situation is required by a consultant with recognized professional expertise and stature in a field; or when it will be less expensive to contract for the work. Such contracts will be let only after approval by the Director or Deputy Director.

(3) Agreements for the services of a consultant who is a member of the Public Employees' Retirement System and who is employed in another department will normally be in the form of an interagency agreement. Exceptions may be granted by the Director or Deputy Director when it shown that such an agreement is impractical and that the work will be done strictly on the consultant's own time. Such exceptions will be processed as a regular personal services contract.

Stat. Auth.: ORS 279.051, ORS 285.035(5) & ORS 291

Stats. Implemented: ORS 279.051

Hist.: EDD 4-1991, f. & cert. ef. 5-20-91

123-006-0015

Definitions

(1) "Director" means the Director of the Economic Development Department.

(2) "Deputy Director" means those employees named by the Director to serve in a Deputy Director position for the Economic Development Department.

(3) "Department" means the Economic Development Department.

(4) "Consultant" or "Contractor" means an individual or firm that has been found qualified to do specific types of work for the Department and with whom the Department may contract.

Stat. Auth.: ORS 279.051, ORS 285.035(5) & ORS 291

Stats. Implemented: ORS 279.051

Hist.: EDD 4-1991, f. & cert. ef. 5-20-91

123-006-0020

General

(1) A contract file will be maintained by the Administrative Services Division, Fiscal Services Section. The file will contain a complete record of the actions involved in developing and administering the contract including the following:

(a) Statement of Department justification for the contract;

(b) Written justification for negotiation in lieu of competitive procurements for personal service contracts in excess of \$2,500 per agreement per fiscal year;

(c) Methodology/rationale by which rates are established for contracts of \$2,500 or more per agreement per fiscal year may include the following:

(A) A copy of the request for proposal;

(B) List of prospective contractors who were requested to submit proposals;

(C) Method used to advertise/notify other possible prospective contractors;

(D) A copy of each proposal;

(E) Method of evaluating proposals;

(F) Record of negotiations and results;

(G) How the contractor was selected including the basis for awarding the contract;

(H) Resulting contract, if awarded.

(d) All contract files for agreements of \$2,500 or less should include:

(A) The names of firms or individuals and cost estimates/quotations considered;

(B) The basis for selection of the contractor;

(C) How reasonableness of price was determined.

Stat. Auth.: ORS 279.051, ORS 285.035(5) & ORS 291

Stats. Implemented: ORS 279.051

Hist.: EDD 4-1991, f. & cert. ef. 5-20-91

123-006-0025

Procedure and Responsibility

(1) Department or Director or Deputy Director determines that work on a project requires the services of a consultant:

(a) Prepares Department justification for contract;

(b) Prepares a cost estimate for contract;

(c) Determines type of selection and screening process to be used in selecting a contractor;

(d) Completes screening and selection procedure and selects a contractor;

(e) Prepares selection statement for contract;

(f) Forwards all documentation on contract to Administrative Services Division, including selection and justification statement, request for proposal, list of firms contacted, all proposals received, method of advertising, and method of evaluating proposals.

(2) Administrative Services prepares contract and facilitates signature process:

(a) Forwards draft of proposed contract that totals \$25,000 or more to Attorney General for review of legal sufficiency unless contract form has previously been approved by Attorney General;

(b) Receives Attorney General's approval of contract's legal sufficiency if \$25,000 or more;

(c) Obtains contractor's signature on contract;

(d) Obtains Director's or Deputy Director's signature on contract;

(e) If contract is under \$1,000, forwards one original copy to Executive Department Budget and Management Division for filing, retains one original copy for contract file, forwards one original copy to the contractor, and forwards one copy of contract to the originating division within the Department;

(f) If contract is over \$1,000 forwards three copies to the Executive Department Budget and Management Division along with required documents including:

(A) Input form;

(B) Selection and justification statement if contract is over \$2,500.

(3) Budget and Management Division reviews the contract for compliance with their administrative rules and returns two approved, signed copies to Administrative Services Division.

(4) Administrative Services Division files one original copy in contract file, forwards one original to the contractor, and forwards one copy of contract to the Director, Deputy Director, or originating division.

Stat. Auth.: ORS 279.051, ORS 285.035(5) & ORS 291

Stats. Implemented: ORS 279.051

Hist.: EDD 4-1991, f. & cert. ef. 5-20-91

DIVISION 8

LAND USE COORDINATION

123-008-0005

Purpose

These rules, as required by ORS 197.180 and OAR Chapter 660, Division 030, establish policies and procedures for assuring compliance with the LCDC statewide planning goals; compatibility with acknowledged comprehensive plans and land use regulations; coordinating with local governments, state and federal agencies, and special districts in land use matters; and resolving land use disputes.

Stat. Auth.: ORS 197.180 & ORS 285.035

Stats. Implemented: ORS 197.180

Hist.: EDD 9-1990, f. & cert. ef. 5-23-90

123-008-0010

Policy

(1) It is the policy of the Economic Development Commission and the Economic Development Department that prior to approving or undertaking any project, program or action under a program listed in OAR 123-008-0015, the Commission or Department shall find that the project, program or action complies with the LCDC statewide planning goals and is compatible with applicable acknowledged comprehensive plans and land use regulations.

(2) The Commission and the Department shall make goal compliance and comprehensive plan compatibility findings in accordance with OAR Chapter 123, Division 8, and the procedures in the Commission's and Department's "Land Use Coordination Program".

Stat. Auth.: ORS 197.180 & ORS 285.035

Stats. Implemented: ORS 197.180

Hist.: EDD 9-1990, f. & cert. ef. 5-23-90

123-008-0015

Applicability

Educational, marketing, technical assistance, funds for technical analysis or other similar programs of the Commission and the Department do not affect land use. The provisions of OAR Chapter 123, Division 008, apply to the following programs that affect land use:

(1) Commission programs:

(a) Business Development Fund;

(b) Composite Revenue Bond Program;

(c) Industrial Development Revenue Bond Program;

(d) Port Revolving Fund; and

(e) Port Formation.

(2) Department programs:

(a) Community Facilities Grant Program;

- (b) Community Development Block Grant Program;
 - (c) County Fairs and Special Events Program;
 - (d) Enterprise Zone Program;
 - (e) Regional Strategies Program;
 - (f) Special Public Works Fund;
 - (g) Strategic Reserve Fund;
 - (h) Tourism Museum Grants;
 - (i) Tourism Matching Grants; and
 - (j) Tourist Information Centers if owned by the Department.
- (3) Real property obtained by the Commission or Department through foreclosure on collateral or other means.

Stat. Auth.: ORS 197.180 & ORS 285.035

Stats. Implemented: ORS 197.180

Hist.: EDD 9-1990, f. & cert. ef. 5-23-90

123-008-0020

Compliance with the LCDC Statewide Planning Goals

(1) The Commission and Department shall achieve goal compliance whenever possible by taking actions that are compatible with the applicable acknowledged comprehensive plan and land use regulations.

(2) The Commission and Department will achieve compliance by acting compatibly with applicable acknowledged comprehensive plans; however, should a situation arise which requires direct goal findings pursuant to OAR 660-030-0065(3), the Commission or Department shall adhere to the following procedures:

(a) Confirm that a situation exists requiring the Commission or Department to adopt direct goal findings of compliance with one or more of the LCDC statewide planning goals;

(b) Identify which LCDC goals or goal requirements the Commission or 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 by LCDC under OAR Chapter 660;

(f) Adopt any necessary findings to assure compliance with the LCDC statewide planning goals.

Stat. Auth.: ORS 197.180 & ORS 285.035

Stats. Implemented: ORS 197.180

Hist.: EDD 9-1990, f. & cert. ef. 5-23-90

123-008-0025

Compatibility with Acknowledged Comprehensive Plans and Land Use Regulations

(1) Except when it is necessary for the Commission or Department to adopt direct findings for compliance with the LCDC statewide planning goals, the Commission or Department shall achieve goal compliance by acting compatibly with acknowledged comprehensive plans and land use regulations.

(2) To make the necessary determinations of comprehensive plan compatibility, the Commission or Department shall require the applicant to certify that the project complies with all applicable local, state and federal laws, rules and regulations, including but not limited to, the applicable city or county comprehensive plan, public facility plan and land use regulations as well as one of the following:

(a) 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;

(b) 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; or

(c) Other equivalent documentation from an authorized representative of the affected city or county.

Stat. Auth.: ORS 197.180 & ORS 285.035

Stats. Implemented: ORS 197.180

Hist.: EDD 9-1990, f. & cert. ef. 5-23-90

123-008-0030

Dispute Resolution

(1) When a land use dispute related to an application for funding occurs, the applicant will be expected to resolve the dispute directly with the city or county where the proposed project would be located. The Commission or Department will not provide funding for such a project until the dispute is resolved and the documentation required under OAR 123-008-0025 is provided.

(2) In other cases, the Commission or Department shall attempt to resolve disputes regarding land use issues by direct contact with the applicable local governing body. Whenever possible, Commission or Department efforts to resolve land use disputes shall be pursued prior to and through local government land use proceedings. The Commission or Department shall use one or more of the following procedures to resolve land use disputes with local governments:

(a) Hold a meeting with the project applicant/sponsor, local government, state agency or federal agency;

(b) Assist in the identification of alternative actions or modifications to the proposed project to resolve the land use dispute;

(c) Request assistance from the Department of Land Conservation and Development or a compatibility determination by LCDC under LCDC OAR 660-030-0070.

Stat. Auth.: ORS 197.180 & ORS 285.035

Stats. Implemented: ORS 197.180

Hist.: EDD 9-1990, f. & cert. ef. 5-23-90

123-008-0035

Compliance and Compatibility of New or Amended Programs

The Commission and Department shall not amend their "Land Use Coordination Program", adopt new programs or rules, or amend existing programs or rules that affect land use without notifying the Department of Land Conservation and Development in accordance with LCDC OAR 660-030-0075.

Stat. Auth.: ORS 197.180 & ORS 285.035

Stats. Implemented: ORS 197.180

Hist.: EDD 9-1990, f. & cert. ef. 5-23-90

123-008-0040

Consistency with Local Economic Development Plans

Prior to the approval of a loan or grant for a project by the Economic Development Commission, the Commission shall find that the project is consistent with all applicable adopted local economic development plans including, but not limited to, the comprehensive plans of cities and counties as required by ORS 184.025.

Stat. Auth.: ORS 285.035 & ORS 197.180

Stats. Implemented: ORS 197.180

Hist.: EDD 9-1990, f. & cert. ef. 5-23-90

DIVISION 9

OREGON COMMUNITY DEVELOPMENT FUND

123-009-0050

Purpose

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

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

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

123-009-0060

Definitions

As used in this division, unless the context requires otherwise:

(1) "Fund" means the Oregon Community Development Fund established in ORS 285A.227, which includes lottery fund-

ing for grant and loan programs and contracted services and all interest earnings that accrue to the Fund.

(2) "Commission" means the five member Oregon Economic and Community Development Commission established in ORS 285A.040.

(3) "Director" means the Director of the Oregon Economic and Community Development Department established in ORS 285A.070.

(4) "Loan and Grant Programs and Contracted Services" includes all those authorized programs within the investment categories of the Commission's biennial allocation plan.

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

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

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

123-009-0070

Commission Allocations

(1) The Commission shall distribute resources in the Oregon Community Development 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 outlined in HB 5038, Section 12 (3), 1999 Legislative Assembly and based on recommendations of the Oregon Economic and Community Development Commission.

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

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

123-009-0080

Commission Responsibilities

The Commission shall be responsible for making allocations from the Oregon Community Development Fund and may adjust these allocations based on need.

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

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

123-009-0090

Criteria for Allocations

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

(1) Funding shall be targeted based on the principles established in ORS 285A.020. The principles include a primary focus of support to rural and distressed communities and to existing Oregon businesses.

(2) Allocations from the Oregon Community Development Fund shall be used to enhance coordination among internal and external programs, contractors, and other agencies.

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

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

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

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

123-009-0100

Director's Review and Approval of Awards under Allocation Plan

Once allocations 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)

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

DIVISION 11

STANDARDS TO DETERMINE PROJECT ELIGIBILITY AND APPLICATION PROCEDURES FOR STATE OF 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.377.

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

Stats. Implemented: ORS 285B.320 – ORS 285B.392, 1999 SB 1128

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

123-011-0021

Commission Powers

For the purposes of these rules the Economic and Community Development 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 Economic and Community Development 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(5) & ORS 285A.110

Stats. Implemented: ORS 285B.320 – ORS 285B.392, 1999 SB 1128

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

123-011-0025

Definitions

For the purposes of these rules, the following terms shall have the following definitions, 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) "Application" means the application form completed by the Applicant, and evaluated by the Finance Committee for determination of the Applicant's and Project's eligibility for Oregon Economic Development Revenue Bonds.

(3) "Bonds" means Oregon Economic Development Revenue Bonds issued by the State of Oregon under ORS 285B.320 to 285B.377.

(4) "Commission" means the State of Oregon Economic and Community Development Commission appointed under ORS 285A.040.

(5) "Finance Committee" means the Finance Committee for the Economic and Community Development Commission as allowed in ORS 285A.060.

(6) "Department" means the State of Oregon Economic and Community Development Department created under ORS 285A.070.

(7) "Eligible Project" means an economic development project as defined in ORS 285B.323 determined by the Finance Committee to be eligible under OAR 123-011-0035 for Oregon Economic Development Revenue Bonds.

(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) "State" means the State of Oregon.

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

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

Stats. Implemented: ORS 285B.320 – ORS 285B.392, 1999 SB 1128

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

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 rule, OAR Chapter 123, Division 11.

(3) The Department shall send to each member of the Commission a summary of each project to be considered by the Finance Committee. Commissioners shall receive such summaries in sufficient time to comment on the projects orally or in writing, 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 with such frequency 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 shall decide 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(5) & ORS 285A.110

Stats. Implemented: ORS 285B.320 – ORS 285B.392 & 1999 SB 1128

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

123-011-0030

Application

(1) An Applicant desiring the issuance of Economic Development Revenue Bonds authorized under ORS 285B.320 to 285B.377 must submit a complete formal application to the Department in a form approved by the Department.

(2) The application should be received by the Department at least 21 calendar days prior to the Finance Committee meeting at which the application will be considered. Under extraordinary circumstances, the Department may waive this requirement.

(3) A Resolution of Approval from the county having jurisdiction over the proposed project site shall be submitted with the Application. The form of the resolution is available from the Department.

(4) The project shall satisfy the applicable requirements of OAR Chapter 123, Division 8.

(5) A non-refundable application fee is to be submitted with the application:

(a) A \$250 non-refundable application fee shall be paid by an Applicant seeking economic development revenue bond financing of \$500,000 or less;

(b) A \$500 non-refundable application fee shall be paid by an Applicant seeking economic development revenue bond financing greater than \$500,000.

(6) Application materials may be obtained from the Oregon Economic and Community Development Department, 775 Summer Street N.E., Salem, OR 97310.

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

Stats. Implemented: ORS 285B.320 – ORS 285B.392 & 1999 SB 1128

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

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 activities are eligible for Economic Development Revenue Bonds, unless otherwise prohibited under subsection (b) of this section:

(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) Research and development;

(F) Destination resorts;

(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) Not-for-profit corporations organized under *Section 501(c)(3)* of the *U.S. Internal Revenue Code* and established solely for community benefit;

(N) Utilities, except electricity, to serve a designated, specified industrial site. General utility systems or systems which provide service primarily to residential or non-industrial commercial customers are not eligible;

(O) Other activities which represent a new technology or type of economic enterprise which the Finance Committee determines is needed to diversify the economic base of an area.

(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;

(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;

(G) Co-generation of electric power;

(H) Activities expressly ineligible under ORS 285B.323(1).

(c) The following serve as elaboration and clarification of activities which are eligible for Economic Development Revenue Bonds:

(A) "Destination Resort" may include incidental food service. This classification is not intended to include sleeping accommodations which otherwise would not assist the development of the tourist industry. Sleeping accommodations which do not include major convention meeting facilities or other major non-

residential facilities are not eligible. Preferential treatment by the developer to any land purchaser is not allowed;

(B) "Convention Centers" may include sleeping accommodations, but approximately 1/3 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 the Applicant demonstrates it has at least one other facility subordinate to the facility for which eligibility is being requested. A minimum of 75 percent of the floor space must be allocated to the corporate headquarters 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 qualify 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) "Non-Profit Organizations" do not include religious, fraternal, or educational 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) 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, and increased productivity. The county and city (if within the boundary of a city) having jurisdiction over the proposed project should provide a statement with regards to the potential benefit to be derived by the jurisdiction from the project. The Applicant is encouraged to demonstrate as many public purposes for the proposed project as can be prudently shown;

(e) 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;

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

(C) Find that the project satisfies the applicable requirements of OAR Chapter 123, Division 8;

(D) Find that the project will produce goods or services which are sold in markets for which national or international com-

petition exists, or if the project is to be constructed and operated by a not-for-profit organization, that the project will not compete 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;

(F) Find that the project involved is consistent with all applicable adopted local economic development plans; and

(G) 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. Questions will be asked only by Finance Committee members and Department staff.

(f) 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;

(g) 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;

(h) 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;

(i) The Finance Committee may require an Applicant to execute an Authorization to Release Information form prescribed by the Department.

(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: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

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

Stats. Implemented: ORS 285B.320 – ORS 285B.392 & 1999 SB 1128

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

123-011-0040

Extension

(1) The Department may extend the original eligibility granted by the Finance Committee for up to six months if the Department determines that 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, proof of continued support by the county and a project status report to the Department, on a form approved by the Department, at least 14 calendar days before eligibility expires.

(2) The Finance Committee may extend eligibility if extended eligibility is denied by the Department 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, proof of continued support by the county, and a project status report, as well as an application for extension, on 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 under extraordinary circumstances.

Stat. Auth.: ORS 285A.075(5) & ORS 285A.110
Stats. Implemented: ORS 285B.320 – ORS 285B.392 & 1999 SB 1128
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

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 bond issue for the project. This fee shall not exceed \$50,000 for any single bond issue. In addition, the Applicant may be required to pay to the Department any out-of-pocket expenses incurred by the Department in the processing of the bond request, including but not limited to legal expenses.

(2) An applicant for a current refunding of an outstanding bond shall pay to the Department:

(a) A processing fee of \$250 which shall accompany the request for the refunding; and

(b) A closing fee of 1/10 of one percent of the amount of the refunding bond, however, 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; and

(c) Any out-of-pocket expenses incurred by the Department processing the refunding request, including but not limited to legal expenses.

Stat. Auth.: ORS 285A.075(5) & ORS 285A.110
Stats. Implemented: ORS 285B.320 – ORS 285B.392 & 1999 SB 1128
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

123-011-0050

Confidential Records

(1) Upon written request and within a reasonable time, the Director of the Department or his designee shall provide 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 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 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 which 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 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 285A.075(5) & ORS 285A.110
Stats. Implemented: ORS 285B.320 – ORS 285B.392, 1999 SB 1128
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

DIVISION 12

PROJECT ELIGIBILITY AND APPLICATION PROCEDURES FOR OREGON UMBRELLA REVENUE BOND PROGRAM

123-012-0005

Purpose

The purpose of these rules is to provide procedures, standards and criteria for operation of the Oregon Umbrella Revenue Bond program authorized by ORS 280.310 to 280.397.

Stat. Auth.: ORS 280
Stats. Implemented: ORS 285.310 - ORS 285.397
Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85

123-012-0010

Definitions

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

(1) "Applicant" means any person, firm or public or private corporation or federal or state government subdivision or agency which submits an application for financing of an economic development project under the Oregon Umbrella Revenue Bond program.

(2) "Bonds" means revenue Bonds issued by the State of Oregon under ORS 280.397.

(3) "Bond Date" means a date on which a bond principal or interest payment is due.

(4) "Borrower" means the obligor of any loan.

(5) "Commission" means the State of Oregon Economic Development Commission appointed under ORS 184.005.

(6) "Commitment Letter" means the agreement between the Commission, Lender and Borrower, which sets forth the terms and conditions of the Commission's participation in the Loan.

(7) "Credit Committee" means the committee created by the Commission to review Loan applications and make recommendations to the Commission concerning proposed economic development projects.

(8) "Debt Service" means the amount of Bond principal, interest and premium (if any) due on a Bond Date, whether at maturity or upon prior redemption.

(9) "Debt Service Account" means the Debt Service Account in the Oregon Economic Development Fund.

(10) "Department" means the State of Oregon Economic Development Department created under ORS 184.125.

(11) "Economic Development Insurance Account" (EDIA) means a trust account within the Oregon Economic Development Fund into which fees or monies authorized under ORS 280.395 are placed, including, but not limited to, self-insurance program

fees and participation fees described in OAR 123-012-0060 and OAR 123-012-0075.

(12) "Eligible Project" means an economic development project determined by the Economic Development Commission to be eligible for financing under the Oregon Umbrella Revenue Bond program.

(13) "Eligibility Application" means the application form issued by the Commission, completed by the Applicant, and evaluated by the Commission for determination of the Applicant's Project's eligibility for financing under the Oregon Umbrella Revenue Bond program.

(14) "General Account" means the General Account of the Oregon Economic Development Fund.

(15) "Individual Debt Service Reserve" means a reserve fund equal to the lesser of the maximum annual debt service, or 125 percent of the average annual debt service. The Individual Debt Service Reserve will be credited to the Oregon Economic Development Fund pursuant to ORS 280.395.

(16) "Insurance Account" means the Economic Development Insurance Account in the Oregon Economic Development Fund, which is created by ORS 280.395(3).

(17) "Loan" means a Loan in which the Commission purchases a participating interest.

(18) "Loan Application" means the application to gain commitment from the Commission on a form provided by the Commission to be signed by the Borrower and Participating Lender.

(19) "Loan Participation" means participation in the Total financing by the Participating Lender, and by the Economic Development Commission.

(20) "Loan Payment Account" means the Loan Payment Account in the Oregon Economic Development Fund.

(21) "Loan Servicer" means the Participating Lender who services the Loan in Accordance with the Loan Participation and Servicing Agreement.

(22) "Oregon Economic Development Fund" means the fund created by ORS 280.395, which fund shall pay:

(a) Principal of, interest and redemption premium, if any, on Bonds issued under ORS 280.397;

(b) Insurance premiums for Bonds issued under ORS 280.397; and

(c) Repayment of any authorized transfers.

(23) "Oregon Umbrella Revenue Bond Program" means the program authorized by ORS 280.310 to ORS 280.397 for the State's issuance of revenue bonds secured in part by the assets of the Oregon Economic Development Fund as specified in ORS 280.397.

(24) "Original Purchasers" means the firm or firms originally purchasing a series of Bonds from the State.

(25) "Participation Lender" means any commercial bank, mutual savings bank, savings and loan association, commercial finance company, insurance company, or affiliate of any such organization which is licensed or authorized to do business in the State of Oregon, and which has entered into a Loan Participation and Servicing Agreement with the Economic Development Commission.

(26) "Participation Loan" means any secured Loan in which a participation interest has been sold by Lender to Purchaser under the Terms of the Loan Participation and Servicing Agreement and evidenced by a Participation Certificate attached as Exhibit "A" to the Loan Participation and Servicing Agreement.

(27) "Paying Agent" means the paying agent for a series of Bonds, as designated in the Bond Resolution.

(28) "Pooled Debt Service Reserve" means the cumulative total of all Individual Debt Service Reserves.

(29) "Purchaser" means the State as a purchaser of an interest in a Loan originated by a Participating Lender.

(30) "Reserve Account" means the Pooled Debt Service Reserve.

(31) "Reserve Subaccount" means the subaccount established for Borrower in the Pooled Debt Service Reserve Account.

(32) "Security Instrument" means any mortgage, deed of trust, security agreement or other instrument subjecting real or personal property to a lien, which is given to secure a Loan.

(33) "State" means the State of Oregon.

(34) "Total Financing" means the Loan made to a Borrower, by a Participating Lender, a share of which is purchased by the State.

(35) "Treasurer" means the Treasurer of the State of Oregon or his designee.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.315

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 8-1984(Temp), f.12-31-84, ef. 1-1-85; EDD 2-1985, f. & ef. 3-7-85; EDD 7-1985(Temp), f. & ef. 10-22-85

123-012-0015

Size Requirements

To qualify for the Oregon Umbrella Revenue Bond Program, Applicant must demonstrate, with accounting records prepared in conformance with Generally Accepted Accounting Principles (GAAP), that the Applicant qualifies as "a small business" under standards set forth in the federal Small Business Administration (SBA) 503 or 7(a) programs, as of September 1, 1984.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.310 - ORS 285.397

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85

123-012-0020

Determination of Eligibility

(1) The Economic Development Commission shall determine the eligibility of an Applicant and Project for financing under the Oregon Umbrella Revenue Bond program.

(2) Applicants shall submit an Eligibility Application to the Department.

(a) The Eligibility Application form shall be provided by the Department.

(b) A resolution of Approval from the county having jurisdiction over the proposed project site shall be submitted with the Eligibility Application.

(c) If the project is located within a County or City having comprehensive plan approved by the Land Conservation and Development Commission, the appropriate local unit of government must certify that the project is consistent with such comprehensive plan. If the project is located within a county or city not having such a comprehensive plan, the appropriate local unit of government must certify that the project is consistent with state-wide Goals and Guidelines as adopted by the Land Conservation and Development Commission.

(d) Eligibility Applications should be submitted to the Economic Development Department at least 21 days prior to a scheduled Commission meeting.

(e) A non-refundable application fee is to be remitted with the Eligibility Application:

(A) A \$250 non-refundable application fee shall be paid by an applicant seeking umbrella revenue bond financing of \$500,000 or less.

(B) A \$500 non-refundable application fee shall be paid by an applicant seeking umbrella revenue bond financing greater than \$500,000.

(3) The Department shall review the Eligibility Application.

(4) The Department shall make a recommendation to the Commission to either approve or deny the application for eligibility for Umbrella Revenue Bond financing. The review of the Eligibility Application will be based upon the standards set forth in this rule:

(a) The following economic activities are eligible for Umbrella Revenue Bond financing:

(A) Manufacturing or other industrial production;

(B) Agricultural development of food processing;

(C) Aquacultural development or seafood processing;

(D) Development or improved utilization of natural resources;

(E) Research and development;

- (F) Destination resorts;
- (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) Buildings on the National Register of Historic Places;
- (M) Nonprofit organizations established solely for community benefit;

(N) Other activities which represent a new technology or type of economic enterprise which the Commission determines is needed to diversify the economic base of an area.

(b) Activities or projects that will not be considered for the issuance of Oregon Umbrella 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) Activities that maintain private memberships; are not open to the general public; or do not serve a broad cross section of the general public;

(F) Co-generation of electric power;

(G) Activities prohibited under ORS 280.315(1);

(H) Any other activities which do not qualify as tax-exempt activities under **Section 103** of the **Internal Revenue Code of 1954**, as amended.

(c) The following serve as elaboration and clarification of activities which are eligible for Umbrella Revenue Bond financing:

(A) "Destination Resort" may include food service and incidental recreational activities. This classification is not intended to include sleeping accommodations which otherwise would not assist the development of the tourist industry. Sleeping accommodations which do not include major convention meeting facilities or other major recreational facilities are not eligible. Preferential treatment by the developer to any land purchaser is not allowed. Private membership to golf courses or other activities is not allowed.

(B) "Convention Centers" may include sleeping accommodations, but approximately 1/3 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 Commission 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 convention meeting facility space.

(C) "Corporate headquarters" may qualify if the applicant demonstrates it has at least one other subordinate facility to the facility for which eligibility is being requested a minimum of 75 percent of the floor space must be 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) "Recreational Facilities" must be a significant benefit to the community, not just the developer. Private memberships will not be allowed in facilities funded by umbrella revenue bonds. Recreational facilities must substantially promote the tourist industry of the area and serve a cross section of the general public. Recreational facilities do not include athletic clubs, clubs for racquetball, handball, tennis, golf, amusement rides, bowling, or similar types of activities unless they are an incidental part of a destination resort or convention center complex.

(E) Transportation. This qualifying activity is not intended to include rolling stock or other highly moveable equipment operated by a carrier for hire.

(F) Buildings listed on the National Register of Historic Places may also include certified historic structures within Nation-

al Register Districts and certified historic structures within local districts certified by the federal government. Residential structures do not qualify.

(G) Pollution Control. For projects that qualify under this subsection, and where pollution control equipment costs are incidental to the total capital investment of the project, the Commission may qualify such equipment, provided the Oregon Department of Environmental Quality concurs.

(H) In-State Plant Relocation. Revenue bonds may be considered for in-state plant relocations when two conditions are met:

(i) The applicant must demonstrate that the relocation is necessary for reasons beyond its control; and

(ii) The relocation will not cause a direct reduction in employment in the area of former locations by the company making application.

(I) Nonprofit organizations. Religious, fraternal, or educational organizations will not qualify.

(J) Developer Projects. The Commission 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 and be enforceable for the term of the bond.

(d) Public Purpose. The applicant must demonstrate that a public purpose is served by the proposed economic development project. Public purpose shall include 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, and increased productivity. The county and city (if within the boundary of a city) having jurisdiction over the proposed project should provide a statement with regards to the potential benefit to be derived by the jurisdiction from the project. The applicant is encouraged to demonstrate as many public purposes for the proposed project, as can be prudently shown.

(e) Prior to determining an economic development project is an Eligible Project, the Economic Development Commission shall:

(A) Determine that the action is cost effective, considering both major public expenses and major public benefits;

(B) Find that the project involved is consistent with the Department's comprehensive policy and programs established by the Department in 1982.

(C) Find that the project involved is consistent with all applicable adopted local economic development plans; and

(D) Provide for public notice of, and public comment on, the action.

(f) The Commission must find that the project complies with one of three conditions:

(A) Revenue bond financing is an inducement to expand or locate the project in an Economically Lagging Area pursuant to ORS 280.630;

(B) Revenue bond financing is an inducement to locate the project in Oregon rather than another state;

(C) Revenue bond financing is used to further the objectives of the Commission's Comprehensive Policy.

(g) The Commission may deny an application if the applicant does not demonstrate, to the satisfaction of the Commission, the project is financially feasible.

(h) The Commission may make any reasonable requirement of the Applicant, including requirements that would survive closing and be enforceable for the term of the bond.

(5) The Umbrella Revenue Bond program is intended to provide financing primarily for real property.

(6) The Commission 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 Commission.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS. 280

Stats. Implemented: ORS 285.065

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 2-1985, f. & ef. 3-7-85; EDD 7-1985(Temp), f. & ef. 10-22-85

123-012-0023

Extension Policy

(1) The Department may extend the original eligibility granted by the Commission for up to six months. The Applicant must provide updated financial information and a project status report to the Department, on a form approved by the Department, at least 14 calendar days before eligibility expires.

(2) The Commission may extend eligibility, if extended eligibility is denied by the Department or if the initial extension granted by the Department under section (1) of this rule has expired. An Applicant must submit an application for extension, on a form approved by the Department, at least one month prior to the expiration date of the original eligibility period. The Department may waive this requirements under extraordinary circumstances.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.065

Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 2-1985, f. & ef. 3-7-85; EDD 7-1985(Temp), f. & ef. 10-22-85

123-012-0025

Loan Participation and Servicing Agreements

(1) The State of Oregon, acting through the Economic Development Commission and the Treasurer of the State of Oregon, will purchase participations, of not less than 65 percent or more than 90 percent, in eligible loans made by Participating Lenders to Applicants. The State's portion of the loan shall be made available only through proceeds from the sale of Bonds.

(2) Lenders who desire to participate in loans with the State of Oregon must enter into a Loan Participation and Servicing Agreement with the State.

(3) The Loan Participation and Servicing Agreement shall govern the sale and transfer, by the Participating Lender to the State, of an undivided participation interest and an undivided participation ownership in all loans in which such a participating interest is offered by the Participating Lender to the State.

(4) The Loan Participation and Servicing Agreement shall constitute the master agreement for all participation loans entered into between the Participating Lender and the State.

(5) A Loan Participation Certificate shall be issued by the Lender to the State for each individual participation loan. The State shall provide the form to the Lender. The purpose of the Certificate shall be to describe stated interest in the individual participation Loan.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.310 - ORS 285.397

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85

123-012-0030

Loan Applications

(1) The Loan Application shall contain information which shall form the basis for the Commission's decision to approve or deny participation in a Loan.

(2) A Participating Lender who has entered into a Loan Participation and Servicing Agreement with the State may submit a Loan Application to the Commission.

(3) A Loan Application may be submitted subsequent to the issuance of the Resolution for Project Eligibility by the Commission or at the same time the Eligibility Application is submitted. The Commission will not grant final approval of a Loan Application prior to the issuance of a Resolution for Project Eligibility.

(4) Prior to submitting the Loan Application to the Commission, the Lender shall commit to:

(a) Providing 100 percent of the interim or construction financing; and

(b) Participation in the permanent or long term financing. The 100 percent interim or construction financing shall continue until the State purchases a participation interest in the permanent Loan. The Lender's participation in the permanent Loan shall not be more than 35 percent or less than ten percent, of the total per-

manent or long term financing. The Lender's commitment to finance may be extended to Applicant, contingent upon Applicant's and Lender's execution of a Commitment Letter:

(A) The term of the Lender's participatory share shall not be for less than five years;

(B) The Lender shall submit a loan agreement containing all terms and conditions between the Lender and the Applicant, with the Loan Application.

(5) The State shall rely on the Participating Lender to adhere to sound lending practices.

(6) Credit analysis by the Participating Lender shall be sufficiently detailed and complete to clearly ascertain the credit-worthiness of the Applicant, and Application.

(7) Collateral must be available for the State and Participating Lender to adequately secure the Loan, and shall not be less than a first mortgage lien interest in real property and improvements, and a first security interest in other collateral.

(8) The Department shall forward a completed copy of the Loan Application to the Treasurer upon receipt from the Participating Lender.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.310 - ORS 285.397

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85

123-012-0035

Loan Amount

(1) The State's maximum participation in the total permanent financing for an individual Loan shall not exceed \$1,000,000. This total shall be inclusive of the Individual Debt Service Reserve, the participation fee, closing fees, and any capitalized interest as required by the State.

(2) The Participating Lender's participation in the total permanent financing shall not be less than 10 percent or more than 35 percent of the total loan.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.310 - ORS 285.397

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85

123-012-0040

Review of Full Application

(1) The Department shall review all Loan Applications submitted by Participating Lenders, in accordance with prudent commercial lending standards.

(2) The Commission shall create a committee to review Loan Applications. The name of this committee shall be the Credit Committee:

(a) The Credit Committee shall serve the Commission in an advisory capacity;

(b) The Credit Committee shall be made up of five members appointed by the Chairman of the Commission. Two of the five members shall be members of the Commission. The remaining three members of the Credit Committee shall represent areas of the financial, accounting or business community. A positive recommendation from a majority of those Credit Committee members voting is required before a recommendation for approval of the Loan Application will be forwarded to the Commission.

(3) The Loan Application shall be submitted three weeks prior to a meeting of the Credit Committee. The Credit Committee shall meet at least one time each month.

(4) Based on reasonable commercial credit standards, the Department will make a recommendation of approval or denial for each Loan Application to the Credit Committee.

(5) The Credit Committee shall make a recommendation to the Commission for approval or denial of each Loan Application, based on credit information contained in the Application.

(6) The treasurer shall review all Loan Applications. A recommendation of approval from the Treasurer shall be obtained before the Application will be submitted to the Commission.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.310 - ORS 285.397

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85

123-012-0045

Loan Approval

(1) Following approval of the loan by the Commission, the Commission shall issue a Commitment Letter to the Participating Lender.

(2) The Commitment Letter shall set forth the terms, conditions, and amount of the Total Financing to be purchased by the State.

(3) The Borrower and Lender shall signify acceptance of the terms and conditions of the Commitment letter by signing the Commitment Letter and returning it to the Commission. The Borrower shall submit a Commitment Fee along with the Commitment Letter. The Commitment Fee shall be equal to four percent of the Total Commission participation. The Borrower shall pay the Commitment fee in two installments:

(a) One percent of the total Commission participation shall be submitted to the Commission along with the executed Commitment Letter;

(b) Three percent of the total Commission participation shall be submitted to the Commission immediately prior to marketing of Bonds in accordance with the following procedures:

(A) The Borrower shall be notified by the Commission, two business days prior to marketing a series of Bonds. The Borrower will be told the projected interest rate for the forthcoming Bond sale;

(B) Within 24 hours of the notice, described in the preceding paragraph, Borrower must decide if he or she wants to receive proceeds derived from the Bond sale;

(C) If Borrower decides to be included in the Bond sale, Borrower must execute an Authorization to Sell bonds form and remit three percent of the Commission's participation in the total Loan to the Commission. The State shall provide the Authorization to Sell Bonds form;

(D) The entire Commitment fee shall be credited to the Borrower if the Loan closes.

(c) The entire commitment fee is non-refundable except as provided in paragraphs (3)(b)(D) of this rule.

(4) The Borrower shall pay carrying costs and interest on the Bonds from the date of Bond sale to disbursement of Bond proceeds.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.310 - ORS 285.397

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85

123-012-0050

Loan Structure

(1) The State shall purchase not less than 65 percent and not more than 90 percent of the Total Financing.

(2) The Lender's participation in the total Loan must be for a minimum term of five years. The Participating Lender shall agree to service the loan for the entire term of the Loan.

(3) Borrower shall remit all Loan payments to the Participating Lender under terms and conditions of the Loan Participation and Servicing Agreement, and the Commitment Letter.

(4) The Participating Lender shall provide the Borrower with a monthly payment schedule.

(5) Borrower's monthly payments shall include:

(a) Principal and interest on the Participating Lender's portion of the total loan;

(b) Principal and interest on the State's portion of the total Loan; and

(c) The Economic Development Insurance Account (EDIA) premium.

(6) The State may allow Borrower to defer payment of principal on the State's portion of the total Loan for a period up to the first five years of the loan term.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.310 - ORS 285.397

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85; EDD 7-1985(Temp), f. & ef. 10-22-85

123-012-0055

Interest Rate

(1) The Participating Lender and Borrowers shall mutually agree to the interest rate to be charged on the Participating Lender's portion of the total Loan. The rate of interest will be subject to a test of reasonableness by the Commission.

(2) The interest rate on the State's participation in the total Loan shall be determined by the State and based on the rate at which Bonds are sold, the term of the Loan, costs and fees associated with the Umbrella Revenue Bond program and cash flow.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.310 - ORS 285.397

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85

123-012-0060

Fees

(1) Borrower may pay to the Participating Lender a reasonable Loan fee mutually agreed upon between the Borrower and the Participating Lender.

(2) The Borrower shall pay the following fees to the State at the time of Loan closing in addition to those mentioned in other Commission rules governing the Oregon Umbrella Revenue Bond Program:

(a) A Participation Fee of 1/2 of 1 percent of the principal amount of the State's participation in the Total Loan.

(b) A closing Fee of 1/2 of 1 percent of the principal amount of the State's participation in the total Loan.

(c) An economic Development Insurance Account premium of 1/2 of 1 percent of the principal amount of the State's participation in the total Loan. Subsequent to loan closing, the Borrower shall remit each month an EDIA premium in the amount of 1/12 of 1/2 of 1 percent of the outstanding principal balance of the State's participation in the total Loan.

(d) A fee of the State Treasurer of the greater of \$750 or .3 of 1 percent of the principal amount of the State's participation in the total Loan.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.310 - ORS 285.397

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 6-1984(Temp), f. & ef. 10-23-84; EDD 2-1985, f. & ef. 3-7-85; EDD 7-1985(Temp), f. & ef. 10-22-85

123-012-0065

Individual Debt Service Reserve

(1) The Borrower is required to deposit into an Individual Debt Service Reserve account the lesser of the maximum annual debt service or 125 percent of the average annual debt service.

(2) If, at any time, the amount in a Borrower's Individual Debt Service Reserve account equals the total amount of payments remaining due under the Borrower's Loan, the Borrower shall not be required to remit further Loan payments.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.310 - ORS 285.397

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85

123-012-0070

Pooled Debt Service Reserve

The cumulative total of all Individual Debt Service Reserves shall be called the Pooled Debt Service Reserve.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.310 - ORS 285.397

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85; EDD 7-1985(Temp), f. & ef. 10-22-85

123-012-0075

Economic Development Insurance Account (EDIA)

(1) Pursuant to ORS 280.395 the Economic Development Insurance Account (EDIA) is established.

(2) The Borrower shall remit, at the time of Loan closing, a premium to the EDIA in the amount of 1/2 of 1 percent of the State's participation in the Total Loan.

(3) Subsequent to Loan closing, the Borrower shall remit each month an EDIA premium in the amount of 1/12 of 1/2 of 1 percent of the outstanding principal balance of the State's participation in the total Loan.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.310 - ORS 285.397

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85;
EDD 7-1985(Temp), f. & ef. 10-22-85

Stats. Implemented: ORS 285.310 - ORS 285.397
Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85

123-012-0080**Bond Sales**

(1) The State shall purchase a participation in the total permanent financing at the time the Participating Lender has met all of the terms contained in the Commitment Letter, and when funds are available to the State from the sale of Bonds.

(2) The State may request the Treasurer to sell Bonds in anticipation that the Participating Lender will satisfy the requirements of the Commitment Letter.

(3) The State will sell Bonds in amounts necessary to minimize the costs of issuance. The Treasurer, with advice from the Commission, financial advisor and underwriter, shall determine the size, terms and conditions and the date of sale of the Bonds.

(4) Borrower shall pay a pro rata share of all costs associated with issuance of the Bonds.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.310 - ORS 285.397

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85

123-012-0085**Funds Flow**

(1) The Borrower shall remit principal, interest and EDIA premiums to the Loan Servicer each month, as provided in OAR 123-012-0050.

(2) The Loan Servicer, in accordance with terms of the Loan Servicing and Participation Agreement, shall remit monies owed to the State to the Commission:

(a) In the event the entire scheduled payment is not remitted by the Borrower, the Loan Servicer shall forward a pro rata share of the payment to the Commission. Allocation of payment proceeds shall be in the order of:

(A) Interest payable in full;

(B) Principal in full;

(C) The EDIA premium in full; and

(D) Fees or charges for late payment. The pro rata allocation will be based on the State's and Participating Lender's percentage of the total principal balance on the date the partial payment is made.

(b) The Loan Servicer shall submit information to the Commission describing payment proceeds from the Borrower on remittance forms provided by the Commission.

(3) The Commission shall maintain accurate accounting records for monies received from the Loan Servicer.

(4) The Commission shall forward these monies to the Treasurer for investment in the Oregon Economic Development Fund.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.310 - ORS 285.397

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85;
EDD 7-1985(Temp), f. & ef. 10-22-85

123-012-0090**Assumptions of Loans**

Loans made pursuant to the Umbrella Revenue Bond program may not be assumed without consent of the Commission.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.310 - ORS 285.397

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85

123-012-0095**Delinquency/Default Procedure**

(1) Loans will be considered delinquent if payment is not in the possession of the Loan Servicer by the date of payment established in the Loan Documents.

(2) Loan Servicer shall notify Borrower of any delinquency within five business days of the delinquency.

(3) If any default in payment of an installment is not cured within ten days of the due date for such installment, the entire remainder of the unpaid balance, including principal, interest, fees and charges, shall at the option of the Note holder, become immediately due and payable.

Stat. Auth.: ORS 280

123-012-0100**Confidential Records**

(1) Upon written request and within a reasonable time, the Director of the Department or his designee shall provide 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 Commission's cost for locating, compiling, copying, and mailing the records. Such costs shall not exceed fifteen dollars per hour for locating records, separating exempt and nonexempt records, for having a custodian present during the inspection, and for preparing lists of data; and twenty-five cents per page for copies of records.

(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 Commission 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) Intradepartmental advisory memoranda preliminary to a Loan decision; and

(d) Formulas, plans, designs and related information which constitute trade secrets under ORS 192.500.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 192.501

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85

123-012-0120**Security for Bonds**

(1) The Bonds shall not be a charge against any funds other than those pledged and assigned in ORS 280.335, nor shall the State of Oregon be subject to any liability thereon.

(2) No owner of any Bond shall ever have the right to compel any exercise of the taxing power of the State of Oregon or any of its political subdivisions to pay any sums due on the Bonds, nor to enforce payment of any Bonds against any property of the State other than assets pledged and assigned in ORS 280.335.

(3) Bonds shall not constitute a debt of the State of Oregon, or a lending of its credit within the meaning of any constitutional or statutory debt limitation.

(4) The Treasurer may transfer to the Oregon Economic Development Fund: Excess money from any state fund, other than the Oregon Business Development Fund, in a maximum amount of \$3,000,000; but only under such conditions for repayment which the Treasurer may, in his sole opinion, determine to be necessary or appropriate to insure repayment. No Bondowner, Borrower or any other person may compel the Treasurer to approve any particular conditions for repayment, or to make any transfer authorized by ORS 280.395(4), and no representation is made to any person that monies will be available for transfer, or that the Treasurer will approve conditions for repayment of the transfer, or that any transfer will be made.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.310 - ORS 285.397

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85

123-012-0130**Parity Bonds**

All Bonds authorized to be issued under ORS 280.397 shall have an equal lien on assets pledged to the payment of the Bonds, subject only to the priorities for distribution of monies expressly provided.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.310 - ORS 285.397

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85

123-012-0140

Oregon Economic Development Fund

(1) The Treasurer shall hold and invest all monies in the Oregon Economic Development Fund.

(2) The Commission shall account for the monies in the Oregon Economic Development Fund.

(3) The Commission shall prepare regular reports of activity in the Oregon Economic Development Fund. Such reports shall, upon request, be made available to the Treasurer, the Original Purchasers, and Bondowners.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.335 & ORS 285.395

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85

123-012-0145

Economic Development Fund Accounts

(1) The following accounts are created in the Oregon Economic Development Fund:

- (a) The Debt Service Account;
- (b) The Loan Payment Account;
- (c) The Reserve Account;
- (d) The Insurance Account; and
- (e) The General Account.

(2) Debt Service Account:

(a) On Each Bond Date the Commission shall direct the Treasurer to transfer from the Debt Service Account, to the Paying Agent, the amount of Bond Debt Service due on that Bond Date.

(b) On the tenth day of each month preceding a Bond Date the Commission shall instruct the Treasurer to transfer into the Debt Service Account from the following accounts in the following order of priority:

(A)(i) From each Borrower's Loan Payment Subaccount there shall be transferred the amount indicated in the schedule prepared pursuant to OAR 123-012-0150.

(ii) If the amount in any Borrower's Loan Payment Subaccount is insufficient, then there shall be transferred an amount equal to the insufficiency from the Borrower's Reserve Subaccount.

(B) If the amount in a Borrower's Reserve Subaccount is insufficient to permit the required transfer to be made, the Commission shall record the amount of the insufficiency, and shall make all transfers for other Borrowers under paragraphs (2)(b)(A) and (B) of this rule. When the total amount of insufficiencies is known, the Commission shall direct a transfer of the total amount of the insufficiency from the following sources in the following order of priority:

- (i) The Insurance Account;
- (ii) The General Account.

(C) If there are still insufficient monies after the foregoing transfers have been made the Commission shall petition the Treasurer to authorize a transfer of monies pursuant to ORS 280.395(4).

(D) If a transfer is not made, or if the transfer from the Treasurer is insufficient, the Commission shall direct the Treasurer to transfer from the Reserve Subaccounts of all Borrowers an amount computed as follows:

$$\text{Amount Transferred from each Reserve Subaccount} = \frac{(\text{Balance in Reserve Subaccount})}{(\text{Sum of Balances})} \times (\text{Amount of Remaining Insufficiency})$$

Where:

"Balance in Reserve Subaccount" means the Balance on hand in the Reserve Subaccount for each Borrower prior to any transfer under this paragraph for Bond Debt Service Due on the next Bond Date;

"Sum of Balances" means the sum of the amounts on hand in all Reserve Subaccounts prior to any transfers under this paragraph for Bond Debt Service due on the next Bond Date; and

"Amount of Remaining Insufficiency" means the amount which is required to be transferred to the Debt Service Account to Pay Bond Debt Service due on the next Bond date, after all the transfers required by paragraphs (2)(b)(A) through (C) of this rule have been made, or the Sum of Other Balances, whichever is less.

(E) If, after the foregoing transfers have been made there are still insufficient monies to pay Bond Debt Service due on the next Bond Date the available monies shall be distributed as provided in section (11) of this rule.

(F) Any balance remaining in the Debt Service Account after a Bond Date and after transfer of all required amounts to the Paying Agent shall be credited to the Insurance Account. Monies in the Debt Service Account shall be used only as provided in section (2) of this rule.

(3) Loan Payment Account:

(a) The Loan Payment Account shall be divided into separate subaccounts for each Borrower;

(b) The Commission shall credit to each Borrower's Loan Payment Subaccount all amounts, which are received from that Borrower's Loan and deposited in the Oregon Economic Development Fund, unless such amounts are distributed as provided in section (8) of this rule. Monies in Loan Payment Subaccounts shall be used solely for transfer to the Debt Service Account as provided herein, until all Bonds have been paid;

(c) Earnings on each Reserve Subaccount shall be credited by the Commission to the corresponding Loan Payment Subaccount. In addition, earnings on each Loan Payment Subaccount shall be credited by the Commission to the subaccount. Such credits shall be made on March 1 of each year, and shall reduce the Loan payment, for the month of May for each year, from each Borrower by the amount of the credit;

(d) Any amounts remaining in the Loan Payment Account after all Bonds have been paid shall be transferred to the Insurance Account.

(4) Reserve Account:

(a) The Reserve Account shall be divided into separate subaccounts for each Borrower;

(b) On closing of each bond issue the Commission shall transfer to the Treasurer the amounts designated in the Bond Resolution for deposit in the Reserve Subaccounts;

(c)(A) Monies in the Reserve Subaccounts shall be used solely for transfer to the Debt Service Account as provided in section (2) of this rule, and as provided in this subsection;

(B) If, at any time, the amount in a Borrower's Reserve Subaccount (plus any amount the Commission determines will be earned on the amount in the Reserve Subaccount prior to its transfer to the Debt Service Account) equals the total amount of payments remaining due under the Borrower's Loan, the amounts in the Reserve Subaccount shall be transferred to the Borrower's Loan Payment Subaccount, and no further Loan payments shall be due from that Borrower;

(C) If at any time the Commission elects to redeem Bonds in accordance with section (10) of this rule, the Commission may certify to the Treasurer amounts to be transferred from Reserve Subaccounts to corresponding Loan Payment Subaccounts to redeem Bonds. The certificate shall state:

(i) The amounts to be transferred from each affected Reserve Subaccount;

(ii) The date on which such transferred amounts are to be used to redeem Bonds, and the amount of Bonds to be redeemed;

(iii) That all conditions precedent to redemption of Bonds under the applicable Bond Resolution and section (10) of this rule will be satisfied.

(d) Earnings on each Borrower's Reserve Subaccount shall be credited to the Borrower's Lease Payment Subaccount and used to reduce Loan payments as described in section (3) of this rule;

(e) Any amounts remaining in Reserve Subaccounts after all bonds have been paid shall be transferred to the Insurance Account.

(5) Insurance Account:

(a) The Commission shall credit the following monies to the Insurance Account when they are deposited in the Oregon Economic Development Fund:

(A) All participation fees imposed under ORS 280.320(4)(d);

(B) All insurance assessments imposed under ORS 280.320(4)(e); and

(C) Any other monies which the Commission elects, or is required, to deposit in the Insurance Account pursuant to ORS 280.395(3).

(b) Monies in the Insurance Account shall be used only for the following purposes, and in the following order of priority:

(A) Payment to the Treasurer of any amounts required to be paid to the Treasurer as a condition to a transfer authorized by ORS 280.395(4);

(B) Transfers to the Debt Service Fund authorized under section (2) of this rule; and

(C) Purchase of Bond Insurance.

(c) Any surplus remaining in the Insurance Account after all Bonds have been paid and all transfers by the State Treasurer have been repaid shall be transferred to the General Account.

(6) General Account:

(a) The General Account shall contain all monies which are credited to the Oregon Economic Development Fund, but which are not required by law or this Agreement to be placed into another account of the Oregon Economic Development Fund, and any monies required by this Agreement to be credited to the General Account;

(b) Monies in the General Account shall be used only for transfers to the Debt Service Fund pursuant to section (2) of this rule until all Bonds have been paid. After all Bonds have been paid monies in the General Account shall be used to repay any outstanding transfers made under ORS 280.395(4). After all such transfers have been repaid, any balance remaining in the General Account may be used for any purpose authorized by law.

(7) Proceeds Fund:

(a) There is established with the Treasurer a special trust fund to be known as the Oregon Economic Development Umbrella Revenue Bond Proceeds fund, which shall be held and administered in accordance with section (7) of this rule;

(b) All proceeds from the sale of Bonds received by the Treasurer and the Commission shall be placed in the Proceeds Fund. Monies in the Proceeds Fund shall be used only:

(A) To pay any costs associated with issuing Bond, including the fees of the Commission and the Treasurer for making Loans;

(B) To fund Bond reserves;

(C) To fund Loans; and

(D) To pay Bond principal, interest or premium, if any.

(c) The Treasurer shall disburse money from the Proceeds Funds to the order of, and in the amounts certified by, the Commission. The certification shall state:

(A) The amount to be disbursed;

(B) The person to whose order the disbursement shall be made;

(C) The purpose for the disbursement; and

(D) That the disbursement is required to accomplish the purposes for which the Bonds were issued.

(d) If any monies remain in the Proceeds Fund after all costs of issuance for a Bond issue have been paid and all Loans to be funded with the proceeds of a series of Bonds have been funded, the Commission shall transfer such monies to the Insurance Account unless the Commission elects to use such monies to redeem Bonds.

(8) Distribution of Late Loan Payments: If the balance in a Borrower's Loan Payment Subaccount was insufficient to permit a transfer under subparagraph (2)(b)(A)(i) of this rule when such a transfer was last attempted, then all late Loan Payments from that Borrower's Loan which are received by the Commission before the next such transfer is attempted shall be distributed as follows, in the following order of priority:

(a) First — The Treasurer shall be paid any amounts required to be paid to the Treasurer as a condition to a transfer authorized by ORS 280.395(4);

(b) Second — There shall be deposited into the Reserve Subaccounts of all other Borrowers any amounts withdrawn from those Subaccounts as a result of the insufficiency described in the first paragraph of this subsection;

(c) Third — There shall be deposited into the Reserve Subaccount of the Borrower described in the first paragraph of this sub-

section any amount required to restore the balance in that Reserve Subaccount to the amount required to be deposited in that Reserve Subaccount under the Bond Resolution;

(d) Fourth — Any remaining monies shall be deposited in the Loan Payment Subaccount of the Borrower described in the first paragraph of this subsection.

(9) Investment of Monies: Monies in the Oregon Economic Development Fund and the Proceeds Fund shall be invested only in Permitted Investments having a maturity date on or before the date on which the Commission estimates the monies will be required to be disbursed from the funds. Monies within any fund may be commingled for investment purposes.

(10) Redemption of Bonds:

(a) Optional Redemption:

(A) If Bonds are subject to redemption prior to maturity at the option of the State, such Bonds may be so redeemed only in accordance with the applicable Bond Resolution and this subsection.

(B) Prior to calling Bonds for optional redemption the Commission shall:

(i) Verify that adequate monies are available in the Oregon Economic Development Fund to redeem Bonds at the Proposed redemption date, without increasing, in the sole judgment of the Commission, the probability that there will be a default on Bonds which remain outstanding;

(ii) Identify the accounts and subaccounts from which monies will be transferred to redeem Bonds;

(iii) Provide for notice of redemption to be given to affected Bond owners, and for the satisfaction of all conditions precedent to the redemption of Bonds;

(iv) Transfer sufficient monies to the Debt Service Fund to accomplish the redemption, in accordance with paragraph (4)(c)(C) of this rule.

(b) Mandatory Redemption:

(A) If Bonds are subject to mandatory redemption according to a schedule specified in a Bond Resolution, the Commission shall provide for notice of redemption to be given to affected Bondowners, and for the satisfaction of all conditions precedent to the redemption of Bonds;

(B) Bonds subject to mandatory redemption according to a schedule specified in a Bond Resolution shall be redeemed from transfers into the Debt Service Account which are made in the same manner as transfers to pay maturing principal and interest on Bonds under section (2) of this rule.

(11) Application of Insufficient Monies: If monies in the Debt Service Account are not sufficient on a Bond Date to permit the Treasurer to transfer to the Paying Agent the amount of Bond Debt service due on that Bond Date, then the available monies shall be allocated as follows:

(a) First — To the payment to the persons entitled to all installments of interest then due on the Bonds, in the order of the maturity of the installments of such interest (with interest on overdue installments of such interest, to the extent permitted by law, at the rate of the overdue installment) and, if the amount available shall not be sufficient to pay in full any particular installment, to the persons entitled thereto, without any discrimination or privilege; and

(b) Second — To the payment to the persons, entitled thereto of the unpaid principal of an premium, if any, on any of the Bonds which shall have become due (other than Bonds matured or called for redemption for the payment of which monies are held pursuant to OAR 123-012-0145 through 123-012-0160), (with interest on overdue installments of principal and premium, if any, to the extent permitted by law, at the interest rate payable on the principal which is unpaid) and, if the amount available shall not be sufficient to pay in full all bonds due on any particular date, then to the payment ratably according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.395

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85;
 EDD 7-1985(Temp), f. & ef. 10-22-85

123-012-0150

Loan Administration Limitation of Liability

(1) The Commission shall prepare a schedule of transfers from the Loan Payment Subaccount to the Debt Service Fund, for each Borrower prior to funding the Borrower's Loan, to verify that the schedule provides for sufficient monies to be available from each Loan to pay Bond Debt Service attributable to each Loan, and to fund each Loan only if the Loan payments are calculated to be sufficient to pay all Bond Debt Service when Due, in accordance with the applicable Bond Resolution and the Commission's Division 12 rules.

(2) Limitation on Liability:

(a) The State may perform any of its duties under the Oregon Umbrella Revenue Bond program by or through attorneys, agents, receivers or employees, but shall not be answerable for the conduct of the same if appointed with due care, and shall be entitled to advice of counsel concerning its duties, and may in all cases pay such reasonable compensation to all attorneys, agents, receivers and employees as may reasonably be employed in connection with its duties. The State may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for a Borrower) selected by the State in the exercise of reasonable care. The State shall not be responsible for any loss or damage resulting from any action or inaction taken or not taken as the case may be, in good faith in reliance upon such opinion or advice;

(b) The State shall not be responsible for any obligations undertaken by a Loan Servicer pursuant to a Loan Participation and Servicing Agreement;

(c) The State shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the State upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any Bond shall be conclusive and binding upon future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof;

(d) About the existence or nonexistence of any fact or about the sufficiency or validity of any instrument, paper or proceeding, the State shall be entitled to rely upon a certificate signed by an authorized agent of a Borrower or a Loan Servicer;

(e) The permissive right of the State to do things enumerated in Commission's Division 12 rules shall not be construed as a duty, and the State shall not be answerable for other than its negligence or willful default;

(f) The State shall not be required to give any bond or surety in respect of the execution of Commission's Division 12 rules or otherwise in respect of the premises;

(g) The State shall have the right, but shall not be required, to demand any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms required as a condition of such action, deemed desirable by the State for the purpose of establishing the right of the State to take any action;

(h) Before exercising any default remedies on behalf of Bondowners, the State may require that a satisfactory indemnity bond be furnished for the reimbursement of any expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful default in connection with any such action.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.310 - ORS 285.397

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85

123-012-0155

Defaults and Remedies

(1) Events of Default. Each of the following events is hereby declared an "Event of Default":

(a) Payment of the principal of or premium, if any, on any Bond shall not be made when and as the same shall become due, whether at maturity or upon call for redemption or otherwise; or

(b) Payment of interest on any of the Bonds shall not be made when and as the same shall become due; or

(c) The parties shall fail or refuse to comply with the provisions of this Commission's Division 12 rules shall default in the performance or observance of any of the covenants, agreements or conditions on their part contained herein or in any Bond Resolution or the bonds, and such failure, refusal continues after written notice thereof is given to the Commission by the owners of not less than 25 percent in principal amount of the Outstanding Bonds.

(2) Remedies:

(a) Upon the happening and continuation of any Event of Default specified in section (1) of this rule, the owners of not less than 25 percent in principal amount of the Outstanding Bonds may:

(A) Petition any court of competent jurisdiction for the appointment of a Trustee to represent the interest of all the owners of the Bonds. Only one such Trustee may be so appointed and only after notice to all Bondowners;

(B) Any Trustee so appointed may, in its own name and subject to the provisions hereof, protect and enforce the rights of the Bondowners by such of the following remedies as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce such rights:

(i) By appropriate proceedings at law or in equity, to enforce all rights of the Bondowners;

(ii) By bringing suit upon the Bonds;

(iii) By action or suit in equity, to require the State to account as if the State were the trustee of an express trust for the owners of the Bond;

(iv) By appropriate judicial proceedings to enjoin any acts or things which are in violation of the laws under which the Bonds are issued or in violation of the rights of the owners of the Bonds; or

(v) By exercising any powers necessary or appropriate under the Act or otherwise incidental to the general representation of the Bondowners in the enforcement and protection of their rights.

(C) Declare the principal amount of all outstanding Bonds immediately due and payable by filing a written declaration, signed by the registered owners of not less than 25 percent in principal amount of the Outstanding Bonds, with the Bond registrar. The registrar shall promptly give notice of such acceleration to all Bondowners.

(3) Termination of Proceedings: In case any proceedings taken by any appointed Trustee on account of any Event of Default shall have been discontinued or abandoned for any reasons, then in every such case the State, any Trustee and the Bondowners shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of any such Trustee shall continue as though no such proceeding had been taken.

(4) Limitation on Rights of Bondowners: No owner of any Bond shall have any right to institute any suit, action mandamus or other proceeding in equity or at law or for the protection or enforcement of any right under the Commission's Division 12 rules unless the owners of not less than 25 percent in principal amount of the Bonds then Outstanding shall have made written request of any appointed Trustee after the right to exercise such powers of right of action, as the case may be, shall have occurred, and shall have afforded any such Trustee a reasonable opportunity either to proceed to exercise the powers granted or granted under the law or to institute such action, suit or proceeding in its name and unless, also, there shall have been offered to any Trustee reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and any such Trustee shall have refused or neglected to comply with such request within a reasonable time; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of any such Trustee, to be conditions precedent to the execution of

the powers under the Commission's Division 12 rules or for any other remedy or by law. No one or more owner of the Bonds hereby secured shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of the Commission or to enforce any right or under law with respect to the Bonds, except in the manner provided and for the benefit of all owners of the Outstanding Bonds. Nothing contained in this rule shall affect or impair the right of any Bondowners to enforce the payment of the principal of an interest on his Bonds from the sums available therefor.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.310 - ORS 285.397

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85

123-012-0160

Amendment

Procedure for Obtaining Bondowner Consent:

(1) Consent of Bondowners to amendment under OAR 123-012-0155 shall be requested in writing mailed by certified mail to each Bondowner not less than 20 days prior to the date by which consent is requested (the "Consent Date"). Notices shall be mailed to the Bondowner listed in the Bond Register on the tenth day prior to the mailing, and shall include a written form on which the Bondowner may indicate consent or refusal.

(2) The notice and form shall state:

(a) The address to which the form would be returned by the Consent Date, and the Consent Date;

(b) The text of the provision which is proposed to be amended;

(c) The text of the new amending provision and its effective date;

(d) The reason for the proposed amendment; and

(e) That the Bondowner will be deemed to have consented if the form has not been received by the Commission on or before the Consent Date.

(3) Not earlier than the day following the Consent Date, the Commission shall tally the number of consents received or deemed given, and the number of refusals. If sufficient consents have been received or the proposed amendment shall take effect on the effective date indicated in the notice.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.310 - ORS 285.397

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85

123-012-0165

Defeasance

Conditions for Defeasance. If:

(1) Cash or Government Obligations are deposited irrevocably in escrow for the payment of all or any portion of the Outstanding Bonds, together with irrevocable instructions for the application of the escrow to pay Bond Debt Service;

(2) An opinion is obtained from a certified public accountant that cash and the principal and interest to be received from the Government Obligations are calculated to be sufficient, without further reinvestment, to pay when due all principal, interest and premium (if any), due on the Bonds to be deceased, either at maturity or on prior redemption;

(3) An opinion is obtained from nationally recognized bond counsel that the proposed defeasance will not cause the interest paid on the Bonds to be deceased to become taxable under federal income tax laws; and

(4) The Commission and the Treasurer irrevocably call for redemption any Bonds to be redeemed in connection with the defeasance, and provide for the satisfaction of all conditions precedent to such redemption; then the Bonds so deceased shall be paid solely from the monies available in escrow, and the parties shall have no further obligation to make payments or transfers of funds hereunder for such Bonds.

Stat. Auth.: ORS 280

Stats. Implemented: ORS 285.310 - ORS 285.397

Hist.: EDD 5-1984(Temp), f. & ef. 9-25-84; EDD 2-1985, f. & ef. 3-7-85

DIVISION 15

ELIGIBILITY AND APPLICATION PROCEDURES FOR EMERGENCY ECONOMIC ASSISTANCE

123-015-0005

Eligibility Requirements for Assistance

The Economic Development Commission will consider applications for emergency technical assistance projects in communities that meet all of the following requirements for eligibility:

(1) The applicant must be the governing body of a city or other political subdivision of the state, a consortium of local governments, or a regional governmental agency.

(2) The applicant must describe and delineate boundaries of the community for which emergency assistance is requested. For these purposes, a community is an area or locality which:

(a) Has common economic interests and which is directly affected by an economic emergency;

(b) Is not limited to a city, county, or other political subdivision and need not, but may be, limited by political lines and boundaries;

(c) May be a large populous area containing several communities under one or more local governmental jurisdictions.

(3) The applicant must appoint a local economic action team, which must broadly represent the principal economic interests in the community, including small business, the professions, management, labor and local government officials. If a community requiring assistance is located within the jurisdictions of more than one city or county, the city councils and/or boards of county commissioners must jointly appoint the local economic action team.

(4) The local economic action team must prepare and recommend to the governing body of the community a statement describing the nature and extent of the economic emergency. The statement should explain the existing or expected economic problems and their impact on the community. The statement should also tentatively identify action that the community may take or has taken to solve economic problems. The statement may be brief, and may be altered in subsequent plans.

(5) An economic emergency is deemed to exist when:

(a) One or more businesses in the community close, or have announced their impending closure other than a seasonal closure, and which can reasonably be expected to remain closed for a period of at least four months; and

(b) The closure or impending closure has caused or will probably cause the loss of jobs of more than 100 employees, or least two percent of the total work force in the community.

(6) The applicant must declare that a state of economic emergency exists in the community, and the applicant is a community requiring assistance under this program.

Stat. Auth.: Ch. 505, OL 1981

Stats. Implemented: Ch. 505, OL 1981

Hist.: EDD 1-1981, f. & ef. 10-7-81

123-015-0010

Applicant Procedures for Assistance

The Economic Development Commission will consider applications in the order received according to the following procedures:

(1) Applications submitted by eligible communities as a prerequisite for assistance must contain the following:

(a) A resolution adopted by the governing body of the community creating a local economic action team and appointing citizen volunteers from the community. Names and affiliations of members must be included;

(b) A resolution adopted by the governing body of the community accepting the recommendations of the local economic action team, declaring an emergency, and requesting the Economic Development Commission to certify eligibility of the community to receive technical assistance. The resolution must include the statement prepared by the local economic action team, and a description of the boundaries of the community for which assistance is requested.

(2) The Economic Development Commission will determine eligibility of communities within 35 days and will recommend for approval by the Governor those communities eligible for assistance.

(3) Following approval by the Governor of the eligibility of communities for emergency assistance under this program, the Economic Development Commission will notify eligible communities of their status and assign a priority to each application for emergency technical assistance projects in accordance with the following criteria:

(a) The financial and other state resources committed to this program;

(b) The severity of the economic emergency in terms of the economic and social impacts on the community such as the level of unemployment, loss of payrolls, bankruptcies, or mortgage foreclosures;

(c) The responsiveness of the applicant to the emergency and the degree of local initiative and commitment to solving the problem;

(d) The extent to which the recommendations of the local economic action team anticipate carrying out a plan for economic development designed to correct the problems;

(e) The capability of the eligible applicant to carry out a local program of economic adjustment and development;

(f) Location of the community within a designated Economically Lagging Area as determined by the OAR Chapter 123, Division 14.

Stat. Auth.: Ch. 505, OL 1981

Stats. Implemented: Ch. 505, OL 1981

Hist.: EDD 1-1981, f. & ef. 10-7-81

123-015-0015

State Agency Coordination

The Economic Development Commission is the primary appointed state body with authority to govern coordination of the responsibilities of state agencies in economic emergencies. In carrying out this responsibility, the Commission will:

(1) Notify appropriate state agencies of eligible applicants as determined in accordance with OAR 123-015-0010(2).

(2) Require state agencies to report to the Commission within ten days the status of their involvement in and assistance to the communities for which eligibility has been determined.

(3) Appoint representatives of state agencies from a list approved by the Governor for assignment to advisory teams designated to coordinate state assistance for eligible communities.

(4) Appoint one or more representatives from the Department of Economic Development, and designated as the lead coordinator of the state's economic advisory team.

(5) Assign a state economic advisory team to each community for which eligibility has been determined by the Commission and approved by the Governor, such advisory teams to have the following duties:

(a) Meet with the community's local economic action team within ten days of assignment;

(b) Coordinate the responses of state agencies in providing assistance to the community with an economic emergency;

(c) Provide information and assist communities to obtain assistance from federal, state and local sources;

(d) Assist the community to prepare an economic adjustment strategy within 120 days of the initial meeting with the local economic action team, such economic adjustment strategy to be consistent with the purposes of Chapter 505, Oregon Laws, 1981 and which must contain the following:

(A) An identification of each economic development and adjustment need of the community for which further assistance may be sought. This should include an explanation of anticipated or existing economic problems and their impact on the community;

(B) A description of each activity planned to meet each need. This explanation should include all actions that the community has taken or plans to take regardless of whether funding is sought

for them, and should explain how each action will contribute to the solution of the economic problems;

(C) A statement of objectives or expected results from each activity. For example, a public health project might provide employment for 100 people and treat 3,000 persons a year, and induce new industry to move into the community;

(D) Evidence that the economic adjustment strategy was prepared in cooperation with state and regional public agencies, political subdivisions and economic development agencies that may be affected by implementation of the plan. This would include reference to existing local economic plan elements of comprehensive plans and assurances that the assistance program is consistent with the Statewide Planning Goals.

(e) Report to the Commission the results of carrying out duties in subsections (a) through (d) of this section.

Stat. Auth.: Ch. 505, OL 1981

Stats. Implemented: Ch. 505, OL 1981

Hist.: EDD 1-1981, f. & ef. 10-7-81

DIVISION 16

OPERATION OF THE OREGON STABILIZATION AND CONVERSION FUND — FEASIBILITY STUDIES AND TECHNICAL ASSISTANCE AND MANAGEMENT CONSULTING

123-016-0000

Purpose

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

Stat. Auth: ORS 184

Stats. Implemented: ORS 285.120

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

123-016-0010

Definitions

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

(1) "Applicant" means any county, municipality, local development group, worker group, non-profit corporation, or person requesting the Commission to expend funds from the Oregon Stabilization and Conversion Fund.

(2) "Local Development Group" means any public or private corporation which 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.

(3) "Municipality" means any city, municipal corporation, or quasi-municipal corporation, including a port district.

(4) "Person" means any individual, association of individuals, joint venture, partnership or corporation whose primary business is in a troubled industrial facility.

(5) "Commission" means the Economic Development Commission appointed under ORS 184.006.

(6) "Department" means the Economic Development Department created under ORS 184.125.

(7) "Fund" means the Oregon Stabilization and Conversion Fund.

(8) "Director" means the Director of the Economic Development Department appointed under ORS 184.135.

(9) "Facility" refers to an industrial plant in a given location in Oregon without reference to the location of the parent corporation or other operations owned by the same parent company.

(10) "Technical assistance and management consulting" means providing experts and qualified persons to private firms to assist managers and/or owners identify and solve problems that may lead to a major layoff or closure of the company. The problems to be addressed may include (but are not limited to) manage-

ment improvements, marketing problems, financial problems, equipment needs, productivity improvements, production control, cost and pricing systems, and/or ownership.

(11) "Feasibility study" means a study conducted to analyze the feasibility of reopening, keeping open, or converting a troubled industrial facility to another product, market or ownership structure.

(12) "A troubled industrial facility" refers to an existing Oregon facility which has declining profits, declining sales and/or declining employment and/or an erosion of working capital which could lead to major layoffs or a plant closing. The facility must be involved in one or more of the following activities:

- (a) Manufacturing or other industrial production;
- (b) Agriculture development or food processing;
- (c) Aquaculture development or seafood processing;
- (d) Wood products processing;
- (e) Mining or minerals processing.

(13) "Conversion" includes conversion of the facility to a new product, or market, or the conversion of a company's ownership structure, including an employee buy out.

Stat. Auth.: ORS 183.310 - ORS 183.550 & ORS 285A.110

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

123-016-0020

Eligibility for Technical Assistance and Management Consulting

(1) Eligible projects are technical assistance and management consulting services as defined in OAR 123-016-0010.

(2) Eligible applicants are troubled industrial facilities as defined in OAR 123-016-0010.

(3) Technical assistance and management consulting services may be provided in two phases:

(a) Phase one includes, but is not limited to, evaluation of, and recommendations for resolution of current problems in a troubled industrial facility.

(b) Phase two includes more extensive involvement with a troubled industrial facility where the economic survival of the facility or person is in serious question. When the results of phase one state that the continued operation of the facility is threatened, the loss of the facility would have an adverse economic impact on the community, and the person does not have the necessary financial resources to affect a turn-around, the Department may provide additional technical assistance to the facility.

(4) The relocation of a facility from one labor market in Oregon to another is not a permissible subject of technical assistance or management consulting services.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.120

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

123-016-0030

Application Procedure for Technical Assistance and Management Consulting

(1) Application shall be made to the Economic Development Department on a form prescribed and provided by the Department.

(2) The Department may request any additional information necessary to making a final determination on expenditures for professional services.

(3) The Department may require an environmental quality review of the industrial facility to be analyzed by the technical assistance and management consulting services.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.120

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

123-016-0040

Application Approval Procedures for Technical Assistance and Management Consulting

(1) All applications shall be reviewed by the Department.

(2) The Commission may also designate an advisory committee to review applications and make recommendations to the Department.

(3) The Commission shall either approve, deny, request additional information or recommend a modification to the application.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.120

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

123-016-0050

Eligibility for Feasibility Studies

(1) Eligible projects are feasibility studies as defined in OAR 123-016-0010.

(2) Eligible purposes are feasibility studies of:

(a) Closed facilities to determine a new product, market or ownership structure.

(b) Troubled facilities to determine the economic viability of a conversion to a new product, market or ownership structure where such analysis is needed to avoid a closure.

(3) Eligible applicants are those defined in OAR 123-016-0010(1) that represent a troubled industrial facility as defined in OAR 123-016-0010(12).

(4) The possible relocation of an industrial facility from one labor market in Oregon to another is not a permissible subject of a feasibility study.

(5) To be eligible for a feasibility study, a troubled industrial facility must be evaluated under the technical assistance and management consulting portion of the program, and such evaluation must have resulted in a Department recommendation that a feasibility study be performed. In the event of a closed facility, the Department or its agent must recommend that a feasibility study be performed based on the reasonable probability of restarting or converting the facility.

(6) Feasibility studies may include (but are not limited to), the following:

(a) A proposal to convert an existing industrial facility to a new use.

(b) An analysis of new products and markets for an existing industrial facility.

(c) An assessment and appraisal of all the industrial facility's assets to be purchased.

(d) An analysis of the management structure at an industrial facility.

(e) An analysis of the financial structure of an industrial facility.

(f) An analysis of the alternative ownership possibilities for an industrial facility, including employee ownership.

(7) A feasibility study of an industrial facility should consider reemploying or continuing the employment of that facility's former or existing labor force.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.120

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

123-016-0060

Feasibility Study Application Procedure

(1) Application shall be made to the Economic Development Department on a form prescribed and provided by the Department.

(2) The Department may request any additional information necessary to make a final determination on expenditures for feasibility studies.

(3) The Department may require a cost-benefit analysis of the project to help determine whether a feasibility study is necessary.

(4) The Department may require an environmental quality review of the project to be analyzed by the feasibility study.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.120

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

123-016-0070

Feasibility Study Application Approval

(1) Applications shall be reviewed by the Department. The Commission may also designate an advisory committee to review applications.

(2) The Commission shall either approve, deny, request additional information or recommend a modification to the application

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.120

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

123-016-0080

Preferences

The Commission shall give preference in expending funds for technical assistance and management consulting services and feasibility studies to troubled industrial facilities which have the following characteristics:

(1) The facility is located in an economically lagging area as designated under ORS 280.630.

(2) The facility is primarily engaged in the forestry, agriculture or fishing industries.

(3) The facility's products compete in markets for which national or international competition exists.

(4) The facility has the potential of becoming employee-owned.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.120

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

123-016-0090

Expenditures

(1) The Commission may expend moneys from the fund for the purposes of conducting feasibility studies and technical assistance and management consulting of troubled companies.

(2) The Commission's expenditure for a feasibility study may not exceed \$30,000 per applicant.

(3) A minimum of 25 percent of feasibility study cost must be contributed by the applicant in cash.

(4) The Commission's expenditures for technical assistance and management consulting may not exceed \$15,000 for any one firm per applicant.

(5) The Commission may contract for feasibility studies and technical assistance and management consulting and must assure that contractors have expertise in this area and that costs are consistent with usual and customary rates. The Commission will only engage contractors who can demonstrate adequate expertise and experience in conducting business feasibility studies or, in the case of professional services, are certified, licensed, or otherwise experienced and qualified in their field.

(6) All services connected with feasibility studies must be completed within one year from the date of approval of expenditure by the Department.

(7) The Commission may contract with a non-profit corporation to perform technical assistance to employee-owned industrial facilities or employee-ownership groups as defined in ORS 1987 Chapter 677.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.120

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

123-016-0100

Confidential Records

All records of troubled industrial facilities and persons associated with such facilities that are covered by ORS 192.500 are subject to absolute confidentiality as provided in ORS 192.500.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.120

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

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 - ORS 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 Economic and Community Development Commission, the Finance Committee and the Economic and Community Development Department to make loans from the Oregon Business Development Fund to qualified applicants without regard to race, color, creed, sex, age or national origin. Members of Oregon's minority and women business community are particularly encouraged to apply.

(2) Seventeen percent of the available money in the Fund shall be set aside for loans of \$50,000 or less.

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

(4) 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 the ability to transfer from time to time up to \$5 million into or out of the Oregon Targeted Development Account.

Stat. Auth.: ORS 285A.110

Stats. Implemented: ORS 285B.050 - ORS 285B.059, ORS 285B.153, SB 402 & SB 1128

Hist.: 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 11-1999, f. & cert. ef. 10-11-99

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 Finance Committee shall adopt standards and procedures for the operation of the Fund. Such standards and procedures shall not be inconsistent with any part of this rule.

(3) The Department shall send to each member of the Commission a summary of each project to be considered by the Finance Committee. Commissioners shall receive such summaries in sufficient time to comment on the projects orally or in writing, 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 Fund with such frequency 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 Fund.

(6) 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 \$50,000 or less, by the Director.

(7) When applicable, the references to the Finance Committee shall include the Director, acting in regard to loans for business development projects of \$50,000 or less pursuant to ORS 285B.080(3).

Stat. Auth.: ORS 285A.110

Stats. Implemented: ORS 285B.050 - ORS 285B.098 & SB 1128

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

123-017-0010

Definitions

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

(1) "Applicant" means any county, municipality, person or any combination of counties, municipalities and persons applying for a loan from the Oregon Business Development Fund.

(2) "Collateral" means property subject to a security interest, as defined in ORS 79.1050.

(3)(a) "Commission" means the Economic and Community Development Commission appointed under ORS 285A.040;

(b) "Finance Committee" means the Finance Committee for the Oregon Economic and Community Development Commission as authorized in ORS 285A.080.

(4) "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) Tourist 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 is 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.

(5) "Department" means the Economic and Community Development Department created under ORS 285A.075.

(6) "Director" means the Director of the Economic and Community Development Department appointed under ORS 285.070(3) or designee.

(7) "Financial Institution" means any financial institution defined under ORS 706.008.

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

(9) "Local Development Group" means any public or private corporation which 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.

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

(11) "Person" means any individual, association of individuals, joint venture, partnership or corporation.

(12) "Emerging Small Business" means any emerging small business as defined in ORS 200.005 which includes:

(a) A business with its principal place of business located in this state;

(b) A business with average annual gross receipts over the last three years not exceeding \$1 million for construction firms and \$300,000 for nonconstruction firms;

(c) A business which has fewer than 20 employees;

(d) An independent business;

(e) A business properly licensed and legally registered in this state; and

(f) A business which is not a subsidiary or parent company belonging to a group of firms which are owned and controlled by the same individuals which have annual gross receipts in excess of \$1 million for construction or \$300,000 for nonconstruction firms over the last three years.

(13) "Distressed Area" means any area designated as a distressed area by the Department under ORS 285A.010.

(14) "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.

(15) "Destination resort" means a project which have a significant impact on the regional tourism economy and have 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.

Stat. Auth.: ORS 285A.110

Stats. Implemented: ORS 285B.050, SB 402 & SB 1128

Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. 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

123-017-0015

Eligibility

(1) Eligible projects are business development projects as defined in OAR 123-017-0010(4). If the Department is unable to obtain a sufficient number of approvable applications to meet the requirements of ORS 285B.059(6), it may, notwithstanding the limitations imposed by ORS 285B.050(1)(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.

(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 not an eligible activity unless:

(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) 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 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 facility.

(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) Substantial strengthening of applicant's management has occurred;

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

(d) Existing lenders agree to extend due dates, provide additional financing or provide other favorable terms to the applicant; and

(e) The applicant meets all other requirements set forth in statute or 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.

Stat. Auth.: ORS 285A.110

Stats. Implemented: ORS 285B.059, ORS 285B.080(3) & SB 402

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 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

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 in making loans to those projects which demonstrate an overall community benefit and which have one or more of the following characteristics:

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

(b) Are operated by businesses with fewer than 50 employees;

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

(d) Are located in Enterprise Zones designated under ORS 285B.650 - 285B.728;

(e) Make use of the skills of the 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 (less than three years old, or firms making the transition from research and development to production) comes 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 offer severe adverse competitive disadvantage to an existing business.

(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.110

Stats. Implemented: ORS 285B.059 & SB 402

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

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 a \$100 application fee.

(3) If the amount of the loan being sought from the Fund is \$50,000 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 \$50,000 the Department shall make a recommendation to the Finance Committee which may in its sole discretion approve or deny the loan request.

(5) Except in the case of a loan made from the Oregon Targeted Development Account, the applicant shall obtain the necessary resolution of support from the city or county having jurisdiction over the project site.

(6) 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 Finance Committee or the Director may have conditioned its approval of the loan. Any 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 \$50,000 or less.

Stat. Auth.: ORS 285A.110

Stats. Implemented: ORS 285B.053 & SB 402

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

123-017-0030

Loan Conditions

(1) The Director (for loan requests of \$50,000 or less) or the Finance Committee may approve a loan request if it finds that:

(a) Fund participation in any financing shall not exceed forty 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.

(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. 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 Economic Development Department may make loans to emerging small businesses 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, and the applicant's financial resources are adequate to assure success of the project.

(f) The applicant has not received or entered into a contract or contracts exceeding \$500,000 with the State of Oregon under authority of ORS 285B.050 - 285B.098, for the previous 365 days, nor is there an amount equal to 20 percent or more of the total value of the Fund in outstanding loans with the Commission at any one time for business development projects located in the same county as the proposed project. The restrictions in subsection (f) of this rule do not apply to loans of \$100,000 or less or to loans to emerging small businesses.

(g) Except in the case of a loan made from the Oregon Targeted Development Account, the Housing and Community Services Department received notification of the proposed project and any related workforce increase at the time the application was received by the Commission.

(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 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. However, Oregon Business Development Fund loans are not necessarily or automatically assumable.

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

Stat. Auth.: ORS 285A.110

Stats. Implemented: ORS 285B.059 & SB 402

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

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 \$500,000, secured by good and sufficient collateral (except as noted in OAR 123-017-0030(3)), which 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 to emerging small businesses, as defined in ORS 200.005, which are located in or draw their workforces from within distressed areas as determined by the Economic Development Department shall be made at a rate of one percentage point (1%) less than such prevailing interest rate. Loans made from the Oregon Targeted Development Account shall be made at a fixed rate of four percentage points less than the prevailing prime rate. 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) which 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;

(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 20 years from the date of the contract, whichever is less. 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. Loans from the Oregon Targeted Development Account shall be for a maximum term of 5 years, with a maximum amortization of 15 years. The term of the loan from the Oregon Targeted Development Account may be extended by the Finance Committee, with any additional terms and conditions, including interest rate, that it may determine. The payment schedule shall include repayment of interest which 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;

(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, declare the entire outstanding indebtedness to be forthwith due and payable and assign the loan to the Attorney General for collection.

(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 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 business development project financed by the Oregon Business Development Fund if the Borrower is delinquent in the repayment of any moneys due the Oregon Business Development Fund.

(6) That the Borrower shall, six months after the loan proceeds are expended and each annually thereafter for a total period of five years, or for the life of the loan, whichever is greater, report to the Director the number of jobs created/saved by the project financed, in a form as provided by the Department.

(7) 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, worker's compensation, unemployment insurance and flood insurance (if applicable); and

(d) All out-of-pocket costs associated with the loan closing including but not limited to filing and recording fees, title insurance and appraisals.

(8) That the Borrower will provide to the Department on an annual basis, within 90 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.

(9) That the Borrower will provide an assignment of life insurance on active principals in Borrower. In cases of abundant collateral and substantial depth in management, the Finance Committee may waive this requirement.

(10) In the case of loans of more than \$50,000 which are funded by proceeds from the Oregon Lottery, that the Borrower

shall under take a good faith effort to hire and retain as employees 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.

(11) 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 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.

(12) In the case where a project involves building construction, expansion, rehabilitation or modification, a loan from the Fund shall be permanent and not interim financing.

(13) Loans made in whole or part from the Oregon Targeted Development Account are not subject to ORS 285B.059(1)(e) to (g), (2) and (5).

Stat. Auth.: ORS 285A.110

Stats. Implemented: ORS 285B.062 & SB 402

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

123-017-0037

Appeals, Servicing, Amendments and Modifications

(1) If the Director denies a loan request, the denied 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 Director or 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) A denied 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 an additional \$100 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 its payment arrives in the Department 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. 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 may approve such requested amendment or modification.

(8) If the Director, the Finance Committee, its Chairperson or designee, consents to any requested modification or amendment, 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.110

Stats. Implemented: ORS 285B.059, ORS 285B.062 & SB 402

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

123-017-0040

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 285A.110

Stats. Implemented: ORS 192.430, ORS 285.035(5) & SB 1128

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 5-1990, f. & cert. ef. 3-5-90; EDD 11-1999, f. & cert. ef. 10-11-99

123-017-0055

Fees and Charges

(1) The Department shall charge and collect a fee of \$100 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, 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 local development group, county or municipality for packaging the loan, processing applications, investigating proposed business development projects and servicing outstanding loans. The additional amount of up to one and one-half percent may be paid for projects which are located in an enterprise zone or for which the OBDF loan being sought is not more than \$50,000, or which are operated by an emerging small enterprise which is located in, or draws its workforce primarily from, a distressed area. 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.110

Stats. Implemented: ORS 285B.056, ORS 285B.068 & SB 402

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

DIVISION 18

CAPITAL ACCESS PROGRAM

123-018-0000

Purpose

The purpose of these rules (hereafter, the “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.

Stat. Auth.: ORS 183.310 - ORS 183.550 & ORS 285.507 - ORS 285.527

Stats. Implemented: ORS 285.507 - ORS 285.527

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

123-018-0010

Definitions

As used in ORS 285B.126, HB 2251 (1991), or these Rules, the following terms shall have the following definitions, unless the context otherwise requires.

(1) “Agreement” means a contract between a Financial Institution and the Department authorizing the Financial Institution to participate in the Program under the terms and conditions specified in the Agreement.

(2) “Borrower” means a Qualified Business that has received a Qualified Loan from a Lender.

(a) If the Lender is a member bank as defined in **12 CFR 215.2(g) (1990)** or a banking institution, national bank, extra national institution or foreign institution as defined in ORS 706.005, and notwithstanding ORS 708.460, a Borrower may not be an executive officer, director, or principal shareholder of the Lender, or a member of the immediate family of an executive officer, director or principal shareholder of the Lender or a related interest of any such executive officer, director, principal shareholder or member of the immediate family. For the purposes of this subsection, the terms “executive officer,” “director,” “principal shareholder,” “immediate family” and “related interest” shall have the meanings set out in **12 CFR 215.2 (1990)**.

(b) If the Lender is a federal association or a savings association as defined in ORS 722.004, and notwithstanding ORS 722.108 and 722.342, a Borrower may not be an “affiliated person” of a federal association or a savings association as that term is defined in **12 CFR 561.5 (1990)**.

(c) If the Lender is a federal credit union, a credit union as defined in ORS 723.006 or an out-of-state credit union doing business in Oregon under ORS 723.042, and notwithstanding ORS 723.532, a Borrower may not be an official, immediate family member of an official or any individual having a common ownership, investment or other pecuniary interest in a business enterprise with an official or with an immediate family member of an official. For the purposes of this subsection an “official” shall mean any member of the board of directors, credit committee or supervisory committee of the Lender and “immediate family member” shall mean the spouse or any other family member living in the official's household.

(3) “Brownfield”: Means any real property where expansion or redevelopment is complicated by real or perceived environmental contamination.

(4) “Common Enterprise” has the same meaning given to it in **12 CFR section 32.5(a)(2) (1989)**.

(5) “Department” means the Economic Development Department created by ORS 184.125.

(6) “Distressed Area”: A county, incorporated city, or sub-city area will be considered a “Distressed Area” if it meets one or more of the following criteria set forth under OAR 123-024-0000 through 0040. All geographic areas within a county designated by the department as a distressed area shall be considered to be distressed areas.

(7) “Enrolled Loan” means a Qualified Loan enrolled in the Program, as provided for in Section 123-018-0055 of the Rules.

(8) “Fees” means a non-refundable fee of no less than one and one-half percent (1.5%) and no more than three and one-half percent (3 1/2 %) of the principal amount of the Qualified Loan charged by the Lender to the Borrower. In addition, the Lender shall pay a non-refundable fee equal to the fee paid by the Borrower. The Lender may obtain their Fee from the Borrower.

(9) “Financial Institution” means a financial institution, as defined in ORS 285B.126.

(10) “Fund” means the Capital Access Fund in the State Treasury.

(11) “Lender” means a Participating Financial Institution that has enrolled one or more Qualified Loans under the Program.

(12) “Loss” means any principal amount due and not paid, accrued interest due and not paid, and documented out of pocket collection expenses, at the time the Lender determines, in a manner consistent with its normal method for making such determinations on business loans which are not Enrolled Loans, that a Qualified 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 such covered principal amount, from the date the Qualified Loan is made.

(13) “Loss Reserve Account” means a deposit account maintained by the Department with a Participating Financial Institution, or an account maintained by the Department in the State Treasury, to cover Losses sustained by the Participating Financial Institution on Enrolled Loans.

(14) “Participating Financial Institution” means a Financial Institution that has executed an Agreement with the Department to participate in the Program.

(15) “Primary Economic Effect” means that the majority of economic benefit resulting from a business activity occurs in Oregon. It shall be conclusively presumed that the Primary Economic Effect is in Oregon if either of the following conditions exists:

(a) At least 51 per cent of the total revenues of the Qualified Business are generated in Oregon;

(b) At least 51 per cent of the total jobs of the Qualified Business are created or retained in Oregon.

(16) “Program” means the Capital Access Program authorized by 285.B120 to 285B.150.

(17) “Qualified Business” means a corporation, partnership, joint venture, sole proprietorship, cooperative, or other entity, doing business for profit or not for profit, which is authorized to conduct business in the State of Oregon.

(18) “Qualified Loan” means a loan, portion of a loan, the amount of additional loan in excess of a loan that is refinanced, or the maximum amount that may be drawn down against a line of credit, extended by a Lender to a Qualified Business, for any business activity which has its Primary Economic Effect in Oregon. Excluded from the term are:

(a) A loan for the construction or purchase of residential housing of any kind;

(b) A loan for the purchase of real property that is not used for the business operations of the Borrower. Included in this exclusion is real estate ownership for the purpose of deriving income from speculation, trade, lease or rental, and construction loans for real estate not required for the business operations of the Borrower;

(c) A loan for the refinancing of the remaining principal balance of an existing loan.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 285B.126

Stats. Implemented: ORS 285B.138 & OL 1997, Ch. 686

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

123-018-0020

Authority to Implement Program

The Manager, Business Finance Section of the Department, or his/her designee, is authorized to execute any document reasonably necessary or convenient to implement the Program.

Stat. Auth.: ORS 183.310 - ORS 183.550 & ORS 285.507 - ORS 285.527

Stats. Implemented: ORS 285.507 - ORS 285.527

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

123-018-0030

Program Registration Procedure

(1) A Financial Institution wishing to participate in the Program will complete a program registration application on a form provided by the Department. The Department shall determine the Financial Institution's eligibility to participate in the Program from the information provided, or from such other information as the Department may deem necessary.

(2) A Financial Institution that is eligible to participate in the Program shall enter into an Agreement with the Department on a form provided by the Department.

Stat. Auth.: ORS 183.310 - ORS 183.550 & ORS 285.507 - ORS 285.527

Stats. Implemented: ORS 285.513

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

123-018-0040

Agreement

The Agreement entered into by the Participating Financial Institution and the Department shall provide for:

(1) The creation of a Loss Reserve Account by the Department, owned by the Department and for the benefit of the Participating Financial Institution.

(2) The limitation of liability of the State of Oregon and the Department to the Participating Financial Institution to the balance in the Loss Reserve Account of the Participating Financial Institution.

(3) The terms and conditions of Qualified Loans to be determined solely by agreement of the Lender and Borrower.

(4) The enrollment of Qualified Loans in the Program.

(5) The deposit of funds by the Borrower, the Lender, and, subject to the availability of money in the Fund, the Department, into the Loss Reserve Account when the Lender makes a Qualified Loan to the Borrower.

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

(7) Payment by the Department from a Loss Reserve Account to a Lender to reimburse it for any Loss.

(8) Disposition of any recoveries from a Borrower made by the Lender 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 Lender in collateral, personal guarantees, and all other forms of security for the Qualified Loan.

(10) Conditions for withdrawal by the Department of excess balances in a Loss Reserve Account.

(11) 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) Withdrawal by a Lender from the Program, and disposition by the Department of any remaining balance in the Loss Reserve Account.

(14) Periodic reporting to the Department by the Lender as required by the Department.

(15) Inspection by the Department of the pertinent files of the Lender relating to Enrolled Loans.

(16) Transmittal to the Department by the applicable state or federal regulatory body of the Lender of any public information directly relating to the Lender's participation in the Program.

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

Stat. Auth.: ORS 183.310 - ORS 183.550 & ORS 285.507 - ORS 285.527

Stats. Implemented: ORS 285.513

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

123-018-0050

Establishing a Loss Reserve Account

Upon the execution of the Agreement with the Participating Financial Institution, the Department shall establish a Loss Reserve Account to receive all Fees as described in OAR 123-018-0070 from the Borrower and the Lender and the Department's matching contribution which shall be transferred from the Fund. 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-paying deposit.

Stat. Auth.: ORS 183.310 - ORS 183.550 & ORS 285.507 - ORS 285.527

Stats. Implemented: ORS 285.515 & ORS 285.527(4)

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

123-018-0055

Procedure for Enrollment of a Qualified Loan

(1) A Lender shall enroll a Qualified Loan under the Program:

(a) By notifying the Department in writing, on a form prescribed by the Department and thirty (30) days after the Qualified Loan is made, that it is enrolling a Qualified Loan. For purposes of this section, the date on which the Lender makes a Qualified Loan is the earlier of the date on which the Lender first disburses proceeds of the Qualified Loan to the Borrower, or the date on which the loan documents have been executed and the Lender has obligated itself to disburse proceeds of the loan and;

(b) By transmitting to the Department the Fees collected from the Lender and the Borrower in connection with the Qualified Loan. When the Loss Reserve Account is domiciled with the Lender, the deposit of Fees by the Lender to the Loss Reserve Account, with written notification by the Lender to the Department confirming such deposit, shall be deemed the transmitting of Fees by the Lender to the Department and shall satisfy the requirements of this section.

(2) The Department shall, upon receipt of documentation and Fees from the Lender as described in OAR 123-013-0055(1), enroll the Qualified Loan if the Department is satisfied that the Qualified Loan is eligible. The Department shall notify the Lender of enrollment within ten business days from receipt of documentation and Fees, in such form as will be determined by the Department.

(3) When the requirements of OAR 123-018-0055(1)(b) are met, the Department shall also transfer from the Fund to the Loss Reserve Account an amount equal to the combined amount of Fees paid by the Borrower and the Lender; except when the Qualified Loan has been made to a Borrower in a Distressed Area or for use in the evaluation of Brownsfields on or before June 30, 1999, the Department shall transfer from the Fund to the Loss Reserve Account an amount equal to two times the combined Fees paid by the Borrower and the Lender.

(4) The amounts transferred by the Department from the Fund to the Loss Reserve Account of one or more Lenders in connection with any one Borrower, or any group of Borrowers among which a Common Enterprise exists, shall not exceed \$35,000.

(5) Before or when making a Qualified Loan, a Lender may obtain from the Department a commitment that funds sufficient to meet the Department's contribution required in OAR 123-018-0055(3) are available in the Fund to transfer to the Loss Reserve Account when the Qualified Loan is enrolled. The commitment shall be binding on the Department for thirty (30) days after the date of the reservation if the Lender has complied with OAR 123-018-0055(1).

Stat. Auth.: ORS 285B.126

Stats. Implemented: ORS 285B.138 & OL 1997, Ch. 686

Hist.: EDD 3-1991, f. & cert. ef. 4-17-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 1-1994(Temp), f. & cert. ef. 1-11-94; EDD 9-1998, f. & cert. ef. 5-22-98

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.

ment, and are controlled solely by the Department. The Department may withdraw funds from a Loss Reserve Account only as provided for in these Rules.

(2) Any earnings on the balance in a Loss Reserve Account are deemed to be part of the Loss Reserve Account.

(3) The Department may withdraw at any time and for use as deemed appropriate by the Department a maximum of 50 percent of all earnings that have been credited to the Loss Reserve Account, with such withdrawal limited to a maximum of 50 percent of earnings credited to the Loss Reserve Account since the last such withdrawal.

Stat. Auth.: ORS 183.310 - ORS 183.550 & ORS 285.507 - ORS 285.527

Stats. Implemented: ORS 285.515

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

123-018-0070

Fees

When making an Enrolled Loan, the Lender shall charge the Borrower a Fee and the Lender shall match the Fee.

Stat. Auth.: ORS 183.310 - ORS 183.550 & ORS 285.507 - ORS 285.527

Stats. Implemented: ORS 285.517(2)

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

123-018-0080

Procedure for Enrollment of a Qualified Loan

(1) A Lender shall enroll a Qualified Loan under the Program:

(a) By notifying the Department in writing, on a form prescribed by the Department and within ten days after the Qualified Loan is made, that it is enrolling a Qualified Loan. For purposes of this section, the date on which the Lender makes a Qualified Loan is the earlier of the date on which the Lender first disburses proceeds of the Qualified Loan to the Borrower, or the date on which the loan documents have been executed and the Lender has obligated itself to disburse proceeds of the loan; and

(b) By transmitting to the Department the Fees collected from the Lender and the Borrower in connection with the Qualified Loan. When the Loss Reserve Account is domiciled with the Lender, the deposit of Fees by the Lender to the Loss Reserve Account, with written notification by the Lender to the Department confirming such deposit, shall be deemed the transmitting of Fees by the Lender to the Department and shall satisfy the requirements of this section.

(2) The Department shall, upon receipt of documentation and Fees from the Lender as described in section (1) of this rule, enroll the Qualified Loan if the Department is satisfied that the Qualified Loan is eligible. The Department shall notify the Lender of enrollment within ten business days from receipt of documentation and Fees, in such form as will be determined by the Department.

(3) When the requirements of subsection (1)(b) of this rule are met, the Department shall also transfer from the Fund to the Loss Reserve Account an amount equal to the combined amount of Fees paid by the Borrower and the Lender; except when the Qualified Loan has been made to a Borrower in a Distressed Area on or before June 30, 1995, the Department shall transfer from the Fund to the Loss Reserve Account an amount equal to two times the combined Fees paid by the Borrower and the Lender.

(4) The amounts transferred by the Department from the Fund to the Loss Reserve Account of one or more Lenders in connection with any one Borrower, or any group of Borrowers among which a Common Enterprise exists, shall not exceed \$35,000.

(5) Before or when making a Qualified Loan, a Lender may obtain from the Department a commitment that funds sufficient to meet the Department's contribution required in section (3) of this rule are available in the Fund to transfer to the Loss Reserve Account when the Qualified Loan is enrolled. The commitment shall be binding on the Department for 30 days after the date of the reservation if the Lender has complied with section (1) of this rule.

Stat. Auth.: ORS 183.310 - ORS 183.550 & ORS 285.507 - ORS 285.527

Stats. Implemented: ORS 285.517

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

123-018-0090

Procedure for Making Claim for Reimbursement of Loss

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

(2) A Lender 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, subject however to the provisions in OAR 123-018-0110.

(3) The Lender shall retain documentation in its files substantiating all claims.

Stat. Auth.: ORS 183.310 - ORS 183.550 & ORS 285.507 - ORS 285.527

Stats. Implemented: ORS 285.520

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

123-018-0100

Payment of Claims by Department

(1) The Department shall pay Loss claims as submitted, except the Department may reject a claim when the representations and warranties provided by the Lender at the time of enrolling the Qualified Loan were false.

(2) Earnings available for withdrawal by the Department from the Loss Reserve Account under OAR 123-018-0060(3) shall not be available to pay Loss claims.

(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, excepting amounts due the Department under OAR 123-018-0060(3), which payment will fully satisfy the Loss claim and the Lender shall have no further right to receive any amount from the Loss Reserve Account with respect to such claim.

(4) The Department shall pay Loss claims in the order it receives them. If two or more Loss claims are filed simultaneously by the Lender and there are insufficient funds in the Loss Reserve Account to pay them, the Lender may designate the order the Loss claims are paid by the Department.

Stat. Auth.: ORS 183.310 - ORS 183.550 & ORS 285.507 - ORS 285.527

Stats. Implemented: ORS 285.520

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

123-018-0110

Recoveries on Loans Subsequent to Payment of Claim

If subsequent to the payment of a Loss claim by the Department the Lender recovers from the Borrower, from liquidation of collateral or from any other source, amounts for which Lender was reimbursed by the Department, the Lender shall promptly pay to the Department, for deposit in the Loss Reserve Account, the amount received that in aggregate exceeds the amount needed to fully cover the Lender's Loss on the Enrolled Loan. When the Loss Reserve Account is domiciled with the Lender, the deposit to the Loss Reserve Account of the amount recovered from the Borrower by the Lender, with written notification by the Lender to the Department confirming such deposit, shall be deemed payment to the Department of the amount recovered from the Borrower by the Lender and shall satisfy the requirements of this section.

Stat. Auth.: ORS 183.310 - ORS 183.550 & ORS 285.507 - ORS 285.527

Stats. Implemented: ORS 285.520(3)

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

123-018-0120**Available Collateral, Guarantees and Other Security Not Realized**

After the Department has paid a Loss claim to the Lender from the Loss Reserve Account, and the Lender has terminated its lending relationship with the Borrower, the Lender shall, at the Department's request, provide the Department with details and copies of any collateral, guarantee, or other security documents which secured the Qualified Loan and which remain available.

Stat. Auth.: ORS 183.310 - ORS 183.550 & ORS 285.507 - ORS 285.527

Stats. Implemented: ORS 285.520

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

123-018-0130**Subrogation**

(1) At the Department's request, the Department will be subrogated to the rights of the Lender in collateral, personal guarantees, and all other forms of security for the Qualified Loan that have not been realized upon by the Lender, when the Lender's Loss has been fully or partially covered by payment of a Loss claim, or by a combination of payment of a Loss claim and recovery from the Borrower, liquidation of collateral, or from other sources, and the Lender has stated to the Department that it will not take action to realize on remaining available sources of collateral or other security for recovery.

(2) At the time of subrogating its rights, the Lender shall provide the Department with all original security agreements, any documents evidencing title to real property, certificates of title, guarantees, and any other documents representing security for the Qualified Loan, duly recorded and perfected, and accompanied by enforceable assignments and conveyances to the Department.

Stat. Auth.: ORS 183.310 - ORS 183.550 & ORS 285.507 - ORS 285.527

Stats. Implemented: ORS 285.520

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

123-018-0140**Reporting**

(1) When a Loss Reserve Account is domiciled with the Lender, the Lender 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) To assist the Department in determining the progress of the program, in meeting its reporting requirements to the Governor and to the Joint Legislative Committee on Trade and Economic Development, and in identifying excesses in Loss Reserve Accounts, the Lender shall on or before February 15, May 15, August 15, and November 15 of each year file a report with the Department indicating the number and aggregate outstanding balance of all Enrolled Loans as of the previous December 31 in the case of the report due February 15, as of the previous March 31 in the case of the report due May 15, as of the previous June 30 in the case of the report due August 15, and as of the previous September 30 in the case of the report due November 15. In computing the aggregate outstanding balance of all Enrolled Loans, the balance of any Enrolled Loan shall in no event be considered to be greater than the covered amount of the Enrolled Loan.

Stat. Auth.: ORS 183.310 - ORS 183.550 & ORS 285.507 - ORS 285.527

Stats. Implemented: ORS 285.515

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

123-018-0150**Withdrawal of Excess Deposits in Loss Reserve Accounts**

The Department may withdraw any excess deposits in a Loss Reserve Account if the balances in a Loss Reserve Account have exceeded the aggregate outstanding balances of Enrolled Loans continuously for a period of six calendar months. The Department may withdraw the excess of the balance of the Loss Reserve Account over the total balance of Enrolled Loans on the last day

of the sixth calendar month of such excesses, and on the last day of each calendar quarter thereafter, so long as an excess continues to exist.

Stat. Auth.: ORS 183.310 - ORS 183.550 & ORS 285.507 - ORS 285.527

Stats. Implemented: ORS 285.527

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

123-018-0160**Termination of and Withdrawal from Program**

(1) The Department may terminate its obligation to enroll Qualified Loans under the Program for a Lender on the date specified in the Department's notice of termination to the Lender, or for all participating Lenders 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 the balance of a Loss Reserve Account be reduced to zero, the Department may, at its sole discretion, terminate the Agreement.

(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, at its sole discretion, determine the disposition of any remaining balance in the Loss Reserve Account.

Stat. Auth.: ORS 183.310 - ORS 183.550 & ORS 285.507 - ORS 285.527

Stats. Implemented: ORS 285.513

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

123-018-0170**Disposition of Funds Withdrawals from Loss Reserve Accounts**

Funds withdrawn by the Department from Loss Reserve Accounts resulting from action under OAR 123-018-0060(3), 123-018-0150 and 123-018-0160(3) shall be deposited in the Fund.

Stat. Auth.: ORS 183.310 - ORS 183.550 & ORS 285.507 - ORS 285.527

Stats. Implemented: ORS 285.527

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

123-018-0180**Inspection of Files**

The Department may inspect the files of the Lender relating to Enrolled Loans at any time during normal business hours.

Stat. Auth.: ORS 183.310 - ORS 183.550 & ORS 285.507 - ORS 285.527

Stats. Implemented: ORS 285.513(e)

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

123-018-0190**Reports of Regulatory Agencies**

The Department may apply to the applicable state or federal regulatory body of the Lender for information directly related to the Lender's participation in the program. The Department shall, to the extent permitted by law, hold any information acquired from regulators in confidence.

Stat. Auth.: ORS 183.310 - ORS 183.550 & ORS 285.507 - ORS 285.527

Stats. Implemented: ORS 285.513(f)

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

123-018-0200**Administrative Costs of Program**

The Department may charge actual and necessary administrative expenses in operating the Program:

(1) To the Fund; and

(2) To earnings on Loss Reserve Accounts as provided in OAR 123-018-0060(3).

Stat. Auth.: ORS 183.310 - ORS 183.550 & ORS 285.507 - ORS 285.527
 Stats. Implemented: ORS 285.527(4)
 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

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 Economic Development Department on or after July 1, 1993.

Stat. Auth.: Ch. 765, OL 1993

Stats. Implemented: 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

123-019-0010

Definitions

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

(1) "Applicant" means any 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 Economic Development Department under OAR 123-019-0100.

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

(4) "Department" means the Economic Development Department created under ORS 285.035.

(5) "Deputy Director" means any Deputy Director of the Department appointed under ORS 285.040 or any Assistant Director appointed by the Director.

(6) "Director" means the Director of the Department appointed under ORS 285.033.

(7) "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.

(8) "Finance Committee" means the Finance Committee for the Oregon Economic Development Commission established under ORS 285.030.

(9) "Fund" or "EDLF" means the Oregon Entrepreneurial Development Fund as defined and set forth in Section 13, Chapter 688, Oregon Laws 1991.

(10) "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.

(11) "Person" means any individual, association of individuals, joint venture, partnership or corporation.

(12) "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 construction of residential housing;

(b) A loan for the purchase of property that will not be used for the business operation of the Applicant;

(c) A loan for the refinancing of an existing loan.

(13) "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.

(14) "Small Business Development Center" or "SBDC" means any small business development center described in the Small Business Training Assistance Act of 1983.

(15) "Small Business Management Program" means any of the following:

(a) A Going Into Business class;

(b) A Greenhouse program;

(c) A Small Business Management Program;

(d) Any series of classes/seminars/workshops/counseling sessions similar to a Going Into Business, Greenhouse or Small Business Management Program;

(e) Any series of classes/seminars/workshops/counseling sessions that meet the approval of a Small Business Development Center or Certified Entity director.

Stat. Auth.: ORS 285.035

Stats. Implemented: 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

123-019-0020

Eligibility

(1) To be eligible for a loan from the Fund, each Applicant must meet at least two of the three criteria in this section:

(a) The Applicant must not have been operating for more than 24 months as of the date application is made to the Fund;

(b) The Applicant must have had total revenues of \$100,000 or less in the 12 calendar months immediately preceding the date application is made to the Fund;

(c) At least 50 percent of the Applicant 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 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.: Ch. 765, OL 1993

Stats. Implemented: ORS 285A.075

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

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 two of the three criteria outlined in OAR 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 operated by an SBDC or Certified Entity prior to Department action on such Applicant's loan request. Each Applicant shall certify to the Department they are enrolled in 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 of the SBDC or Certified Entity, or their designee, 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. 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 \$40,000 in loan proceeds from the fund.

(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: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 285A.075

Stats. Implemented: 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

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 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 in an amount not less 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.

(4) The Applicant can provide good and sufficient Collateral for the loan. The Collateral coverage ratio for the loan is expected to be at least 1:1 applying the following advance ratios:

(a) Real property will generally be valued for Collateral purposes at 70 percent of the tax assessed value or 80 percent of appraised value;

(b) New construction will generally be valued for Collateral purposes at 80 percent of cost;

(c) Existing machinery will generally be valued for Collateral purposes at 40 percent of depreciated book value;

(d) Newly acquired machinery will generally be valued for Collateral purposes at 80 percent of acquisition cost.

(5) Applicants should be aware that the Collateral value of out-of-state real property will be significantly discounted from nominal assessed or appraised value. The Department may, in its sole discretion, assign a value of more or less than the above percentages.

(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 initial amount borrowed from the Fund by any borrower does not exceed \$25,000 and the total amount borrowed does not exceed \$40,000.

(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 183.310 - ORS 183.550 & ORS 285.450 - ORS 285.463

Stats. Implemented: ORS 285A.075

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

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 \$40,000, 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 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 Project or five 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 shall 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 Department shall inform the borrower and the Director 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, worker's compensation and unemployment insurance, flood insurance; 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 a quarterly basis, within 45 days of the end of each fiscal quarter, 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 fund.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 183.310 - ORS 183.550 & ORS 285.450 - ORS 285.463

Stats. Implemented: ORS 285A.070

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

123-019-0060

Appeals, Monitoring, Amendments and Modifications

(1) If the Director denies a loan request, the Director 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 183.310 - ORS 183.550 & ORS 285.450 - ORS 285.463

Stats. Implemented: Ch. 765, OL 1993

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92

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 183.310 - ORS 183.550 & ORS 285.450 - ORS 285.463

Stats. Implemented: Ch. 765, OL 1993

Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92

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 183.310 - ORS 183.550 & ORS 285.450 - ORS 285.463
Stats. Implemented: Ch. 765, OL 1993
Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92

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 183.310 - ORS 183.550 & ORS 285.450 - ORS 285.463
Stats. Implemented: Ch. 765, OL 1993
Hist.: EDD 16-1991(Temp), f. & cert. ef. 11-8-91; EDD 12-1992, f. & cert. ef. 8-26-92

123-019-0100

Certification of Entities for Business Plan Review

(1) In addition to SBDCs, the Director may certify an entity for review of business plans, if the Director finds in his or her sole discretion that the entity possesses:

(a) Experience in providing financial counseling to businesses;

(b) Experience in operating a micro lending program.

(2) The Director may establish time periods for certification and review in his or her sole discretion.

Stat. Auth.: ORS 285.035
Stats. Implemented: Ch. 688, OL 1991 & Ch. 765, OL 1993
Hist.: EDD 8-1995, f. & cert. ef. 10-26-95

DIVISION 20

FORMATION OF PORTS

123-020-0005

Definitions

As used in these rules, unless the context requires otherwise:

(1) "Port" includes "port authority" and "port district".

(2) "Commission" as used in these rules means Oregon State Economic Development Commission.

(3) "Division" as used in these rules means the Ports Division of the Oregon Department of Economic Development.

Stat. Auth.: ORS 777
Stats. Implemented: ORS 285.805 & ORS 777.005
Hist.: EDD 6, f. & ef. 4-30-76

123-020-0010

Application

To facilitate performance of duties imposed by ORS 777.835, from and after the effective date of these rules, any applicant for the formation of a port shall comply with the relevant portion of these rules as prescribed by the Ports Division of the Department of Economic Development, Portland, OR 97204:

(1) Prior to filing with the appropriate county, the applicant will submit to the Ports Division a sample petition of the type required for formation of a port as described in ORS 198.705 to 198.955.

(2) At the same time, the applicant will provide the Ports Division with the applicant's response to any information requested under authority of this chapter and a letter formally requesting the formation of the proposed port district.

(3) The Division will notify the public that application has been made for the formation of a port district and that the Ports Division will make available to the public the application information for its review and comment. Also, the Ports Division will circulate the application information to all interested parties that the Division might identify for review and comment. All comments regarding the proposed port formation must be in writing and submitted within 30 days of notification to the public.

(4) Within 60 days after notification to the public of the formation request, the Economic Development Commission will approve or deny the port district formation request.

(5) If the request is denied, the applicant may request a hearing. The applicant must notify the Economic Development Commission in writing that they wish a hearing within 20 days of the date of mailing of the "Notice of Opportunity for Hearing".

(6) If a hearing is requested, a date will be set, and the applicant and public will be notified in accordance with the Administrative Procedures Act and ORS Chapter 183.

(7) If, in the final order and accompanying findings and conclusions, the port formation is denied, the applicant will have the right to judicial review in the Court of Appeals as detailed in ORS 183.480.

(8) If the port formation request is approved by the Commission, the applicant will follow the remaining procedures as described in ORS Chapters 198 and 777.

Stat. Auth.: ORS 777
Stats. Implemented: ORS 198.705 - ORS 198.955
Hist.: EDD 6, f. & ef. 4-30-76

123-020-0015

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 Ports Division of the Department of Economic Development 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 new port;

(2) The adequacy of funding for the proposed port;

(3) The orderly development of the proposed port and its effects upon the development of a state port system.

Stat. Auth.: ORS 777
Stats. Implemented: ORS 198.705 - ORS 198.955
Hist.: EDD 6, f. & ef. 4-30-76

123-020-0020

Need for Port Services

In evaluating the need for port services, the Commission will determine:

(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;

(4) That proposed port boundaries are reasonable and conform with lines of tax assessment and property ownership.

Stat. Auth.: ORS 777
Stats. Implemented: ORS 198.705 - ORS 198.955
Hist.: EDD 6, f. & ef. 4-30-76

123-020-0025

Adequacy of Funding

The Commission will consider the following:

(1) A proposed budget of the 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, including the millage requirements of the proposed port, and the source and amounts of any other revenues estimated to be required;

(3) Additional financial information as may be required by the Ports Division.

Stat. Auth.: ORS 777

Stats. Implemented: ORS 198.749

Hist.: EDD 6, f. & ef. 4-30-76

123-020-0030

Orderly Development of Port and State Port System

The Commission encourages and may require public views and information on any application for the establishment of a port showing:

(1) Relationship of the proposed port activities to locally approved land use plans and the provision of other local services;

(2) Coordination with affected environmental, economic, and social agencies;

(3) Effects of the proposed activities on transportation facilities and services.

Stat. Auth.: ORS 777

Stats. Implemented: ORS 198.705 - ORS 198.955

Hist.: EDD 6, f. & ef. 4-30-76

123-020-0035

Commission Request for Additional Information

In addition to the above, the Commission may request such other relevant facts and/or information as it deems appropriate for consideration of port district formation authorization.

Stat. Auth.: ORS 777

Stats. Implemented: ORS 198.705 - ORS 198.955

Hist.: EDD 6, f. & ef. 4-30-76

123-020-0040

Commission Approval or Denial

After the Commission has obtained all information it considers relevant regarding a proposed port formation, it will approve or deny the proposed port district formation as it deems appropriate. If the Commission denies a port formation request, it shall indicate the reasons therefor and what remedies, if any, would initiate a reconsideration.

Stat. Auth.: ORS 777

Stats. Implemented: ORS 198.705 - ORS 198.955

Hist.: EDD 6, f. & ef. 4-30-76

123-020-0050

Port Division Cooperation

Nothing in these rules should be construed as a hindrance toward port district formations, and any qualified applicant may request and expect full assistance and cooperation of the Ports Division in complying with these requirements.

Stat. Auth.: ORS 777

Stats. Implemented: ORS 198.705 - ORS 198.955

Hist.: EDD 6, f. & ef. 4-30-76

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 making loan guarantees or other forms of credit guarantees from the Oregon Credit Enhancement Fund.

Stat. Auth.: ORS 285.065 & ORS 285.466 - ORS 285.481

Stats. Implemented: ORS 285.466 - ORS 285.481

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94

123-021-0010

Definitions

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

(1) "Application" means a request for a loan or other credit guarantee submitted to the Department by a Financial institution.

(2) "Average annual employment" means:

(a) In the case of a Borrower existing for more than twelve months preceding the date of application, the average level of employment for the twelve months preceding the date of application;

(b) In the case of a Borrower that has existed for less than twelve months prior to the date of application, the average of all monthly employment levels preceding the date of application;

(c) In the case of a new Borrower, the number of employees at the time of application.

(3) "Borrower" means a business entity which meets the eligibility requirements of OAR 123-021-0010(19), and includes a prospective borrower where the context requires.

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

(5) "Commission" means the Oregon Economic and Community Development Commission appointed under ORS 285A.040 or its designee.

(6) "Department" means the Economic and Community Development Department created under ORS 285A.070.

(7) "Deputy Director" means any Deputy Director or any Assistant Director appointed by the Director under ORS 285A.070.

(8) "Destination activities or facilities other than retail or food service" means a Qualified business which has a significant impact on the regional recreational or tourism economy. Incidental food service or retail facilities necessary to the operation of a destination activity or facility are eligible. Sleeping accommodations without unique attraction capabilities are not Qualified businesses.

(9) "Director" means the Director of the Department appointed under ORS 285A.070.

(10) "Distressed area" means any area as defined by the Department under ORS 285A.010.

(11) "Eligible purposes" means the acquisition, improvement, rehabilitation, or construction of real or personal property, working capital for operations, export transactions, maintenance and other costs and expenses which are used for purposes other than acquiring real or personal property, but not including:

(a) An insured loan used for any personal, family, or household expenses of the Borrower or any guarantor;

(b) An insured loan used for construction financing;

(c) An insured loan for the construction of residential housing;

(d) An insured 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. The Department will consider refinancing requests on a case by case basis, except in the case of loans where refinancing constitutes a portion of an application and is necessary to improve a collateral position. In evaluating such requests the Department will consider the requirements of this section and the financial benefits to the Borrower, the prospects for success, public benefits such as jobs created or retained, 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.

(e) An insured loan used to purchase an existing Qualified business, except for:

(A) Acquisition/expansions where the majority of loan proceeds are used to support expansion improvements;

(B) Restructured enterprises, including Employee Stock Ownership Plans, where jobs might otherwise be lost.

(12) "Emerging small business" means a Qualified business:

(a) With its principal place of business located in Oregon;

(b) With average annual gross receipts over the last three years not exceeding \$300,000 each year;

(c) Which has fewer than 20 employees;

(d) Which is an independent business;

(e) Properly licensed and legally registered in this state; and

(f) "Emerging small business" does not mean a subsidiary or parent company belonging to a group of firms which are owned and controlled by the same individuals which have aggregate annual gross receipts in excess of \$300,000 each year over the last three years.

(13) "Financial institution" means a financial institution defined in ORS 706.005.

(14) "Fund" means the Credit Enhancement Fund created by ORS 285B.215.

(15) "Loan authorization" means a letter from the Director or Deputy Director or their designees to a Financial institution agreeing to insure a loan to a Borrower on the terms and conditions and subject to the requirements stated therein.

(16) "Loan insurance agreement" means the agreement between the Financial institution and the Department required by OAR 123-021-0100.

(17) "Manager" means the Manager of the Business Finance in the Department, or his/her designee.

(18) "Program(s)" means the loan insurance and other credit guarantee programs governed by this division of the rules.

(19) "Qualified business" means any existing or proposed business entity with an average annual employment not exceeding 200 employees that, except when located in a distressed area, sells goods or services in markets for which national and international competition exists. In a distressed area, any existing or proposed business entity with an average annual employment not exceeding 200 employees is a Qualified business. Any company that owns, occupies, operates, or has entered into an agreement to own, occupy or operate real property containing a Brownfield is a Qualified business. Outside of a distressed area, any existing or prospective business entity that will result in or will aid, promote or facilitate, development of one or more of the following activities shall be a Qualified business:

- (a) Manufacturing or other industrial production;
- (b) Food processing;
- (c) Aquaculture development or seafood processing;
- (d) Convention facilities or trade centers;
- (e) Destination facilities other than retail or food service;
- (f) Transportation or freight facilities;
- (g) Distribution facilities; or
- (h) Other activities, as approved by the Department, that represent new technology or diversifying activity but not including:
 - (A) Construction of office buildings;
 - (B) Retail businesses, shopping centers and food service facilities;
 - (C) Motels or bed and breakfast hotels without unique attraction facilities;
 - (D) Professional services for medicine, law, dentistry or finance;
 - (E) Athletic, racquetball, handball clubs, private membership clubs, and golf courses;
 - (F) Sand and gravel facilities; or
 - (G) Newspapers.

(i) As used in the phrase "average annual employment not exceeding 200 employees", the term "200 employees" means 200 full time employees. A full time employee is one who works at least 2080 hours annually. Part time employees shall be converted to full time equivalent employees by totaling the annual hours of all part time employees and dividing the sum by 2080.

(j) For the Evergreen Entrants Program, a Qualified business includes persons or enterprises without, or about to be without, existing line of credit Working capital loans. For the Evergreen Plus Program, a Qualified business includes persons or enterprises with existing line of credit Working capital loans.

(20) "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 or personal property.

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

Stats. Implemented: ORS 285B.200 - ORS 285B.218 & SB 402 & SB 1128

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

123-021-0020

Eligibility

(1) Eligible purposes are defined in OAR 123-021-0010(11).

(2) The maximum term for an eligible loan guaranty is the lesser of fifteen (15) years or the useful life of the assets being financed, or one year plus four annual renewals for the Evergreen Entrants or Evergreen Plus Programs.

(3) Eligible borrowers are defined in OAR 123-021-0010(19).

(4) Eligible Financial institutions are defined in OAR 123-021-0010(13).

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

Stats. Implemented: ORS 285B.200 - ORS 285B.218 & SB 402 & SB 128

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

123-021-0030

Borrower Preferences

(1) Not less than 20 percent of all moneys available for loan guarantees from the Fund is reserved for loan guarantees to Emerging small business.

(2) The amounts reserved for the 1999-2001 biennium for Emerging small businesses is: \$13 million.

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

Stats. Implemented: ORS 285B.200 - ORS 285B.218 & SB 402 & SB 128

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

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 such as 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 285.065 & ORS 285.466 – ORS 285.481

Stats. Implemented: ORS 285.474(3)

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94

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 shall consider the application as expeditiously as possible after a complete application is received with the goal of processing applications within ten business days.

(4) 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. In no event shall the insurance provided for a Borrower exceed the maximum permitted for a particular Insurance Program.

(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 insured loan proceeds 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.

(g) A Qualified Business may apply directly to the Department for a preliminary guarantee commitment for an export transaction. Such preliminary commitment may be issued by the Department subject to the Qualified Business securing a commitment for financing from a Financial Institution. For a preliminary

guarantee commitment, the Department shall charge the Qualified Business a \$250 application fee.

Stat. Auth.: ORS 285B.200

Stats. Implemented: ORS 285B.200 - ORS 285B.218 & OL 1997, Ch. 148

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

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 authorization will be issued setting forth the terms and conditions upon which the loan will be insured.

(2) No Loan authorization shall become effective until the Financial institution has paid the initial insurance premium required by OAR 123-021-0110. Such payment, along with an executed Loan authorization, shall indicate the Financial institution's acceptance of the terms of the Loan authorization.

(3) No Loan authorization shall be effective unless a Loan insurance 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, they will promptly send the Financial institution and Borrower 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 285.065 & ORS 285.466 – ORS 285.481

Stats. Implemented: ORS 285.474(3)

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94

123-021-0070

Appeal to the Commission

In the event that an application is rejected by the Director or Deputy Director or their designees, the Borrower or the Financial Institution shall have the right to appeal the decision to the Commission. Notice of the appeal, together with a statement of the reasons why the Director or Deputy Director or their designees' decision should be reversed or modified, shall be given to the Manager in writing within twenty days after the date of the Director or Deputy Director or their designees mailed notice of rejection to the Financial Institution. The Manager shall inform the Financial institution of any such appeals. The appeal shall be heard at the next meeting of the Commission at which there is room on the agenda, and the Borrower must be present to support the appeal. The Commission may, at its discretion, direct the appeal to a Finance Committee for the Commission for final review and disposition.

Stat. Auth.: ORS 285B.200

Stats. Implemented: ORS 285B.200 - ORS 285B.218 & OL 1997, Ch. 148

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

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 provided that no term may exceed the lesser of fifteen years or the useful life of the assets being financed or one year plus four annual renewals for the Evergreen Entrants or Evergreen Plus Programs.

(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 any guarantors are of good character and have good credit histories;

(b) Real estate or unmovable machinery or equipment constituting a significant portion of collateral for repayment of 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.

(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 285.065 & ORS 285.466 – ORS 285.481

Stats. Implemented: ORS 285.474(4)

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94

123-021-0090

Loan Insurance Programs

The Department shall offer the following Insurance Programs:

(1) Conventional Insurance, under which the Department may insure up to 90 percent of a loan to a maximum of \$500,000. Should a Borrower which receives an insured loan default or otherwise be unable to make loan payments, the Department would pay the Financial institution up to 90% of the deficiency. The balance of any loss is absorbed by the Financial institution. Loan payments and the proceeds of collateral are applied pro rata to the insured and uninsured portion of a loan. The Department's obligation would be limited to a payment of the insured percentage of a loan times the amount of principal, accrued interest and the Financial institution's reasonable costs of collection, exclusive of costs attributed to environmental problems, remaining unpaid after liquidation of collateral, up to the lesser of \$500,000 or an amount equal to the insured percentage of the original loan amount authorized in the Loan authorization.

(2) Evergreen Entrants Insurance, under which the Department may insure up to 75%, on a pro rata basis, of a line of credit Working capital loan, not to exceed the lesser of \$250,000 or an amount equal to the insured percentage of the original loan amount authorized in the Loan Authorization. Eligible borrowers include persons or enterprises without or about to be without existing line of credit Working capital loans. The maximum term of the guarantee is an initial one year term plus four annual renewals. To participate in the Evergreen Entrants Program, the Department must be satisfied the Financial institution has 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.

(3) First Loss Insurance, under which the Department may insure 100 percent of any loss to a Financial institution up to the lesser of 25% of the original loan amount or \$300,000. If a Financial institution makes a payment request, the Department's obligation

would be limited to 100% of the amount of principal, accrued interest and the Financial institution's reasonable costs of collecting the loan, exclusive of costs attributable to environmental problems, remaining unpaid after liquidation of collateral, up to the lesser of: 25% of the outstanding balance of the loan, including accrued interest and reasonable costs and expenses of collection and liquidation of collateral, but not taking into account the proceeds of liquidation and payments by guarantors, or an amount equal to the insured percentage of the original loan, or \$300,000.

(4)(a) Evergreen Plus Insurance, under which the Department may insure up to 90% of a new increment of a line of credit Working capital loan, with maximum insurance of \$300,000. If a Financial institution makes a payment request for any deficiency remaining after liquidation of collateral and payment by any guarantors, the Department's obligation would be limited to the lesser of:

(A) A ratable share of the total default charges; or

(B) 90 percent of the deficiency.

(b) The formula for calculating the Department's ratable share of total default charges is:

Guaranteed Loan Amount

(as set out in Authorization)

Total credit facility made available

X

**(Principal outstanding upon default
plus accrued interest and liquidation charges)**

(c) Qualified businesses include persons or enterprises with existing line of credit Working capital loans. The maximum term of guarantees is an initial one year term plus four annual renewals. To participate in the Evergreen Plus program, a Financial institution must have in place and operating a lending program specializing in loans secured by accounts receivable and inventory, as determined by the Department. The Department must be satisfied that the Financial institution is sufficiently experienced and capable of operating an effective Evergreen Plus Program.

(5) The Conventional and First Loss Insurance Programs are available for all types of loans for eligible purposes, including Working capital loans that are secured by fixed assets.

Stat. Auth.: ORS 285.065 & ORS 285.466 – ORS 285.481

Stats. Implemented: ORS 285.474(4)

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94

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 285.065 & ORS 285.466 – ORS 285.481

Stats. Implemented: ORS 285.474(4)

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94

123-021-0110

Insurance Premiums

(1) The Department shall charge a one-time (up-front) insurance premium. Premiums are due at the time Financial institution's 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 insured loan amount, shall be charged in accordance with the following schedule for the Programs indicated:

Term	Conventional	First Loss
1 Yr.	1.25%	2.5% (.625%)*
2 Yrs.	1.5%	3.0% (.75%)
3-4 Yrs.	1.75%	3.5% (.875%)
5-7 Yrs.	2.0 %	4.0% (1.0%)
8-11 Yrs.	2.5 %	5.0% (1.25%)
12-15 Yrs.	3.0%	6.0% (1.5%)

*The percentages in parentheses represent the maximum effective premium as a percentage of a total loan or credit facility made available to a Borrower, since these Programs provide maximum insurance of 25% of a loan or credit facility.

(2) The fee for the Evergreen Entrants Program is 1.25 percent annually; the fee for Evergreen Plus Program is 2.5 percent annually.

(3) For revolving lines of credit or evergreen facilities, the premium will be based on the total amount of the credit facility made available to a Borrower, regardless of whether it is fully drawn down. Examples:

(a) The premium due on a \$200,000, five year loan with 85% Conventional insurance would be \$3,400 (\$200,000 x .85 x .02);

(b) The premium on a Evergreen Entrants 75% insured loan for \$200,000 would be \$1,875 (\$200,000 x .75 x .0125); 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);

(c) The premium due on a \$200,000, eight year, 25% First Loss insured loan would be \$2,500 (\$200,000 x .25 x .05);

(d) The premium due on a \$700,000, 25% insured Evergreen Plus loan would be \$4,375 (\$700,000 x .25 x .025); 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 285.065 & ORS 285.466 – ORS 285.481

Stats. Implemented: ORS 285.474(4)

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94

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 285.065 & ORS 285.466 – ORS 285.481

Stats. Implemented: ORS 285.476(2), ORS 285.476(5) & ORS 285.471(1)(b)

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94

123-021-0130

Delegation

(1) Authority for the day-to-day operation of the fund, excluding the approval of loan authorization unless delegated by the Director or Deputy Director, is delegated to the Manager.

(2) With the exception of appeals, the Director or Deputy Director or their designees are authorized to approve Loan authorizations and to execute any document necessary or convenient to make effective such guarantees.

Stat. Auth.: ORS 285.065 & ORS 285.466 – ORS 285.481

Stats. Implemented: ORS 285.474(4)

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94

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 285.065 & ORS 285.466 – ORS 285.481

Stats. Implemented: ORS 192.430 & ORS 285.035(5)

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94

DIVISION 22

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 ORS 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 & ORS 285A.110

Stats. Implemented: ORS 285A.340 & ORS 285B.165 - ORS 285B.180

Hist.: EDD 6-1998, f. & cert. ef. 4-22-98

123-022-0070

Definitions

As used in this division, unless the context requires otherwise:

(1) "Department" means the State of Oregon Economic Development Department.

(2) "Director" means the Director of the State of Oregon Economic Development Department.

(3) "Small Business Development Center" means a community college-based center which helps small businesses develop and improve skill in such areas as marketing management and capital formation.

(4) "Small Business" means a business enterprise with 49 or fewer employees.

(5) "Small Business Development Center Network" means the statewide network of small business development centers.

Stat. Auth.: ORS 285A.075 & ORS 285A.110

Stats. Implemented: ORS 285A.340 - ORS 285A.349 & ORS 285B.165 - ORS 285B.180

Hist.: EDD 6-1998, f. & cert. ef. 4-22-98

123-022-0080

Eligibility Criteria

From funds appropriated for such purposes, the Department may make grants to community college and community college service districts 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 & ORS 285A.110

Stats. Implemented: ORS 285A.340 - ORS 285A.349 & ORS 285B.165 - ORS 285B.180

Hist.: EDD 6-1998, f. & cert. ef. 4-22-98

123-022-0090

Application and Award Procedures

(1) Each applicant for a small business development center grant shall submit a workplan to the Small Business Development Center Network office and the Department. The workplan 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 college, client and department grant shares;

(e) A plan to participate in evaluations conducted by the Small Business Development Center Network office.

(2) The Department and the Small Business Development Center Network office shall review and approve the workplans submitted by applicants prior to disbursement of grant funds to the Small Business Development Center program recipients.

Stat. Auth.: ORS 285A.075 & ORS 285A.110

Stats. Implemented: ORS 285A.340 - ORS 285A.349 & ORS 285B.165 - ORS 285B.180

Hist.: EDD 6-1998, f. & cert. ef. 4-22-98

123-022-0100

Standards and Criteria

The Small Business Development Center Network office and the Department shall use the following criteria to evaluate applicants workplans:

(1) The number of small business clients to be served through one-to-one counseling and training programs as set out in the workplans;

(2) Special needs based upon geographic location or special populations to be served.

(3) The quality and the extent to which the workplan meets the needs of small business clients in the service area.

Stat. Auth.: ORS 285A.075 & ORS 285A.110

Stats. Implemented: ORS 285A.340 - ORS 285A.349 & ORS 285B.165 - ORS 285B.180

Hist.: EDD 6-1998, f. & cert. ef. 4-22-98

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 house the Small Business Development Center Network office. In making the designation the Director shall consider the recommendations of others providing substantial financial support to the Small Business Development Center Network.

(2) In the first quarter of each biennium, the Small Business Development Center Network office shall submit a plan to the Department for an independent evaluation of the effectiveness of the program. The Department shall review and approve a plan for independent evaluation in a timely manner.

(3) 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.

(4) 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.

(5) 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 Economic Development Department and the Small Business Development Center Network office shall apply for waivers of such federal requirements.

Stat. Auth.: ORS 285A.075 & 285A.110

Stats. Implemented: ORS 285A.340 - ORS 285A.349 & ORS 285B.165 - ORS 285B.180

Hist.: EDD 6-1998, f. & cert. ef. 4-22-98

DIVISION 23

STRATEGIC INVESTMENT PROGRAM

123-023-0201

Purpose

The purpose of these rules is to provide procedures, standards and criteria for operation of the Oregon Strategic Investment Program authorized by ORS 285B.380 to 285B.392.

Stat. Auth.: ORS 285A.110

Stats. Implemented: ORS 285B.383, ORS 285B.386, ORS 285B.389 & ORS 285B.392

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99

123-023-0251

Commission Powers

For the purposes of these rules the Economic and Community Development Commission shall retain and possess, in addition to all authority reserved to it under OAR 123-023-0351, all rights and powers delegated to the Finance Committee. Upon written notice to the Finance Committee, the Economic and Community Development 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.110

Stats. Implemented: ORS 285B.383, ORS 285B.386, ORS 285B.389 & ORS 285B.392

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99

123-023-0301

Definitions

For the purposes of these rules, the following terms shall have the following definitions, 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 the Oregon Strategic Investment Program.

(2) "Application" means the application form completed by the Applicant, and evaluated by the Finance Committee for determination of the Applicant and Project eligibility for the Oregon Strategic Investment Program.

(3) "Commission" means the State of Oregon Economic and Community Development Commission appointed under ORS 285A.040.

(4) "Department" means the State of Oregon Economic and Community Development Department created under ORS 285A.070.

(5) "Eligible Project" means an economic development project determined by the Finance Committee to be eligible for the Oregon Strategic Investment Program.

(6) "Finance Committee" means the Finance Committee for the Economic and Community Development Commission as allowed under ORS 285A.060.

(7) "State" means the State of Oregon.

(8) "Existing project" refers to property which is owned by the applicant and was subject to real property taxation on July 1 of the tax year in which the Finance Committee determines the project is an eligible project under OAR 123-023-0451 or any property comprising a previously approved Strategic Investment Program project.

Stat. Auth.: ORS 285A.110

Stats. Implemented: ORS 285B.383, ORS 285B.386, ORS 285B.389 & ORS 285B.392

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99

123-023-0351

Delegation

(1) Authority for the day-to-day operation of the Strategic Investment Program, including determination of eligibility, is delegated to the Finance Committee.

(2) The Finance Committee may adopt standards and procedures for the operation of the Strategic Investment Program. Such standards and procedures shall not be inconsistent with any part of this division of administrative rules.

(3) The Department shall send to each member of the Commission a summary of each project to be considered by the Finance Committee. Commissioners shall receive such summaries in sufficient time to comment on the projects orally or in writing, 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 Strategic Investment Program with such frequency 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 Strategic Investment Program.

(6) If at any time the Commission shall decide 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.110

Stats. Implemented: ORS 285B.383, ORS 285B.386, ORS 285B.389 & ORS 285B.392

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99

123-023-0401

Application

(1) An Applicant desiring consideration of a project under the Strategic Investment Program authorized under ORS 285B.380 to 285B.392 must submit a complete formal application to the Department in a form approved by the Department or submit a copy of the application, including any supplements, submitted to the county, which includes all information required in the Department's application form. The applicant shall submit all additional information requested by the Department for purposes of evaluating the application.

(2) The application should be received by the Department at least 21 calendar days prior to the Finance Committee meeting at which the application will be considered. Under extraordinary circumstances, the Department may waive this requirement.

(3) The application shall include the following:

(a) Evidence of an official action from the county and the city, if applicable, having jurisdiction over the proposed project site(s) requesting the undertaking of a project;

(b) Evidence that the county and, if the proposed eligible project is located within a city, the city have approved the special provisions related to the property tax exemption;

(c) Evidence that the county held a public hearing as required by ORS 285B.386 (4);

(d) A copy of the written agreement between the applicant and the county providing for the applicant's payment to the county of an annual fee for community services support in an amount equal to 25 percent of the property taxes exempted in each tax year, but not exceeding \$2 million in any year. The agreement shall include provisions:

(A) Requiring the applicant to pay the community services fee annually during the tax exemption period;

(B) Identifying the dates for payment of the community services fee;

(C) Addressing the refunding or crediting of community service fee overpayments;

(D) Providing for interest, if any, on the late payment or underpayment of the community service fee;

(E) Describing the manner in which an appeal of the assessed value of the project will affect payment of the community services fee; and

(F) Describing any other requirements related to the project.

(e) If all or a portion of the project is located in a city, a copy of the written agreement between the county and city governing distribution of the community services fee.

(f) A copy of the first-source hiring agreement between the applicant and a publicly funded job training provider as provided in Division 70 of these administrative rules. The agreement must not expire or be subject to termination until the end of the tax exemption period.

(4) A non-refundable application fee of \$10,000 is to be submitted with the application.

(5) Application materials may be obtained from the Oregon Economic Development Department, 775 Summer Street N.E., Salem, OR 97310.

Stat. Auth.: ORS 285A.110

Stats. Implemented: ORS 285B.383, ORS 285B.386, ORS 285B.389 & ORS 285B.392

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99

123-023-0451

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 the Oregon Strategic Investment Program.

(3) The Finance Committee may find that a project that meets the following criteria is eligible under the Strategic Investment Program:

(a) The project includes any economic development project as defined in by ORS 285B.323.

(b) The project will directly benefit a key industry as defined in ORS 285B.280(3);

(c) The total cost of the eligible project exceeds \$100 million;

(d) The project is not expressly ineligible under ORS 285B.323(1).

(e) The project is not an existing project as defined in OAR 123-030-0251(8);

(f) The project proposed by the applicant is not a precertified project in an enterprise zone under ORS 285B.692 to ORS 285B.728.

(g) The county and, if the proposed eligible project is located within a city, the city have approved the special provisions related to the property tax exemption.

(h) The undertaking of the project was requested by official action of the county and the city, if applicable, having jurisdiction over the proposed project site(s).

(i) The county held a public hearing as required by ORS 285.386(4).

(j) The applicant and the county have entered into the written agreement described in OAR 123-023-0401(3)(d).

(k) If applicable, the county and the city have entered into the written agreement described in OAR 123-023-0401(3)(e).

(l) The applicant and a publicly funded job training provider have entered into the first source hiring agreement described in OAR 123-023-0401(3)(f).

(m) The applicant has agreed to comply with any additional reasonable requirements imposed by the Finance Committee related to the Oregon Strategic Investment Program, including requirements that would continue for the term of the property tax exemption.

(4) For purposes of section (3) of this rule, the applicant shall define, and the Finance Committee may approve, a project by identifying the real or personal property that will be included in the Strategic Investment Program project. Property which is eligible for the property tax exemption may include all or any portion of the property which will be used at the site(s) of the project during the period of the property tax exemption, but not to exceed fifteen years. Future additions to buildings or structures that are part of the project shall not be considered part of the eligible project unless the future additions are identified in the definition of the eligible project which is approved by the Finance Committee. The definition of the eligible project which may be approved by the Finance Committee shall include:

(a) A description of the project which may qualify for property tax exemption including all land, buildings, structures, machinery and equipment, fixtures, and furnishings associated with a project, or any portion thereof. The project may include repairs, replacements, modernizations, renovations, and remodeling of buildings, structures, machinery and equipment, fixtures, and furnishing. The following definitions serve as clarification:

(A) "Additions to existing buildings or structures" means an enlargement of building space including construction which creates additional floor space or which creates more building volume by raising a ceiling or roof;

(B) "Modernization" means taking corrective action to bring a property into conformity with changes in technology;

(C) "Remodeling" means to change the plan, form or style of a property to correct functional or economic deficiencies;

(D) "Renovation" means to restore a property to a former state by rebuilding or repairing;

(E) "Replacement" means machinery or equipment which is functionally equivalent to machinery or equipment that it takes the place of.

(b) A schedule estimating when the property will be acquired, installed, or constructed and placed in service;

(c) The maximum value of the project which may qualify for property tax exemption.

(5) Administrative rules in effect at the time the Finance Committee determines a project to be eligible shall continue to govern the project for the period of the tax exemption, notwithstanding any contrary provision in any subsequently adopted administrative rule.

(6) The Finance Committee shall 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. Questions of the Applicant will be asked only by Finance Committee members and Department staff.

(7) A finding by the Finance Committee that a project is eligible under the Strategic Investment Program shall constitute a determination, in accordance with ORS 285B.383, that the real and personal property constituting the project is eligible for the tax exemption provided in ORS 307.123. When it finds a project

eligible under the Strategic Investment Program, the Finance Committee shall, in accordance with ORS 285B.383(5), establish the invested cost of all real and personal property included in the project.

Stat. Auth.: ORS 285A.110

Stats. Implemented: ORS 285B.383, ORS 285B.386, ORS 285B.389 & ORS 285B.392

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99

123-023-0501

Fees

In addition to the application fee specified in OAR 123-023-0401(5), the Applicant shall pay a \$50,000 fee to the Department when the project is determined eligible by the Finance Committee. The Department shall pay 50 percent of this fee to the Oregon Department of Revenue for the purpose of administration of ORS 307.123.

Stat. Auth.: ORS 285A.110

Stats. Implemented: ORS 285B.383, ORS 285B.386, ORS 285B.389 & ORS 285B.392

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99

123-023-0551

Confidential Records

(1) Notwithstanding ORS 192.410 to 192.505, the identity of an Applicant for an eligible project designation under ORS 285B.383, the application form submitted to the county governing body, the application form received by the Department on behalf of the Commission, and the negotiations conducted between the applicant and the county shall be confidential, until the county governing body gives notice of its intent to take official action on the application.

(2) Subject to paragraph (1) of this rule, upon written request and within a reasonable time, the Director of the Department or his designee shall provide program records, for inspection in accordance with ORS Chapter 192.

(3) 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.

(4) 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 which 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 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 285A.110
 Stats. Implemented: ORS 285B.383, ORS 285B.386, ORS 285B.389 & ORS 285B.392
 Hist.: EDD 7-1999, f. & cert. ef. 9-30-99

DIVISION 24

DISTRESSED AREAS

123-024-0001

Scope and Purpose

The 1997 Oregon Legislature, through ORS 285A.095, directed the department to give priority when providing funding for a project, a program or technical assistance, to counties, cities, communities or other geographic areas that are designated as distressed areas by the department. The designation of distressed areas must be based on indicators of economic distress, including but not limited to unemployment, poverty and job loss.

Stat. Auth.: ORS 285A.075 (5)
 Stats. Implemented: ORS 285A.095, ORS 285B.062 & ORS 285B.065
 Hist.: EDD 12-1998, f. & cert. ef. 8-14-98

123-024-0011

Definitions

As used in this division of administrative rules, unless the context requires otherwise:

(1) "Department" means the Oregon Economic Development Department.

(2) "Director" means the Director of the Oregon Economic Development Department.

(3) "City" means the area within the corporate limits or urban growth boundary, or both, of any incorporated city in Oregon.

(4) "Distressed Area" means a geographic area within the state of Oregon that meets one or more of the criteria set forth under OAR 123-024-0031. All geographic areas within a county designated by the department as a distressed area shall be considered to be distressed areas.

Stat. Auth.: ORS 285A.075 (5)
 Stats. Implemented: ORS 285A.095, ORS 285B.062 & ORS 285B.065
 Hist.: EDD 12-1998, f. & cert. ef. 8-14-98

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 may be obtained from the Director's Office, Oregon Economic Development Department, 775 Summer St. NE, Salem, Oregon 97310.

Stat. Auth.: ORS 285A.075 (5)
 Stats. Implemented: ORS 285A.095, ORS 285B.062 & ORS 285B.065
 Hist.: EDD 12-1998, f. & cert. ef. 8-14-98

123-024-0031

Methodology for Determining Distressed Areas

The department will consider a county, incorporated city, or other geographic area to be a distressed area if it is:

(1) A county whose average index of economic distress is equal to or greater than 1.20, where the state's average index of economic distress equals 1.00, based on an average of several sub-index factors. The sub-index factors shall use data for the most recent year for which reliable data are available. The sub-index factors shall be, where reliable data are available:

(a) The county's unemployment rate divided by this state's unemployment rate;

(b) This state's per capita income divided by the county's per capita income;

(c) This state's average covered payroll per worker divided by the county's average covered payroll per worker;

(d) This state's population percentage change divided by the comparable percentage for the county;

(e) The county's percentage of total population receiving unemployment insurance benefits divided by this state's comparable percentage;

(f) The sum of the absolute differences between a county's percentage of total covered employment in each industry and this state's percentage of total covered employment in the same industry, divided by the average of the sums for all counties in the state;

(g) The county's poverty rate for all families divided by this state's poverty rate for all families; and

(h) This state's employment percentage change divided by the comparable percentage for the county; or

(2) An incorporated city outside of the counties identified as distressed areas under subsection (1) of this section whose average index of economic distress as calculated in subsection (1) of this section, using city or zip code data rather than county data and using modifications of the county methodology where necessary due to data limitations, is equal to or greater than 1.25; or

(3) A county, incorporated city, or other geographic area that has demonstrated in writing, 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 this subsection.

Stat. Auth.: ORS 285A.075 (5)
 Stats. Implemented: ORS 285A.095, ORS 285B.062 & ORS 285B.065
 Hist.: EDD 12-1998, f. & cert. ef. 8-14-98

123-024-0041

Priorities Based on Distressed Area List

The department will give highest funding priority to distressed areas that are designated in acknowledged local comprehensive plans as incorporated cities, unincorporated areas within urban growth boundaries, or unincorporated communities described in Oregon Administrative Rule 660-022-0010(9).

Stat. Auth.: ORS 285A.075 (5)
 Stats. Implemented: ORS 285A.095, ORS 285B.062 & ORS 285B.065
 Hist.: EDD 12-1998, f. & cert. ef. 8-14-98

DIVISION 25

STANDARDS TO DETERMINE PROJECT ELIGIBILITY AND APPLICATION PROCEDURES FOR PORT PLANNING AND MARKETING GRANTS FROM THE 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 285.850 through 285.863.

Stat. Auth.: ORS 183.360 & ORS 285.035(5)
 Stats. Implemented: ORS 285.850 - ORS 285.860
 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

123-025-0010

Definitions

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

(1) "Department" means the Economic Development Department.

(2) "Ports Division" means the Division within the Economic Development Department responsible for administering the Fund.

(3) "Port" means a port established pursuant to ORS 777.005 through 777.725, ORS 777.915 through 777.953, or ORS Chapter 778.

(4) "Fund" means Port Planning and Marketing Fund.

(5) "Planning Project" means a project conducted under ORS 285.815 or any other planning project necessary for improving the

port's capability to carry out is authorized function and activities related to trade and commerce.

(6) "Marketing Project" means a marketing project necessary for improving the Port's capability to carry out its authorized functions related to trade and commerce.

(7) "Project" means a planning project and/or a marketing project. It does not include project implementation such as, but not limited to, final engineering or comprehensive plan and zone change applications.

Stat. Auth.: ORS 183.360 & ORS 285.035(5)

Stats. Implemented: ORS 285.850 - ORS 285.860

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

123-025-0015

Determination of Eligibility

(1) The Port shall submit a written application for planning and/or marketing project funding to the Ports Division. The Port's written application shall:

(a) Describe the nature and purposes of the proposed project, including the need for the project, term of the project, the reasons why the project is in the public interest, and an estimate of the project costs.

(b) Contain a Resolution of the Port Governing Body that a minimum of 25 percent of the total cost of the project is committed and available for carrying out the project.

(c) Contain a statement from applicable local governing bodies that the project is consistent with applicable county and city comprehensive plans. This requirement may be waived by the Ports Division if the Ports Division determines that the project does not implicate the current and applicable comprehensive plans.

(2) Upon receipt of a written application, the Ports Division shall determine whether the project is eligible for funding. If the Ports Division determines the project is not eligible, it shall, within 60 days of receipt of the written application:

(a) Reject the application; or

(b) Require the applicant to submit additional information as may be necessary.

(3) The Ports Division will review each written application and will give priority to projects that meet one or more of the following standards:

(a) The project will develop strategic business plans or plan updates.

(b) The project is regional or cooperative in nature, and leverages other marketing and development efforts by the State or other government units.

(c) The project will lead to economic diversification.

(d) The project will lead to development of a new or emerging industry.

(e) The project will lead to development or redevelopment of new and/or existing public facilities.

(f) The project term does not exceed twelve months.

(4) The project must meet the following criteria:

(a) The required local share of the project cost is in cash rather than in-kind services.

(b) The project will enhance the port's ability to conduct trade and commerce.

(c) The project is not a duplication of marketing efforts among ports.

(d) The project does not subsidize regular port operating expenses.

(e) The project will not require or rely upon continuing subsidies from the Department.

(f) The grant application does not seek funding in excess of the lesser of \$25,000 or 75 percent of the total cost of the project.

Stat. Auth.: ORS 183.360 & ORS 285.035(5)

Stats. Implemented: ORS 285.850 - ORS 285.860

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

123-025-0020

Grant Approval

(1) The project coordinator for the Port Planning and Marketing Fund shall make a recommendation to the Manager of the Ports Division to approve or reject the project grant application.

(2) The Manager of the Ports Division will approve or reject the project grant application, and the Ports Division will notify the applicant of the Manager's decision within seven days of the decision.

Stat. Auth.: ORS 183.360 & ORS 285.035(5)

Stats. Implemented: ORS 285.850 - ORS 285.860

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

123-025-0025

Grant Administration

(1) The Ports Division and the port shall execute a grant agreement following project approval and prior to disbursement of grant funds.

(2) Grant funds will be disbursed to a port for actual project costs as they are incurred.

(3) Documentation of costs incurred by a port must be submitted to the Ports Division prior to disbursement of funds.

(4) Disbursement of grant funds to a port will not exceed one disbursement per month.

(5) The port must provide the Ports Division with a copy of documents, studies, reports, and materials developed under a Planning Project grant within 60 days following project completion.

(6) The port must provide the Ports Division with a written report of results of marketing efforts and with materials developed under a Marketing Project grant within 60 days following project completion.

(7) Fifteen percent of the project grant to a port will be withheld until the port has complied with sections (5) and (6) of this rule.

(8) Any money not used for an approved project must be returned to the Ports Division.

(9) Project amendments must have prior approval of the Ports Division if they change the project cost, scope, objectives, or time frame.

(10) The Ports Division may require return of unexpended funds or require repayment of expended funds under the following conditions:

(a) The project has not significantly been started within sixty days of the notification of project approval;

(b) There is significant deviation from approved project activities;

(c) State statutory regulations have not been met.

Stat. Auth.: ORS 285

Stats. Implemented: ORS 285.850 - ORS 285.860

Hist.: EDD 8-1985(Temp), f. 10-22-85, ef. 11-1-85; EDD 5-1987, f. & ef. 10-9-87

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 777.262 - ORS 777.267

Stats. Implemented: ORS 777.262 - ORS 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93

123-027-0040

Definitions

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

(1) "Department" means the Economic Development Department.

(2) "Fund" means the Marine Navigation Improvement Fund.
 (3) "Ports Division" means the Division within the Economic Development Department.

(4) "Project" means federally authorized studies, dredging and construction of a new navigation improvement project.

(5) "Sponsor" means a port or the State of Oregon having the authority to furnish the cooperation required for a project under the Water Resources Development Act of 1986 (PL 99-662).

(6) "Dredging" means dredging and related activities carried out for a project when federal law or regulation requires a portion of the cost of such dredging and related activities to be paid by non-federal interests.

(7) "Non-Federal Share" means that portion of a project cost not paid for by the federal government.

(8) "Port" means a port incorporated under ORS Chapter 777 or 778.

(9) "Government" means the United States Army Corps of Engineers.

(10) "State of Oregon" means State of Oregon government departments or agencies.

Stat. Auth.: ORS 777.262 - ORS 777.267

Stats. Implemented: ORS 777.262 - ORS 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93

123-027-0050

Determination of Eligibility

(1) Eligibility for assistance from the Fund shall be limited to federally authorized studies, dredging and construction of a new project.

(2) The Sponsor shall notify the Ports Division of a potential project at the time it initiates a Reconnaissance Study with the Government.

(3) Financial assistance for construction of a project shall be limited to those projects that have completed all federally required studies and have confirmed positive cost/benefit ratios as required by the National Economic Development Plan.

(4) The Sponsor shall submit written documentation to the Ports Division evidencing its participation with the Government in a project. The written documentation shall:

(a) Describe the nature and purpose of the project, including: Proposed project scheduling; project term; estimated project cost; the Sponsor's estimated non-federal share of the total project cost; and, the required schedule for payment of the Sponsor's non-federal share of the total project cost;

(b) Contain federal documents which authorize the project, including Reconnaissance/Feasibility Studies;

(c) Contain a copy of the Sponsor's proposed Local Cost Share Agreement with the Government for undertaking and carrying out the project.

(5) The Sponsor shall submit written cost/benefit information which identifies benefits of the proposed project to the local community, the region, and the State as a whole.

(6) Upon receipt of written documentation, the Ports Division shall determine whether the project is eligible for funding. If documentation is not adequate to determine eligibility, the Ports Division shall, within 30 days, require the Sponsor to submit additional information as may be necessary.

(7) The Ports Division will review documentation for each project and make a determination to either approve or deny payment of the required non-federal share of the total project cost from the Fund. The Ports Division review will be based on the following:

(a) The project is federally authorized;

(b) A cost/benefit analysis which is satisfactory to the State of Oregon. Determination of the relative costs and benefits of the proposed project shall be derived on the basis of the amount requested from the Fund, and not on total project costs;

(c) The required amount needed during a biennium for payment of the non-federal share of the total project cost is available within the Fund.

Stat. Auth.: ORS 777.262 - ORS 777.267

Stats. Implemented: ORS 777.262 - ORS 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93

123-027-0060

Findings and Notification

(1) Based on its review of the Sponsor's project, the Ports Division shall furnish written findings to support its decision to recommend approval or denial of the proposed project.

(2) The Sponsor shall be notified immediately of the Ports Division's recommendation, and shall receive a copy of the findings. The Sponsor shall have 30 days to appeal a denial.

Stat. Auth.: ORS 777.262 - ORS 777.267

Stats. Implemented: ORS 777.262 - ORS 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93

123-027-0070

Approval of Non-Federal Share Payment

(1) The Ports Division shall make a recommendation to the Director of the Department to approve or deny payment of the non-federal share and shall notify the Sponsor of the said recommendation. The Ports Division's recommendation to deny payment shall not precede the appeal period set forth in OAR 123-027-0020(2).

(2) The Ports Division will notify the Sponsor of the Director's decision for approval or denial of payment within five days of the decision.

Stat. Auth.: ORS 777.262 - ORS 777.267

Stats. Implemented: ORS 777.262 - ORS 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93

123-027-0080

Fund Administration

(1) The Department and the Sponsor shall execute a disbursement agreement following approval for payment of the non-federal share and prior to disbursement of moneys from the Fund.

(2) Payments from the Fund will be disbursed to a Sponsor in accordance with the Government's schedule requirements for payment of the non-federal share.

(3) The Sponsor must provide the Ports Division with a written report, records, and an accounting of detailed costs for a project:

(a) Within 30 days following the close of each Government fiscal year;

(b) Within 90 days following final completion of a project.

(4) Any amount disbursed from the Fund and not used by a Sponsor for a project must be returned to the Department.

(5) Project amendments must have prior approval of the Department if they change the project cost, scope or time frame.

(6) The Department may require return of disbursed funds or require repayment of expended funds under the following conditions:

(a) The project is not undertaken within the time frame originally proposed;

(b) There is significant deviation in the approved project;

(c) State Statutory regulations have not been met;

(d) The project is suspended or terminated.

Stat. Auth.: ORS 777.262 - ORS 777.267

Stats. Implemented: ORS 777.262 - ORS 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93

DIVISION 30

PORT REVOLVING FUND

123-030-0005

Application

To facilitate the performance of duties imposed by ORS 285.870 - 285.943 from and after the effective date of these rules, any Oregon port district applying for a loan from the Oregon Port Revolving Fund shall comply with these rules as prescribed by the Oregon Economic Development Commission:

(1) All applications by Oregon port districts for loans from the Oregon Port Revolving Fund, as authorized under ORS 285.870 - 285.943, shall be submitted to the Economic Development Commission and shall be signed by the Port Commission President, Secretary, and Treasurer of the port district. In addition, the following information shall be included in the application:

- (a) The port district's official name;
 - (b) The port district's business address;
 - (c) Name of chief operating officer of the port district;
 - (d) Name of all port district commissioners and their respective titles; and
 - (e) Organizing date and authority of the port district.
- (2) A fee of \$100 shall be charged for each loan application submitted to the Department. All application fees shall 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 filed with the Department shall include or be accompanied by adequate information in sufficient detail and clarity to indicate the nature and extent of the work proposed. A sketch shall be provided, drawn to scale on substantial paper, and shall include a plot plan showing the proposed facilities, if appropriate, and the physical relationship to other facilities on the property. Specifications shall include preliminary cost estimates, engineering specifications, and architectural specifications when appropriate.
- (4) All applications for loans from the Oregon Port Revolving Fund shall include or be accompanied by sufficient financial and economic data that will demonstrate that the port development project is feasible from an economic standpoint and has reasonable prospect for repayment. The data shall include, but not be limited to:
- (a) Pro forma budget forecast, formally reviewed by the port fiscal officer and attesting to the correctness of the fiscal data, showing total costs of the port development project, the amount of funds requested from the Oregon Port Revolving Fund, the source of all other funds associated with the project, and all expenditures and revenues projected on an annualized basis to implement and operate the project for the loan period;
 - (b) A plan for payment of all funds borrowed, plus interest, to the Oregon Port Revolving Fund;
 - (c) A copy of the port's audit report, when appropriate, filed in accordance with ORS Chapter 297, and a copy of the budget filed in accordance with ORS Chapter 294 for the previous four years. If an audit report is not available, a detailed financial statement reviewed by a Certified Public Accountant that includes a statement of total current assets, liabilities, and current net worth;
 - (d) Whether any information relating to the application is confidential, pursuant to ORS 184.160(4). (Note that the projects must be considered by the Commission in public meetings, and there may be information that cannot be kept confidential in the course of such consideration. Should this become a problem, the situation will be discussed with the applicant in advance.)
- (5) All applications for loans from the Oregon Port Revolving Fund shall indicate the proposed collateral to secure the loan and shall 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 mileage rate, the projected new mileage rate, if required, to pay off the loan, and a statement indicating whether the proposed pledge is within the port's current six percent limitation;
 - (b) If any of the port's personal or real property is proposed to be pledged as collateral, the Commission may require a formal appraisal, certified by an appropriate licensed authority, attesting to the value of all collateral proposed to be held as security.
- (6) The project shall satisfy the applicable requirements of OAR Chapter 123, Division 8.
- (7) The Economic Development Commission may provide preliminary approval of a loan application at any time and identify all necessary requirements for final approval.
- (8) If the Economic Development Commission approves the loan application, it may authorize a loan from the Oregon Port Revolving Fund, secured by good and sufficient collateral.
- (9) If the Economic Development Commission denies the application, the matter will be set aside unless the applicant requests further action under ORS Chapter 183.

Stat. Auth.: ORS 285.857

Stats. Implemented: ORS 285.873

Hist.: EDD 9, f. & ef. 10-14-77; EDD 6-1978, f. & ef. 7-10-78; EDD 17-1990, f. & cert. ef. 6-28-90

123-030-0010

Need for the Port Revolving Fund Project

All applications for loans from the Oregon Port Revolving Fund shall include sufficient information that will demonstrate the need for the port development project. The information shall include, but not be limited to, the following:

- (1)(a) Whether reasonable alternatives to the proposed port development project have been considered;
 - (b) Whether economic benefits and opportunities such as increased employment, increased personal income, and cost savings are evident;
 - (c) Whether the applicant has a prospective user or other near-term use of the proposed port development project;
 - (d) That the project satisfies the applicable requirements of OAR Chapter 123, Division 8.
- (2) In the event the loan is primarily for a proposed port development project to facilitate the location or expansion of industry pursuant to ORS 285.870 - 285.943, then the following condition must be met as a demonstration of need: That industry expansion to be induced by the loan includes one or more of the following activities:

- (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) Medical, clinical, engineering, or other scientific testing;
 - (g) Corporation headquarters facilities;
 - (h) Destination resort and recreational development;
 - (i) Storage and warehousing facilities;
 - (j) Product distribution facilities;
 - (k) Transportation or freight facilities including, but not limited to, airports;
 - (l) Introduction of new technology or new types of economic development to broaden an area's economic base;
 - (m) Other activities consistent with the target industries or reverse investment programs of the Department of Economic Development.
- (3) Need for the port development project will not be considered established for the purpose of these rules for in-state plant relocation unless the following conditions are met:

- (a) The applicant 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 285.870 - ORS 285.943

Stats. Implemented: ORS 285.883

Hist.: EDD 9, f. & ef. 10-14-77; EDD 17-1990, f. & cert. ef. 6-28-90

DIVISION 40

ELIGIBILITY STANDARDS AND APPLICATION PROCEDURES FOR SITE-SPECIFIC INFRASTRUCTURE GRANTS

123-040-0000

Authority

Pursuant to ORS 284.340(4)(b), the Intergovernmental Relations Division may transfer Special Public Works Fund Monies to the Economic Development Department for allocation. The Department may adopt rules as provided by ORS 184.125(3).

Stat. Auth.: ORS 776

Stats. Implemented: ORS 285.707

Hist.: EDD 2-1986, f. & ef. 1-22-86

123-040-0005

Purpose

The purpose of these rules is to provide procedures, standards and criteria for operation of the Department's Site Specific Infrastructure Grant Program. Insofar as practicable, projects that

meet the following criteria will receive priority for financial assistance:

- (1) Support projects that will increase the number of family wage jobs in this state.
- (2) Promote economic recovery in small cities heavily dependent on a single industry.
- (3) Emphasize development in underdeveloped rural areas of this state.
- (4) Utilize the educational resources available at institutions of higher education.
- (5) Support the development of the state's small businesses, especially businesses owned by women and members of minority groups.
- (6) Encourage the use of Oregon's human natural resources in endeavors which harness Oregon's economic comparative advantages.
- (7) Encourage projects that assist businesses selling goods and services in markets for which national or international competition exists.

Stat. Auth.: ORS 776

Stats. Implemented: ORS 285.707

Hist.: EDD 4-1985(Temp), f. & ef. 7-23-85; EDD 2-1986, f. & ef. 1-22-86

123-040-0010

Definitions

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

- (1) "Department" means the Economic Development Department.
- (2) "Municipality" means a city, a county, a port incorporated under ORS 777.010 and 777.050, the Port of Portland created by ORS 778.010, a metropolitan service district organized under ORS Chapter 268, a domestic water supply district organized under ORS Chapter 264, a county service district established under ORS Chapter 451, a mass transit district organized under ORS 267.010 to 267.390 and a transportation district organized under ORS 267.510 to 267.650.
- (3) "Infrastructure Project" means:
 - (a) A project for the construction of sewage treatment works, solid waste disposal sites, water supply works, roads, public transportation or other facilities that comprise the physical foundation for industrial and commercial activity;
 - (b) A project, in cooperation with the Oregon Department of Transportation, for the acquisition, reconstruction, rehabilitation, operation and maintenance of an abandoned railroad line or railroad line that has been designated by the owner and operator thereof as subject to abandonment within a three-year period pursuant to federal law and regulations governing abandonment of common carrier railroad lines.
- (4) "Public Transportation" includes public depots, public parking, public docks, public wharves, railroads and airport facilities.
- (5) "Roads" includes ways described as streets, highways, throughways or alleys; road-related structures that are in the right-of-way such as tunnels, culverts or similar structures; and structures that provide for continuity of the right-of-way such as bridges.
- (6) "Sewage Treatment Works" includes all facilities necessary for collecting, pumping, treating and disposing of sanitary or storm sewage.
- (7) "Solid Waste disposal site" has the meaning given to the term "disposal site" by ORS 459.005(8).
- (8) "Water Supply Works" includes all facilities necessary for tapping natural sources of domestic and industrial water, treating and protecting the quality of the water and transmitting it to the point of sale to any public or private agency for domestic, municipal, and industrial water supply service.
- (9) "Family Wage Job" means a full-time equivalent job with a wage greater than 80 percent of the median income for a family of two in the county where most of the present or future employment generated by the infrastructure project will reside.

Stat. Auth.: ORS 776

Stats. Implemented: ORS 285.707

Hist.: EDD 4-1985(Temp), f. & ef. 7-23-85; EDD 2-1986, f. & ef. 1-22-86

123-040-0015

Determination of Eligibility

- (1) The municipality shall submit an application for infrastructure project funding to the Department. The municipality's application shall:
 - (a) Describe the nature and purposes of the proposed infrastructure project, including the need for the project, and the reasons why the project is in the public interest. The description will include information regarding the existing or proposed user of site, including the actual or estimated investment and employment;
 - (b) Submit a feasibility study that includes an estimate of project costs, construction schedule, and a plan for funding ongoing operation, maintenance, and replacement or rehabilitation costs;
 - (c) Document the ability or inability of the municipality to fund more than 15 percent of the project given its tax capacity, credit ratings, and other factors including, but not limited to, special circumstances of recent origin that are not reflected in its tax and credit ratings, such as recent plant closures or natural disasters;
 - (d) State the source of the matching grant moneys that are proposed to be used for the infrastructure project and when these moneys will be made available for the project;
 - (e) Document that project funding must be made available before the next Intergovernmental Relations Division competitive allocation for Special Public Works Funds and that no other state or federal funds are available;
 - (f) Document that the project is compatible with the acknowledged comprehensive plan and land use regulations for the affected area, including any public facility plan, and that the project is consistent with other applicable local, state and federal laws and regulations including the Statewide Planning goals;
 - (g) State whether any purposes other than servicing the specific site are included in the proposed infrastructure project;
 - (h) A project which overlaps municipal boundaries must be authorized through a cooperation agreement adopted by the municipalities. The agreement must specify the responsibilities of the parties, identify a coordinating municipality (the applicant) and provide necessary assurances that the project can be built as proposed;
 - (i) Document that other infrastructure facilities necessary to serve the existing or proposed user of the site are now and will continue to be available.
- (2) Upon receipt of an application, the Department shall determine whether the information provided is satisfactory, and if the Department determines that it is not satisfactory it may:
 - (a) Reject the application;
 - (b) Require the municipality to submit additional information as may be necessary; or
 - (c) Make, with the agreement of the municipality, such revisions to the feasibility study as it considers necessary to make the proposed project satisfactory.
- (3) The Department shall review the municipality's application based upon the following standards:
 - (a) The infrastructure project is related to a specific existing or proposed development or expansion opportunity;
 - (b) A grant may pay up to 85 percent of total project costs depending on the ability of the municipality to pay more than 15 percent of such costs. Maximum grant is \$4 million;
 - (c) Other state or federal funding is not available;
 - (d) Completion of the project and the creation of jobs requires immediate infrastructure funding;
 - (e) The creation of jobs, as a result of the funding, can be assured as much as practicable;
 - (f) The project is cost-effective in terms of the amount of grant compared to the total number of permanent jobs created.

Stat. Auth.: ORS 776

Stats. Implemented: ORS 285.715

Hist.: EDD 4-1985(Temp), f. & ef. 7-23-85; EDD 2-1986, f. & ef. 1-22-86

123-040-0020

Grant Approval

(1) The Department will submit the municipality's application and the Department's review thereof to the Governor's Economic Action Council.

(2) The Department shall make a final recommendation on the infrastructure project grant to the Governor based on the recommendations of the Economic Action Council.

(3) The Department will allocate grant funds at the direction of the Governor.

(4) The grant allocation will be contingent on receipt, within sixty days of grant approval or other period specified by the Department, of:

(a) A letter of commitment from the site's existing or proposed user and their financial sources regarding the actual investment to be made and the projected level of employment;

(b) A letter of financial commitment regarding the infrastructure grant matching funds; and

(c) A grant agreement signed by the highest elected or appointed official of the municipality.

Stat. Auth.: ORS 776

Stats. Implemented: ORS 285.715

Hist.: EDD 4-1985(Temp), f. & ef. 7-23-85; EDD 2-1986, f. & ef. 1-22-86

123-040-0025

Grant Administration

(1) The Department and municipality will sign a grant agreement that stipulates:

(a) Grant funds will be disbursed monthly for actual project costs as they are incurred by the municipality. The municipality's infrastructure construction schedule shall be coordinated with the existing or proposed site user's facility construction schedule;

(b) The municipality must provide documentation of project completion and an annual statement certifying the number of jobs created or retained for a period of five years;

(c) The municipality shall maintain records of all activities associated with an infrastructure grant project. The Department is entitled to monitor the municipality's records to verify compliance with the grant agreement;

(d) If the project includes a recoverable asset, the Department may require that the grant amount or the percentage of total project cost paid with the grant, whichever is less, shall be repaid to the State of Oregon "Special Public Works Funds" or be retained by the municipality in a special economic development fund upon sale of such asset by the municipality.

(2) Grant funds shall not be used to pay the costs of preliminary planning or legal, fiscal and economic investigations, reports and studies to determine the economic and engineering feasibility of the project. Grant funds may be used to pay for the engineering and architectural reports, studies, surveys, designs, plans, working drawings and specifications necessary for the construction of the infrastructure project.

(3) Grant funds may be disbursed to the municipality concurrently with the closing of the site purchase transaction or the signing of a site lease agreement by the proposed or existing site user.

(4) All projects assisted with Special Public Works Program funds must comply with state procurement guidelines, state wage and hour standards (Little Davis-Bacon), municipal budget and audit laws and other applicable state and local regulations;

(5) Contract amendments must have prior written approval of the Department if they change the cost, scope, location, objectives, or time frame of the approved activities. Failure to gain prior approval for amendments may result in sanctions.

(6) Any infrastructure project financed with proceeds from the state lottery authorized by Section 4, Article XV of the Oregon Constitution shall have displayed conspicuously on the site or as part of the program information specifying that the program is being financed by the state lottery.

Stat. Auth.: ORS 776

Stats. Implemented: ORS 285.717

Hist.: EDD 4-1985(Temp), f. & ef. 7-23-85; EDD 2-1986, f. & ef. 1-22-86

123-040-0030

Sanctions

(1) The Department may invoke sanctions against municipalities that fail to comply with grant agreement provisions. No sanctions will be imposed by the Department until the recipient has been notified in writing of deficiencies and has been given a reasonable time to respond and correct the deficiencies noted. Sanctions may be imposed under the following conditions:

(a) None of the project activities have begun within six months after award; or

(b) Private party agreement is not legally binding within six months of the grant award; or

(c) State statutory regulations have not been met; or

(d) There is a significant deviation from the grant agreement; or

(e) 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.

(2) One or more of the following sanctions may be imposed by the Department:

(a) Bar a recipient from applying for future grants;

(b) Revoke an existing award;

(c) Withhold unexpended funds;

(d) Require return of unexpended funds;

(e) Require repayment of expended funds;

(f) Withhold other state funds such as state shared revenues; or

(g) Other remedies may be incorporated into grant agreements.

(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 grant agreement.

(4) The municipality governed by the grant agreement shall be responsible for taking all action necessary to enforce the terms of the grant agreement against any private participant that fails to comply with the agreement, and to recover on behalf of the state any liabilities that may arise as the result of the breach of such an agreement by a private participant. Nothing in this paragraph shall restrict the state's right to enforce independently the terms of any grant agreement or to recover any sums that may become due as the result of a breach of such contract.

Stat. Auth.: ORS 776

Stats. Implemented: ORS 285.727

Hist.: EDD 2-1986, f. & ef. 1-22-86

123-040-0035

Railroad Lines

In addition to or in lieu of other provisions of these rules, as determined by the Department, the provisions of this section shall apply to railroad lines.

(1) A grant may be made by the Department to a municipality for retaining jobs based on continuing railroad freight service to existing industry.

(2) An application for a railroad line shall include:

(a) Documentation that the line is abandoned or designated for abandonment;

(b) Documentation of cooperation with the Oregon Department of Transportation; and

(c) Documentation of the municipality's ability to acquire the railroad line and pay the costs of operation, maintenance and rehabilitation in accordance with state and federal laws if a grant from the Special Public Works Fund is approved.

(3) If applicable, an application for a railroad line shall include:

(a) A preliminary acquisition contract between the municipality and the owner of the line;

(b) A preliminary contract between the municipality and a short line operator or documentation of the municipality's ability to operate the line itself;

(c) Letters from existing shippers documenting expected job losses without continued railroad freight service and the lack of economic alternatives thereto;

(d) Letters of commitment from shippers documenting the level of support for the proposed project; and

(e) Documentation of any potential new rail traffic if the line is acquired by the municipality.

(4) If applicable, the grant allocation will be contingent on receipt, within sixty days of grant approval or other period specified by the Department, of:

(a) A final acquisition contract;

(b) A final contract with a short line operator; and

(c) Letters of financial commitment from shippers documenting that the municipality will receive revenues sufficient to operate the line for a period of five years on a break even basis.

Stat. Auth.: ORS 776

Stats. Implemented: ORS 285.717

Hist.: EDD 2-1986, f. & ef. 1-22-86

DIVISION 42

SPECIAL PUBLIC WORKS FUND PROGRAM

123-042-0000

Purpose and Objectives

The purpose of these rules is to implement a Special Public Works Fund Program that provides financial assistance to municipalities for the improvement, expansion and new construction of the public infrastructure which provides the basic framework for continuing and expanding economic activity in Oregon. These rules are promulgated under authority granted to the Economic Development Department in ORS 285.035(5).

Stat. Auth.: ORS 285.700 - ORS 285.753

Stats. Implemented: ORS 285.700 - ORS 285.753

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 120-50-001; EDD 26-1990, f. & cert. ef. 10-11-90; EDD 9-1992, f. & cert. ef. 4-29-92

123-042-0010

Definitions

As used in these rules and the **Applicant's Handbook and Program Guidelines**, unless the context clearly indicates otherwise, the following terms shall have the following meaning:

(1) "Applicant's Handbook and Program Guidelines": This document is issued by the Department and includes both general program information and applications for program funding.

(2) "Applicant": A Municipality as defined in ORS 285.700(1).

(3) "Department": The State of Oregon Economic Development Department.

(4) "Director": The Director of the Department.

(5) "Family Wage Job": A job that has no anticipated end at the time it is created or retained and has an annual income greater than or equal to the average annual covered wage in the county in which most of the present or future employees of the business(es) or employer(s) in the Project Benefit Area will reside. The most current annual average covered wage information from the Oregon Employment Division shall be used to determine the family wage job rate for each county/region.

(6) "Fund": The Special Public Works Fund created by ORS 285.733.

(7) "Infrastructure Project" or "Project": As defined in ORS 285.700(2).

(8) "Loan": Debt financing offered through the Fund. There are two ways a Loan may be funded:

(a) "Direct Loans": These loans are funded with unobligated moneys from the SPWF;

(b) "Bond Funded Loans": These loans are funded through the sale of State Revenue Bonds. These loans are pledged to secure the bonded debt;

(c) Collateral Loans: These loans are funded with unobligated moneys from the SPWF and are subordinate to a Bond Funded Loan;

(d) When there is otherwise no specific reference to direct, bond funded, or collateral loans, the reference shall include all loan types.

(9) "Grants": Awards from the Fund to an Applicant which do not require the funds to be repaid. Grants benefiting Applicants include grants to fund eligible construction costs and to pay eligible bond issuance costs. Grants include Conditional Grants and Non-Cash Grants.

(10) "Conditional Grants": Awards from the Fund to an Applicant that are repaid only as events occur that allow for repayment.

(11) "Non-Cash Grant": Funds paid from the SPWF on behalf of an Applicant to pay bond insurance costs and debt service reserve, as needed.

(12) "State Revenue Bond": Bonds issued by the State of Oregon. The bond is payable from specific revenue sources and is not a pledge of the full faith and credit of the State of Oregon.

(13) "Financial Advisor": A consultant providing the Department with information and advice relative to the structure, timing, marketing, pricing, terms and bond ratings for the sale of State Revenue Bonds.

(14) "Bond Counsel": A legal firm hired to advise the Department regarding the legal and tax aspects of the sale of State Revenue Bonds.

(15) "Project Benefit Area": The geographic area which includes properties that will be specifically benefitted by the Infrastructure Project.

(16) "Project Period": The time period between execution of a contract between the Department and Applicant and the completion of an Infrastructure Project, normally two years.

(17) "Recipient": Refers to an Applicant that has received SPWF financing.

(18) "CD Manager": Manager of the Community Development Programs Section of the Department.

(19) "Severely Affected Community": A community will be considered a Severely Affected Community if it meets the criteria established in subsections (a), (b), or (c) of this section:

(a) A community whose most recent employment figures* for the timber industry exhibit at least a four percent decline since 1989 compared to the total 1990 workforce in the community. The timber industry is defined as forestry, lumber and wood products, furniture and paper products, and includes the standard industrial classification (SIC) codes of 08, 24, 25, and 26;

(b) A community that has demonstrated in writing, to the satisfaction of the Director, that it has suffered or is likely to suffer a severe economic decline. This economic decline is measured by a decline in employment in the timber industry, regardless of cause, or other resource-based industry that has been affected by forest health problems, or by the listing of a species as threatened or endangered. The community must present verifiable data that documents a current or impending decline of at least four percent in total employment since 1989 in timber or other natural resource based industry employment. The community may present other verifiable information to support its claim. The Director shall have the authority to declare communities severely affected as allowed under this subsection;

(c) A county in which the most recent annual average unemployment rate for a calendar year exceeds the state's annual average unemployment rate for the same calendar year by more than 50 percent.

NOTE: From data collected by the state Employment Division, updated annually about July 1.

(20) "Technical Assistance": Preliminary planning, legal, fiscal, engineering and economic investigations, reports and studies to determine the economic and engineering feasibility of an Infrastructure Project or for assistance in preparing an SPWF application.

(21) "Issuance Costs": Costs associated with the issuance of State Revenue Bonds including, but not limited to, costs for Financial Advisor, Bond Counsel and other consultants.

(22) "Debt Service Reserve": Unobligated moneys from the SPWF set aside in an account in the SPWF, to be used as debt ser-

vice for State Revenue Bonds, in the event that debt service is not met by Recipients.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency]
Stat. Auth.: ORS 285.700 - ORS 285.753
Stats. Implemented: ORS 285.700 - ORS 285.753
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 120-50-010; 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

123-042-0025

Bond Funded Loan Information

(1) The Department, in cooperation with the State Treasurer, may issue State Revenue Bonds to fund qualifying Projects in accordance with the limitation on state revenue bond issuance established by the Legislature.

(2) The Department shall use these funds only when a thorough analysis of Project feasibility and the Applicant's credit has been completed and reviewed with the Department's Financial Advisor and Bond Counsel and the determination is made that a Bond Funded Loan is the most appropriate financing alternative.

(3) The Department may use available and unobligated balances of the SPWF to make Non-Cash Grants.

Stat. Auth.: ORS 285.700 - ORS 285.753
Stats. Implemented: ORS 285.700 - ORS 285.753
Hist.: EDD 26-1990, f. & cert. ef. 10-11-90; EDD 9-1992, f. & cert. ef. 4-29-92

123-042-0030

Direct Loan and Grant Information

(1) The Department may offer Loans, Grants, or a combination of Loans and Grants to Applicants under this program. Financial assistance is given to Applicants with Projects that clearly meet the economic development objectives in ORS 285.700 - 285.763. The Department may offer Applicants the amount of financial assistance applied for or a different mix of Grant and Loan assistance than requested.

(2) Loans shall be awarded only after a thorough evaluation of the engineering and financial feasibility of the Project, and the credit strength of the Applicant.

(3) In accordance with ORS 285.703(3), Grants shall be awarded only when it is not feasible to award a Loan. Projects that are not financially feasible shall not be funded.

(4) Conditional Grants are awarded when an Applicant must rely upon unpredictable revenue sources to repay the award or part of the award. Conditional Grants are awarded in lieu of Loans when the Department sufficiently documents that Loan repayment ability is limited.

(5) No more than \$250,000 per state fiscal year or one percent of the value of the Fund, whichever is less, shall be expended on Technical Assistance Grants and Loans in any biennium.

Stat. Auth.: ORS 285.700 - ORS 285.753
Stats. Implemented: ORS 285.700 - ORS 285.753
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 120-50-030; EDD 26-1990, f. & cert. ef. 10-11-90; EDD 9-1992, f. & cert. ef. 4-29-92

123-042-0035

Award Limits, Rates and Terms

The CD Manager shall determine the amount, type, interest rate, and terms of financing awarded to an Applicant for an Infrastructure Project. Interest rates are set quarterly and generally are equal to tax exempt rates for similar obligations. The CD Manager shall consider the financial status of the Fund and may delay final award of funds to any Project until sufficient funds are available. The Department reserves the right to investigate and recommend other sources of funds for all or part of a proposed Infrastructure Project.

Stat. Auth.: ORS 285.700 - ORS 285.753
Stats. Implemented: ORS 285.700 - ORS 285.753
Hist.: 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

123-042-0040

Management of the Special Public Works Fund

(1) The Fund is capitalized through a biennial limitation of Oregon Lottery resources, the sale of State Revenue Bonds and interest earnings on Fund balances and Loan repayments.

(2) The Department shall manage the Fund so as to retain value to the Fund in conformance with the standard prescribed in ORS 285.707(2)(a).

(3) The Department shall maintain an accounting system for the Fund that separately accounts for administrative costs, Direct Loans, Grants and Bond Funded Loans and Collateral Loans. The Fund shall be managed so as to comply with generally accepted accounting principles and practices.

(4) The Department may expend funds from the SPWF to support the sale of State Revenue Bonds. Such expenditures may include the payment of all costs associated with the issuance of a State Revenue Bond including but not limited to Bond Counsel and Financial Advisor fees, underwriter fees and discounts, printing and publishing, and other costs as deemed necessary to secure the sale of a State Revenue Bond.

(5) The Department may expend funds from the SPWF to establish a debt service reserve to support the credit pledge of a Recipient.

(6) Four million dollars of the lottery proceeds received by the Fund during the biennium ending June 30, 1993, is reserved for Projects located in Severely Affected Communities. If these moneys are not used by December 31, 1992, the unexpended balance of the moneys shall be available for allocation for the purposes and through the procedures applicable to the Fund.

Stat. Auth.: ORS 285.700 - ORS 285.753
Stats. Implemented: ORS 285.700 - ORS 285.753
Hist.: EDD 3-1987(Temp), f. 8-17-87, ef. 8-20-87; EDD 5-1988, f. & cert. ef. 2-17-88; EDD 26-1990, f. & cert. ef. 10-11-90; EDD 9-1992, f. & cert. ef. 4-29-92

123-042-0050

Program Information

(1) The Department will adopt guidelines for the program. Guidelines will address application procedures, Project selection criteria, Project eligibility, financial assistance available, financing limits and other applicable information. Before guidelines are adopted, the Department will go through the rulemaking process. Program guidelines will be published in the Special Public Works Fund Program Applicant's Handbook and Program Guidelines.

(2) The guidelines in the Applicant's Handbook are hereby adopted by reference.

(3) The SPWF program is an agency program affecting land use, and will be administered pursuant to the Department's Certified State Agency Coordination Program and rules for goal compliance and comprehensive plan compatibility (OAR Chapter 123, Division 8).

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]
Stat. Auth.: ORS 285.700 - ORS 285.753
Stats. Implemented: ORS 285.700 - ORS 285.753
Hist.: EDD 3-1987(Temp), f. 8-17-87, ef. 8-20-87; EDD 5-1988, f. & cert. ef. 2-17-88; EDD 26-1990, f. & cert. ef. 10-11-90; EDD 9-1992, f. & cert. ef. 4-29-92

123-042-0060

Application Requirements

(1) An eligible Applicant may submit an application for Infrastructure Project funding to the Department at any time.

(2) The Department shall set forth in the **Applicant's Handbook** and **Program Guidelines** specific information required to assess the eligibility, engineering and financial feasibility of the Project, credit strength of the Applicant, and compatibility of the Project with acknowledged local comprehensive plans including public facility plans.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]
Stat. Auth.: ORS 285.700 - ORS 285.753
Stats. Implemented: ORS 285.710

Hist.: EDD 3-1987(Temp), f. 8-17-87, ef. 8-20-87; EDD 5-1988, f. & cert. ef. 2-17-88; EDD 26-1990, f. & cert. ef. 10-11-90; EDD 9-1992, f. & cert. ef. 4-29-92

123-042-0080

Contract Administration

(1) The Department shall award moneys from the Fund by entering into an SPWF contract with the Recipient.

(2) The Department shall provide each Recipient with information, in the form of a Project management handbook, which guides local record keeping and Project reporting activities.

(3) Grant funds awarded to a Project can only be drawn down as needed to pay for eligible Project costs. The time between draw down and disbursement of Grant funds shall be as brief as is administratively feasible. Grant funds awarded to the Project may only be drawn down after all Loan funds and interest earned on Loan funds have been expended. The exception to this rule is when Grant funds are used to pay the costs of State Revenue Bond issuance costs as approved by the Department. Other exceptions to this rule can be made in special circumstances with advance approval of the CD Manager.

(4) The expenditure of SPWF award moneys generally shall occur in relative proportion to the percentage that the SPWF award represents to the total Project cost.

Stat. Auth.: ORS 285.700 - ORS 285.753

Stats. Implemented: ORS 285.717 - ORS 285.753

Hist.: EDD 3-1987(Temp), f. 8-17-87, ef. 8-20-87; EDD 5-1988, f. & cert. ef. 2-17-88; EDD 26-1990, f. & cert. ef. 10-11-90; EDD 9-1992, f. & cert. ef. 4-29-92

123-042-0090

Railroad Lines

(1) The provisions of this section shall apply to railroad lines. If these rules conflict with other administrative rules of the SPWF, the rules of this section shall apply.

(2) An award may be made by the Department to an Applicant for retaining jobs based on continuing railroad freight service to existing businesses.

(3) An application for a railroad line Infrastructure Project shall include:

(a) Documentation that the line is abandoned or designated by the owner and operator for abandonment as provided in ORS 285.700(2)(b);

(b) Documentation of consultation with the Oregon Department of Transportation, the PUC and other affected agencies; and

(c) Documentation of the Applicant's ability to acquire the railroad line and pay the costs of operation, maintenance and rehabilitation in accordance with state and federal laws if assistance from the Fund is approved.

(4) Where applicable, an application for a railroad line Infrastructure Project also shall include:

(a) A preliminary acquisition contract between the Applicant and the owner and operator of the line;

(b) A preliminary contract between the Applicant and a short line operator or documentation of the Applicant's ability to operate the line itself;

(c) Letters from existing shippers documenting expected job losses without continued railroad freight service and the lack of economic alternatives thereto;

(d) Letters of commitment from shippers documenting the level of support for the proposed Project;

(e) Documentation of any potential new rail traffic if the line is acquired by the Applicant.

(5) If applicable, the SPWF award will be contingent on receipt, within 60 days of award approval or other period specified by the Department, of:

(a) A final acquisition contract;

(b) A final contract with a short line operator; and

(c) Letters of financial commitment from shippers documenting that the Applicant will receive revenues sufficient to operate the line for a period of five years on a break even basis.

Stat. Auth.: ORS 285.700 - ORS 285.753

Stats. Implemented: ORS 285.700 - ORS 285.753

Hist.: EDD 3-1987(Temp), f. 8-17-87, ef. 8-20-87; EDD 5-1988, f. & cert. ef. 2-17-88; EDD 26-1990, f. & cert. ef. 10-11-90; EDD 9-1992, f. & cert. ef. 4-29-92

123-042-0100

Sanctions

(1) The Department may invoke sanctions against Recipients that fail to comply with contract provisions. Sanctions will not be imposed by the Department until the Recipient has been notified in writing of deficiencies and has been given a reasonable time to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:

(a) None of the Project activities have begun within six months after award; or

(b) Any private party agreements relating to the Project are not legally binding within six months of the SPWF award; or

(c) State statutory requirements have not been met; or

(d) There is a significant deviation from the SPWF contract; or

(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.

(2) One or more of the following sanctions may be imposed by the Department:

(a) Bar a Recipient from applying for future SPWF assistance;

(b) Revoke an existing SPWF award;

(c) Withhold unexpended SPWF funds;

(d) Require return of unexpended SPWF funds;

(e) Require repayment of expended SPWF funds;

(f) Withhold other state funds such as state-shared revenues;

(g) Other remedies that may be incorporated into Grant or Loan contracts.

(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 SPWF contract.

(4) The Recipient which has signed the SPWF contract shall be responsible for taking all action necessary to enforce the terms of the SPWF contract against any private participant that fails to comply with the contract, and to recover on behalf of the Department any liabilities that may arise as the result of the breach of such contract by a private participant. Nothing in this paragraph shall restrict the Department's right to enforce independently the terms of any SPWF contract or to recover any sums that may become due as the result of a breach of such contract.

Stat. Auth.: ORS 285.700 - ORS 285.753

Stats. Implemented: ORS 285.727

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 120-050-0050; EDD 26-1990, f. & cert. ef. 10-11-90; EDD 9-1992, f. & cert. ef. 4-29-92

123-042-0110

Appeals Procedures

(1) Appeals of local government decisions regarding a Project application must be made at the local level.

(2) The Director will consider appeals of the Department's funding decisions. Only the Applicant may appeal. An application that would have been funded but for a technical error in the Department's review will be funded as soon as sufficient funds become available, provided the Project is still viable. 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 285.700 - ORS 285.753

Stats. Implemented: ORS 285.715 & ORS 285.717

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 120-050-0070; EDD 9-1992, f. & cert. ef. 4-29-92

DIVISION 43

WATER/WASTEWATER FINANCING PROGRAM

123-043-0000

Purpose and Objectives

The purpose of these rules is to implement a Water/Wastewater Financing Program that provides financial assistance to municipalities for the construction and improvement of public water and wastewater collection systems in order to provide safe drinking water and appropriate disposal of wastewater for Oregon residents. These rules are promulgated under authority granted to the Economic Development Department in ORS 285.757(7).

Stat. Auth.: ORS 285.035(5)

Stats. Implemented: ORS 285.950 - ORS 285.968

Hist.: EDD 10-1993(Temp), f. & cert. ef. 10-4-93; EDD 7-1994, f. & cert. ef. 4-7-94

123-043-0010

Definitions

As used in these rules and the Applicant's Handbook and Program Guidelines, unless the context clearly indicates otherwise, the following terms shall have the following meaning:

(1) "Applicant": A municipality as defined in ORS 285.700(1).

(2) "Applicant's Handbook and Program Guidelines": This document is issued by the Department and includes both general program information and applications for program funding.

(3) "Bond Counsel": A legal firm hired to advise the Department regarding the legal and tax aspects of the sale of State Revenue Bonds.

(4) "CD Manager": Manager of the Community Development Programs Section of the Department.

(5) "Contract": A legally binding agreement between the Department and Recipient that sets out the terms and conditions for award of Project funds.

(6) "Debt Service Reserve": Unobligated monies from the Fund set aside in an account in the Fund, to be used as debt service for State Revenue Bonds, in the event that debt service is not met by Recipients.

(7) "Department": The State of Oregon Economic Development Department.

(8) "Director": The Director of the Department.

(9) "Financial Advisor": A consultant providing the Department with information and advice relative to the structure, timing, marketing, pricing, terms, and bond ratings for the sale of State Revenue Bonds.

(10) "Fund": The Water Fund created by ORS 285.755(2).

(11) "Grants": Awards from the Fund to an Applicant that do not require the funds to be repaid. Grants benefitting Applicants include grants to fund eligible technical assistance and construction costs and to pay eligible bond issuance costs. Grants include Non-Cash Grants.

(12) "Issuance Costs": Costs associated with the issuance of State Revenue Bonds including, but not limited to, costs for Financial Advisor, Bond Counsel and other consultants.

(13) "Loan": Debt financing offered through the Fund. There are two ways a Loan may be funded:

(a) Direct Loans: These Loans are funded with unobligated monies from the Fund. These Loans may be deferred for a specified period;

(b) Bond Funded Loans: These Loans are funded through the sale of State Revenue Bonds. These Loans are pledged to secure the bonded debt;

(c) Collateral Loans: These Loans are funded with unobligated monies from the Fund and are subordinate to a Bond Funded Loan;

(d) When there is otherwise no specific reference to Direct, Bond Funded, or Collateral Loans, the reference shall include all Loan types.

(14) "Non-Cash Grant": Monies paid from the Fund on behalf of an Applicant to pay bond issuance costs and Debt Service Reserve, as needed.

(15) "Project": As defined in ORS 285.755(5) and (6).

(16) "Project Period": The time period between award by the Department and the completion of a Project, normally two years.

(17) "Recipient": Refers to an Applicant that has received Project financing.

(18) "State Revenue Bond": Bonds issued by the State of Oregon. The bond is payable from specific revenue sources and is not a pledge of the full faith and credit of the State of Oregon.

(19) "Technical Assistance": Preliminary planning, legal, fiscal, engineering and economic investigations, reports and studies to determine the economic and engineering feasibility of a Project. Technical Assistance may also be used for preparation of applications for Loans and/or Grants.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 285.035(5)

Stats. Implemented: ORS 285.950 - ORS 285.968

Hist.: EDD 10-1993(Temp), f. & cert. ef. 10-4-93; EDD 7-1994, f. & cert. ef. 4-7-94

123-043-0020

State Revenue Bonds

(1) The Department, in cooperation with the State Treasurer, may issue State Revenue Bonds to fund qualifying Projects in accordance with the limitation on State Revenue Bond issuance established by the Legislature.

(2) The Department shall issue State Revenue Bonds only when a thorough analysis of Project feasibility and the Applicant's credit has been completed and reviewed with the Department's Financial Advisor and Bond Counsel and the determination is made that a Bond Funded Loan is the most appropriate financing alternative.

(3) The Department may use available and unobligated balances of the Fund to make Non-Cash Grants.

(4) Administrative expenses of the Department as limited by ORS 285.757(8)(a) may be paid from bond proceeds.

Stat. Auth.: ORS 285.035(5)

Stats. Implemented: ORS 285.950 - ORS 285.968

Hist.: EDD 7-1994, f. & cert. ef. 4-7-94

123-043-0030

Direct Loan and Grant Information

(1) The Department may offer Loans, Grants, or a combination of Loans and Grants to Applicants under this Program. Financial assistance is awarded to Applicants with Projects that clearly meet the objectives in ORS 285.755 to 285.763. The Department may offer Applicants a different amount of assistance than requested.

(2) In accordance with ORS 285.757(2)(b), monies shall be used primarily to make Loans to Municipalities. Loans shall be awarded only after a thorough evaluation of the engineering and financial feasibility of the Project, and the credit strength of the Applicant. The Department may make a Loan only if:

(a) The Municipality applying for the Loan certifies to the Department that adequate funds will be available to repay the Loan; and

(b) The Department determines that the amount of the Loan applied for is based on a reasonable and prudent expectation of the Municipality's ability to repay the Loan.

(3) In accordance with ORS 285.757(2)(c), the Department may award a Grant only if a Loan is not feasible due to:

(a) Financial hardship to the Municipality, as determined by the Department, based on consideration of anticipated water service charges or anticipated waste water service charges that exceed the statewide average for such charges, the per capita income of the Municipality and such other factors as the Department by rule may establish; and

(b) Special circumstances of the water Project.

(4) Projects that are not financially feasible shall not be funded.

(5) No more than \$250,000 per state fiscal year shall be expended on Technical Assistance Grants and Loans.

Stat. Auth.: ORS 285.035(5)

Stats. Implemented: ORS 285.950 - ORS 285.968

Hist.: EDD 7-1994, f. & cert. ef. 4-7-94

123-043-0040

Award Limits, Rates and Terms

(1) The CD Manager shall determine the amount, type, interest rate, and terms of financing awarded to an Applicant for an Infrastructure Project. Interest rates are generally equal to tax exempt rates for similar obligations. The CD Manager shall consider the financial status of the Fund and may delay final award of funds to any Project until sufficient funds are available. The Department reserves the right to investigate and recommend other sources of funds for all or part of a proposed Project.

(2) Water Development Projects as defined in ORS 541.700(6)(a), (b) and (d) to (f) shall not receive Grant funds.

(3) In accordance with ORS 285.757(2)(e), the amount of Grants made under ORS 285.755 to 285.763 shall not exceed 50 percent of the monies allocated to the Fund from proceeds of the Oregon State Lottery.

Stat. Auth.: ORS 285.035(5)

Stats. Implemented: ORS 285.950 - ORS 285.968

Hist.: EDD 7-1994, f. & cert. ef. 4-7-94

123-043-0050

Management of the Fund

(1) The Fund is capitalized through a biennial appropriation of Oregon Lottery resources, the sale of State Revenue Bonds, interest earnings on Fund Balances and Loan repayments.

(2) Other monies in the Fund may include monies transferred from the Special Public Works Fund created by ORS 285.733, monies transferred by the Water Resources Commission from the Water Development Fund created by Article XI-I(1) of the Oregon Constitution, or monies from any federal, state or local grants.

(3) The Department shall maintain an accounting system for the Fund that separately accounts for administrative costs, Direct Loans, Grants, Bond Funded Loans and Collateral Loans. The Fund shall be managed so as to comply with generally accepted accounting principles and practices.

(4) The Department may expend monies from the Fund to support the sale of State Revenue Bonds. Such expenditures may include the payment of all costs associated with the issuance of a State Revenue Bond including but not limited to Bond Counsel and Financial Advisor fees, underwriter fees and discounts, printing and publishing, and other costs as deemed necessary to secure the sale of a State Revenue Bond.

(5) The Department may expend funds from the Fund to establish a Debt Service Reserve to support the credit pledge of a Recipient.

Stat. Auth.: ORS 285.035(5)

Stats. Implemented: ORS 285.950 - ORS 285.968

Hist.: EDD 7-1994, f. & cert. ef. 4-7-94

123-043-0060

Program Information

(1) The Department will adopt guidelines for the program. Guidelines will address application procedures, Applicant and Project eligibility, financial assistance available, financing rates, terms and limits and other applicable information. Before guidelines are adopted, the Department will go through the rulemaking process. Program guidelines will be published in the **Applicant's Handbook and Program Guidelines**.

(2) The guidelines in the **Applicant's Handbook** are hereby adopted by reference.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 285.035(5)

Stats. Implemented: ORS 285.950 - ORS 285.968

Hist.: EDD 7-1994, f. & cert. ef. 4-7-94

123-043-0070

Application Requirements

(1) An eligible Applicant may submit an application for Project funding to the Department at any time.

(2) The Department shall set forth in the **Applicant's Handbook and Program Guidelines** specific information required to

assess eligibility and feasibility of the Project and the credit strength of the Applicant.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 285.035(5)

Stats. Implemented: ORS 285.950 - ORS 285.968

Hist.: EDD 7-1994, f. & cert. ef. 4-7-94

123-043-0080

Contract Administration

(1) The Department shall award monies from the Fund by entering into a Contract with the Recipient.

(2) The Department shall provide each Recipient with information, in the form of a **Project Management Handbook**, which guides local recordkeeping and Project reporting activities.

(3) Grant funds awarded to a Project can only be drawn down as needed to pay for eligible Project costs. The time between draw down and disbursement of Grant funds shall be as brief as is administratively feasible.

(4) Grant funds awarded to the Project may only be drawn down after all Loan funds and interest earned on Loan funds have been expended. The exception to this rule is when Grant funds are used to pay the costs of State Revenue Bond issuance costs as approved by the Department. Other exceptions to this rule may be made in special circumstances with advance approval of the CD Manager.

(5) If the Department determines that all funds awarded to a Project are not needed to complete the Project, Grant funds shall be recaptured by the Department first, followed by Loan funds.

(6) The expenditure of Project monies shall generally occur in relative proportion to the percentage that the Project award represents to the total Project cost.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 285.035(5)

Stats. Implemented: ORS 285.950 - ORS 285.968

Hist.: EDD 7-1994, f. & cert. ef. 4-7-94

123-043-0090

Sanctions

(1) The Department may invoke sanctions against Recipients that fail to comply with contract provisions. Sanctions will not be imposed by the Department until the Recipient has been notified in writing of deficiencies and has been given a reasonable time to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:

(a) None of the Project activities have begun within six months after award; or

(b) Any third party agreements relating to the Project are not legally binding within six months of the award; or

(c) State statutory requirements have not been met; or

(d) There is a significant deviation from the Contract; or

(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.

(2) One or more of the following sanctions may be imposed by the Department:

(a) Bar a Recipient from applying for future Department assistance;

(b) Revoke an existing Department award;

(c) Withhold unexpended Department funds;

(d) Require return of unexpended Department funds;

(e) Require repayment of expended Department funds;

(f) Withhold other state funds such as state-shared revenues;

(g) Other remedies that may be incorporated into Grant or Loan Contracts.

(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 taking all action necessary to enforce the terms of the Contract against any private

participant that fails to comply with the Contract, and to recover on behalf of the Department any liabilities that may arise as the result of the breach of such Contract by a private participant. Nothing in this section 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 285.035(5)
Stats. Implemented: ORS 285.950 - ORS 285.968
Hist.: EDD 7-1994, f. & cert. ef. 4-7-94

123-043-0100

Appeals Procedures

(1) Appeals of local government decisions regarding a Project application must be made at the local level.

(2) The Director will consider appeals of the Department's funding decisions. Only the Applicant may appeal. An application that would have been funded but for a technical error in the Department's review will be funded as soon as sufficient funds become available, provided the Project is still viable. 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 285.035(5)
Stats. Implemented: ORS 285.950 - ORS 285.968
Hist.: EDD 7-1994, f. & cert. ef. 4-7-94

DIVISION 44

REGIONAL STRATEGIES PROGRAM

123-044-0000

Purpose and Objectives

(1) The purpose of these rules is to establish standards to implement the Regional Investment Program in accordance with ORS 285B.230 through 285B.260 and 285B.269.

(2) The objectives of the Regional Investment Program are:

(a) To encourage the development of regional plans that address the economic and community development priorities of each region of the state;

(b) To identify and coordinate regional economic and community development priorities;

(c) To ensure that economic and community development plans reinforce the long-term prosperity and livability of Oregon;

(d) To effectively utilize available resources; and

(e) To coordinate private and public resources to support economic and community development.

Stat. Auth.: ORS 285A.075, ORS 285B.230 - ORS 285B.260 & ORS 285B.269

Stats. Implemented: ORS 285B.230 - ORS 285B.260

Hist.: EDD 2-1987(Temp), f. & cert. ef. 6-30-87; EDD 8-1988, f. & cert. ef. 3-1-88; EDD 5-1989, f. & cert. ef. 10-5-89; EDD 8-1991(Temp), f. & cert. ef. 8-30-91; EDD 1-1992, f. & cert. ef. 1-14-92 (and corrected 2-7-92); Former section (2)(a) - (h) renumbered to 123-44-015; ED 9-1993(Temp), f. & cert. ef. 10-1-93; EDD 13-1993, f. & cert. ef. 12-2-93; EDD 9-1999(Temp), f. & cert. ef. 10-8-99 thru 4-1-00

123-044-0010

Definitions

(1) "Act" means the Regional Economic Development Act, ORS 285B.230 through 285B.260 and 285B.269.

(2) "Business development grants or loans" mean grants or loans made to individual private businesses.

(3) "Commission" means the Oregon Economic and Community Development Commission.

(4) "Department" means the Oregon Economic and Community Development Department.

(5) "Director" means the Director of the Oregon Economic and Community Development Department.

(6) "Evaluation plan" means a plan for measuring and monitoring achievement of the regional investment plan and priorities.

(7) "Fixed asset acquisition" means the purchase of plant, property and other tangible assets with a useful life of one year or longer, that may be depreciated as income is produced.

(8) "Individual private businesses" means individual for-profit private sector firms.

(9) "Multi-region projects" means projects that implement the approved regional investment plans of two or more regions with common economic and community development priorities.

(10) "Performance measurements" mean regional benchmarks and interim indicators of performance, determined after negotiation between the regional board and the commission, for measuring and monitoring regional investment plan performance.

(11) "Projects and activities" mean tasks, improvements or actions needed to implement a regional investment plan.

(12) "Private economic sector" means representatives from for-profit or income producing non-profit businesses. This excludes residents employed by, or elected to a public or quasi-public entity.

(13) "Region" means groups of at least two contiguous counties designated by the Department or recognized in a regional partnership as provided in ORS 285B.236(3).

(14) "Regional allocation" means regional investment funds provided to each region to distribute. To be sure counties can align within regions that serve their needs and logical relationships, the state formula for allocation of funds is applied on a county rather than regional basis.

(15) "Regional investment fund" means a fund established by the Legislature. Moneys, appropriated to the Department each biennium, are placed in the fund to be used by the Department to pay for administrative expenses of operating the regional investment program and for grants to implement the regional investment program.

(16) "Regional investment plan" means an economic and community development plan, updated each biennium, that focuses on the economic and community development priorities of each region.

(17) "Regional board" means a board comprised of representatives jointly appointed by the governing bodies of each county. The board will develop, fund, implement and monitor the achievement of the regional investment plan and two-year implementation plan. The board is comprised of individuals who represent various local interests including cities, counties, ports, special districts and Indian tribes and significant representation from the private economic sector. The board is a public body subject to public meetings, public records, ethics and public contract laws.

(18) "Regional investment program" means a program administered by the Department which provides assistance to counties and Regional Boards in developing regional investment.

(19) "Regional partnership" means a group of regional and economic development partners, including but not limited to cities, ports, Indian tribes, special districts, nonprofit organizations, that join together in a memorandum of understanding between the members of the partnership and the directors of the Department of Transportation, the Economic and Community Development Department, the Housing and Community Services Department and the Department of Environmental Quality to provide a forum for coordination of economic and community development planning and investments so that strategies and processes for economic and community development are leveraged to the greatest extent possible to meet agreed-upon priority issues, challenges and goals. The partnership can be implemented through a steering committee or executive committee, if mutually agreeable. The Governor may delegate responsibility for review and approval of a regional investment plan to the partnership through the memorandum of understanding.

(20) "Regional Workforce Committees" means regional committees designated by the Oregon Workforce Quality Council to prepare strategic regional workforce development plans for the implementation and promotion of programs aimed at achieving education and training benchmarks established by the Oregon Progress Board.

(21) "Management and implementation plan" means a section of the regional investment plan which demonstrates a region's capacity to allocate resources and ensure that such resources are effectively used to implement the regional investment plan.

(22) "Plan development funds" mean regional allocation moneys available to each region prior to approval of a regional investment plan for technical assistance and staff support for regional investment plan development and refinement and administration of regional partnerships.

(23) "Terms and conditions" mean the basis on which grants or loans to individual private businesses are made and the broad administrative procedures for managing these funds. This includes, but is not limited to: Identification of the entity responsible for managing the funds; type of financing to be made available; grant or loan parameters (e.g., time period, interest rates, maximum award per business); criteria for award; review process; requirements of awards; and interest on funds, repayment and reallocation considerations.

(24) "Two-year implementation plan" or "implementation plan" mean a two-year plan coinciding with each biennium and considered in effect until approval of the subsequent biennium's regional investment plan update and two-year implementation plan. The two-year implementation plan contains a prioritized list of projects and activities to be undertaken by a region which will help the region progress toward its goals.

Stat. Auth.: ORS 285A.075, ORS 285B.230 - ORS 285B.260 & ORS 285B.269

Stats. Implemented: ORS 285B.230 - ORS 285B.260

Hist.: EDD 2-1987(Temp), f. & cf. 6-30-87; EDD 8-1988, f. & cert. ef. 3-1-88; EDD 5-1989, f. & cert. ef. 10-5-89; EDD 8-1991(Temp), f. & cert. ef. 8-30-91; EDD 1-1992, f. & cert. ef. 1-14-92 (and corrected 2-7-92); ED 9-1993(Temp), f. & cert. ef. 10-1-93; EDD 13-1993, f. & cert. ef. 12-2-93; EDD 2-1997(Temp), f. & cert. ef. 3-10-97; EDD 9-1999(Temp), f. & cert. ef. 10-8-99 thru 4-1-00

123-044-0015

Criteria

Regional investment plans developed and assisted under this program shall set forth in measurable terms at a minimum, the extent to which each plan shall meet the following criteria:

(1) Supports communities and populations that have been left out of Oregon's economic expansion and diversification;

(2) Helps companies that are starting up or are already in business in Oregon to compete globally;

(3) Ensures that economic strategies reinforce Oregon's long-term prosperity and livability; and

(4) Coordinates regional efforts for economic and community development, education, workforce development, natural resource management and other civic activities.

Stat. Auth.: ORS 285A.075, ORS 285B.230 - ORS 285B.260 & ORS 285B.269

Stats. Implemented: ORS 285B.230 - ORS 285B.260

Hist.: EDD 8-1991(Temp), f. & cert. ef. 8-30-91; EDD 1-1992, f. & cert. ef. 1-14-92 (and corrected 2-7-92); Renumbered from 123-044-0000(2); ED 9-1993(Temp), f. & cert. ef. 10-1-93; EDD 13-1993, f. & cert. ef. 12-2-93; EDD 9-1999(Temp), f. & cert. ef. 10-8-99 thru 4-1-00

123-044-0025

Regional Strategies Calendar

The following timelines are for operation of the Regional Strategies Program:

(1) October 25, 1993 — Counties submit regional configuration proposals to the Department.

(2) November 1, 1993 — The Department designates regions based on regional configuration proposals submitted by the counties and other economic considerations. Regions designated by the Department shall not be changed for the duration of the strategy.

(3) June 1, 1994 — Each region submits a Strategy and Two-Year Action Plan to the Department for review and approval. Thereafter, regions are required to update their strategies and submit these updates and Two-Year Action Plans to the Department for review on or before June 1 of the second calendar year of each biennium. The State Review Board reviews Strategies and/or Action Plans between June and September and submits its recommendation to the Governor. The Governor shall approve updated

Strategies and/or Action Plans by October 1 the first calendar year of each biennium.

(4) October 1, 1994 — Deadline for regions to receive approval of their Strategies and/or Action Plans from the Governor. Any region not receiving approval by this date or October 1 of the first calendar year of each biennium may not continue to participate in the Regional Strategies Program or receive moneys from the Regional Strategies Fund for the biennium.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 285.035(3), ORS 285.630 - ORS 285.650, ORS 285.655 & ORS 285.685

Stats. Implemented: ORS 285.630 - ORS 285.650 & ORS 285.655

Hist.: EDD 1-1992, f. & cert. ef. 1-14-92 (and corrected 2-7-92); ED 9-1993(Temp), f. & cert. ef. 10-1-93; EDD 13-1993, f. & cert. ef. 12-2-93; Suspended by EDD 9-1999(Temp), f. & cert. ef. 10-8-99 thru 4-1-00

123-044-0030

Strategy Components

(1) A regional investment plan submitted to the Department, or the Regional Partnership, where authorized by the Governor, for review and approval shall contain the following elements:

(a) A summary of the region's vision and short-term (current biennium) and long term (period defined by the region) regional economic and community development priorities;

(b) An analysis of the unique or significant resources that provide the foundation for the regional investment plan;

(c) An analysis of barriers to implementation of the regional investment plan and an identification of the means to overcome those barriers;

(d) A long-term (period defined by the region) plan to implement the regional investment plan, including necessary actions by local governments, the private sector, state government and federal government;

(e) A plan for involvement of the disadvantaged and minority groups in the region;

(f) A description of how the region has identified problems or issues shared in common with other regions and how it has discussed joint funding of one or more multi-region projects;

(g) A two-year implementation plan, including a prioritized list of projects and activities to be undertaken and/or funded by the state from lottery proceeds or other sources and description of the extent to which the identified projects and activities address the Quality Development Objectives contained in the Governor's Executive Order 97-22;

(h) An overall management and action plan which demonstrates the region's capacity to implement the regional investment plan;

(i) An evaluation plan which includes regional benchmarks for measuring and monitoring achievement of regional investment plans and priorities and interim indicators of performance, negotiated between the regional board and the Department.

(2) The Regional Investment Resource Guide published by the Department and updated by December 1 the first year of each biennium, with guidelines for preparation of regional investment plans, multi-region funding requests, and reporting requirements. Regions shall comply with all requirements set out in this guide in submitting regional investment plans, and reports to the Department.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 285A.075, ORS 285B.230 - ORS 285B.260 & ORS 285B.269

Stats. Implemented: ORS 285B.230 - ORS 285B.260

Hist.: EDD 2-1987(Temp), f. & cf. 6-30-87; EDD 8-1988, f. & cert. ef. 3-1-88; EDD 5-1989, f. & cert. ef. 10-5-89; EDD 8-1991(Temp), f. & cert. ef. 8-30-91; EDD 1-1992, f. & cert. ef. 1-14-92 (and corrected 2-7-92); ED 9-1993(Temp), f. & cert. ef. 10-1-93; EDD 13-1993, f. & cert. ef. 12-2-93; EDD 9-1999(Temp), f. & cert. ef. 10-8-99 thru 4-1-00

123-044-0040

Strategy Development and Adoption

(1) Local plan development and approval process:

(a) The county governing bodies of a region shall jointly designate a Regional Board to develop, fund, implement and monitor the regional investment plan:

(A) The regional board shall consist of individuals who represent rural interests, including cities, counties, ports, special districts and Indian tribes;

(B) The regional board shall include significant representation from the private economic sector; and

(C) In areas with established Regional Partnerships, the regional board may be defined in the memorandum of understanding for the partnership.

(b) The regional board shall be responsible for developing the regional investment plan for the region;

(c) In developing the prioritized list of projects and activities to be undertaken each biennium, the board shall consult with industries, ports, special districts, regional workforce committees and federally recognized Oregon Indian tribes located in the region;

(d) The regional board shall hold a public hearing in each county in the region prior to a vote by the governing bodies of the counties to adopt the regional investment plan:

(A) A public hearing shall be held in each county of the region, after giving at least two-weeks published notice, to receive public comments on the regional investment plan that is being recommended to the county governing bodies of the region for adoption; and

(B) The plan shall be made available to the public during the two week period preceding the public hearing.

(e) After the public hearing, the county governing bodies of a region shall take formal action to recommend the plan to the Governor or the Regional Partnership, where authorized by the Governor. A majority of the county governing bodies in a region shall vote to recommend a regional investment plan before submitting the plan for review; and

(f) Regions that fail to submit regional investment plans shall not receive moneys for projects and activities from the fund for that biennium. The Commission shall reallocate any moneys designated for regions that fail to submit plans to regions remaining in the program.

(2) Plan Review and Approval Process:

(a) Regional investment plans shall be submitted to the Department or to the Regional Partnership, if authorized by the Governor;

(b) Plans submitted to the Department shall be reviewed by staff for completeness. Staff will obtain missing information from regions before forwarding plans to the Commission. Staff will prepare a summary and recommendation for the Commission. The Commission shall make recommendations on the approval of the plan to the Governor for final approval or shall return the plan to the regional board for modification;

(c) The Governor may adopt a proposed regional investment plan or return the plan to the affected counties for modification;

(d) Upon approval of a regional investment plan by the Governor, or a regional partnership, when authorized by the Governor, the Department shall enter into an agreement with the region for funding, implementation and monitoring of the plan. The agreement will require periodic reports to the Department by the region on plan implementation and expenditure of regional investment funds;

(e) The Department shall discourage competition among regions for existing Oregon businesses and economic activity;

(f) The Department shall maintain contact with and provide staff assistance as necessary and appropriate to regions in the development and implementation of regional investment plans. This staff assistance will include provision of information about the program, attendance at local regional board meetings, and contacts regarding other state and federal agency programs. Staff assistance with plan implementation will be provided as time and resources permit. The Department will not be responsible for guiding or leading counties in the development of regional investment plans or for performing in-depth research or information gathering for any county or region under this program; and

(g) The Department shall work to ensure that all counties are included in a region with an adopted regional investment plan and that each regional investment plan is approved for implementation.

Stat. Auth.: ORS 285A.075, ORS 285B.230 - ORS 285B.260 & ORS 285B.269

Stats. Implemented: ORS 285B.230 - ORS 285B.260

Hist.: EDD 2-1987(Temp), f. & ef. 6-30-87; EDD 8-1988, f. & cert. ef. 3-1-88; EDD 5-1989, f. & cert. ef. 10-5-89; EDD 8-1991(Temp), f. & cert. ef. 8-30-91; EDD 1-1992, f. & cert. ef. 1-14-92 (and corrected 2-7-92); Renumbered from 123-044-0020; ED 9-1993(Temp), f. & cert. ef. 10-1-93; EDD 13-1993, f. & cert. ef. 12-2-93; EDD 9-1999(Temp), f. & cert. ef. 10-8-99 thru 4-1-00

123-044-0080

Regional Strategies Fund Awards

(1) The fund shall be managed by the Department.

(2) In each biennium, the Commission, in agreement with the Association of Oregon Counties, League of Oregon Cities, and Oregon Public Ports Association, may provide funds, either centrally or to regional boards or both, for multi-region projects that implement the approved regional investment plans of two or more regions with common economic and community development priorities. The Commission shall adopt criteria for the selection of projects by the regions.

(3) In the 1999-2001 biennium, a total of \$2,000,000 shall be reserved for multi-region projects from the funds allocated to regions as follows:

(a) Each region's setaside shall be calculated by the Department by applying county percentages of the total regional allocation;

(b) Regions are responsible for using small amounts of multi-region setaside funds which remain after multi-region projects have been funded for projects and activities on the prioritized list in the two-year implementation plan. "Small amount" means less than \$10,000; and

(c) The Commission may require recapture of a region's unobligated multi-region balance, in excess of \$10,000, for distribution to multi-region projects in other regions.

(4) With the exception of provisions outlined in section (5) of this rule, the fund shall not be used to retire any debt or to reimburse any person or municipality for expenditures made or expenditures incurred prior to approval by the Governor of a regional investment plan.

(5) The Commission shall determine the maximum portion of moneys from the fund to be dedicated by a regional board for plan development prior to regional investment plan approval. The established limit will be included in grant agreements with regions. This money may be used to pay for technical assistance and staff support for regional investment plan development and administration of regional partnerships. The Department shall disburse only plan development funds to the region prior to approval of the regional investment plan by the Governor or the regional partnership, if authorized.

(6) After a regional investment plan has been approved by the Governor or the regional partnership, where authorized by the Governor, the Department shall disburse, on a quarterly basis, moneys from the fund to the regional board or its designated entity to fund, implement and monitor its regional investment plan:

(a) The Regional Board shall select projects and activities for funding based on merit and readiness to proceed and which are consistent with the approved regional investment plan;

(b) In each biennium, a regional board may dedicate a portion of its regional investment funds to provide grants or loans to individual private businesses for financing fixed asset acquisition or for establishing a grant or revolving loan fund to be used for the same purpose. The terms and conditions of grants or loans to individual private businesses must be contained in the region's investment plan at the time it is submitted for state review;

(c) The regional board shall not provide regional investment funds for the relocation of a facility from one labor market area within the state to another, if not accompanied by an expansion of the applicant's business or employment; and

(d) The regional board or its fiscal agent shall maintain records of all activities associated with the regional investment plan. The Department is entitled to monitor the recipient's records to verify compliance with the award agreement.

(7) Moneys awarded from the fund that are not obligated by contract for approved regional investment plan activities prior to the beginning of each new biennium shall be immediately returned to the fund by the region.

(8) Public entities awarded money from the fund shall comply with state procurement guidelines, minimum wage and hour standards, municipal budget and audit laws, and other applicable state and local regulations.

(9) All activities funded through the regional investment program shall indicate that the activity is lottery-funded and a part of the regional investment program.

(10) Any public facilities, as defined in ORS 447.210, the construction costs of which are paid for, in whole or in part, with the fund shall be accessible to and usable by handicapped persons in accordance with the Americans with Disabilities Act.

(11) Individual private businesses receiving direct or substantial benefits from the fund may be required to comply with first source agreement rules set out in OAR 123-070-0300 through 123-070-0370.

(12) The award of regional investment funds shall be subject to the availability of money in the fund. Regions will share proportionately in all shortfalls of lottery revenue.

(13) Any activity, paid for in whole or in part with the fund, that affects land use shall comply with the applicable requirements of OAR Chapter 123, Division 8.

(14) Each regional board shall submit reports to the Governor and the Legislature, as required by the Department, that describe the expenditure of moneys received from the fund and indicate the success of the funded activities in each investment plan against performance measurements mutually agreed upon by the Commission or the Regional Partnership, where authorized by the Governor, and regional board as part of approval of the regional investment plan.

Stat. Auth.: ORS 285A.075, ORS 285B.230 - ORS 285B.260 & ORS 285B.269

Stats. Implemented: ORS 285B.230 - ORS 285B.260

Hist.: EDD 2-1987(Temp), f. & cert. ef. 6-30-87; EDD 8-1988, f. & cert. ef. 3-1-88; EDD 5-1989, f. & cert. ef. 10-5-89; EDD 14-1990, f. & cert. ef. 6-7-90; EDD 8-1991(Temp), f. & cert. ef. 8-30-91; EDD 1-1992, f. & cert. ef. 1-14-92 (and corrected 2-7-92); ED 9-1993(Temp), f. & cert. ef. 10-1-93; EDD 13-1993, f. & cert. ef. 12-2-93; EDD 9-1999(Temp), f. & cert. ef. 10-8-99 thru 4-1-00

123-044-0090

Waivers

The Director may waive non-statutory requirements of this program if it is demonstrated that such a waiver would serve to further the goals and objectives of the regional investment program. The burden of proof to justify such waivers shall be on the region seeking the waiver.

Stat. Auth.: ORS 285A.075, ORS 285B.230 - ORS 285B.260 & ORS 285B.269

Stats. Implemented: ORS 285B.230 - ORS 285B.260

Hist.: EDD 5-1989, f. & cert. ef. 10-5-89; EDD 8-1991 (Temp), f. & cert. ef. 8-30-91; EDD 1-1992, f. & cert. ef. 1-14-92 (and corrected 2-7-92); ED 9-1993(Temp), f. & cert. ef. 10-1-93; EDD 13-1993, f. & cert. ef. 12-2-93; EDD 9-1999(Temp), f. & cert. ef. 10-8-99 thru 4-1-00

DIVISION 45

RURAL INVESTMENT FUND

123-045-0000

Purpose and Objectives

(1) This Division establishes guidelines for administration of the Rural Investment Fund in accordance with 1995 Oregon Laws, Chapter 338 (Senate Bill 697).

(2) The objective of the Rural Investment Fund is to provide a flexible source of funding to help rural areas finance locally-determined Economic and Community Development Projects. It is intended to provide a vehicle by which Regional Boards can

leverage other funding sources to the maximum extent possible to improve the economies of Rural areas.

Stat. Auth.: ORS 285.065

Stats. Implemented: 1995 OL, Ch. 338 (SB 697)

Hist.: EDD 7-1995, f. & cert. ef. 10-6-95

123-045-0010

Definitions

As used in this Division, the following definitions apply. Any capitalized term not defined below shall have the definition set out in OAR 123-044-0010.

(1) "Department": The Oregon Economic Development Department.

(2) "Director": The Director of the Department.

(3) "Economic and Community Development Projects": Those locally-determined activities undertaken and funded through the Rural Investment Fund intended to improve the economy of rural areas. Examples include, but are not limited to: telecommunications and transportation infrastructure, project feasibility studies, community infrastructure and facilities, workforce development activities and Technical Assistance to Rural areas for project development and implementation.

(4) "Existing or Continuing Public Services": Ongoing and continuing services routinely and customarily provided by local government (e.g., law enforcement, fire protection, public works, etc.) which are within the budgeted resources of the governing body. Rural Investment funds cannot be used to pay for existing staff, except to augment Technical Assistance efforts consistent with the objectives of the Rural Investment Fund. These funds should be used only to increase local economic and community development activities.

(5) "Performance Measurements": Quantitative and qualitative standards by which Economic and Community Development Projects, funded through the Rural Investment Fund, will be evaluated. The quantitative measures will be established at the time the Regional Board commits to Economic and Community Development Projects to measure progress toward achievement of their Rural Action Plan.

(6) "Private Economic Sector": Includes representatives from for-profit or income producing non-profit businesses. This excludes individuals employed by, or elected to, a public or quasi-public entity.

(7) "Region": Two or more contiguous counties that join together to develop and implement a Regional Strategy and/or Two-Year Action Plan under this Division. Regions are proposed by county governing bodies and designated by the Department.

(8) "Regional Strategy": A six-year economic development plan, updated each biennium, to build or enlarge a minimum of two but not more than three Key Industries recommended by the Regional Board, adopted by the governing bodies of the counties of the Region, and approved by the Governor. It includes a Two-year Action Plan and a Rural Action Plan.

(9) "Regional Strategy Board" or "Regional Board": A board comprised of representatives jointly appointed by the governing bodies of each county in the Region to develop, fund, implement and monitor the achievement of the Regional Strategy, Two-Year Action Plan and Rural Action Plan. The Board is comprised of individuals selected from the General Public and shall include members who represent Rural interests, including local government. A majority of Board members shall represent the Private Economic Sector. The Board is a public body subject to public meetings, public records, ethics and public contract laws.

(10) "Regional Strategies Program": A program administered by the Department which provides assistance to counties and Regional Boards in developing Regional Strategies and/or Two-Year Action Plans to strengthen and diversify regional economies.

(11) "Rural": Cities, townships and unincorporated areas outside the metropolitan or regional urban growth boundaries of Portland, Salem, Eugene and Medford.

(12) "Rural Action Plan": An addendum to the Two-Year Action Plan developed by each Regional Board which describes how the Region will use the Rural Investment Fund to meet the

needs of Rural areas consistent with the objectives of the Rural Investment Fund and in cooperation with local development and planning efforts to coincide with each biennium. The Rural Action Plan will include objectives established by the Regional Board for use of the Rural Investment Fund; a description of the process the Regional Board will employ to solicit input and participation of Rural areas; a plan for how the Regional Board will select Economic and Community Development Projects to be funded based on the criteria in this Division and an explanation of how the Regional Board will measure progress toward meeting its objectives.

(13) "Strategy Management and Implementation Plan": A section of the Strategy which demonstrates a Region's capacity to allocate resources and ensure that such resources are effectively used to implement the Strategy, Two-Year Action Plan and Rural Action Plan. The Strategy Management and Implementation Plan should demonstrate that the managerial, administrative, and fiscal capacity exists within the Region to implement these plans.

(14) "Technical Assistance": Funds to provide additional staff support, hire outside consultants or otherwise obtain needed professional expertise to fully develop plans, programs and projects in support of the objectives of the Rural Investment Fund.

(15) "Two-Year Action Plan" or "Action Plan": A two-year plan coinciding with each biennium and considered in effect until approval of the subsequent biennium's Two-Year Action Plan. The Two-Year Action Plan contains a prioritized list of activities to be undertaken by a Regional Board which will lead to achievement of the Region's goals and objectives. It also includes a Rural Action Plan to assist Rural areas to improve their economies.

Stat. Auth.: ORS 285.065

Stats. Implemented: 1995 OL, Ch. 338 (SB 697)

Hist.: EDD 7-1995, f. & cert. ef. 10-6-95

123-045-0020

Responsibilities of Regional Strategy Boards

(1) Each Regional Board shall review its membership to ensure adequate representation of Rural interests as defined in OAR 123-045-0010(11). If changes are required as a result of this review, Regional Boards shall recommend to county governing bodies in the Region either expansion or substitution of Regional Board membership in accordance with OAR 123-044-0040(1)(a).

(2) Each Regional Board shall develop and submit a Rural Action Plan in conjunction with either its Regional Strategy or Two-Year Action Plan required under ORS 285.640 and OAR 123-044-0040(1)(b). The Rural Action Plan shall be submitted by June 1 of each odd-numbered year along with the required Strategy and/or Two-Year Action Plan.

NOTE: Due to the passage of Senate Bill 697 by the 1995 Legislative Assembly, for the 1995-1997 biennium, Rural Action Plans will be accepted for review up until 3/31/96.

(3) In developing its Rural Action Plan, Regional Boards shall solicit input and participation of Rural areas and other Rural interests. Boards shall consider the interests of community planning efforts, special districts, Indian tribes, Regional Workforce Quality Committees and other workforce development groups and citizens of Rural areas.

(4) As part of its Rural Action Plan, the Regional Board shall establish a process to evaluate requests for funding and to make decisions on allocation of Rural Investment Funds in accordance with the criteria specified in this Division and consistent with the priorities, performance measurements and economic goals and objectives for the Region as determined by the Regional Board.

(5) Prior to approval of its Rural Action Plan, Regional Boards may dedicate a portion of their allocation from the Rural Investment Fund for Technical Assistance and staff support necessary for development of the Rural Action Plan. Upon approval of the Rural Action Plan, Regional Boards may also commit funds for Technical Assistance to Rural areas consistent with their Rural Action Plan.

(6) In conjunction with the biennial report to the Governor and the Legislative Assembly required under ORS 285.651, each Regional Board shall submit a report on its expenditure of monies

from the Rural Investment Fund. This report shall also include an evaluation of progress and success of the Economic and Community Development Projects funded with Rural Investment Funds based on specific Performance Measures determined by the Regional Board.

Stat. Auth.: ORS 285.065

Stats. Implemented: 1995 OL, Ch. 338 (SB 697)

Hist.: EDD 7-1995, f. & cert. ef. 10-6-95

123-045-0030

Responsibilities of the State

(1) Prior to approval of a Rural Action Plan, the Department may distribute a portion of the monies from the Rural Investment Fund for Technical Assistance and staff support necessary for the development of Rural Action Plans. Reimbursement for expenses incurred after adoption of this rule and prior to approval of the Rural Action Plan is permitted under this section.

(2) Upon receipt of each Rural Action Plan, the Department shall review it against the requirements of this Division for completeness and adherence to statutory requirements.

(3) The Oregon Economic Development Commission and/or its designated representative has responsibility for approval of Rural Action Plans.

(4) Upon approval of the Rural Action Plan, the Department shall enter into an agreement with the Regional Board or its designated fiscal agent for funding, implementation and periodic monitoring of Economic and Community Development Projects in accordance with the Rural Action Plan. The Department shall also coordinate the Rural Action Plans with other federal, State and local economic development resources to support a State strategy for economic development.

Stat. Auth.: ORS 285.065

Stats. Implemented: 1995 OL, Ch. 338 (SB 697)

Hist.: EDD 7-1995, f. & cert. ef. 10-6-95

123-045-0040

Criteria for Rural Investment Programs and Projects

(1) In determining what Economic and Community Development Projects to fund, Regional Boards shall, at a minimum, consider the following:

(a) The priorities of Rural areas that have the greatest economic challenges;

(b) Whether monies from the Rural Investment Fund will fill a gap in financing for programs and projects;

(c) The extent to which monies from the Rural Investment Fund will leverage other resources by bringing in public or private partnerships; and

(d) The degree to which applicants for funding have established measurable economic outcomes that can demonstrate, through specific Performance Measurements, progress towards achievement of the goals and objectives of the Rural Investment Fund.

(2) Rural Investment Fund moneys shall not be used to:

(a) Retire any debt;

(b) Pay for expenses incurred prior to approval of the Rural Action Plan (except those specified in OAR 123-045-0030(1)); or

(c) Pay for, or be used as a substitute for, local government expenditures for Existing or Continuing Public Services.

Stat. Auth.: ORS 285.065

Stats. Implemented: 1995 OL, Ch. 338 (SB 697)

Hist.: EDD 7-1995, f. & cert. ef. 10-6-95

123-045-0050

Rural Investment Fund Awards

(1) The Rural Investment Fund, shall be managed by the Department.

(2) After a Rural Action Plan has been approved, the Department shall disburse, on a quarterly basis, monies from the Rural Investment Fund to the Regional Board or its designated fiscal entity to fund and implement Economic and Community Development Projects approved in accordance with its Rural Action Plan.

(3) The Regional Board shall not provide Rural Investment Funds for the relocation of a facility from one labor market area

within the State to another, if not accompanied by an expansion of the applicant's business or employment.

(4) The Regional Board and/or its designated fiscal agent shall maintain records of all activities associated with the Rural Action Plans. The Department is entitled to monitor the Regional Board's or fiscal agent's records to verify compliance with the award agreement.

(5) Monies awarded from the Rural Investment Fund that are not committed by the Regional Board for approved Rural Action Plan Economic and Community Development Projects prior to the beginning of each new biennium shall be returned to the Rural Investment Fund by the Region.

(6) Public entities awarded money from the Rural Investment Fund shall comply with public procurement guidelines, minimum wage and hour standards, municipal budget and audit laws, and other applicable State and local regulations.

(7) All Economic and Community Development Projects funded through the Rural Investment Fund shall indicate that they are lottery-funded.

(8) Any public facilities, as defined in ORS 447.210, the construction costs of which are paid for, in whole or in part, with the Rural Investment Fund shall be accessible to and usable by disabled persons in accordance with the Americans with Disabilities Act.

(9) Individual Private Businesses receiving direct or substantial benefits from the Rural Investment Fund may be required to enter into a First Source Hiring Agreement according to rules set out in OAR 123-070-0300 through 123-070-0370.

(10) The award of Rural Investment Funds shall be subject to the availability of money in the Rural Investment Fund. Regions will share proportionately in all shortfalls in lottery revenue.

(11) Any Economic and Community Development Project, paid for in whole or in part with the Rural Investment Fund, that affects land use shall comply with all applicable requirements of the State's land use laws.

(12) Each Regional Board shall submit reports to the Governor and the Legislature, as required by the Department, that describe the expenditure of monies received from the Rural Investment Fund and indicate the success of Economic and Community Development Projects funded in accordance with the Rural Action Plan against Performance Measurements developed by the Regional Board.

Stat. Auth.: ORS 285.065

Stats. Implemented: 1995 OL, Ch. 338 (SB 697)

Hist.: EDD 7-1995, f. & cert. ef. 10-6-95

123-045-0060

Waivers

The Director may waive non-statutory requirements of this Division if it is demonstrated that such a waiver would serve to further the goals and objectives of the Rural Investment Fund. The burden of proof to justify such waivers shall be on the Region seeking the waiver.

Stat. Auth.: ORS 285.065

Stats. Implemented: 1995 OL Ch. 338 (SB 697)

Hist.: EDD 7-1995, f. & cert. ef. 10-6-95

DIVISION 49

SAFE DRINKING WATER REVOLVING LOAN FUND

123-049-0005

Purpose, Scope and Incorporated Documents

(1) This division of administrative rules implements a Safe Drinking Water Revolving Loan 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** and this state's Drinking Water Quality Act.

(2) In accordance with section 1, chapter 236, Oregon Laws 1999, this division of administrative rules specifically governs the administration of the moneys awarded through the Safe Drinking Water Revolving Loan Fund by the Economic and Community Development Department in cooperation with the State Health Division of the Oregon Department of Human Resources, but not the activities of the State Health Division itself.

(3) The Safe Drinking Water Revolving Loan Fund Program Guidelines & Applicant's Handbook (September 1999) is:

(a) The principal source of information on this program, as prepared by Department;

(b) Available by contacting any of the Department's teams of regionally assigned staff;

(c) Incorporated into and adopted as part of this division of administrative rules, by reference; and

(d) Subject to the same definitions as used in this division of administrative rules.

[Publications: The publications referenced in this rule are available for review at the agency.]

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & OL 1999, Ch. 236, Section 1(4)

Stats. Implemented: OL 1999, Ch. 236, Section 1

Hist.: EDD 6-1999, f. & cert. ef. 8-26-99

123-049-0010

Definitions

As used in this division of administrative rules, unless the context clearly indicates otherwise:

(1) "Act" means the **Safe Drinking Water Act Amendments of 1996, Public Law 104- 182**, and any subsequent amendments.

(2) "Applicant" means a Community or Nonprofit non-community water system which 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 either:

(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) "Department" means the State of Oregon's Economic and Community Development Department as (re)organized under ORS 285A.070.

(6) "Fund" means the Safe Drinking Water Revolving Loan Fund, which is the financing program managed by the Department under this division of administrative rules, and which may include moneys originating from federal capitalization grants, this state's match of such grants, program loan repayments, interest earnings and any additional funds provided by this state.

(7) "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 the State Health Division pursuant to USEPA guidelines.

(8) "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 legally recognized under Oregon law as a nonprofit entity.

(9) "Project" means facility design, or construction activities or related 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.

(10) "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.

(11) A "public water system" means a system or infrastructure for the provision to the public of water for human consump-

tion 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.

(12) "Recipient" means a Community or Nonprofit non-community water system that has been awarded a loan from the Fund for a Project.

(13) "USEPA" means the Environmental Protection Agency of the federal government.

[Publications: The publications referenced in this rule are available for review at the agency.]

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & OL 1999, Ch. 236, Section 1(4)

Stats. Implemented: OL 1999, Ch. 236, Section 1

Hist.: EDD 6-1999, f. & cert. ef. 8-26-99

123-049-0020

Eligible Applicants and Activities

(1) All Community water systems and Nonprofit non-community water systems are eligible to apply for a Fund loan except those determined to be ineligible by the Department because of nonperformance under a prior Fund Contract.

(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 these guidelines.

[Publications: The publications referenced in this rule are available for review at the agency.]

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & OL 1999, Ch. 236, Section 1(4)

Stats. Implemented: OL 1999, Ch. 236, Section 1

Hist.: EDD 6-1999, f. & cert. ef. 8-26-99

123-049-0030

Program Information

(1) The Department shall prepare program guidelines, application forms and other supplementary program information to help eligible Applicants seek financing and prepare loan 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 Department 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 Fund loans shall comply with the applicable requirements of division 8 of this chapter of administrative rules and OAR Chapter 660, Divisions 4, 11 and 22.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & OL 1999, Ch. 236, Section 1(4)

Stats. Implemented: OL 1999, Ch. 236, Section 1

Hist.: EDD 6-1999, f. & cert. ef. 8-26-99

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's 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.

(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 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 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(5), ORS 285A.110 & OL 1999, Ch. 236, Section 1(4)

Stats. Implemented: OL 1999, Ch. 236, Section 1

Hist.: EDD 6-1999, f. & cert. ef. 8-26-99

DIVISION 50

COUNTY FAIRS AND SPECIAL EVENTS GRANT PROGRAM

123-050-0000

Purpose

As provided in Chapter 937, Oregon Laws 1989, to make grant awards for projects which help to develop and improve the economies of communities throughout this state by means of the improvement, expansion and new construction of facilities at county fairs and special events.

Stat. Auth.: ORS 776 & ORS 937

Stats. Implemented: Ch. 937, OL 1989

Hist.: IRD 4-1986(Temp), f. & ef. 2-14-86; IRD 6-1986, f. & ef. 5-27-86; EDD 11-1988, f. & cert. ef. 4-12-88; Renumbered from 120-060-0001; EDD 11-1989, f. & cert. ef. 12-5-89

123-050-0010

Definitions

(1) "Department" or "OEDD": The Oregon Economic Development Department.

(2) "Director": The Director of the Oregon Economic Development Department or his designee.

(3) "CFSE": The County Fairs and Special Events Grant Program.

Stat. Auth.: ORS 937 & OL 1989

Stats. Implemented: Ch. 937, OL 1989

Hist.: EDD 11-1988, f. & cert. ef. 4-12-88; ED 11-1989, f. & cert. ef. 12-5-89

123-050-0020

Eligible Applicants

The governing bodies of county fairs located in counties having a population of less than 400,000 and those special events defined in ORS 462.280(1)(e) to (o).

Stat. Auth.: ORS 776 & ORS 937

Stats. Implemented: Ch. 937, OL 1989

Hist.: IRD 4-1986(Temp), f. & ef. 2-14-86; IRD 6-1986, f. & ef. 5-27-86; EDD 11-1988, f. & cert. ef. 4-12-88; Renumbered from 120-060-0010; EDD 11-1989, f. & cert. ef. 12-5-89

123-050-0030

Eligible Activities

(1) Improvement, expansion, and new construction of facilities necessary to increase attendance and to present opportunities for a greater range and variety of economic, recreational, cultural, social and educational attractions. "Facilities" includes but is not limited to the following activities:

- (a) Livestock buildings;
- (b) Exhibition buildings and booths;
- (c) Sales buildings;
- (d) Grandstands;
- (e) Outdoor arenas;
- (f) Racetracks;
- (g) Playgrounds and park areas;
- (h) Parking facilities;
- (i) Electrical and public address systems;
- (j) Fences;
- (k) Signs;
- (l) Restrooms;
- (m) Sewage treatment works;
- (n) Solid waste disposal sites;
- (o) Water supply works;
- (p) Roads;
- (q) Public transportation projects; and

(r) Engineering and architectural reports, surveys, plans, working drawings, specifications and acquisition of easements that are part of the project and necessary in the construction of the capital improvements project.

(2) A "project" is a single eligible activity, but may include other related activities if they are necessary to the completion of the project. The department reserves the right to eliminate one or more specific proposed activities from an application prior to grant award if it determines that those activities do not relate to the central purpose of the project.

Stat. Auth.: ORS 776 & ORS 937

Stats. Implemented: Ch. 937, OL 1989

Hist.: IRD 4-1986(Temp), f. & ef. 2-14-86; IRD 6-1986, f. & ef. 5-27-86; EDD 11-1988, f. & cert. ef. 4-12-88; Renumbered from 120-060-0020; EDD 11-1989, f. & cert. ef. 12-5-89

123-050-0040

Ineligible Activities

Grant funds may not be used for:

(1) Payment of administrative costs, costs for preliminary planning, legal, fiscal and economic investigations, reports and studies to determine economic and engineering feasibility of the project.

(2) Maintenance of facilities such as painting, minor repairs, filling pot holes, or other work normally done on a repeated basis during the life of a facility to keep it in good repair.

(3) Facilities intended for the general conduct of government.

Stat. Auth.: ORS 776 & ORS 937

Stats. Implemented: Ch. 937, OL 1989

Hist.: IRD 4-1986(Temp), f. & ef. 2-14-86; IRD 6-1986, f. & ef. 5-27-86; EDD 11-1988, f. & cert. ef. 4-12-88; Renumbered from 120-060-0030; EDD 11-1989, f. & cert. ef. 12-5-89

123-050-0050

Maximum Award

The Director shall establish the maximum grant award amount in the **Applicant's Handbook** prepared for the program. No more than 85 percent of the total cost of a project may be paid with a CFSE grant.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 776 & ORS 937

Stats. Implemented: Ch. 937, OL 1989

Hist.: IRD 4-1986(Temp), f. & ef. 2-14-86; IRD 6-1986, f. & ef. 5-27-86; EDD 11-1988, f. & cert. ef. 4-12-88; Renumbered from 120-060-0040; EDD 11-1989, f. & cert. ef. 12-5-89

123-050-0060

Program Information

(1) The program will be administered by the Oregon Economic Development Department.

(2) Appeals of decisions regarding CFSE applications shall be handled as follows:

(a) Appeals of local decisions must be made at the local level;

(b) The Director will consider appeals of the department's funding decisions only when project rating and ranking are at issue. Only the applicant may appeal. An application which would have been funded but for a technical error in ranking will be funded as soon as sufficient funds become available, provided the situation which prompted the application still exists and the project is still viable. The Director's decision is final.

(3) Applicants which are awarded CFSE grants by the department must enter into a contract with the department. The contract shall contain at a minimum the terms specified in Section 3(5), Chapter 937, Oregon Laws 1989.

(4) Contracts must be signed by the highest elected official of the county, or city if appropriate, in which the project occurs and the chairperson of the entity making the application.

(5) Grantees will be monitored by OEDD and must maintain records sufficient for monitoring.

(6) Project amendments must have prior approval of OEDD if they change the cost, scope, location, objectives, or time frame of the approved activities or beneficiaries. Failure to gain prior approval for amendments may result in sanctions. Amendments which affect the project rating under the original selection criteria will be re-rated and re-ranked. The amendment must rate equal to or greater than the lowest rating received by a funded project during that cycle of ratings; an additional public hearing may be required.

(7) Grantees must display conspicuously on the site information specifying that the project is being financed by the Oregon State Lottery. OEDD will furnish posters for this purpose.

(8) The Director may waive non-statutory requirements of this program if it is demonstrated that such a waiver would serve to further the purpose of the program.

(9) Recaptured funds are those which are returned to the State through close-out of the project, termination for cause, or other means. Funds recaptured will be added to the CFSE Fund and disbursed through the process described in the **Applicant's Handbook**.

(10) Any money not used for approved project activities must be returned to the state.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 776 & ORS 937

Stats. Implemented: Ch. 937, OL 1989

Hist.: IRD 4-1986(Temp), f. & ef. 2-14-86; IRD 6-1986, f. & ef. 5-27-86; EDD 11-1988, f. & cert. ef. 4-12-88; Renumbered from 120-060-0050; EDD 11-1989, f. & cert. ef. 12-5-89

123-050-0070

Sanctions

(1) The State may:

(a) Bar a grantee from applying;

(b) Revoke the award;

(c) Require return of unexpended funds;

(d) Require repayment of expended funds;

(e) Withhold other state funds which may be due the grantee from the Special Public Works Fund; or

(f) Exercise other remedies available under state law.

(2) The sanctions may be invoked if any of the following conditions are applicable:

(a) None of the project activities have begun within four months after execution of the grant contract; or

(b) Private party agreement is not legally binding within six months of the grant award; or

(c) State statutory regulations have not been met; or

(d) There is a significant deviation from the grant-funded activities; or

(e) The department has found 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) The grantee is not complying with provisions of the grant 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 grant agreement.

(4) No action will be taken by the state until the grantee, in accordance with terms of the grant contract, has been notified in writing and has been given a reasonable time to respond and to correct the deficiencies noted.

Stat. Auth.: ORS 776 & ORS 937

Stats. Implemented: Ch. 937, OL 1989

Hist.: IRD 4-1986(Temp), f. & ef. 2-14-86; IRD 6-1986, f. & ef. 5-27-86; EDD 11-1988, f. & cert. ef. 4-12-88; Renumbered from 120-060-0060; EDD 11-1989, f. & cert. ef. 12-5-89

123-050-0080

Application Information

(1) Applications will be accepted at times specified and announced by the Director.

(2) Applications may be made only on State of Oregon CFSE Grant Program application forms, or on a clear copy of the forms. Application forms must be filled out completely. They must be signed by the presiding elected official of the city or county in which the project occurs and the chairperson of the entity making the application. Applications must be received by the department during the application period specified by the department.

(3) An applicant may apply for one project per competition.

Stat. Auth.: ORS 776 & ORS 937

Stats. Implemented: Ch. 937, OL 1989

Hist.: IRD 4-1986(Temp), f. & ef. 2-14-86; IRD 6-1986, f. & ef. 5-27-86; EDD 11-1988, f. & cert. ef. 4-12-88; Renumbered from 120-060-0070; EDD 11-1989, f. & cert. ef. 12-5-89

123-050-0090

Application and Grant Management Information

(1) The Director will adopt an **Applicant's Handbook** for the program. The **Applicant's Handbook** will address the required content of applications, project selection procedures, and outline basic administrative requirements. Before the **Applicant's Handbook** is adopted, the Director will consider comments from interested parties. The department will provide interested parties a reasonable amount of time to review and respond to proposed guidelines for the program.

(2) The most current edition of the **Applicant's Handbook** on file with the department for the CFSE Grant Program is adopted as part of these rules by reference.

(3) The department shall prepare and provide to CFSE grantees a grant management handbook which specifies requirements for local grant management, reporting, and recordkeeping, and the department's monitoring and grant closeout procedures.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 776 & ORS 937

Stats. Implemented: Ch. 937, OL 1989

Hist.: IRD 4-1986(Temp), f. & ef. 2-14-86; IRD 6-1986, f. & ef. 5-27-86; EDD 11-1988, f. & cert. ef. 4-12-88; Renumbered from 120-060-0080; EDD 11-1989, f. & cert. ef. 12-5-89

DIVISION 62

TOURISM COMMISSION MATCHING GRANTS PROGRAM

123-062-0000

Purpose

The purpose of these rules is to make Grant awards, pursuant to the provisions of ORS 285.148, to eligible applicants for projects which help to develop and improve the economies of communities throughout this state by means of the improvement, expansion and promotion of the visitor industry.

Stat. Auth.: ORS 285.137(6)

Stats. Implemented: ORS 285.148

Hist.: EDD 5-1992(Temp), f. & cert. ef. 4-2-92; EDD 13-1992, f. & cert. ef. 9-2-92; EDD 9-1995(Temp), f. & cert. ef. 11-2-95; EDD 6-1996, f. & cert. ef. 7-1-96

123-062-0010

Definitions

As used in these rules the following terms shall have the following meanings:

(1) "Commission": The Oregon Tourism Commission, created by ORS 285.135(1).

(2) "Matching Grants Program": The Commission Promotion and Development Matching Grants Program, created by ORS 285.148.

(3) "Grant": An award from the Matching Grants Program.

(4) "Grantee": An applicant which has received a Grant.

(5) "Administrator": The Executive Director of the Oregon Tourism Commission, pursuant to ORS 285.153(4).

Stat. Auth.: ORS 285.137(6)

Stats. Implemented: ORS 285.148

Hist.: EDD 5-1992(Temp), f. & cert. ef. 4-2-92; EDD 13-1992, f. & cert. ef. 9-2-92; EDD 9-1995(Temp), f. & cert. ef. 11-2-95; EDD 6-1996, f. & cert. ef. 7-1-96

123-062-0020

Eligible Applicants

Cities, counties and non-profit entities located in Oregon and involved with tourism promotion and development as defined in OAR 123-062-0030, are eligible for Grants from the Matching Grants Program.

Stat. Auth.: ORS 285.145

Stats. Implemented:

Hist.: EDD 5-1992(Temp), f. & cert. ef. 4-2-92; EDD 13-1992, f. & cert. ef. 9-2-92; EDD 9-1995(Temp), f. & cert. ef. 11-2-95

123-062-0030

Eligible Activities

Eligible projects that may be awarded Grants from the Matching Grants Program include those that provide for improvement or expansion of tourism marketing programs, or development of new tourism programs or products designed to increase attendance or tourism traffic for a greater economic impact to an area. Projects include, but are not limited to, the following activities:

- (1) Brochure production and distribution;
- (2) Media production and placement;
- (3) Informational tourism signage;
- (4) Video production and distribution; or
- (5) Tourism event promotion;
- (6) Market research; or
- (7) Construction of tourism facilities.

Stat. Auth.: ORS 285.137(6)

Stats. Implemented: ORS 285.148

Hist.: EDD 5-1992(Temp), f. & cert. ef. 4-2-92; EDD 13-1992, f. & cert. ef. 9-2-92; EDD 9-1995(Temp), f. & cert. ef. 11-2-95; EDD 6-1996, f. & cert. ef. 7-1-96

123-062-0040

Maximum Awards

The Administrator, under the direction of the Oregon Tourism Commission, shall establish the maximum Grant amount in the applicant guidelines prepared for the Matching Grants Program each biennium. No more than 50 percent of the total cost of the project may be paid for with funds from the Matching Grants Program. The applicant must show a minimum one-to-one cash match, from private or public sources other than Oregon Economic Development Department programs.

Stat. Auth.: ORS 285.145

Stats. Implemented: ORS 285.148

Hist.: EDD 5-1992(Temp), f. & cert. ef. 4-2-92; EDD 13-1992, f. & cert. ef. 9-2-92; EDD 9-1995(Temp), f. & cert. ef. 11-2-95; EDD 6-1996, f. & cert. ef. 7-1-96

123-062-0050

Program Information

(1) The Matching Grants Program will be administered by the Commission.

(2) The Matching Grants Program will be a biennial program, with awards granted on a competitive basis.

(3) For an application to be considered for funding, all the requested items published in the applicant guidelines shall be provided, including but not limited to:

(a) Viable marketing plan;

(b) Cash match of at least 50% of amount requested (balance in-kind);

(c) Project must be focused on tourism development including market research and capitol construction.

(4) Completed applications which meet the criteria of subsection (3) of this rule will be considered by the Commission for funding and ranked, based on the following criteria, with a total of 100 points available:

(a) Need: What are the resources available to the applicant? What is the applicant's total project budget? Is the project unique?

(b) Viability and Integrity of Project: Is it clearly tourism development? Will the project work? Is the project too unrealistic? Is it a quality proposal with realistic funding expectations?

(c) The Potential for Economic Impact on Community(ies) as a Direct Result of the Project: Is the project clearly going to stimulate and generate tourism economic development, in a new or enhanced way?

(d) Application Presentation: Was the information appropriate? Were there an inordinate number of errors, omissions, typos, etc. on the application form.

(5) Applicants who are awarded a Grant by the Commission shall enter into a grant agreement between the Commission and the highest elected official of the county or city, or the chairperson of the non-profit entity.

(6) Projects will be monitored by the Commission, and Grantees shall maintain records sufficient for monitoring. The grant agreement shall include all timelines that must be observed by the Grantee.

(7) When necessary, amendments shall be made to the Grant agreement by mutual agreement of the Grantee and the Commission. Those items subject to amendment shall be: substantial alteration of cost, scope, location, objectives, or timeframe of the approved activities or project. Failure to gain prior approval for substantial changes may result in sanctions, as delineated in OAR 123-062-0060.

(8) Grantees shall display conspicuously on the site, in publications or in advertisements that the project is being financed by Oregon Lottery funds. The Commission will furnish camera-ready art for this purpose.

(9) Any Grant funds not used for an approved project shall be returned to the Commission pursuant to the grant agreement.

(10) Projects must be completed within the biennium when the Grants are made. Funds not expended by the end of a biennium, shall be returned to the Commission.

Stat. Auth.: ORS 285.137(6)

Stats. Implemented: ORS 285.148

Hist.: EDD 5-1992(Temp), f. & cert. ef. 4-2-92; EDD 13-1992, f. & cert. ef. 9-2-92; EDD 9-1995(Temp), f. & cert. ef. 11-2-95; EDD 6-1996, f. & cert. ef. 7-1-96

123-062-0060

Sanctions

(1) At the discretion of the Commission, the Commission may:

(a) Revoke a Grant for cause, as provided in subsection (2) of this rule;

(b) Require return of unexpended Grant funds;

(c) Require repayment of expended Grant funds; or

(d) Exercise other remedies available under state law.

(2) The sanctions may be invoked if any of the following conditions are applicable:

(a) None of the project activities have begun within four months after execution of the grant agreement; or

(b) State statutory regulations have not been met; or

(c) There is a significant deviation from the Grant-funded activities; or

(d) The Commission has found that significant corrective actions are necessary to protect the integrity of the Grant funds, and those corrective actions are not, or will not be, made within a reasonable time; or

(e) The Grantee is not complying with provisions of the grant agreement.

Stat. Auth.: ORS 285.137(6)

Stats. Implemented: ORS 285.148

Hist.: EDD 5-1992(Temp), f. & cert. ef. 4-2-92; EDD 13-1992, f. & cert. ef. 9-2-92; EDD 9-1995(Temp), f. & cert. ef. 11-2-95; EDD 6-1996, f. & cert. ef. 7-1-96

123-062-0070

Application Information and Time Frames

(1) Applications shall be accepted at times specified and announced by the Commission.

(2) To be considered, applications may be made only on Matching Grants Program application forms, or on clear copies of the form; shall be completed in their entirety; shall be signed by the presiding elected official of the city or county managing the project or the chairperson of the entity making the application; and shall be received by the Commission during the application period specified by the Commission in its announcement.

(3) An applicant may apply for one project only per competition.

Stat. Auth.: ORS 285.137(6)

Stats. Implemented: ORS 285.148

Hist.: EDD 5-1992(Temp), f. & cert. ef. 4-2-92; EDD 13-1992, f. & cert. ef. 9-2-92; EDD 9-1995(Temp), f. & cert. ef. 11-2-95; EDD 6-1996, f. & cert. ef. 7-1-96

123-062-0080

Application and Grant Management Information

(1) The Administrator, under the direction of the Oregon Tourism Commission, will prepare applicant guidelines for the program each biennium or grant period. The guidelines will address the required content of applications, project selection procedures, and basic administrative requirements.

(2) The most current edition of the applicant guidelines for the Matching Grants Program shall be on file with the Commission, and available at the Oregon Tourism Commission, 775 Summer St NE, Salem, Oregon, 97310.

(3) The Commission shall prepare and provide the applicants with a checklist outlining which specific requirements shall be enclosed in their application packet.

Stat. Auth.: ORS 285.137(6)

Stats. Implemented: ORS 285.148

Hist.: EDD 5-1992(Temp), f. & cert. ef. 4-2-92; EDD 13-1992, f. & cert. ef. 9-2-92; EDD 9-1995(Temp), f. & cert. ef. 11-2-95; EDD 6-1996, f. & cert. ef. 7-1-96

DIVISION 64

OREGON MUSEUM GRANT PROGRAM

123-064-0000

Purpose

The purpose of these rules is to make grant awards as provided in ORS 358.710 - 358.770, with the advice of the Oregon Historical Society and the Oregon Museums Association, and to adopt regulations establishing procedures that the Department shall use when distributing the Museum Grant Funds.

Stat. Auth.: ORS 285.065

Stats. Implemented: ORS 358.730

Hist.: EDD 6-1992(Temp), f. & cert. ef. 4-13-92; EDD 14-1992, f. & cert. ef. 9-2-92; EDD 7-1996, f. & cert. ef. 7-1-96

123-064-0010

Definitions

As used in these rules, the following terms shall have the following meanings:

(1) Department: The Oregon Economic Development Department, created by ORS 285.001.

(2) "Director": The Director of OEDD or his/her designee.

(3) "Museum Grant Program": The State of Oregon Museum Grant Program.

(4) "Museum": As defined in ORS 358.710.

(5) "Grant": An award from the Oregon Museum Grant Program.

(6) "Museum Grant Review Committee": As defined in OAR 123-064-0060(1).

Stat. Auth.: ORS 285.065

Stats. Implemented: ORS 358.730

Hist.: EDD 6-1992(Temp), f. & cert. ef. 4-13-92; EDD 14-1992, f. & cert. ef. 9-2-92; EDD 7-1996, f. & cert. ef. 7-1-96

123-064-0020

Eligible Applicants

In order to be eligible for a Grant, Museums shall meet the requirements of ORS 358.740:

(1) Be in operation for a period of at least two years.

(2) Provide museum services to the public at designated and reasonable hours and places.

(3) Have a responsible, competent attendant on duty when museum services are provided to the public.

(4) Be operated in accordance with any other minimum standards which are established by the Oregon Historical Society with the assistance of the Oregon Museums Association. Such standards must be established at least three months prior to applying to the Museum Grant Program. The standards will be used to determine eligibility for funding. The Museum must remain in compliance with the established standards.

Stat. Auth.: ORS 358.710 - ORS 358.770 & ORS 358.730(5)

Stats. Implemented: ORS 358.710 - ORS 358.760

Hist.: EDD 6-1992(Temp), f. & cert. ef. 4-13-92; EDD 14-1992, f. & cert. ef. 9-2-92

123-064-0030

Application Procedure

(1) The Department shall make applications available to all eligible Museums each year. The Museum Grant Program application shall include those items required by ORS 358.750.

(2) To apply for Grants, applicants return two copies of their applications for funding to: Field Historian, Oregon Historical Society, 1230 SW Park Avenue, Portland, Oregon 97205. The Museum Grant Review Committee shall review applications and attach the recommendations of the Oregon Historical Society and the Oregon Museums Association relating to museum services provided by the applicant. The Museum Grant Review Committee shall also make funding recommendations for each applicant. The Museum Grant Review Committee will then forward the applications to the Department.

(3) Application deadlines will be established in the annual application information.

(4) Incomplete or technically incorrect applications will be ineligible for funding.

(5) Questions regarding applications should be directed to: Oregon Museum Grant Review Committee, c/o The Oregon Historical Society, 1230 SW Park Avenue, Portland, Oregon 97205.

Stat. Auth.: ORS 285.065

Stats. Implemented: ORS 358.750

Hist.: EDD 6-1992(Temp), f. & cert. ef. 4-13-92; EDD 14-1992, f. & cert. ef. 9-2-92; EDD 7-1996, f. & cert. ef. 7-1-96

123-064-0040

Distribution of Funds

(1) When Museum Grant Program funds are appropriated by the Legislative Assembly, the Department shall distribute these funds on an annual basis. This distribution will be made with the advice of the Museum Grant Review Committee. The Museum Grant Review Committee shall review all applications and make recommendations regarding the funding of each application to the Department within 45 days after the application deadline.

(2) Grants shall be distributed each year according to the following formula:

Total Available Funds

$$\text{Total Eligible Requests} \times \text{Individual Eligible Requests} = \text{Individual Apportionment}$$

(3) Individual eligible requests may be for up to 50% of the amount expended by a Museum for Museum services in the previous fiscal year, not to exceed an amount established by the Department, the Oregon Historical Society, and the Oregon Museums Association. In no event shall a Grant exceed \$5,000.

Stat. Auth.: ORS 285.065

Stats. Implemented: ORS 358.760

Hist.: EDD 6-1992(Temp), f. & cert. ef. 4-13-92; EDD 14-1992, f. & cert. ef. 9-2-92; EDD 7-1996, f. & cert. ef. 7-1-96

123-064-0050

Reimbursement

Grant recipients shall maintain records adequate for audit purposes and are solely responsible for any questioned audit findings. To remain eligible for Grants, recipients shall supply any information to substantiate costs requested by the Department.

Stat. Auth.: ORS 285.065

Stats. Implemented: ORS 358.750

Hist.: EDD 6-1992(Temp), f. & cert. ef. 4-13-92; EDD 14-1992, f. & cert. ef. 9-2-92; EDD 7-1996, f. & cert. ef. 7-1-96

123-064-0060

Museum Grant Review Committee

(1) The Museum Grant Review Committee shall be composed of:

(a) A representative from the Oregon Historical Society;

(b) Two institutional members of the Oregon Museums Association appointed by the Oregon Museums Association Board of Directors;

(c) Of these three representatives, there shall be one representative from a Museum with a budget of less than \$60,000 annually and one representative from a Museum with a budget of more than \$60,000 annually.

(2) The Museum Grant Review Committee shall adopt conflict-of-interest and procedural rules via 2/3 majority vote.

Stat. Auth.: ORS 358.710 - ORS 358.770 & ORS 358.730(5)

Stats. Implemented: ORS 358.710 - ORS 358.760

Hist.: EDD 6-1992(Temp), f. & cert. ef. 4-13-92; EDD 14-1992, f. & cert. ef. 9-2-92

DIVISION 65

ENTERPRISE ZONE

General

123-065-0000

Definitions

As used in this division of administrative rules, unless the context indicates otherwise:

(1) "Applicant" means the Sponsoring Government or Governments submitting the application for an enterprise zone designation pursuant to OAR 123-065-1500 to 123-065-1599.

(2) "Department" means the Oregon Economic Development Department unless specified otherwise.

(3) "Director" means the Director of the Department.

(4) "Preexisting Enterprise Zone" means an enterprise zone:

(a) Designated within three years of an enterprise zone's being Terminated by Statute; and

(b) For which at least one-half of its cosponsors comprise a majority of the cosponsors of the enterprise zone Terminated by Statute and represented in subsection (a) of this section. For example, if the former zone was sponsored by four jurisdictions, to reapply as a "Preexisting Enterprise Zone" an Applicant must include at least three of those jurisdictions, assuming the Applicant has no more than six Sponsoring Governments in all.

(5) "Sponsoring Government" means a county or city participating as an Applicant in proposing an enterprise zone.

(6) "Terminated by Statute" means the automatic termination of an enterprise zone by operation of law after more than ten years under ORS 285B.686(3).

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)
 Stats. Implemented: ORS 285B.650 - ORS 285B.728
 Hist.: EDD 4-1994, f. & cert. ef. 2-24-94; EDD 10-1995, f. & cert. ef. 12-19-95; EDD 1-1997, f. & cert. ef. 1-7-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0010

Enterprise Zone Sponsorship

An enterprise zone shall be sponsored by, and only by, the governing body of each city or county jurisdiction in which it is located, with the following exceptions:

- (1) A county need not cosponsor a zone, if the zone contains only incorporated territory in that county.
- (2) A county need not cosponsor a zone, if:
 - (a) The only unincorporated territory in that county inside of the zone lies within the urban growth area between the corporate limit and the urban growth boundary of a city that is the sponsor or a cosponsor of the zone;
 - (b) Such unincorporated territory has no residents; and
 - (c) The county granted consent for the city to sponsor the zone through a resolution of the governing body of the county.
- (3) A county or city need not cosponsor a zone, if the only part of the zone inside of that jurisdiction consists of stretches of road, tracks, waterways, transmission lines or right of ways that connect separate areas of the zone.

- (4) A city need not cosponsor a zone, if:
 - (a) The county is the sponsor or a cosponsor of the zone;
 - (b) Less than the zone's entire area lies within less than the entire jurisdiction of the city; and
 - (c) The city granted consent for the county to sponsor the zone through a resolution of the governing body of the city.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)
 Stats. Implemented: ORS 285B.656, ORS 285B.680 & ORS 285B.689
 Hist.: EDD 4-1994, f. & cert. ef. 2-24-94; EDD 10-1995, f. & cert. ef. 12-19-95; EDD 1-1997, f. & cert. ef. 1-7-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0048

Maximum Number of Enterprise Zones

(1) The maximum number of enterprise zones that may be designated is 47:

- (a) Plus any designation based on a Federal Enterprise Zone under ORS 285B.677; and
- (b) Minus any of the 10 designations under section (3) of this rule that is not in effect by January 1, 2004.

(2) At the time of the adoption of this rule, 37 enterprise zones are in existence by designation of the Director, as follows:

- (a) Six under ORS 285B.653;
- (b) None under ORS 285B.677; and
- (c) Thirty-one under ORS 285B.689.

(3) From October 23, 1999, to January 1, 2004, 10 zones may be designated under ORS 285B.653, such that when originally designated:

- (a) All 10 must be nonurban enterprise zones; and
- (b) No more than six may include any area in Multnomah, Clackamas, Linn, Lane, Douglas or Jackson County or in a county farther west than these.

(4) The designations under section (3) of this rule exclude and are in addition to any designation under ORS 285B.677 or under ORS 285B.689(2) to replace a zone terminated by order of the Director.

(5) This rule neither affects nor is necessarily affected by the designation of any Federal Enterprise Zone (see OAR 123-065-1710).

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)
 Stats. Implemented: ORS 285B.650, ORS 285B.653, ORS 285B.659 & ORS 285B.689 & OL 1999, Ch. 460, Section 4
 Hist.: EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99

123-065-0080

Boundaries and Dimensions

For purposes of an enterprise zone designation or boundary change:

(1) Except as allowed in OAR 123-065-0090, the straight-line distance between any two points within the zone may not exceed 12 miles.

(2) The total area of the zone may not exceed 12 square miles, not including:

- (a) Areas below the ordinary high water mark of navigable bodies of water; and
- (b) Roads, tracks, transmission lines or right of ways that are used solely to connect separate areas of the zone.

(3) Separate areas of the zone must be connected with each other by roads, tracks, waterways, transmission lines or right of ways.

(4) Except as allowed in OAR 123-065-0090, 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.

(5) No part of the zone may be inside the boundaries of another enterprise zone.

(6) No part of this rule shall be interpreted to exclude enterprise zones designated or amended under federal law or under ORS 285B.677.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)
 Stats. Implemented: ORS 285B.656, ORS 285B.677, ORS 285B.680 & ORS 285B.683
 Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 13-1997, f. & cert. ef. 11-10-97

123-065-0090

Extended Distances in Rural Zones

For purposes of ORS 285B.683:

(1) This rule applies only to nonurban enterprise zones.
 (2) The maximum distance allowed under OAR 123-065-0080(1) is increased from 12 to:

- (a) Twenty-five lineal miles, if no area of the zone is in a county listed under section (4) of this rule; or
- (b) Twenty lineal miles, if some but not all of the area of the zone lies in a county listed under section (4) of this rule.
- (3) The maximum distance allowed under OAR 123-065-0090(4) is increased from 5 to 15 lineal miles if none of the separate area is in a county listed under section (4) of this rule.

(4) The counties of this state that are too densely populated for purposes of ORS 285B.683(5) include:

- (a) Any county for which a shrinkage of its area, growth in its population or combination thereof results in a population density for the county in excess of 100 persons per square mile;
- (b) Any future, new county for which the actual population and area correspond to a population density for the county in excess of 100 persons per square mile; and
- (c) The following existing counties (unless there is change in the county's circumstances that are entirely the opposite of subsection (a) of this section):

- (A) Benton County;
- (B) Clackamas County;
- (C) Marion County;
- (D) Multnomah County;
- (E) Washington County; and
- (F) Yamhill County.

(5) For purposes of section (4) of this rule, the population density of a county is computed by dividing the latest estimate for the county's total population by the current area of the county in terms of square miles.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)
 Stats. Implemented: ORS 285B.656, ORS 285B.680 & ORS 285B.683
 Hist.: EDD 13-1997, f. & cert. ef. 11-10-97

Explication of Statutory Terms

123-065-0100

Nonurban and Urban Zones

(1) "Enterprise zone" means an area designated as defined in ORS 285B.650(4) or declared valid by section 18, chapter 773,

Oregon Laws 1993, that is categorized as either “nonurban” or “urban” pursuant to ORS 285B.650(7) and (13).

(2) “Metropolitan statistical area” (MSA) means any regular metropolitan statistical area or any primary metropolitan statistical area (PMSA), as defined by the most recent federal decennial census and the federal Office of Management and Budget.

(3) As used in ORS 285B.650(7) and (13), “regional or metropolitan urban growth boundary” means:

(a) The Metro/Portland area regional urban growth boundary;

(b) The urban growth boundary encompassing Eugene and Springfield;

(c) The urban growth boundary encompassing Salem and Keizer;

(d) The urban growth boundaries encompassing Medford and Central Point;

(e) The urban growth boundary or boundaries encompassing the largest city within a metropolitan statistical area and any other city that has a common or adjoining urban growth boundary; or

(f) An established formal demarcation encompassing a larger area than that defined under subsections (b) to (e) of this section, but smaller than the respective metropolitan statistical area, if such a demarcation is proposed by the Applicant or the sponsor of an enterprise zone and is approved by the Director in an order that:

(A) Designates the zone;

(B) Changes the zone boundary; or

(C) Recognizes such an alternative definition of “regional or metropolitan urban growth boundary” following the reformulation or creation of a metropolitan statistical area by the federal government.

(4) For the purposes of ORS 285B.650(7) and (13), “outside” and “inside” mean that an enterprise zone may not be designated, redesignated nor amended, such that the zone includes areas both inside and outside of a regional or metropolitan urban growth boundary as defined in section (3) of this rule.

(5) If a new or newly modified regional or metropolitan urban growth boundary intersects an enterprise zone, the zone’s categorization as either nonurban or urban shall remain unchanged until such time as a subsequent modification to the regional or metropolitan urban growth boundary or the definition thereof situates the zone entirely outside or inside of that boundary and hence reverses the zone’s categorization as nonurban or urban.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.650, ORS 285B.653, ORS 285B.659, ORS 285B.680, ORS 285B.683 & ORS 285B.689

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 13-1997, f. & cert. ef. 11-10-97

123-065-0110

Being and Operating a Business

(1) As used in ORS 285B.650(1), “operating or conducting one or more trades or businesses” means to manage or direct commercial affairs, as evidenced by all of the following activities:

(a) Establishment of a place of business 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;

(d) Acquisition of equipment that is necessary to perform business operations;

(e) Maintenance of business records such as those related to sales, shipments, personnel or payroll;

(f) Solicitation of orders for goods, supplies or services from other businesses or business operations within the firm; and

(g) Ultimate pursuit of economic profits.

(2) “Operating” and “operate” as used in the context of ORS 285.590(1) and (3) (1995) have the same meaning as provided in section (1) of this rule for any eligible business firm precertified before October 4, 1997.

(3) As used in ORS 285B.650(1) and 285B.674, “municipal corporation” means any county, city, port district, school district, union high school district, community college district or any other

public or quasi-public corporation including a municipal utility or dock commission operated by a separate board or commission.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285.590 (1995) [repealed], ORS 285B.650 & ORS 285B.674

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 13-1997, f. & cert. ef. 11-10-97

123-065-0120

Employment and Employees

(1) As used in ORS 285B.650(3), “person” may mean two or more part-time employees who together perform and share a single job involving more than 32 hours of work per week by virtue of an established arrangement at an eligible business firm.

(2) As used in ORS 285B.650(3), “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 including but not limited to paid holidays, vacation and so forth, and dividing by 52.

(3) As used in ORS 285B.650(3), “temporary or seasonal jobs” mean nonpermanent positions in which the persons filling them are hired, leased or contractually employed for less than a year’s time, including but not limited to workers that are assigned to a qualified business firm by an external agency for periods of less than 12 consecutive months or on an ad hoc or as-needed basis.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.650 & ORS 285B.704

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 13-1997, f. & cert. ef. 11-10-97

123-065-0130

Modification of Existing Property

As used in ORS 285B.650 to 285B.728 and in this division of administrative rules, unless the context indicates otherwise, “modification” means the alteration or reconstruction of all or part of an existing building or structure:

(1) Irrespective of any addition to the building or structure; and

(2) Consistent with one of the following terms, as used in ORS 285B.650(6):

(a) “Modernization” meaning to adapt the building or structure to advances, ameliorations or updated practices by altering its style, technology, materials or engineering;

(b) “Remodeling” meaning to change the utilization, layout or appearance of the building or structure by reorganizing space and activities, achieving new operational objectives or correcting physical or economic deficiencies associated with the property; or

(c) “Renovation” meaning to restore, rebuild, redesign, repair or replace worn elements, so that the functionality, quality or attractiveness of the building or structure is equivalent to a former state.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.650, ORS 285B.698 & ORS 285B.713

Hist.: EDD 13-1997, f. & cert. ef. 11-10-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0140

The Sponsor of an Enterprise Zone

As used in ORS 285B.650 to 285B.728 and in this division of administrative rules:

(1) “Sponsor” or “zone sponsor” means either:

(a) The single city or county that was the Applicant for the most recent designation of the enterprise zone; or

(b) Collectively, the city and county, cities, cities and county, counties, city and counties, or cities and counties that comprise:

(A) The Applicant for the most recent designation of the enterprise zone; and

(B) Such city or county, if any, that joined the zone since designation as part of a change to the zone boundary under ORS 285B.680(6).

(2) Depending on the particular context, “a sponsor” or “a zone sponsor” may refer to a single sponsoring jurisdiction or cosponsor of the enterprise zone which is a city or county included under subsection (1)(b) of this rule, although no such reference shall be construed as superseding or interfering with ORS

285B.671(3), 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, except for enhanced local public services, local incentives and local regulatory flexibility.

(3) The zone sponsor does not include and is not any city or county that consented to having part of its territory contained in the zone pursuant to OAR 123-065-0010.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)
Stats. Implemented: ORS 285B.650, ORS 285B.671 & ORS 285B.680
Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0150

Assessment and Tax Years

As used in ORS 285B.650 to 285B.728 and this division of administrative rules, “year” or “assessment year” means a calendar year of January 1 to December 31, unless:

(1) Modified as “tax year” which is a 12-month period from July 1 to June 30; or

(2) The context indicates or implies a 12-month period following or preceding an event.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)
Stats. Implemented: ORS 285B.650 - ORS 285B.728
Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

Duties and Options of Sponsoring Jurisdictions

123-065-0200

Local Zone Manager

For purposes of ORS 285B.671(1)(a):

(1) The appointment of a local zone manager by the sponsor of an enterprise zone shall be accomplished through a formal action either by each cosponsor or by all such jurisdictions in some collective fashion.

(2) The enterprise zone 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 local zone manager may be specified as an established position at a local agency or organization, whether public or private, as opposed to a named person.

(4) The enterprise zone sponsor may appoint two or more people to serve as local co-managers of the zone.

(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 sponsor or of a cosponsor of the enterprise zone to make discretionary decisions that do not specifically require resolutions of the sponsor’s governing body or bodies under ORS 285B.650 to 285B.728 or under this division of administrative rules.

(7) Whenever a local zone manager is appointed or a new person fills the appointed position, written notice of such shall be provided to the Department, the Department of Revenue and the county assessor soon afterwards.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)
Stats. Implemented: ORS 285B.671
Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0210

Reporting by the Enterprise Zone Sponsor

(1) Within six months following designation of any enterprise zone, the sponsor of the zone shall provide to the Department, the Department of Revenue, the county assessor, the contact agency for first-source hiring agreements and local institutions involved in marketing the zone:

(a) A description and examples of marketing plans, efforts or materials that have been prepared for the zone;

(b) A final inventory and references to associated enabling instruments such as local ordinances for the enhanced public services, local incentives or regulatory flexibility to be made available inside of the zone pursuant to OAR 123-065-0240(1)(a);

(c) 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 285B.674; and

(d) For an urban zone, indices identifying all land within the zone pursuant to ORS 285B.671(1)(h).

(2) Each year by November 1, the zone sponsor shall provide to the Department, the Department of Revenue, the county assessor, the contact agency for first-source hiring agreements and local institutions involved in marketing the zone:

(a) A list of all outstanding investments of business firms that have been and remain precertified in the zone and are not currently qualified for that investment along with corresponding estimates of expected new jobs and expenditures on qualified property;

(b) Optional commentary on any efforts to assist precertified and qualified business firms and the county assessor with new or ongoing enterprise zone tax exemptions; and

(c) Updated information or recently revised materials pertaining to what was provided under section (1) of this rule and to such matters as: The local zone manager, the zone boundary, public outreach, available industrial land within the zone and local training and education resources.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)
Stats. Implemented: ORS 285B.671
Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0220

Precertification Filing Fee

For purposes of ORS 285B.671(2):

(1) When applying for precertification under ORS 285B.719(1), an eligible business firm may be required to pay a fee that is set by the sponsor of the enterprise zone at:

(a) Zero (that is, the fee is waived);

(b) \$200; or

(c) Any amount not exceeding 0.1 percent of the total estimated cost of the firm’s proposed investment in qualified property.

(2) The requirement of a precertification filing fee shall be consistently applied by the sponsor of the enterprise zone, including but not necessarily through written guidelines, such that the sponsor may vary the fee under 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.

(3) What constitutes exceptional circumstances under which the requirement, waiver or amount of a precertification filing fee may deviate from the usual practice under section (2) of this rule shall be defined through written guidelines.

(4) Failure by an eligible business firm to pay the required filing fee at the time of the firm’s submitting an application for precertification may be grounds for the local zone manager’s refusal to process or to approve the application on behalf of the zone sponsor.

(5) A zone sponsor that requires a precertification filing fee shall collect payment by check in U.S. funds with the application for precertification.

(6) If the application of an eligible business firm for precertification is denied by either the zone sponsor or the county assessor under ORS 285B.719(4), any payment of a precertification filing fee shall be refunded in full to the eligible business firm.

(7) If an eligible business firm’s application for precertification has been approved by both the zone sponsor and the county assessor under ORS 285B.719(3), neither the zone sponsor nor the county assessor may later deny the eligible business firm’s precertification, qualification or property tax exemption because of failure to receive or collect payment of a precertification filing fee.

(8) If a business firm is denied an exemption application under ORS 285B.722, the zone sponsor shall be under no obligation to refund any amount of a precertification filing fee that was paid by the business firm, unless a reason for the denial of the

exemption is that the business firm is ineligible under ORS 285B.707 or was otherwise precertified improperly or by mistake.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.671

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0230

Additional Conditions in an Urban Enterprise Zone

For purposes of additional conditions imposed by the sponsor of an urban enterprise zone under ORS 285B.671(4):

(1) The sponsor of the enterprise zone shall abide by the applicable provisions in OAR 123-065-0530(3) to (13).

(2) "Groups of persons" as used in ORS 285B.671(4) may comprise the general populace or labor force or any lesser number of persons that is not explicitly defined in terms of geography or residency.

(3) In order to effect and enforce compliance, the sponsor of an urban zone must include with its approval of an application for precertification written information that concisely lists and describes the specific additional conditions to which the firm commits, or to which it may be obligated under certain contingencies which must also be specified.

(4) The written information under section (3) of this rule shall appear in a standardized format that conforms with the policy that the zone sponsor has adopted for imposition of such additional conditions, and that is used for all eligible business firms precertified in that urban enterprise zone.

(5) Disqualification of an ongoing enterprise zone exemption under ORS 285B.728(1)(d) or (e) for failure to meet requirements pursuant to ORS 285B.710(2) or (5) shall be:

(a) Applied with respect to each year for which the eligible business receives the enterprise zone exemption except as provided under ORS 285B.728(6); and

(b) Limited to only Affected Employees as defined in OAR 123-065-0500(4). This limitation in no way inhibits the use of other definitions for additional conditions reasonably related to employment opportunities in determining whether the firm is to be precertified in accordance with ORS 285B.719(2)(e) or initially qualified in accordance with ORS 285B.704(1)(j).

(6) An eligible business firm shall have the same rights of appeal as provided elsewhere in ORS 285B.650 to 285B.728 for the precertification and qualification of an enterprise zone exemption.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.671

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0240

Enhanced Public Services and Other Local Incentives

For purposes of any enhanced public service, regulatory flexibility, waiver of local fee or other such local incentive that is provided inside an enterprise zone within an applicable city or county jurisdiction under ORS 285B.671(1)(b):

(1) Unless described as discretionary, any such incentive is binding on the city or county sponsoring the zone and must be made available and implemented no later than six months after the effective date of the designation or boundary change as proposed in the:

(a) Application for designation of the zone pursuant to OAR 123-065-1520(5); or

(b) Resolution in which the city or county requests to be added as a cosponsor of the zone in conjunction with a request to change the boundary of the zone under ORS 285B.680(6).

(2) Within six months of the relevant effective date under section (1) of this rule, a city or county may formally declare and implement one or more such incentives that are in addition to and, if so indicated in the declaration, are as binding on the city or county for the life of the zone as incentives proposed under section (1) of this rule.

(3) Except as provided in section (4) of this rule, any such incentive shall be available or provided to no fewer than all pre-

certified business firms that qualify under ORS 285B.722, until at least the conclusion of the final year of each firm's exemption from property taxes.

(4) Any such incentive shall be offered and made available on an equal basis to all precertified or qualified business firms within the applicable jurisdiction, except that a Sponsoring Government or cosponsor may at any time formally elect to provide no or different incentives to any business firm operated as a hotel, motel or destination resort (if eligible in that zone), but this election may not be subsequently rescinded, reversed or altered except in conjunction with the reapplication of a Preexisting Enterprise Zone.

(5) In determining satisfaction of "similar value," as used in ORS 285B.686(6), in the case where the zone sponsor proposes one or more new incentives to replace an incentive or incentives that are binding according to section (1) of this rule, the Department may consider and take into account the extent to which an incentive to be replaced significantly impairs or is reasonably expected to jeopardize the ability to provide services and incentives to eligible business firms in general, because it excessively:

(a) Benefits some or all precertified or qualified firms; or

(b) Strains local budgetary resources or utility capacity.

(6) That such an incentive is generally used by and available to other business firms within the enterprise zone or elsewhere in the jurisdiction does not affect its status as binding for purposes of the zone.

(7) In accordance with applicable state or local laws, charters, ordinances or conventions, a city or county that sponsors an enterprise zone may offer to precertified or qualified business firms other incentives that are not binding, although the Department shall not formally recognize such discretionary incentives in the context of:

(a) Benefits customarily offered to an eligible business firm investing in that zone for purposes of marketing and related efforts to retain, expand, start or recruit such firms; and

(b) Awarding points for competitive criteria that influence designation of the proposed zone pursuant to OAR 123-065-1570(3) or (4).

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.656, ORS 285B.671, ORS 285B.680 & ORS 285B.686

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

Changes to Enterprise Zone Boundaries

123-065-0300

Definitions

(1) "Census Statistical Unit" means a standard area, designation, entity or place as listed in OAR 123-065-1500 that for purposes of OAR 123-065-0350(4)(b) and (c):

(a) Is selected by the enterprise zone sponsor; and

(b) Contains an entire contiguous area to be added to the zone as part of the requested boundary change.

(2) "Original enterprise zone" as used in ORS 285B.680(2)(c) and (d) means the area within the boundary of the zone at the time when it was most recently designated or redesignated.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.680

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0310

Request by Sponsoring Jurisdictions

The request by the sponsor of an enterprise zone for a change to the zone boundary under ORS 285B.680 must consist of a memorandum with attachments that:

(1) Includes a resolution approved by the governing body of each of the zone sponsor's existing and proposed jurisdictions;

(2) Acknowledges whether a change in the official name of the zone is proposed;

(3) Includes a map or maps and an edited legal description (per OAR 123-065-1530(3)(b)) detailing the particular areas to be added to or removed from the zone;

(4) Includes a new unified map and legal description (per OAR 123-065-1530(3)(b)) of the zone with the proposed boundary change;

(5) Provides an estimate to the nearest 0.1 square mile of the surface area of the zone with the proposed boundary change;

(6) Compares economic hardship conditions in or near any area to be added to the zone with equivalent measures of economic hardship for the original enterprise zone and local areas associated with it in the application for designation, as necessary to assure satisfaction with OAR 123-065-0350(4) or (5);

(7) Comments, as necessary, on adherence to OAR 123-065-0320 and 123-065-0330;

(8) Confirms continued conformity with applicable:

(a) City/county sponsorship under OAR 123-065-0010;

(b) Spatial parameters for an enterprise zone, as delineated in OAR 123-065-0080 or 123-065-0090; and

(c) Requirements of ORS 285B.680(2)(b) or (d) for retaining certain sites or so much area in the zone.

(9) Explains, as appropriate, why the change to the zone boundary complements the zone's Strategic Plan or marketing efforts as formulated in or since the application for designation of the zone; and

(10) Describes any immediate justification, as appropriate, for the change to the zone boundary, including but not limited to one or more of the following:

(a) The ability to immediately site and precertify a prospective investment by an eligible business firm that will result in:

(A) Significant new employment;

(B) Preservation of local full-time jobs that would otherwise be lost;

(C) Compensation comparable to the level described in OAR 123-065-0510(1);

(D) Valuable new training opportunities for local workers; or

(E) Diversification of the local economy.

(b) The opportunity to exploit recent changes in local land use designations and ordinances consistent with the purpose of an enterprise zone under ORS 285B.650 to 285B.728;

(c) The extension of enterprise zone benefits to a city that is not sponsoring a current enterprise zone; or

(d) Other compelling reasons of the zone sponsor.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.668(1) & ORS 285B.680(1)(d)

Stats. Implemented: ORS 285B.680

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1996, f. & cert. ef. 6-24-96; EDD 1-997, f. & cert. ef. 1-17-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0320

Limitations on Boundary Changes

Approval by the Director or the Director's designee of a change in an enterprise zone's boundary as requested by the zone sponsor is restricted as follows:

(1) A boundary change may be approved, only if at least 20 percent of the land to be added and none of what is removed is:

(a) Designated for use by eligible business firms under a comprehensive land use plan acknowledged by the Land Conservation and Development Commission or by a final post-acknowledgment plan amendment;

(b) Free of serious impediments to development and use by eligible business firms, due to environmental concerns or regulations;

(c) Provided with or can effectively be provided with infrastructure, road access, utilities and public services that are adequate for eligible business operations; and

(d) Vacant or available for substantial new occupancy, expansions or improvements by eligible business firms.

(2) In order for a nonurban enterprise zone's boundary to be modified such that it contains new or expanded areas outside of an urban growth boundary, the request for the boundary change must indicate and explain under OAR 123-065-0310(10) to the satisfac-

tion of the Department that there is significant justification for the change.

(3) A boundary change shall not be approved if:

(a) It adds areas within a current enterprise zone; or

(b) A new cosponsor to be added under ORS 285B.680(6) is a city that had sponsored an enterprise zone that terminated at the request of the putative cosponsor or at the determination of the Director, under ORS 285B.686(5) or (6).

(4) A boundary change shall not be approved if it adds any areas outside a regional or metropolitan urban growth boundary to an urban enterprise zone or inside such a boundary to a nonurban zone.

(5) A city or county jurisdiction that is sponsoring an enterprise zone may not have its sponsorship of the zone renounced, rescinded or terminated other than by termination of the entire zone or by the disincorporation of the jurisdiction.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.668(1) & ORS 285B.680(5)

Stats. Implemented: ORS 285B.680

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0330

Public Involvement

In order for a requested change to an enterprise zone's boundary to be approved, the zone sponsor must solicit public involvement that:

(1) Occurs prior to the approval of the resolutions under OAR 123-065-0310(1) or prior to the submission of a revised request for the boundary change under ORS 285B.680(7);

(2) Is commensurate with the scale and potential impact of the requested boundary change on members of the public, subject to the sponsor's judgement and a case-specific review by the Department, which shall recognize, for example, that a minor addition of land within an urban growth boundary will generally necessitate little or no public involvement; and

(3) Potentially includes but is not necessarily dependent on such activities as: Public notice, period of public comment, dissemination of information or public meeting/hearing.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.668(1) & ORS 285B.680(1)(d) & (5)

Stats. Implemented: ORS 285B.680

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1996, f. & cert. ef. 6-24-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0350

Special Cases

(1) If modifications in local, state or federal designations cause a nonurban enterprise zone to be intersected by a previously existing regional or metropolitan urban growth boundary, then no request for a change to the boundary of that nonurban enterprise zone may be approved that adds areas within the regional or metropolitan urban growth boundary as it existed prior to any such intersection of the zone.

(2) If a city annexes into its jurisdiction an area of an enterprise zone, of which the city is not a sponsor, or to which the city did not consent under ORS 285B.656(1):

(a) The tax exemptions of precertified or qualified business firms in the annexed area shall not be affected;

(b) An eligible business firm proposing an investment in qualified property at a location in the annexed area of the zone may be precertified contingent on an amendment to the zone's sponsorship as provided in subsection (c) of this section; and

(c) An eligible business firm precertified under subsection (b) of this section may not qualify nor receive an enterprise zone exemption for the investment unless and until such time as the Director or the Director's designee approves a request by resolutions of the zone sponsor and the city, such that either:

(A) The city becomes a new cosponsor of the zone pursuant to ORS 285B.680(6); or

(B) The city consents consistent with ORS 285B.656(1) that the zone may contain any area within the city's jurisdiction.

(3) If the relevant portion of a legal or jurisdictional border that defines all or part of the boundary of an enterprise zone is altered, the zone boundary shall correspond to the former legal or jurisdictional border. The zone sponsor may request a zone boundary change to conform with the altered legal or jurisdictional border, and that request may be approved without regard to OAR 123-065-0310(9) and (10) and 123-065-0320.

(4) Pursuant to OAR 123-065-0310(6), an area may be added to an enterprise zone, only if one of the following is met:

(a) The area does not contain any significant group of residences, such as all or part of a neighborhood (subject to section (5) of this rule);

(b) Less than 25 percent of the Census Statistical Unit is zoned for residential use; or

(c) Based on the most recently available economic data, the Census Statistical Unit has generally the same or a lower/higher level/rate of household or personal income/poverty, or alternatively a higher unemployment rate, compared to the original zone and associated local areas.

(5) In considering a request for an enterprise zone boundary change, the Director may determine that residential areas in the immediate vicinity of a proposed amendment to a zone boundary are equivalent to being inside the proposed boundary of the area to be added, for purposes of subsection (4)(a) of this rule.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.668(1) & ORS 285B.680(5)

Stats. Implemented: ORS 285B.680

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

Terminations of Enterprise Zones

123-065-0400

Events and Timing

(1) Determinations by the Director on the designation, termination or rejection of an application for designation of an enterprise zone are final.

(2) Enterprise zones that are Terminated by Statute or are designated as replacements under ORS 285B.689(1) shall be terminated or designated effective at 12 midnight of July 1.

(3) Any zone that is designated under ORS 285B.689(1) to replace an enterprise zone that was concurrently Terminated by Statute shall not itself terminate under ORS 285B.686(3) until in effect eleven tax years after its designation.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.668(1) & ORS 285B.689(4)

Stats. Implemented: ORS 285B.686 & ORS 285B.689

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0410

After Termination of the Zone

Following the termination of an enterprise zone:

(1) The local policies adopted by the zone sponsor under ORS 285B.671 or other statutory provisions shall remain in force as they were at the time of termination.

(2) The only change that the sponsor of the terminated zone may make to the zone's local policies is to appoint a replacement as needed for the local zone manager, if the position previously held by the local zone manager lacks qualified personnel.

(3) If the site of an eligible business firm's investment in qualified property becomes located within a new enterprise zone, any pending or approved and unexpired precertification application by the eligible business firm shall remain in effect and be assigned to the new enterprise zone.

(4) For purposes of receiving a property tax exemption, the termination of the zone shall not affect an eligible business firm's existing application for precertification that is appealed, or that is approved under ORS 285B.719 pursuant to OAR 123-065-0790 at the time when the zone terminates, with the following stipulations for a precertified investment that remains outside of a current enterprise zone:

(a) The approved precertification expires on December 31 of the third full year following the effective date on which the zone

terminated or the appeal was granted, unless construction, modification or installation of qualified property is completed and the eligible business firm qualifies for the exemption under ORS 285B.722 in or before the next year; and

(b) The eligible business firm may not apply for precertification on any other proposed investment after the zone's termination, unless the firm is also a qualified business firm that is receiving an exemption in the terminated enterprise zone and the other requirements under OAR 123-065-0420 are met.

(5) Within six months following the termination of the enterprise zone, the sponsor of the terminated zone and the county assessor shall jointly submit to the Department of Revenue, the Department and the contact agency for first-source hiring agreements, a complete list of:

(a) The names of all business firms precertified or qualified in the zone at the time of termination and located outside of any currently designated enterprise zone;

(b) The dates on which each precertification was submitted and finally approved;

(c) The anticipated initial year of each exemption; and

(d) The current status of each investment or exemption of the precertified or qualified business firm (for example, "under construction").

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.686 & ORS 285B.719

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0420

Grand-fathering of Certain Investments Proposed in a Terminated Zone

(1) After the termination of an enterprise zone, an enterprise zone exemption shall be granted under ORS 285B.686(2)(b) for qualified property that is located outside of a current enterprise zone and that is owned or leased by an eligible business firm, if all of the following requirements are met:

(a) Within ten years after the effective date of the termination of the zone, the eligible business firm submits a complete application for precertification pursuant to the applicable provisions of ORS 285B.719;

(b) The qualified property is to be located entirely within the boundaries of the terminated zone as they existed at the time of termination;

(c) At the time when the zone terminated, the eligible business firm was precertified or qualified in that same zone;

(d) The eligible business firm has not been disqualified pursuant to ORS 285B.686(2)(c) in the terminated zone;

(e) Construction, modification or installation of the qualified property commences before July 1 following the tax year in which the firm's last outstanding exemption in the zone concludes;

(f) The eligible business firm's application for precertification is approved:

(A) By the county assessor and the local manager of the terminated zone or the manager's successor;

(B) Lacking a local zone manager, by the county assessor and either the Department or a formal action of the zone sponsor; or

(C) On appeal.

(g) Completion of construction, modification or installation occurs in accordance with ORS 285B.719(5)(b) and (c);

(h) Timely application is made to the county assessor under ORS 285B.722 or 285B.725; and

(i) The eligible business firm complies with all applicable requirements of ORS 285B.692 to 285B.728 in effect when the zone terminated.

(2) For purposes of ORS 285B.686(2)(c) in an enterprise zone that has terminated:

(a) "An entire property tax exemption" means every year for which the property is to be exempted. For example, the loss of an extended abatement pursuant to ORS 285B.728(2)(b) or the payment to the zone sponsor of the equivalent of one year's tax sav-

ings under ORS 285B.728(6) shall not itself trigger the effects of ORS 285B.686(2)(c).

(b) The protection against the repayment of property taxes does not apply to the actual enterprise zone exemption that is disqualifying.

(c) "Termination" of other exemptions shall not apply to qualifying investments that were precertified before the termination of the zone, for they are allowed even without the provisions of ORS 285B.686(2)(b).

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.686

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0430

Purchase of Grand-fathered Firm

Notwithstanding OAR 123-065-0420(1)(a), a precertified or qualified business firm may not apply for precertification under ORS 285B.686(2)(b) in an enterprise zone that has terminated, if since termination the firm has been purchased by and integrated into another business or corporation, except in the case where the firm remains intact as a corporate entity, such as becoming a subsidiary to the purchasing corporation.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.686

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

Extended Abatements for up to a Total of Five Consecutive Years

123-065-0500

Definitions

(1) "County Average Annual Wage" as used in ORS 285B.710 means the most recent average annual covered payroll per employee for all industries in the county, available from the Department at the time that the eligible business firm's application for precertification is approved under ORS 285B.719(3).

(2) "Compensation" as used in ORS 285B.710 means all remuneration in the form of wages, salary, overtime pay, shift differential, profit-sharing, bonuses, paid vacation or financial benefits such as life insurance, medical coverage and retirement plans, but it does not include sales commissions, free meals, club membership, workplace amenities, benefits mandated by federal, state or local law, and so forth.

(3) "Minimum Hourly Wage" means the state's official minimum wage rate as reported by the Oregon Bureau of Labor and Industries.

(4) For purposes of this division of administrative rule unless specified otherwise (see OAR 123-065-0550(1)), "Affected Employees" means persons, positions or jobs that meet the following criteria:

(a) Persons working a majority of their time in eligible operations as provided under ORS 285B.704(6) and 285B.707(4);

(b) Full-time, year-around and non-temporary positions as defined under ORS 285B.650(3);

(c) New jobs that are filled for the first time after the date of application for precertification under ORS 285B.719(1), even if a person filling the job is already employed by the eligible business firm in another position that is refilled within the zone;

(d) Current jobs for which an employee is hired for the first time on or before June 30 at the end of the first full tax year of the exemption;

(e) Jobs that are primarily performed at locations within the boundary of the enterprise zone; and

(f) For an eligible business firm that is qualified under ORS 285B.704(2)(a) or (3)(a), any employees in excess of the number that must be maintained as specified in the resolution or resolutions of the zone sponsor, who are described by subsections (a) to (e) of this section.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.710

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0510

Compensation Standard

(1) To qualify for the additional one or two years of an enterprise zone exemption in a zone outside the Metro/Portland area regional urban growth boundary, all of an eligible business firm's Affected Employees must on average receive Compensation of not less than 150 percent of the County Average Annual Wage during each year throughout the exemption's first three years and the additional one or two years.

(2) For the purposes of section (1) of this rule, the County Average Annual Wage is fixed during the entire enterprise zone exemption period.

(3) For the purposes of section (1) of this rule, the appropriate County Average Annual Wage is not determined by the location of the eligible business firm's investment in qualified property, but rather it is the highest County Average Annual Wage among the counties in which any area of the enterprise zone is located, other than stretches of road, tracks, waterways, transmission lines or right of ways that connect separate areas of the zone.

(4) For purposes of section (1) of this rule, the regular year-long Compensation (excluding bonuses and so forth) associated with any applicable position that is temporarily vacant due to unforeseen circumstances at any time during an exemption year may be used in computing the annual average Compensation for all such Affected Employees.

(5) For the purposes of this division of administrative rules or any relevant requirement set locally by the zone sponsor under ORS 285B.671(4), 285B.704 or 285B.710, the Minimum Hourly Wage shall vary during the enterprise zone exemption period whenever the state's official minimum wage rate increases.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.710

Hist.: EDD 4-1994, f. & cert. ef. 2-24-94; EDD 3-1996, f. & cert. ef. 4-2-96; Renumbered from OAR 123-065-0050; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0520

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 285B.710(3), (4) or (6):

(1) In order for an eligible business firm applying for precertification after September 9, 1995 to receive an additional one or two years of an enterprise zone exemption, the written agreement must be finalized no later than when approval of the application for precertification is fulfilled pursuant to OAR 123-065-0740(7).

(2) Both the eligible business firm seeking an extended enterprise zone exemption and the sponsor of the zone must formally authorize the written agreement.

(3) The sponsoring city or county jurisdiction or jurisdictions of an enterprise zone may authorize the written agreement through a number of approaches, including but not limited to the following examples:

(a) Approval by an official empowered to enter into such an agreement under the laws, charters, ordinances and conventions of the jurisdiction;

(b) Approval by the specific person or persons formally recognized to conclude such an agreement with the eligible business firm pursuant to a previous understanding between the firm and the jurisdiction or between the firm and the zone sponsor;

(c) A specific resolution that is approved by the governing body of the jurisdiction and that sanctions a draft written agreement proposed by the eligible business firm;

(d) A specific resolution that is approved by the governing body of the jurisdiction and that authorizes an agent to conclude such an agreement with the eligible business firm; or

(e) A standing policy adopted by the jurisdiction that establishes guidelines and procedures and that empowers a particular agent to negotiate such an agreement with all or some eligible business firms on behalf of the jurisdiction.

(4) In an enterprise zone sponsored by more than one city or county jurisdiction, the cosponsors must all jointly authorize the

written agreement. This may be accomplished through a combination of approaches as allowed under section (3) of this rule with respect to each jurisdiction, so long as all of the terms of the written agreement are authorized by all of the sponsoring jurisdictions.

(5) The written agreement shall specify whether the total period of abatement is four or five consecutive years.

(6) Notwithstanding section (1) of this rule, if the zone sponsor formally rejects a firm's request for an extended tax abatement prior to precertification and prior to the commencement of construction, modification or installation of qualified property, the sponsor may later reverse its decision and enter into a written agreement with the firm that:

(a) Sets an extended period of property tax abatement;

(b) Stipulates one or more additional reasonable requirements of the firm consistent with OAR 123-065-0530;

(c) Is concluded in accordance with sections (2) to (5) of this rule before the firm makes application for the relevant exemption under ORS 285B.722; and

(d) Is also signed or endorsed in some way by the county assessor.

(7) In the case of an eligible business firm precertified on or before September 8, 1995, the written agreement may be concluded up until but no later than June 30 at the end of the third tax year that begins during the period of tax exemption under ORS 285B.698(3).

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.710

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0530

Additional Reasonable Requirements of the Zone Sponsor

For the sponsor of an enterprise zone that authorizes an extended abatement and requests additional requirements of an eligible business firm under ORS 285B.710(3)(b), (4) or (6)(b):

(1) All such additional requirements must be specified in the required written agreement between the eligible business firm and the zone sponsor pursuant to OAR 123-065-0520.

(2) Adherence to or satisfaction of such additional requirements shall in no way determine qualification for the first three years of an eligible business firm's enterprise zone exemption under ORS 285B.698.

(3) Such additional requirements may differ from the additional requirements requested in another enterprise zone including a zone with a common sponsoring county government.

(4) Such additional requirements shall apply to actions and achievements of the eligible business firm only between the time of precertification and the end of the last full calendar year during the overall enterprise zone exemption period.

(5) Notwithstanding section (4) of this rule, the zone sponsor and the eligible business firm may mutually agree, subject to certain contingencies, to automatically apply the terms and additional requirements of the current written agreement to future extended abatements sought by the firm for subsequent investments within the zone.

(6) Such additional requirements and the policy that underlies them shall not vary dramatically or erratically over time, such that uniformity or predictability is significantly lacking from the perspective of eligible business firms interested in investing in the zone.

(7) Such additional requirements shall be "reasonable" which is further but not exhaustively defined to mean that the requested requirements may not:

(a) Be arbitrarily applied, implemented or enforced;

(b) Make disparate demands of eligible business firms that are broadly of the same size or basic industry type;

(c) Entail net economic costs to the firm as a result of payments or actions to be undertaken by the firm that have the potential to significantly offset the benefit for the eligible business firm associated with the additional one or two years of property tax abatement;

(d) Demand procedures, practices or investments that far exceed anything that has been undertaken in the eligible business firm's industry or related industries throughout the world; or

(e) Plausibly cause the release of information that is proprietary, confidential or otherwise threatening to the eligible business firm's market competitiveness or contractual obligations or that of any third party.

(8) Such additional requirements 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 those persons' or businesses' residency or geographic location.

(9) Some or all such additional requirements may be offered by the zone sponsor as multiple options from which the eligible business firm may freely select one or more of the options or certain combinations thereof pursuant to the zone sponsor's guidelines, so long as:

(a) Each optional requirement is reasonable;

(b) No more than one optional requirement is undefined or otherwise calls for the firm to make its own proposal;

(c) Only the selection of the open-ended option by the firm and the review of the firm's proposal under subsection (b) of this section shall delay direct authorization of the extended abatement by the sponsor following the firm's final selection; and

(d) The firm's selection, and thus what the firm is required to satisfy or not satisfy among the options, is specified in the written agreement between the firm and the zone sponsor.

(10) Such additional requirements shall not modify the stringency or effect of the hiring requirements under ORS 285B.704 or the average Compensation level if so required under OAR 123-065-0510(1), although such additional requirements may be directed at the Compensation of groups of employees other than and not including Affected Employees.

(11) An exception to section (10) of this rule is allowed where the firm is given sufficient choice, such that local additional requirements that effectively increase the stringency of hiring or Compensation requirements above relevant statutory levels may be offered as multiple options under section (9) of this rule, if the total number of available options is at least three times both the number of options that the firm must satisfy and the number related to hiring or Compensation of Affected Employees. For example, if a firm must commit to two from among a list of requirements, at least six listed options must be available, and only two of the six may affect relevant hiring or Compensation.

(12) Failure by a qualified business firm to satisfy such an additional requirement may not result in disqualification under ORS 285B.728, if as specifically allowed in the formally adopted policy of the zone sponsor or in the written agreement by the firm with the sponsor:

(a) The firm's continuing qualification does not depend on compliance with that requirement; or

(b) The firm fulfills an alternative requirement to avoid disqualification. The provision by the sponsor of such an alternative requirement shall not preclude the firm's disqualification, if the firm later fails to adequately fulfill the alternative requirement or other requirements.

(13) In an urban enterprise zone, such additional requirements shall be:

(a) Formally related to the policy and standards adopted by the sponsor under ORS 285B.671(4); and

(b) In addition to and not in replacement of any of the conditions normally imposed by the sponsor under ORS 285B.671(4).

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.710

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0540

Appeal Rights

In regard to an extended abatement under ORS 285B.710(3), (4) or (6) and the requirements therefor, an eligible business firm shall have the same rights of appeal as provided elsewhere in ORS

285B.650 to 285B.728 for the precertification and qualification of an 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(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.710

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0550

Firms Precertified Prior to October 4, 1997

In regard only to the proposed investments of eligible business firms for which the relevant application for precertification was approved by both the zone sponsor and the county assessor on or before October 3, 1997:

(1) "Affected Employees" is defined such that OAR 123-065-0500(4)(c), (d) and (e) do not apply and are replaced by the following criteria:

(a) New jobs that are filled for the first time after the date of application for precertification under ORS 285B.719(1), even if a person filling the job is already employed by the eligible business firm in another position that is refilled within the zone or within 30 miles thereof;

(b) For an existing business under ORS 285.590(1) (1995), only some number of employees equal to 10 percent of the business firm's Existing Employment under OAR 123-065-0800(3)(a), who are described by subsection (a) of this section and OAR 123-065-0500(4)(a) and (b) and are employed within the zone; and

(c) For a new business under ORS 285.590(3) (1995), all employees described by subsection (a) of this section and OAR 123-065-0500(4)(a) and (b) and are employed within the enterprise zone.

(2) To qualify for the additional one or two years of an enterprise zone exemption in the North/Northeast Portland Enterprise Zone, an eligible business firm must maintain an annual average level of Compensation, among not less than 70 percent of the firm's Affected Employees, of at least 150 percent of the Minimum Hourly Wage during each year throughout the exemption's first three years and the additional one or two years.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.710

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0560

Loss of Tax Abatement Depending on Type/Time of Failure

For purposes of ORS 285B.728(6) for a qualified business firm receiving a property tax exemption of up to five consecutive years under ORS 285B.710(3), (4) or (6):

(1) If the firm fails to meet a requirement for the usual three-year period of enterprise zone exemption in any year of the tax abatement, but notice under ORS 285B.728(1)(b), (c), (d) or (e) is received, the firm may avoid disqualification by immediately paying the zone sponsor an amount equal to the year's tax savings.

(2) The firm is disqualified for the entire exemption including payment of back taxes, however, if under section (1) of this rule:

(a) The firm does not make adequate payment pursuant to ORS 285B.728(6)(d); or

(b) The notice is the second such notice and is for a failure occurring in the second, third or fourth year of the exemption.

(3) If there is no notice of the failure under section (1) of this rule, the firm is disqualified for the entire exemption, and the 20 percent penalty under ORS 285B.728(4)(a) is levied on applicable back taxes.

(4) If the notice under section (1) of this rule is for failure to meet a requirement specific to the extended abatement under ORS 285B.710(3), (4) or (6) in the first, second, third or fourth year of the exemption, then the first three years of exemption are not affected at all, and the firm may still receive the fifth year of the exemption by paying the zone sponsor an amount equal to the fourth year's tax savings.

(5) The firm is disqualified for both the fourth and fifth year of the exemption period including payment of back taxes specific to the extended abatement, if under section (4) of this rule:

(a) The firm does not make adequate payment pursuant to ORS 285B.728(6)(d); or

(b) This is the second time that any type of applicable notice has been received.

(6) If the firm fails to meet a requirement in the fifth year of the exemption, but notice under ORS 285B.728(1)(b), (c), (d) or (e) is received for only the first or second time, then the firm may avoid disqualification by immediately paying the zone sponsor an amount equal to the fifth year's tax savings.

(7) However, if under section (6) of this rule the firm does not make adequate payment pursuant to ORS 285B.728(6)(d), the firm is disqualified including payment of applicable back taxes for either:

(a) All five years of the exemption if the requirement applies to the usual three-year period of exemption; or

(b) The fourth and fifth year of the exemption if the requirement applies to the extended abatement.

(8) If no notice is received under ORS 285B.728(1)(d) or (e) of the firm's failure to meet a requirement specific to the extended abatement in any year of the exemption, the firm is disqualified for the fourth and fifth year of the exemption period, and the 20 percent penalty under ORS 285B.728(4)(a) is levied on applicable back taxes.

(9) Any back taxes due under this rule are reduced by any relevant payment previously made by the firm under ORS 285B.728(6) pursuant to section (1) or (4) of this rule.

(10) This rule does not apply to requirements governing the use or location of qualified property during the entire exemption period, for which relevant notice is to be provided under ORS 285B.728(1)(a) or (f).

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.710 & ORS 285B.728

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

Business Eligibility

123-065-0600

Definitions

(1) "Destination resort" as used in ORS 285B.707(3) and 285B.716 means a facility with hotel accommodations at which visitors stay in order to access amenities connected to the resort, including but not limited to a development that satisfies the criteria under ORS 197.435 to 197.467 for siting on certain lands and for limiting or allowing uses and activities in accordance with an acknowledged comprehensive plan.

(2) "Hotel or motel" as used in ORS 285B.707(3) and 285B.716 and consistent with ORS 699.005 means a facility that:

(a) Offers rooms, suites of rooms, cabins, houses or other such units for transient lodging to persons typically from beyond the local area through direct overnight rental, time-share arrangements or other types of limited transactions;

(b) May include one or more visitor-oriented services, facilities or recreational activities, including but not limited to restaurants, laundry, conference rooms, golf course, swimming pool, tennis courts, ski runs, marinas or bicycle paths; and

(c) May be commonly described or labeled as an inn, resort, convention center or by other such names.

(3) "Precertified by the sponsor" as used in ORS 285B.716(1) means that the local zone manager and the county assessor have approved the application for precertification submitted on or after September 9, 1995.

(4) "Separate" as used in ORS 285B.707(4) 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 activity or group of like activities.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.707 & ORS 285B.716

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0610

Local Option for Hotels, Motels and Destination Resorts

For purposes of granting enterprise zone exemptions under ORS 285B.707(3) and 285B.716 for qualified property owned or leased and operated by a business firm as a hotel, motel or destination resort:

(1) If the business firm is precertified on or before June 30, 1996, it and the qualified property for which it is seeking an exemption must:

(a) Satisfy all applicable requirements of the enterprise zone;

(b) Be located in one of the following Enterprise Zones: Albany, Astoria Area, Baker City, Coos Bay Area, Coquille Valley, Dallas, Grande Ronde, Illinois Valley, Klamath Falls/Klamath County, Lower Columbia Maritime, Oakridge/Westfir, Ontario, Pendleton, Port Orford Area, St. Helens/Columbia City, Salem, Seaside, South Douglas County, South Santiam, Sutherlin/Oakland, Sweet Home, Tillamook, Vale or Wasco County/The Dalles; and

(c) Qualify for the exemption no later than the 1997-1998 tax year.

(2) If the business firm is precertified after June 30, 1996, but on or before June 30, 1997, it and the qualified property for which it is seeking an exemption must satisfy all applicable requirements and be located in the Pendleton Enterprise Zone.

(3) If the business firm is precertified after June 30, 1996, it and the qualified property for which it is seeking an exemption must:

(a) Satisfy all applicable requirements of the enterprise zone; and

(b) Be located in one of the following Enterprise Zones: Astoria Area, Baker City, Bay Area, Coquille Valley, Dallas, Grande Ronde, Harney County/Burns/Hines, Harrisburg, Illinois Valley, Klamath Falls/Klamath County, Lakeview, Lower Columbia Maritime, Lower Umpqua, Ontario, Roberts Creek, St. Helens/Columbia City, Salem, Seaside, South Douglas County, South Santiam, Sutherlin/Oakland, Sweet Home, The Dalles/Wasco County, Tillamook or Vale.

(4) If the business firm is precertified on or after October 8, 1997, it and the qualified property for which it is seeking an exemption must satisfy all applicable requirements and be located in the Grant Pass Area Enterprise Zone.

(5) If the business firm is precertified after the effective date of designation of the enterprise zone, it and the qualified property for which it is seeking an exemption must:

(a) Satisfy all applicable requirements of the enterprise zone; and

(b) Be located in an enterprise zone that is acknowledged by order of the Director as having opted to exempt such qualified property:

(A) Consistent with a request by the Applicant under ORS 285B.656(9); or

(B) In the case of a Preexisting Enterprise Zone listed in subsection (3)(b) or (4) of this rule that terminates and does not rescind the option pursuant to OAR 123-065-1520(6)(b) in reapplying for designation.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.707 & ORS 285B.716

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0620

Basic Eligibility for Business Firms and Operations

For purposes of determining the eligibility of a business to be precertified or to qualify for an enterprise zone exemption pursuant to ORS 285B.707(1)(b):

(1) The firm must, when qualified, either produce, sell or provide goods, commodities, products, merchandise, work or services to other businesses or business operations, or be capable of doing so, through eligible activities.

(2) Such eligibility may be indicated if the firm's relevant operations 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 governmental agency, municipal corporation or nonprofit corporation; 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 (subject to other provisions of ORS 285B.707) but are not limited to:

(a) Industrial processes or services such as cleaning, coating, curing, kiting, labeling, laminating, mining, 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 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 that is performed for internal purposes of the firm or is contracted or paid for by a nonretail third party such as the distributor or manufacturer;

(g) Standardized product testing, quality control or laboratory work;

(h) Bulk clerical processing;

(i) Development of standardized computer software products;

(j) Printing or mass document production;

(k) Distribution; or

(l) Wholesaling.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.707

Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0630

Ineligible Activities

For purposes of ORS 285B.707(2)(b):

(1) The following activities are ineligible, and property used in these activities shall not qualify for an enterprise zone exemption, regardless of such an activity's being performed for 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 for 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, advertising, engineering, legal advice or public relations, except where performed in direct support of or association with otherwise eligible activities and located at the same site within the enterprise zone;

(h) Actuary, appraisal, banking, brokerage, extension of credit, insurance, investment, money lending or similar financial services;

(i) Leasing or management of property;

(j) Provision of residential housing for purchase or long-term lease;

(k) Construction or modification of real property at the location where that real property is used or occupied;

(l) Installation of fixtures, machinery or equipment;

(m) Recreational vehicle parks; or

(n) Other similar activities.

(2) Notwithstanding section (1) of this rule, an activity listed in subsections (1)(a) to (1)(e) of this rule is eligible if:

(a) Located at the same site as a hotel, motel or destination resort in a permissible enterprise zone as identified under OAR 123-065-0610;

- (b) Operated by the hotel, motel or destination resort; and
- (c) Fifty percent or more of its receipts are derived from guests staying overnight at the hotel, motel or destination resort.

(3) A business firm may be eligible, regardless of the presence within the enterprise zone of one of the activities listed under section (1) of this rule, if it meets the requirements of OAR 123-065-0640(1) or 123-065-0650.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)
 Stats. Implemented: ORS 285B.707, ORS 285B.713 & ORS 285B.716
 Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0640

Eligible Business Firm with Ineligible Activities

For purposes of ORS 285B.707(4):

(1) A business firm is eligible and may qualify for an enterprise zone exemption:

(a) If the firm is, when qualified, engaged in an eligible activity in the enterprise zone;

(b) Provided that any ineligible activity of the firm is located at a separate operation of the firm; and

(c) Regardless of the degree to which an ineligible activity represents the firm's primary commercial pursuit.

(2) An eligible business firm's "employees working a majority of their time in those operations":

(a) Includes any employee who performs any of the eligible business firm's eligible activities allowed under OAR 123-065-0620(3) for 50 percent or more of the time spent at the employee's job;

(b) Includes any employee whose work is predominantly concerned with the provision of direct administration or technical support to the eligible business firm's eligible activities within the enterprise zone; and

(c) Excludes positions and persons dedicated primarily to ineligible activities such as those listed in OAR 123-065-0630(1).

(3) Any requirement of an eligible business firm to hire, maintain or compensate employees under ORS 285B.692 to 285B.728 applies only to employees "included" under section (2) of this rule that work at locations within the enterprise zone or within 30 miles thereof as stipulated by the applicable requirement.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)
 Stats. Implemented: ORS 285B.707
 Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0650

Gross Receipts Test

For purposes ORS 285B.707(1)(a) and (2)(a):

(1) A gross receipts test is necessary in determining the eligibility of a business firm or business operation involving retail activities, but only if:

(a) There are Applicable Gross Receipts;

(b) The firm is not operating or operated as a hotel, motel or destination resort; and

(c) For lack of definitive or physical separation, such a retail activity cannot be feasibly isolated from eligible activities.

(2) The business firm or operation passes the gross receipts test and is otherwise eligible for precertification or qualification in the enterprise zone, if the ratio of Applicable Gross Receipts to Retail Receipts is exactly equal to or greater than four.

(3) "Applicable Gross Receipts" as used in this rule apply to:

(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, except that an ineligible activity located at a distant site inside the zone may be ignored;

(d) An annual total for the most recent tax year or calendar year; and

(e) The firm's 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 for precertification.

(4) "Retail Receipts" as used in this rule are that subset of the same Applicable Gross Receipts that entail:

(a) Consumption by an end-user that is a member of the general public;

(b) Sales directly to a household or individual that is neither another business firm nor operating as such; and

(c) No subsequent resale of the applicable goods or products by the firm's customer.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)
 Stats. Implemented: ORS 285B.707
 Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

Precertification

123-065-0700

Definitions

(1) For purposes of OAR 123-065-0700 to 123-065-0799:

(a) "Application" means the latest revision of form 150-303-029 (OREGON ENTERPRISE ZONE PRECERTIFICATION APPLICATION) inclusively of attachments.

(b) "Approval Form" means the latest revision of form 150-303-082 (OREGON ENTERPRISE ZONE PRECERTIFICATION APPROVAL).

(c) "Firm/applicant" means a business firm that is seeking to have an Application approved in order to obtain precertification in an enterprise zone.

(2) As used in ORS 285B.719(1), "eligible employees" means employees engaged in eligible activities or operations pursuant to OAR 123-065-0620 and associated with the proposed investment or investments for which the eligible business firm is applying for precertification.

(3) As used in ORS 285B.719(2), "estimate" and "estimated costs" mean current expectations of the owners, managers and executives of an eligible business firm as to the most likely outcomes based on the best information available at the time and shall not be construed as binding in and of themselves.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)
 Stats. Implemented: ORS 285B.719
 Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0710

Applying for Precertification

Pursuant to ORS 285B.719(1):

(1) In applying for precertification 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 or a county assessor of a county in which the enterprise zone is located.

(2) In order for the Application of the Firm/applicant to be accepted for approval, all of the actions described under section (1) of this rule must be accomplished prior to:

(a) The Firm/applicant's hiring eligible employees to qualify under ORS 285B.704; and

(b) Any physical work, such as construction of a building or structure, construction of an addition or modifications to an existing building or structure, or installation of machinery or equipment, comprising all or part of the qualified property for which the Firm/applicant proposes to apply for the exemption under ORS 285B.698.

(3) Physical work for purposes of subsection (2)(b) of this rule:

(a) Includes but is not limited to site preparation leading directly to construction, modification or installation of qualified property, such as fill, grading or leveling on raw land or the instal-

lation of underground utilities and utility connections, except for offsite development as defined in subparagraph (2)(a)(A)(i) of OAR 150-307.010(1).

(b) Excludes demolition, cleanup and so forth in cases where existing buildings and structures have been damaged by fire or some other catastrophe or where hazards, nuisances or environmental problems must otherwise be removed or remedied.

(c) Excludes activity on a building or structure pursuant to OAR 123-065-0750.

(d) Excludes any activity that occurred and stopped prior to:

(A) Six months before the submission of the Application under this rule; or

(B) A complete change in the ownership of the qualified property, such that the Firm/applicant or new owner of such property has no familial, employment, corporate or other such entity relationship with the previous owner of any such property.

(4) For purposes of subsection (3)(d) of this rule, further construction, modification or installation activity shall resume only after the submission of the Application under this rule, but no value of qualified property may be exempted in the enterprise zone, if such value is:

(a) Entered on the county assessment and tax roll for a location inside the zone; and

(b) Entirely attributable to construction, modifications, additions or installations, however incomplete, that occurred prior to the submission of the Application under this rule.

(5) Conformity with provisions of this rule may be verified, as necessary, by:

(a) Final documents for transfer of ownership, sale closing or execution of a lease;

(b) Building permit or contract;

(c) Written statement from someone other than an owner or employee of the Firm/applicant; or

(d) Similar forms of written, independently substantiated proof.

(6) The Firm/applicant shall pay a precertification filing fee if directed to do so by the local zone manager pursuant to OAR 123-065-0220.

(7) If an Application is not received by the zone manager or assessor in time under section (2) of this rule, but the Firm/applicant produces dated evidence to the satisfaction of the zone manager and assessor that the Application was sent in a timely manner, then the Application may be accepted.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.668(1) & ORS 285B.719(8)

Stats. Implemented: ORS 285B.719

Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0720

Processing of Application by Local Zone Manager

Following submission of an Application:

(1) The local zone manager may collect a precertification filing fee pursuant to OAR 123-065-0220.

(2) The local zone manager shall approve or deny the Application in accordance with ORS 285B.719(3) within a reasonable period of time.

(3) If precertification is denied under section (2) of this rule, the local zone manager shall within 15 business days of the denial:

(a) Refund any precertification filing fee that was paid;

(b) Write a letter to the Firm/applicant that justifies the denial;

(c) Send copies of the letter under subsection (b) of this section to the county assessor, Department of Revenue and Economic Development Department; and

(d) Ensure that the Firm/applicant:

(A) Receives the letter under subsection (b) of this section through registered mail or in such a way that the date of such receipt can be verified; and

(B) Is advised in writing of its rights of appeal under ORS 305.404 to 305.560 to the Magistrate Division of the Oregon Tax Court.

(4) If precertification is approved under section (2) of this rule, the local zone manager shall within five business days of the approval:

(a) Fill out and sign the Approval Form except for the section pertaining to the county assessor;

(b) Send the Approval Form and a copy of the Application (with any attachments) to the county assessor of the county in which the Firm/applicant's proposed investment in qualified property is to be located;

(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 of the approval for purposes of OAR chapter 123, division 070.

(5) If the Firm/applicant's proposed investment in qualified property is to be located in an urban enterprise zone that imposes additional conditions under ORS 285B.671(4), the local zone manager shall:

(a) Approve the Firm/applicant for precertification, 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 pursuant to OAR 123-065-0230(3) and (4).

(6) With respect to a sponsor's failing to precertify under ORS 285B.719(4), 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 under this rule or in response to special circumstances, such as those indicated in OAR 123-065-0740(4) and (5).

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.719

Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0730

Processing of Application by County Assessor

For purposes of completing the Approval Form:

(1) The county assessor shall approve or deny the Application in accordance with ORS 285B.719(3) within a reasonable period of time.

(2) Within five business days of taking action under section (1) of this rule, the county assessor shall:

(a) Enter a signature and date in the appropriate place on the Approval Form;

(b) Verify the information on the Approval Form as it pertains to future steps that are required for the eligible business Firm/applicant to qualify;

(c) Remove the appropriate colored copy from the Approval Form for the assessor's records;

(d) Return the remainder of the Approval Form to the local zone manager; and

(e) Include a written explanation justifying the denial with the remainder of the Approval Form, in the event that precertification is denied under section (1) of this rule.

(3) For purposes of this rule, authorized county assessment staff may act on behalf of the county assessor.

(4) The county assessor is not prohibited from processing and approving an Application that is received directly from the Firm/applicant prior to review or approval by the zone sponsor, but the assessor shall immediately notify the zone manager, so that the sponsor can maintain its usual procedures including but not limited to collection of a precertification filing fee.

(5) The county assessor may refuse to approve the Application on condition of seeing a finalized version of any applicable item under OAR 123-065-0740(5).

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.719

Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0740

Final Processing and Distribution of Precertification

With the completion of an Approval Form:

(1) The local zone manager shall have a photocopy made of the Approval Form (with original signatures) for the records of the enterprise zone sponsor.

(2) Within five business days, the local zone manager shall see that the Firm/applicant is informed of the action taken by the county assessor under OAR 123-065-0730(1).

(3) If the county assessor denied the Firm/applicant's precertification, the local zone manager or county assessor shall within 15 business days of the denial:

(a) Refund any precertification filing fee that was paid.

(b) Have the respective top and colored copies of the Approval Form, copies of the Application and the county assessor's written explanation distributed to the:

(A) Firm/applicant;

(B) Department of Revenue;

(C) Economic Development Department; and

(D) Local contact agency for the first-source hiring agreement.

(c) Ensure that the Firm/applicant:

(A) Receives the county assessor's written explanation through registered mail or in such a way that the date of such receipt can be verified; and

(B) Is advised of its rights of appeal under ORS 305.404 to 305.560 to the Magistrate Division of the Oregon Tax Court.

(4) If the Firm/applicant requested an extended period of tax abatement from the sponsor of the enterprise zone under ORS 285B.710, the local zone manager shall:

(a) Delay the processing or distribution of the Application and Approval Form until either the written agreement has been approved pursuant to OAR 123-065-0520 or the zone sponsor has rejected the request;

(b) Fill in the relevant space in the original Application according to the decision of the zone sponsor and the provisions of the required written agreement between the zone sponsor and the Firm/applicant, once the request is accepted; and

(c) Provide a copy of the Application as revised under subsection (b) of this section to the Firm/applicant and (as necessary) to the county assessor.

(5) If precertification of the Firm/applicant is approved by both the local zone manager and the county assessor, the local zone manager shall have copies of the following documents attached to the Application and (as necessary) provided to the county assessor:

(a) Written agreement between the sponsor of the enterprise zone and the Firm/applicant, if the period of property tax abatement is to be longer than three years under ORS 285B.710;

(b) Resolution or resolutions of the governing body or bodies of the zone sponsor as required under ORS 285B.704(2) or (3), if applicable; or

(c) Executed lease as required pursuant to OAR 123-065-0750, if applicable.

(6) If precertification of the Firm/applicant is approved by both the local zone manager and the county assessor, the local zone manager shall have the respective top and colored copies of the Approval Form distributed in a timely fashion to the:

(a) Firm/applicant;

(b) Department of Revenue;

(c) Economic Development Department; and

(d) Local contact agency for the first-source hiring agreement.

(7) For purposes of ORS 285B.650 to 285B.728 and of this division of administrative rules, the Firm/applicant is not officially precertified until the fulfillment of section (6) of this rule. Such precertification must occur before the Firm/applicant qualifies under ORS 285B.722.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.719

Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0743

Copies of Application and Attachments

The distribution of the Approval Form under OAR 123-065-0740(6)(a), (b) and (c) shall include copies of the Application, as appropriate or requested, or if any materials are attached pursuant to OAR 123-065-0720(5)(b) or 123-065-0740(5).

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.668(1) & ORS 285B.719(3)

Stats. Implemented: ORS 285B.719

Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0750

Precertification of Leased Building After Construction Commenced

A qualified leased building, structure or portion thereof may receive an enterprise zone exemption even if construction, reconstruction or modifications commenced prior to submission of the relevant Application, such that:

(1) The submission of the Application and the execution of the lease agreement must occur before the Firm/applicant begins to use or occupy any portion of the building or structure for commercial operations.

(2) The Firm/applicant shall include a copy of an executed lease as a tenant of the new or existing qualified building or structure with the Application, before the Application may be approved.

(3) Inclusion of the executed lease under section (2) of this rule shall permit a waiver to the requirement of ORS 285B.719(1) that an eligible business firm apply for precertification before the commencement of construction or modification.

(4) This rule does not cover:

(a) Leased machinery or equipment, in that installation of any machinery or equipment must commence after submission of the Application, except for real property machinery or equipment that is included in the same lease contract as the building or structure;

(b) Buildings or structures that are or were owned by the Firm/applicant at any time prior to April 1 of the first year of the exemption;

(c) A Firm/applicant that has any familial, employment, corporate or other such entity relationship with the owner of the leased building or structure; or

(d) Any building or structure that qualifies as a result of an allowance indicated under OAR 123-065-0950(8) (that is, the property must satisfy all relevant provisions of ORS 285B.698 and 285B.713).

(5) In common with any leased building or structure to be exempted in an enterprise zone, the applicable requirements under OAR 123-065-0950 must be met.

(6) Consistent with OAR 123-065-0960, the enterprise zone exemption may begin no later than the year following the year in which qualifying construction or modifications, or additions to, the building, structure or portion thereof are finally completed, including but not limited to leasehold improvements.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.668(1) & ORS 285B.719(8)

Stats. Implemented: ORS 285B.719

Hist.: EDD 4-1994, f. & cert. ef. 2-24-94; EDD 3-1996, f. & cert. ef. 4-2-96; Renumbered from OAR 123-065-0060; EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0760

Coverage of Precertification

A single Application, as approved, may be used to exempt qualified property for purposes of ORS 285B.722(2)(a)(B) only:

(1) For qualified property located at the same site or adjacent sites within the enterprise zone; and

(2) If the exemption is filed for under ORS 285B.722(1) and begins in:

(a) A single initial year;

(b) The next year after the first filing in subsection (a) of this section; or

(c) The third consecutive tax year after the first and second filings in subsections (a) and (b) of this section.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.719 & ORS 285B.722

Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0770

Changes in Investment Plans and Estimates of Precertified Firms

With respect to changes or additions to the qualified property for which a precertified business firm proposes to apply for the exemption under ORS 285B.698:

(1) The firm shall generally not need to notify the local zone manager and the county assessor, nor need to amend the Application in any way, if the total estimated cost of the qualified property will not exceed 130 percent of the total estimated cost reported on the approved Application or the most recent amendment thereto.

(2) Except as restricted under OAR 123-065-0760 or section (3) of this rule, the firm may amend its approved Application by written notice:

(a) Containing revised descriptions and estimates of qualified property;

(b) Submitted to the local zone manager and the county assessor prior to commencement of any additional construction, modification or installation; and

(c) Accepted by the local zone manager and the county assessor.

(3) The firm shall submit another Application, if:

(a) Formally directed to do so by the local zone manager and county assessor;

(b) The enterprise zone exemption or commercial use or occupancy for any of the qualified property described or estimated in the approved Application has already begun; or

(c) Any proposed qualified property is:

(A) A building, structure or portion thereof that is not an element of the descriptions or estimates in the approved Application, other than minor or ancillary buildings, structures or additions to a building or structure;

(B) Machinery or equipment in the case where no such qualified property is identified in the descriptions or estimates in the approved Application; or

(C) Associated with operations or activities that are different from those represented in the approved Application.

(4) A Firm/applicant submitting another Application under section (3) of this rule must comply with the applicable requirements of ORS 285B.704 specific to that Application in order for the Firm/applicant to qualify for the additional qualified property.

(5) Nothing in this rule shall be construed in any way as prohibiting the enterprise zone exemption on a qualified business firm's qualified property that satisfies the requirements of ORS 285B.698, 285B.713 and 285B.722(1).

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.668(1) & ORS 285B.719(8)

Stats. Implemented: ORS 285B.719

Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0780

Selling or Leasing of Property by Precertified Firms

(1) If ownership of a precertified business firm changes hands, the relevant rights and requirements of precertification may be transferred along with ownership of the firm, regardless of a change in the name or mailing address of the firm.

(2) An eligible business firm that purchases or leases qualified property that was owned or leased by a precertified business firm may apply under ORS 285B.722 for the exemption on such qualified property, if:

(a) The qualified property is reasonably well identified by the descriptions and estimates in the approved Application, subject to applicable requirements of OAR 123-065-0700 to 123-065-0770;

(b) The purchasing or leasing firm submits an Application under OAR 123-065-0710 before it undertakes any further physi-

cal work in constructing, modifying or installing the qualified property; and

(c) The qualified property conforms with the requirements in ORS 285B.698.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.668(1) & ORS 285B.719(8)

Stats. Implemented: ORS 285B.698, ORS 285B.719 & ORS 285B.722

Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0790

Obtaining Precertification in a Terminating Zone

For purposes of OAR 123-065-0410(4), a Firm/applicant is precertified, subject to approval of the Application by the zone sponsor and the county assessor, if before the effective termination of the zone the Application was:

(1) Received by both the local zone manager and the county assessor; and

(2) Formally approved by the local zone manager, the county assessor or both.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.668(1) & ORS 285B.719(8)

Stats. Implemented: ORS 285B.686, ORS 285B.719 & ORS 285B.722

Hist.: EDD 5-1997, f. 4-14-97, cert. ef. 4-15-97; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

Employment of Qualified Business Firms

123-065-0800

Definitions

(1) As used in ORS 285B.650 to 285B.728 and in this division of administrative rules, "employee" means a position or person, as defined in ORS 285B.650(3) and explicated in OAR 123-065-0120, who:

(a) Is employed directly by an eligible business firm; or

(b) Works for the firm but is leased, contracted for or otherwise obtained through another entity.

(2) As used in ORS 285B.704, "employment of the firm" means employees other than those:

(a) Working 32 hours or less per week;

(b) Hired, leased or contracted for on a seasonal basis or for less than a year's time;

(c) Expected to be temporarily employed with the firm, including but not limited to persons acquired and receiving compensation through an outside agency on a short-term or as-needed basis;

(d) Engaged solely in the construction, modification or installation of qualified property;

(e) Spending the majority of their time working in ineligible operations such as retail sales that do not directly support eligible operations of the firm; or

(f) Regularly performing their work for the firm at a site or sites located outside the boundary of the enterprise zone. (For purposes of OAR 123-065-0820(5), however, all employees at relevant sites within 30 miles of any point on the zone boundary are considered.)

(3) For purposes of OAR 123-065-0800 to 123-065-0899:

(a) "Existing Employment" means the employment of the firm as averaged over the 12 months preceding precertification pursuant to OAR 123-065-0810;

(b) "Greatest Year-end Employment" means the actual employment of the firm on December 31 that is higher than such employment on any other December 31 while the firm is receiving the enterprise zone tax exemption; and

(c) "Highest Employment" means the highest level of actual employment of the firm that is achieved at any time during a calendar year that concludes while the exemption is being received.

(4) As used in ORS 285B.704(1)(d) and (e), "investment" means any qualified property for which a precertified business firm seeks to qualify and receive an enterprise zone exemption under ORS 285B.698 pursuant to OAR 123-065-0960, regardless of whether the qualified property:

(a) Is specifically identified in the firm's application for precertification; or

(b) Corresponds entirely to the project proposed therein.

(5) As used in ORS 285B.704(2)(a) or 285B.704(3)(a), “loss of employment” means a reduction in the employment of the firm below the level of Existing Employment.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.704

Hist.: EDD 14-1997, f. & cert. ef. 12-4-97

123-065-0810

Computation of Existing Employment

For purposes of increasing and maintaining employment as required under ORS 285B.704 and 285B.728(1)(b) and (3), Existing Employment is calculated such that:

(1) The actual employment of the firm at the end of each time period (such as pay periods, calendar months or quarters of a year that concluded during the 12-month interval prior to the application for precertification) shall be summed and then divided by the corresponding number of such time periods.

(2) Time periods longer than a quarter of a year may not be used in averaging annual employment, and such quarters of a year that may be used shall begin and end at the beginning of the months of January, April, July and October.

(3) Results shall be rounded to a whole number equal to one or more, such that:

(a) Any number between zero and one equates to one;

(b) A whole number or a whole number plus a decimal fraction less than 0.50 equates to the respective whole number; or

(c) A whole number plus a decimal fraction equal to or greater than 0.50 equates to the next higher whole number.

(4) A shorter interval than 12 months shall be used only if the eligible business firm was not conducting trade or business in the enterprise zone 12 or more months prior to when the firm applies for precertification, in which case employment is averaged over the interval between the firm’s commencing trade or business in the zone and its applying for precertification.

(5) For purposes of determining the time before which annual employment is averaged, the date on which any of the activities described in OAR 123-065-0710(2) first occurs may be used instead of the date of the application for precertification, but only in the case of a waiver of precertification by the Department of Revenue under ORS 285B.719(8).

(6) Only if none of the activities described in OAR 123-065-0710(2) have yet begun, may an eligible business firm change the computed level of Existing Employment by submitting a new application for precertification

(7) Notwithstanding section (6) of this rule, the computed level may be revised at anytime as necessary to correct for errors, including but not limited to the erroneous counting of part-time, temporary, seasonal, construction or ineligible workers.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.704 & ORS 285B.728

Hist.: EDD 14-1997, f. & cert. ef. 12-4-97

123-065-0820

Employment Requirements to Qualify

In order to receive and begin an exemption from taxation on qualified property in an enterprise zone, a precertified business firm must file for the exemption with the county assessor in accordance with OAR 123-065-0970, and the firm must qualify such that:

(1) Following the application for precertification but on or before April 1 of the first initial year as mandated in OAR 123-065-0960(1), the business firm must have:

(a) Entered into a first-source hiring agreement prior to hiring new employees pursuant to OAR chapter 123, division 70;

(b) Added to or increased the employment of the firm by one or more new employees;

(c) Reached a level of actual employment of the firm equal to or greater than the Existing Employment multiplied by 1.1 and rounded per OAR 123-065-0810(3);

(d) Satisfied the employment requirement of section (5) of this rule, if necessary; and

(e) Not violated the stipulations under OAR 123-065-0840.

(2) To receive any subsequent exemption, a qualified business firm must file another exemption application with the county assessor in accordance with OAR 123-065-0970, even if the exemption is on additional qualified property that:

(a) Relates to the same precertification application as a previous exemption, as allowed under OAR 123-065-0760; and

(b) Depends on exactly the same requirements under section (1) of this rule, which were already satisfied and thus do not have to be met again.

(3) Required employment levels may be satisfied only through newly created jobs, which do not include any employees associated with a merger with another business firm or the purchase of another firm’s operations or property, except for positions of the other firm that have been vacant for more than 60 days at the time of the purchase or merger and are otherwise not reasonably expected to be reinstated.

(4) Subsections (1)(a) and (1)(b) of this rule do not apply if waived by the sponsor of the enterprise zone under ORS 285B.704(2) or (3), subject to OAR 123-065-0850 for an investment of \$25 million or more.

(5) As provided under ORS 285B.704(5), if any employees, jobs or positions are transferred into the enterprise zone from a site that is outside but within 30 miles of the zone’s boundary, then an additional requirement must be met with respect to subsection (1)(c) of this rule, such that the respective definitions for employment of the firm and Existing Employment are broadened to include employees located at any such site, as well as those inside the zone, unless the transfer:

(a) Occurred entirely prior to the time of application for precertification; or

(b) Occurred entirely after the first filing for the exemption on qualified property.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.698, ORS 285B.704 & ORS 285B.722

Hist.: EDD 14-1997, f. & cert. ef. 12-4-97

123-065-0830

Loss of Exemption for Insufficient Employment

For purposes ORS 285B.728(1)(b) and (c) and (3):

(1) At the end of each calendar year while an enterprise zone exemption on qualified property is being received, a qualified business firm shall record and report to the county assessor pursuant to the latest revision of form 150-303-051 (OREGON ENTERPRISE ZONE ANNUAL STATEMENT OF COMPLIANCE):

(a) The average annual employment of the firm during that year using the guidelines in OAR 123-065-0810(1) to (3);

(b) The actual employment of the firm on December 31 of that year; and

(c) The numbers corresponding to OAR 123-065-0800(3)(a), (b) and (c).

(2) The qualified business firm’s property is not eligible for the property tax exemption, if:

(a) The number under subsection (1)(a) of this rule is less than 110 percent of the qualified business firm’s Existing Employment;

(b) The number under subsection (1)(b) of this rule is less than 15 percent of the qualified business firm’s Greatest Year-end Employment; or

(c) The number under subsection (1)(b) of this rule and the number corresponding to (1)(b) of this rule one year earlier are both less than 50 percent of the qualified business firm’s Highest Employment.

(3) If failure occurs under section (2) or (7) of this rule, then the qualified business firm shall notify both the local zone manager and the county assessor in writing at the latest by September 1 of the year after the calendar year in which the failure occurred.

(4) Notification of failure under section (3) of this rule shall result in the loss of any property tax exemption of the firm on qualified property covered by the same requirement and precertification application, such that either:

(a) The firm reimburses to the enterprise zone sponsor the amount of property taxes exempted in the year in which failure occurred under section (2) or (7) of this rule, as provided in ORS 285B.728(6); or

(b) The firm is disqualified, pursuant to ORS 285B.728(2) and (5), including:

(A) Loss of future years of the exemption; and

(B) Retroactive payment with the next tax bill of applicable back taxes, except if the last full calendar year of exemption for the qualified property ended prior to the year in which failure under section (2) or (7) of this rule occurred.

(5) If failure is discovered, but there is not timely notification under section (3) of this rule, then disqualification under subsection (4)(b) of this rule shall include the 20-percent penalty under ORS 285B.728(4) to be assessed on back taxes.

(6) The owner of any qualified property that is leased by the qualified business firm and is subject to disqualification may make timely notification under section (3) of this rule.

(7) Section of (2) of this rule does not apply if the enterprise zone sponsor set alternative employment and other requirements under OAR 123-065-0850 for an investment of \$25 million or more, in which case the qualified business firm's property is not eligible for the property tax exemption, if:

(a) The number under subsection (1)(a) of this rule is less than the level set by the sponsor under OAR 123-065-0850(2)(a); or

(b) Additional requirements under OAR 123-065-0850(2)(b) have not been satisfied as determined by the sponsor.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.704 & ORS 285B.728

Hist.: EDD 14-1997, f. & cert. ef. 12-4-97

123-065-0840

Diminishing Employment Beyond 30 Miles of Zone

For purposes of ORS 285B.704(1)(g) and (4), a precertified business firm seeking an exemption in any enterprise zone may not qualify or remain qualified if the firm transferred operations into the enterprise zone, unless demonstrated by the firm to the satisfaction of the county assessor and the Department that associated closures, curtailment of operations, downsizing, employment reductions, layoffs or job losses elsewhere in the state:

(1) Occurred at a location less than 30 miles from the boundary of the zone in which the business firm is seeking the exemption, and the requirement of ORS 285B.704(5) is met;

(2) Occurred entirely prior to the time of application for precertification;

(3) Occurred entirely after the first filing for the exemption on qualified property;

(4) Will not be permanent, such that the complete restoration of the employment is reasonably anticipated to occur, and does in fact occur, on or before December 31 of the first initial year of exemption;

(5) Pertain only to business operations that are in no way controlled by the precertified business firm through common ownership, corporate affiliation or contracts governing relevant operations or through other comparable inter-firm relationships; or

(6) Have only de minimis impact on the local economy, subject to all of the following criteria:

(a) Job losses are equal to or less than one-tenth of one percent of the most recently available figure from this state's Employment Department for average annual covered employment of the county;

(b) The most recently available figure for the annual increase in total employment for the metropolitan statistical area or county containing the lost employment is positive and greater than the equivalent annual increase of the metropolitan statistical area or county containing the enterprise zone to which operations and jobs are to be transferred;

(c) The employment impact and growth described in subsections (a) and (b) of this section are commensurate for any local area not larger than a city and affected by the job losses, as indicated by, or inferred from, available statistics; and

(d) Executive or economic development officials with or serving the government of any affected county or city have been advised of the enterprise zone exemption and have not objected to it.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.704

Hist.: EDD 14-1997, f. & cert. ef. 12-4-97

123-065-0850

Waiver of Investment of \$25 Million or More

For purposes of ORS 285B.704(2) and (3), in which the local enterprise zone sponsor waives employment requirements in order for an eligible business firm to qualify for an exemption:

(1) The investment of the firm must include qualified property costing at least \$25 million that:

(a) Appears on a single exemption application; and

(b) Begins the exemption in a single year.

(2) A majority of each governing body of the sponsor, as stipulated in the respective city or county charter, must each approve a resolution that specifies common alternative requirements for the eligible business firm to qualify, including:

(a) An average annual employment level to be maintained during each year of the exemption, either as an absolute number or as a percentage of Existing Employment; and

(b) Any other conditions, as commonly agreed to among the governing bodies, subject to the applicable provisions of OAR 123-065-0530(3) to (13).

(3) Conditions prescribed under subsection (2)(b) of this rule are in addition to and not in lieu of other requirements and may not:

(a) Completely nullify the stipulation of an employment level under subsection (2)(a) of this rule; or

(b) Effectively lessen or increase the stringency of requirements under any applicable provision of ORS 285B.650 to 285B.728.

(4) Final processing and distribution of the precertification application shall be delayed until final approval of the resolution or resolutions under section (2) of this rule, copies of which shall be included with materials distributed under OAR 123-065-0740.

(5) Prior to the first filing and initial qualification of the business firm under ORS 285B.722, the resolution or resolutions adopted under this rule by the sponsor may be jointly modified pursuant to section (2) of this rule, but only if so requested by the firm.

(6) The final resolution or resolutions adopted or modified under this rule must be attached to, and made part of, the firm's application for the exemption under ORS 285B.722 in addition to the stipulations of OAR 123-065-0970.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.704

Hist.: EDD 14-1997, f. & cert. ef. 12-4-97

123-065-0860

Commonly Owned Corporate Entities

Pursuant to ORS 285B.707(5):

(1) Employment of the firm as defined in OAR 123-065-0800(2) does not include any employees located at and employed by any corporation operating inside the enterprise zone other than the eligible business firm, regardless of the extent to which the firm and the other corporation have common ownership.

(2) Section (1) of this rule is not applicable if:

(a) The common ownership is total, such that:

(A) The firm owns 100 percent of the other corporation;

(B) The other corporation owns 100 percent of the firm; or

(C) The firm and the other corporation have exactly the same owner, owners or shareholders; and

(b) The firm notifies the local zone manager and the county assessor in writing prior to or with its application for exemption under ORS 285B.722 that employees of the firm and employees of the other corporation are to be combined for purposes of all applicable requirements for the enterprise zone exemption.

(3) If total common ownership is achieved pursuant to paragraph (2)(a)(B) or (2)(a)(C) of this rule, the written notice under

subsection (2)(b) of this rule must include the signed and dated authorization of an owner, executive officer or legally authorized representative of such an owner or officer of the corporation with 100-percent ownership of the firm and any such jointly owned corporation or corporations in question.

(4) In the case of the exception provided under section (2) of this rule, all relevant definitions and requirements of ORS 285B.650 to 285B.728 and this division of administrative rules shall apply to the combined hiring, compensation or employment levels of the qualified business firm and any such jointly owned corporation or corporations in question.

(5) An eligible business firm is not bound by the definitions and requirements under section (4) of this rule for any other exemption received in the same or another enterprise zone and may retract the election made under subsection (2)(b) of this rule prior to the first filing for the exemption on qualified property.

(6) Notwithstanding section (5) of this rule, the election of a qualified business firm in effect at the time of the termination of the enterprise zone shall apply consistently to all exemptions allowed under ORS 285B.686(2) in the terminated zone.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.707

Hist.: EDD 14-1997, f. & cert. ef. 12-4-97

123-065-0870

Sale or Leasing of Exempted Property

For purposes of ORS 285B.698(3)(b) and 285B.728, in the event that qualified property is sold or leased during the period of property tax exemption, but it remains inside the enterprise zone and used exclusively for eligible activities:

(1) For the remainder of the exemption period, the annual employment numbers recorded and reported under OAR 123-065-0830(1)(a) and (b) after the sale or leasing of the qualified property shall be the sum of the applicable employment numbers for the in-zone operations of both the Selling/leasing Firm and the Purchasing/leasing Firm.

(2) The qualified property shall not be eligible for the exemption on property taxes, if:

(a) The total number for the Selling/leasing Firm and Purchasing/leasing Firm under OAR 123-065-0830(1)(a) is less than the total of:

(A) Ten percent of the Selling/leasing Firm's Existing Employment; and

(B) The average annual employment of the Purchasing/leasing Firm as computed in accordance with OAR 123-065-0810 for the 12 months preceding the sale or leasing of the qualified property.

(b) The total number for the Selling/leasing Firm and Purchasing/leasing Firm under OAR 123-065-0830(1)(b) is less than 15 percent of their Combined Greatest Year-end Employment; or

(c) The total numbers for the Selling/leasing Firm and Purchasing/leasing Firm under OAR 123-065-0830(1)(b) at the conclusion of two consecutive calendar years are both less than 50 percent of their Combined Highest Employment.

(3) Timely notification in writing under OAR 123-065-0830(3) to (6) may be made by the:

(a) Selling/leasing Firm;

(b) Purchasing/leasing Firm; or

(c) The owner of qualified property leased to the Purchasing/leasing Firm.

(4) As used in this rule:

that: "Selling/leasing Firm" means a qualified business firm that:

(A) Sells, leases or subleases property receiving an exemption to another business firm; or

(B) Leased and operated such property that is subsequently sold to another firm by the owner of the leased property or leased to another firm by the original owner or a subsequent owner of the property.

(b) "Purchasing/leasing Firm" means an eligible business firm that:

(A) Purchases or leases qualified property as a result of transactions described in subsection (a) of this section, and

(B) Operates and uses such property inside the enterprise for eligible activities throughout the remainder of the period of exemption on the property.

(c) "Combined Greatest Year-end Employment" means the sum of the Selling/leasing Firm's Greatest Year-end Employment before the qualified property was sold or leased plus the Purchasing/leasing Firm's Greatest Year-end Employment after the qualified property was bought or leased. (If at least one exemption year did not elapse before the selling or leasing of the property, the Selling/leasing Firm's Greatest Year-end Employment is zero.)

(d) "Combined Highest Employment" means the sum of the Selling/leasing Firm's Highest Employment before the qualified property was sold or leased plus the Purchasing/leasing Firm's Highest Employment after the qualified property was bought or leased.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.698, ORS 285B.704 & ORS 285B.728

Hist.: EDD 14-1997, f. & cert. ef. 12-4-97

123-065-0880

Property and Multiple Precertified Employment Levels

For purposes of a property tax exemption in an enterprise zone and the requirements under ORS 285B.728(1), in the event that there are overlapping exemption applications or precertification applications by a qualified business firm:

(1) The information specified in each exemption application shall determine which qualified property's exemption depends on compliance with which requirements.

(2) If a group of qualified property located at the same site and beginning an exemption in the same year is associated with two or more separate precertification applications, the qualified business firm may file two exemption applications under ORS 285B.722 with the county assessor listing the particular property associated with investments and requirements pertaining to each respective precertification application.

(3) In the event of failure to meet a requirement during the exemption period, the criteria and information related to the requirement and the estimates and descriptions of property in the relevant precertification applications shall be critical, whenever:

(a) The same exemption application lists property associated with two or more precertification applications; or

(b) There is uncertainty about the appropriateness or accuracy of a particular criterion or qualification, such as the correct level of Existing Employment.

(4) For purposes of sections (2) and (3) of this rule, any qualified property that is not clearly identified in the precertification application with the effectively less stringent requirement shall be assigned to the precertification application with the more stringent requirement.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.704, ORS 285B.719, ORS 285B.722 & ORS 285B.728

Hist.: EDD 14-1997, f. & cert. ef. 12-4-97

Property and the Exemption

123-065-0900

Definitions

Consistent with the definitions in ORS 307.010 and 307.020 and associated administrative rules of OAR chapter 150:

(1) As used in ORS 285B.698, 285B.701 and 285B.713(2), "addition" means one or both of the following as indicated by the statutory context:

(a) The construction on 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, per the construction described in subsection (a) of this section.

(2) As used in ORS 285B.650(6), 285B.698(4), 285B.701 and 285B.713(2), "building" means a real property improvement

erected on the land, mostly enclosed by walls and roofing, and designed for human use, occupancy or shelter, including structural components necessary to make the building usable and habitable such as wiring, plumbing, foundation, fixtures, lighting and heating and cooling system.

(3) For purposes of sections (4) and (16) of this rule and OAR 123-065-0960(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) As used in ORS 285B.698(3)(a), “completion of the construction, addition, modification or installation of the property” (and any equivalent terminology in ORS 285B.698, 285B.701, 285B.704 and 285B.722) means that qualified property is legally operable and practically ready for use or occupancy by a precertified business firm, including but not limited to the installation, testing or proving of safety, information or other equipment or systems essential to the property’s commercial operation, but excluding training of personnel and other similarly intangible activities however critical they might be.

(5) As used in ORS 285B.671(3), 285B.698(1)(c), 285B.704, 285B.713(2) and 285B.719(2)(b), “cost” means expenditures that can be documented through existing records or retrospective compilation of evidence, and that are incurred:

(a) For the construction, modification or installation of qualified property, including but not limited to materials, supplies, labor, paint, contractor charges, equipment usage, engineering, architectural fees and physical connections to utilities and other property, but excluding the costs associated with maintenance, financing, legal fees, the eligible business firm’s own management and so forth; or

(b) With the purchase of real or personal property machinery or equipment or of ready-made buildings or structures directly prior to installation or occupancy. Real market value shall be substituted for purchase price in the case of existing property that has not been recently sold (for example, leased property).

(6) As used in ORS 285B.698, 285B.713(2), 285B.719 and 285B.722(1), “installation” means the actual placement, affixing, connection or integration of machinery or equipment in or with a building, structure or other machinery or equipment for purposes of being used and does not mean the purchase, onsite delivery or storage of the machinery or equipment.

(7) As used in ORS 285B.713(2)(c) and (d), “item” means any machinery or equipment normally appraised and assessed as a unit and may include, for example, an entire conveyance or information system (see OAR 123-065-0920).

(8) As used in ORS 285B.713(3)(a), “land” means raw undeveloped land and any improvements to the land for site development.

(9) As used in ORS 285B.698(3)(a), “located in the enterprise zone” means that the qualified property is used and operated for trade or business within the current boundary of the enterprise zone and is not removed therefrom during the exemption period except for incidental reasons or for purposes of the property’s repair, maintenance and so forth.

(10) As used in ORS 285B.698, 285B.713(2), 285B.719 and 285B.722(1), “modification” is defined under ORS 285B.650(6) and explicated in OAR 123-065-0130.

(11) As used in ORS 285B.713(2)(d), “personal property machinery or equipment” means any tangible personal property (readily movable as opposed to effectively fixed or stationary) 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 123-065-0920).

(12) As used in ORS 285B.713(2)(d)(A), “producing 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 (see OAR 123-065-0920).

(13) As used in ORS 285B.713(2)(c), “real property machinery or equipment” means real property (fixed or stationary and immovable due to weight, size or attachment to or integration with other real property) used in the business process or activity that is not otherwise described in this rule including but not limited to devices, fixtures, specialized pipes, venting, air filtration systems, special wiring, electrical panels or switches, or other non-structural forms of construction or assembled apparatus.

(14) As used in ORS 285B.713(3)(b), “self-propelled motorized vehicles” means a device carrying its own driver and its own fuel and engine for motive power including but not limited to automobiles, aircraft, boats, golf carts, trains and trucks (see OAR 123-065-0920).

(15) As used in ORS 285B.650(6), 285B.698(4) and 285B.713(2), “structure” means 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 free-standing signs, subterranean compartments and outdoor lighting, as well as associated fixtures, wiring, pipes, foundations and so forth.

(16) As used in ORS 285B.698, “use or occupancy” means that qualified property is being used, operated or occupied as commercially designed or intended for the production of income and does not refer to any ancillary activity, such as testing, training, hiring, administration or planning, in preparation or support of a precertified business firm’s investment or the commercial purpose of that investment (see OAR 123-065-0960).

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.698 & ORS 285B.713

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0910

Eligible Utilization of Property

For purposes of property to be exempted in an enterprise zone:

(1) In order for property to qualify for the exemption, it must be used exclusively for one or more eligible activities as stipulated in OAR 123-065-0620, and it must not be used for any ineligible activity listed under OAR 123-065-0630(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 or space in a retail setting;

(b) A commercially operated kitchen and associated fixtures and appliances;

(c) Entertainment, recreational and exercise facilities or equipment;

(d) Medical devices; or

(e) Construction machinery.

(3) An exception to sections (1) and (2) of this rule shall apply in the case of a hotel, motel or destination resort, regardless of whether the hotel, motel or destination resort is itself receiving an exemption, insofar as the property is:

(a) Used exclusively for activities meeting the stipulations of OAR 123-065-0630(2);

(b) Owned or leased by a business firm that operates the hotel, motel or destination resort; and

(c) Situated and used at the same general location as the hotel, motel or destination resort.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.707 & ORS 285B.713

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0920

Machinery and Equipment

For purposes of the property to be exempted in an enterprise zone:

(1) Subject to OAR 123-065-0960(2)(b) (that is, recently in use for the “first time” inside the zone boundary), machinery or equipment is not prohibited from qualifying for the exemption despite prior usage, such that the exempted value for the machinery or equipment shall take account of the usual factors of

appraisal, such as age, deterioration and obsolescence, as well as any reconditioning, refurbishment or restoration.

(2) Machinery or equipment (whether real or personal property) may not qualify for the exemption, if more than three months prior to the submission of the precertification application the machinery or equipment was already:

(a) Owned or leased by the qualified business firm; and

(b) Located in the county containing the site of the property inside the zone.

(3) Subject to all other applicable requirements, including but not limited to section (2) of this rule and OAR 123-065-0910, the following property shall qualify for the exemption without further consideration:

(a) An item of real property other than land, buildings or structures; or

(b) A nonvehicular item of personal property with a cost of \$50,000 or more.

(4) An item of personal property machinery or equipment with a cost of less than \$50,000 may not qualify for the exemption, unless it is used exclusively for producing tangible goods. (By itself this will usually preclude furniture, as well as communication, design, information, office or video equipment, costing less than \$50,000. This section applies regardless of association with a hotel, motel or destination resort.)

(5) Section (4) of this rule also includes any personal property item of machinery or equipment that:

(a) Maintains, serves, calibrates, adjusts, monitors, tests or repairs qualified property directly involved with tangible output or production, or is used to assure quality control of tangible output or production, including but not limited to relevant research and development equipment; and

(b) Costs at least \$1,000 and meets all other applicable requirements for qualified personal property machinery or equipment, including but not limited to being in use or occupancy on or before the relevant April 1 and installed on or before the preceding December 31 as part of a qualifying investment.

(6) A fixed load vehicle without motive power under ORS 801.285 or any comparable item may qualify for the exemption subject to the restrictions for an item of personal property machinery or equipment.

(7) Regardless of any other provision of this division of administrative rules, the following property shall not qualify for the exemption:

(a) Land and improvements "to" the land such as site preparation;

(b) Any item of personal property with a cost of less than \$1,000;

(c) Raw materials, fuel, lubricants and so forth;

(d) Fixed load vehicles with motive power under ORS 801.285.

(e) Any self-propelled motorized vehicle; and

(f) Any centrally assessed 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(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.713

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0930

Buildings and Structures

For purposes of property to be exempted in an enterprise zone:

(1) Neither a single building nor a single structure may qualify for an exemption, unless a cost of at least \$25,000 is attributable to:

(a) Construction, in the case of a new building or structure; or

(b) All of the additions, modifications or reconstruction that are undertaken within a continuous period of time not exceeding

12 consecutive months, in the case of an existing building or structure.

(2) As provided under ORS 285B.713(2)(e), the minimum cost requirement under section (1) of this rule does not apply to a new building or to any new or existing structure associated with that building, if such property is leased by a qualified business firm from an agency of the federal or state government or from a municipal corporation as defined in OAR 123-065-0110(3).

(3) A qualified building or structure is severable, such that:

(a) A part of the building or structure may be exempted, 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 exempted shall be determined through proration based on floor area or other reasonable method.

(4) As determined by the county assessor, a golf course or elements thereof may be classified as a qualified structure or structures subject to section (1) of this rule in the case of a hotel, motel or destination resort consistent with OAR 123-065-0910(3).

(5) Pursuant to ORS 285B.698(4), the exemption on qualified additions and modifications to an existing building or structure is measured in each year of the period of exemption by:

(a) Identifying the new improvements to property attributable to those same qualified additions and modifications;

(b) Accounting for all other concurrent property improvements, retirements or adjustments that affect the valuation of the taxable property containing the new improvements identified under subsection (a) of this section;

(c) Computing the assessed value (using either the real market value or the maximum assessed value whichever is lower in each case) of such taxable property:

(A) With such new improvements; and

(B) Without such new improvements (that is, the assessed value generally subject to taxation during the period of exemption); and

(d) Taking the difference between the values under paragraphs (c)(A) and (c)(B) of this section, such that any negative difference is equated to zero.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.698 & ORS 285B.713

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0940

Property Already Entered on Rolls

Qualified property is not prohibited from receiving an enterprise zone exemption, even if after the creation of the zone or relevant area of the zone but prior to the period of exemption, such property is entered on the assessment roll of the county:

(1) While the property is in the process of construction, modification or installation but ineligible to receive the cancellation of assessment permitted under ORS 307.330 and 307.340 for any of the following or for other reasons:

(a) The owner of the property did not apply for the cancellation in a timely fashion;

(b) The property does not satisfy requirements for the cancellation (for example, personal property or centrally assessed property); or

(c) The property may no longer receive the cancellation because, for example:

(A) The limit of two consecutive years under ORS 307.330(1) has been exceeded, including but not limited to a situation in which a newly constructed or modified building awaits an eligible tenant/lessee as allowed in OAR 123-065-0750; or

(B) A portion of a building, structure or addition violates a requirement under ORS 307.330(1).

(2) In the case of machinery or equipment that was located elsewhere in the county, but that is subsequently bought or leased by the qualified business firm and is newly introduced to the enterprise zone in accordance with OAR 123-065-0920 and 123-065-0960;

(3) Pending an administrative or judicial resolution of an appeal;

(4) As provided in section 34 or 44, chapter 835, Oregon Laws 1997, in which a qualified business firm missing the initial-year filing deadline receives the remaining years of the exemption (see OAR 123-065-1090); or

(5) Under other circumstances that do not in and of themselves nullify the exemption.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.698 & ORS 285B.722

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0950

Obligations for All Leases, Lessors and Lessees

For purposes of qualified property that is not owned by the qualified business firm but that may be exempted in an enterprise zone if used, occupied or operated by the firm under a lease agreement during the period of exemption:

(1) The lease agreement is not required with the precertification application, except under OAR 123-065-0750, but it must always be executed prior to the application for the exemption under ORS 285B.722.

(2) If the firm and the owner of such qualified property are not direct parties to the lease agreement, but instead the agreement is between the firm and a lessee, then all lease or sublease agreements pertaining to the property must explicitly recognize the privileges and responsibilities associated with the enterprise zone exemption in the text of the agreement or through a mutually acknowledged addendum or attachment thereto. For their own protection, the parties to such leases are responsible for ascertaining compliance with this section.

(3) The lessor of such qualified property may be any person or corporation, including but not limited to a governmental body or an owner of the firm.

(4) Any lease agreement under this rule must be a net lease, inasmuch as:

(a) All ad valorem taxes assessed against any property covered by the lease agreement are directly collected from the firm; or

(b) The owner of the property is or would be compensated in full for such property taxes in addition to rent or other costs throughout the period of the lease.

(5) The owner of any such qualified property (even machinery or equipment) must join the firm in applying for any exemption on that property under ORS 285B.722(1), such that the owner or the owner's authorized legal agent signs one of the following:

(a) The same tax exemption application that has the original signature of the firm's representative;

(b) An official addendum to that application that expressly provides for multiple lessors or co-signers of such an application;

(c) A letter attached to that application specifically acknowledging and affirming the enterprise zone exemption being sought; or

(d) A comparable attachment to the application as filed with the county assessor, including but not limited to provisions for joint enterprise zone application in the lease agreement.

(6) For purposes of section (5) of this rule, the "owner" may be substituted by the lessee that directly leases the property to the firm, as provided in section (2) of this rule.

(7) The owner of any such property, as well as the qualified business firm that leases the property, has the right to notify the county assessor and enterprise zone sponsor under ORS 285B.728(1) in order to avoid penalties under ORS 285B.728(2) and (4). The rights of the owner under this section also apply to any intermediary lessee/lessor as provided under section (2) of this rule.

(8) In the case of a leased building for purposes of ORS 285B.701 (1997), if the firm has an executed lease and is approved for precertification prior to the completion of the property's construction, addition or modification, then subject to all other applicable requirements, the firm may qualify in the enterprise zone, and the exemption may be granted on the building,

regardless of stipulations under ORS 285B.698(1), (2), (5) or (6) or 285B.713(1)(a) or (1)(b), including but not limited to:

(a) The existence of the building prior to the effective date of the enterprise zone designation or relevant boundary change;

(b) When the Firm/applicant actually begins using or occupying the building; or

(c) The cost of the building.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.698, ORS 285B.701, ORS 285B.713, ORS 285B.722 & ORS 285B.728

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0960

Mandatory Initial Year, Use/Occupancy and Construction in Process "CIP" Abatement

In order to be granted an enterprise zone exemption, in addition to requirements applicable to particular property under OAR 123-065-0900 to 123-065-0999:

(1) A precertified business firm may apply for and begin a full period of exemption only in the year immediately following the calendar year in which the completion of construction, addition, modification or installation of the qualified property to be exempted occurs, regardless of dates for completion or application as anticipated in the firm's precertification.

(2) No exemption may be granted unless the qualified property to be exempted is actually in use or occupancy for the first time at a location inside the zone:

(a) Not later than April 1 following the occurrence under section (1) of this rule; and

(b) Not earlier than January 1 preceding the occurrence under section (1) of this rule.

(3) Sections (1) and (2) of this rule pertain to any portion of an investment in qualified property that is functioning or is capable of functioning apart from other property as an integral and viable commercial operation, which:

(a) Does not necessarily mean the entire investment as proposed by the precertified business firm; but

(b) Does not include even qualified property that is physically operable or finished, if (pending completion of work on other property within the overall facility or investment) such property is:

(A) Incapable of effective use or occupancy for commercial purposes; or

(B) Not yet intended to be so used or operated, pursuant to reasonable plans for readying the investment including but not limited to testing or startup.

(4) Full compatibility with the provisions of ORS 307.330 and 307.340 (Commercial Facilities Under Construction) exists, and the cancellation of assessment under those provisions and in an enterprise zone are mutually exclusive in terms of the property that may qualify in either case, such that the requirements that terminate the cancellation on qualified real property under those provisions effectively allow an enterprise zone exemption for such property to begin in the subsequent year.

(5) Property ineligible for the tax abatement under ORS 307.330 and 307.340 is not prohibited from qualifying in an enterprise zone, including but not limited to centrally assessed property or certain types of personal property, or to the case in which another part of a new building, structure or addition was already in use or occupancy for more than a year.

(6) Property that is not qualified for an enterprise zone exemption is not prohibited from being exempted under ORS 307.330 and 307.340, including but limited to property used in ineligible activities or located outside of a zone.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.698 & ORS 285B.722

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0970

Filing the Application with the County Assessor

In order for qualified property to be exempted from ad valorem taxation in an enterprise zone for the entire period of the exemption that is being sought by a precertified business firm:

(1) A filled-out and signed form 150-310-075 (OREGON ENTERPRISE ZONE TAX EXEMPTION APPLICATION) that identifies the qualified property must be filed by the firm:

(a) With the county assessor of the county in which the property is located;

(b) For the initial year as mandated pursuant to OAR 123-065-0960(1); and

(c) After January 1 but on or before April 1 of that initial year without a filing fee, or as late as April 15 of that initial year if accompanied by the late filing fee prescribed in ORS 285B.725(1).

(2) A new exemption application must be filed at the beginning of the period of exemption for any qualified property.

(3) The firm must indicate in the exemption application and be prepared to substantiate for the county assessor that it has satisfied the employment requirements delineated in OAR 123-065-0820, although if the exemption is covered by the same precertification and the same requirements under OAR 123-065-0820(1) as an exemption beginning in the previous year on other qualified property, then the business firm is already qualified for the current exemption and does not need to explicitly meet those requirements a second time.

(4) The total cost of the qualified property identified in any exemption application must be at least \$25,000, regardless of other qualified property that began an exemption covered by the same precertification and requirements in a previous year.

(5) As proof of compliance with ORS 285B.710(1), a copy of the first-source hiring agreement must be attached to the exemption application.

(6) In the exemption application the business firm must indicate the dates, on which its application for precertification was submitted and approved by the local zone manager and the county assessor, and may be required by the county assessor to present proof that such approvals were so granted.

(7) If the exemption application includes any leased qualified property, even when leased from an owner of the firm or when multiple owners/lessors exist, then each owner/lessor must join in the application as described in OAR 123-065-0950(5), and the executed lease agreement must be attached to the application in order for the county assessor to check for compliance with OAR 123-065-0950.

(8) If an exemption is sought for qualified property owned or leased by two or more corporations pursuant to ORS 285B.707(5), then the stipulations of OAR 123-065-0860(2) to (6) apply.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.698, ORS 285B.704, ORS 285B.722 & ORS 285B.725

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0980

Disqualification of Particular Property

An ongoing enterprise zone exemption is not necessarily forfeited for all qualified property of a qualified business but only for such specific property that fails to satisfy a relevant requirement, such that pursuant to ORS 285B.698 and 285B.728(1)(a) or (f):

(1) Disqualification including back taxes under ORS 285B.728(2)(a), (4) and (5) shall apply to any qualified property that is, at anytime during a calendar year that concludes while the exemption is being received:

(a) Removed from the enterprise zone;

(b) Sold, exchanged or leased to another business firm in a situation in which the exemption may not continue despite the provisions of ORS 285B.698(3)(b) (see OAR 123-065-0870); or

(c) Used for an ineligible activity as listed under OAR 123-065-0630(1) or by an ineligible business firm in violation of ORS 285B.707.

(2) The exemption terminates, with loss of any remaining years of exemption but without repayment of back taxes, for any qualified property that is:

(a) In violation during the exemption period with any applicable requirement described in OAR 123-065-0900 to 123-065-

0999 except for section (1) of this rule and OAR 123-065-0970, including but not limited to a required lease provision; or

(b) Idle and not in use or occupancy for a continuous period of 180 or more days occurring at any time before April 1 preceding the first tax year for which the exemption is lost under this section.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.698, ORS 285B.713, ORS 285B.722 & ORS 285B.728

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-0990

Designation, Amendment and Termination of Enterprise Zone

Notwithstanding any other provision for receiving an enterprise zone exemption on qualified property:

(1) No such property may receive an exemption if located in the zone prior to the effective date of:

(a) The designation of that zone; or

(b) That location's inclusion in the zone by a change in the zone boundary.

(2) The restriction in section (1) of this rule is suspended if:

(a) The business firm owning or leasing the property was legitimately qualified or precertified within the boundaries of a terminated zone; or

(b) On such an effective date:

(A) The qualified property was in the process of being constructed, added to, modified or installed; and

(B) Such construction, addition, modification or installation is specifically excluded as physical work under OAR 123-065-0710(3)(b) or (d)(A) for purposes of precertifying an eligible business firm.

(3) Notwithstanding OAR 123-065-0940 and section (2) of this rule, no qualified property may receive an enterprise zone exemption if listed on the assessment rolls of the county, at any site in the county, both on and before the effective date of:

(a) The zone's original designation (other than the continuation of a Preexisting Enterprise Zone); or

(b) A change in the zone boundary that brought the site of the qualified property into the zone.

(4) Only as provided under ORS 285B.686(2) or 285B.719(5) and (6), pursuant to relevant stipulations in OAR 123-065-0400 to 123-065-0499 and 123-065-0790, may an exemption on qualified property be granted and completed within the former boundary of an enterprise zone, subject to the usual requirements of ORS 285B.650 to 285B.728.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: ORS 285B.686, ORS 285B.698 & ORS 285B.719

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

123-065-1090

Post-Deadline Filing for Exemption Net of First Year

For purposes of receiving the remainder of an exemption less the initial year for a very late submission of an exemption application to the county assessor:

(1) Section 44, chapter 835, Oregon Laws 1997, operates in lieu of section 34, chapter 835, Oregon Laws 1997, for exemptions and assessment years beginning on or after January 1, 1998;

(2) A firm missing the September 1 deadline for beginning a full exemption in the 1997-1998 tax year must submit the application on or before June 30, 1998;

(3) A firm missing the April 1 deadline for beginning a full exemption in an assessment year beginning on or after January 1, 1998, must submit the application on or before December 31 of that year;

(4) The firm must be in compliance with all applicable requirements as if the exemption were in effect during the initial year; and

(5) Section (3) of this rule is not effective for any assessment year beginning on or after January 1, 2000, except as provided by amendments to or repeal of section 46, chapter 835, Oregon Laws 1997, by the Legislative Assembly.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: OL 1997, ch. 835, sections 34 & 44

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98

Local Applications and Designation by the Director

123-065-1500

Definitions

In addition to terms defined in OAR 123-065-0000, the following definitions apply to applications for designation of an enterprise zone:

(1) "Basis Point" equals one one-hundredth of a unit of a percentage rate or 1 percent of a Percentage Point.

(2) "Census Statistical Unit" includes any standard geographic area, legal entity or administrative designation for which data is available through the most recent federal decennial census, such as the following: Census county subdivision, incorporated place, census urbanized area, census designated (unincorporated) place, ZIP code, census tract, census block numbering area (BNA), census block group (BG) or census block.

(3) "Enterprise Zone Population" means:

(a) For nonurban enterprise zones, the total population of incorporated cities in which any part of the zone is located, plus the estimated population of unincorporated territory that is within the boundary of the zone; or

(b) For urban enterprise zones, the estimated population within the boundaries of the zone, plus the estimated population of any Target Community that is used for purposes of OAR 123-065-1630(3)(f).

(4) "Percentage Point" equals one unit of a percentage rate. For example, an 8.5 percent unemployment rate is two Percentage Points higher than a 6.5 percent unemployment rate.

(5) "Round of Designation" is defined as the period of time, not less than 90 days, that begins when one set of enterprise zones is designated, and that ends when the next set of zones is designated.

(6) "Strategic Plan" or "Strategic Planning" as used in this division of administrative rules means any documentation or descriptions, as submitted with an application for designation of an enterprise zone, that are pertinent to OAR 123-065-1650.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.656(4), ORS 285B.668(1) & ORS 285B.689(4)

Stats. Implemented: ORS 285B.653 - ORS 285B.662 & ORS 285B.689

Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99

123-065-1510

Mandatory Economic Need and Land

(1) Except as allowed in section (2) of this rule, a proposed enterprise zone must meet one of the following relative measures of economic hardship in order to qualify for designation:

(a) The proposed enterprise zone's median income per household or mean income per capita is 80 percent or less of the equivalent statewide income;

(b) The proposed enterprise zone's unemployment rate is at least two Percentage Points higher than the statewide unemployment rate;

(c) The proposed enterprise zone's percentage of persons or households 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 grew by 1 percent, but the state's population growth over the same ten-year period was 16 percent, the proposed enterprise zone would meet this qualification.

(2) A proposed enterprise zone that does not meet one of the comparative measures of economic hardship in section (1) of this rule may still qualify for designation, if one of the following alternative qualifications is satisfied:

(a) The Director or designee determines based on evidence, arguments and cases succinctly presented and documented by the Applicant, including but not limited to a combination of recently available facts and data for social and economic conditions, that the proposed enterprise zone would effectively serve communities

with economic needs at least as severe as what is represented under section (1) of this rule and ORS 285B.662;

(b) The proposed enterprise zone is located predominantly within a distressed area or areas, as identified by the Department at the time of the zone application, under division 024 of this chapter of administrative rules;

(c) Permanent closures or curtailments within 30 miles of the proposed enterprise zone that have been effected or announced by specified employers during the three years preceding the application deadline are associated with job losses equal to at least 2 percent of the average annual covered employment, as most recently reported by the Employment Department, for the county or counties in which the lost jobs are located; or

(d) The proposed enterprise zone is in a labor surplus area, as classified by the U.S. Department of Labor and reported by the Employment Department or by the U.S. Bureau of Labor Statistics at the time of the zone application, subject to the following conditions:

(A) The national average annual unemployment rate used in this most recent classification was at least 0.5 Percentage Points higher than the most recently available annual average unemployment rate for this state; and

(B) The labor surplus area completely contains the proposed zone.

(3) An enterprise zone shall include significant land that is vacant, improvable and suitable for use and development by eligible business firms, including:

(a) Land designated for industrial use under a local comprehensive plan acknowledged by the Land Conservation and Development Commission or by a final post-acknowledgment plan amendment; and

(b) Land that has or will have sufficient physical access, infrastructure, utilities and public services for a reasonable variety of eligible business firms to operate and for such firms and the Sponsoring Governments to maintain compliance with applicable federal and state environmental laws.

(4) No part of this rule shall be construed to exclude enterprise zones so designated or amended under federal law or under ORS 285B.677 or 285B.680.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.662(3), ORS 285B.668(1) & ORS 285B.689(4)

Stats. Implemented: ORS 285B.659 - ORS 285B.668 & ORS 285B.689

Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99

123-065-1520

Enterprise Zone Application

The application for designation of an enterprise zone:

(1) Shall not be accepted by the Department if sent on or after the next business day following the date of the application deadline specified under OAR 123-065-1550(1), as indicated by a postmark or the receipt of a commercial deliverer. Deliveries made directly by the Applicant must be received at the Department's Salem office by 5 p.m. of the deadline date.

(2) Shall include all items and information specified in OAR 123-065-1530.

(3) Shall be accepted by the Department from any city or county or combination of cities or counties in accordance with OAR 123-065-0010, except that:

(a) A city may be a Sponsoring Government for only one application per Round of Designation;

(b) A city with less than 100,000 population may not be a Sponsoring Government, if it is a sponsor of a current enterprise zone, unless that current enterprise zone is to be Terminated by Statute at the conclusion of the Round of Designation; and

(c) An Applicant is not eligible, if it includes a majority of the cities or of the cities and counties that had sponsored an enterprise zone that was terminated by order of the Director under ORS 285B.686(5) or (6).

(4) Shall specify a name for the proposed zone corresponding to common geographic or jurisdictional terms. (For official purposes, this name must have a suffix such as "II", if the same name was ever previously used by a designated enterprise zone.)

(5) May contain binding proposals by each Sponsoring Government to provide local benefits under ORS 285B.656(5) to (8) in accordance with OAR 123-065-0240 that would be effective within the applicable territory of the respective jurisdiction for precertified or qualified business firms locating or expanding in the proposed zone, such as:

(a) Increased availability or efficiency of local public services, including but not limited to utilities, transportation access, fire fighting and police services; or

(b) Local tax incentives and local regulatory flexibility that shall last at least as long as a qualified business firm's enterprise zone exemption.

(6) Serves as an opportunity for a Preexisting Enterprise Zone:

(a) To alter any or all of the existing policies or decisions under ORS 285B.671. Otherwise, such policies or decisions shall be maintained with the new designation;

(b) That had previously opted under ORS 285B.716(2) to exempt qualified property of hotels, motels and destination resorts, to rescind that option in the resolution or resolutions under OAR 123-065-1540.

Stat. Auth.: ORS 285.035(5), ORS 285.065, ORS 285.563(4), ORS 285.575(1) & ORS 285.588(4)

Stats. Implemented: ORS 285.563, ORS 285.577, ORS 285.588 & ORS 285.610

Hist.: EDD 4-1994, f. & cert. ef. 2-24-94; EDD 10-1995, f. & cert. ef. 12-19-95; EDD 1-1997, f. & cert. ef. 1-7-97; Renumbered from 123-065-0020; EDD 1-1999, f. & cert. ef. 1-26-99

123-065-1530

Required Elements of Application

An application proposing designation of an enterprise zone must contain:

(1) A form provided by the Department, filled out by the Applicant and enclosed with the information described in this rule and other information that the Applicant wishes to submit.

(2) A resolution proposing the enterprise zone designation, in accordance with OAR 123-065-1540:

(a) From each Sponsoring Government (or a resolution of consent from any applicable jurisdiction under OAR 123-065-0010);

(b) That is approved by a majority of the jurisdiction's governing board as specified in the county or city charter, not more than 90 days prior to when the application is sent or submitted to the Department for that Round of Designation; and

(c) Such that for purposes of subsection (a) of this section, the governing body of a special jurisdiction may substitute for a city or county, if the membership of the governing body is identical to that of the city or county, and the special jurisdiction comprises the entirety of the area inside the proposed enterprise zone that is also within the city's corporate limits or the county's unincorporated territory.

(3) A description of the surface area of the proposed zone, estimated to the nearest 0.1 square miles, that demonstrates adherence with the provisions in OAR 123-065-0080 or 123-065-0090, including:

(a) A map drawn to scale with a clear representation of the proposed boundary of the entire zone;

(b) A metes and bounds description of the proposed boundary of the zone with the following allowed exceptions:

(A) Where a portion of the boundary coincides with a city limit, urban growth boundary, county line, waterway, road, track, transmission line, right of way or similarly permanent or confirmable demarcation, a statement that it does so for that portion with documentary references shall suffice; or

(B) A listing of Census Statistical Units larger than a census block may be substituted, if the proposed zone completely conforms to the listing; and

(c) If the zone's location entirely within 12 or fewer cadastral sections is offered in lieu of the estimate of surface area required by this section, a depiction of these cadastral sections on the map required under subsection (a) of this section.

(4) Information sufficient to verify satisfaction of the mandatory qualifications under OAR 123-065-1510, as well as economic competitive criteria under OAR 123-065-1560, by including:

(a) Data for social and economic conditions that is used and documented pursuant to OAR 123-065-1600 to 123-065-1630; and

(b) A current comprehensive plan land use map, on which can be recognized both the proposed zone boundary and the land uses allowed by the comprehensive plan or plans as acknowledged by the Land Conservation and Development Commission or by a final post-acknowledgment plan amendment.

(5) All of the following, with respect to any public service district, municipal corporation and so forth, other than Sponsoring Governments, that receives operating revenue through the levying of ad valorem taxes on real and personal property in any tax code area inside the boundary of the proposed zone:

(a) A list of contact names and mailing addresses for all such taxing districts;

(b) A copy of a notification directed at such taxing districts that:

(A) Describes the probable schedule for consideration of resolutions under OAR 123-065-1540;

(B) Explains the property tax exemptions available in a designated zone for future property associated with potential investments by certain business types;

(C) Invites comments on the proposed zone to be directed at some or all of the possible Sponsoring Governments; and

(D) Includes contact information for the Applicant.

(c) Copies of all responses to the notification by any relevant taxing district, to be submitted by the Applicant to the Department no later than 30 calendar days following receipt of the response or the application deadline specified under OAR 123-065-1550(1), but before the zone is designated, if possible; and

(d) A statement signed by the preparer of the application attesting that the notification was sent by regular mail for each listed district on a specified date, at least 21 calendar days prior to the adoption of a resolution under section (2) of this rule by a jurisdiction that is appropriate and relevant to the district.

(6) Failure to have adequately or accurately performed the tasks described in this rule may result in the termination of the proposed enterprise zone after it has been designated, consistent with ORS 285B.686(6).

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.656(4), ORS 285B.668(1) & ORS 285B.689(4)

Stats. Implemented: ORS 285B.656 - ORS 285B.662 & ORS 285B.689

Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 5-1999(Temp), f. & cert. ef. 8-20-99 thru 10-23-99; EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99

123-065-1540

Local Resolutions Requesting Designation

The resolutions of Sponsoring Governments required under OAR 123-065-1530(2) as part of the application for designation of an enterprise zone shall:

(1) State the Applicant's principal reasons for an enterprise zone, as appropriate.

(2) Acknowledge, as appropriate, the other participants in a joint application.

(3) Confirm that the Applicant will give priority to the use in a designated zone of any economic development or job training funds received directly or indirectly from the federal government.

(4) Declare that the Applicant will fulfill its duties under ORS 285B.671, if the proposed zone is designated, including but not limited to a commitment to:

(a) Appoint or jointly appoint (as necessary) a local zone manager or co-managers within 90 days of designation, if one is not already appointed through the application;

(b) Implement within six months of designation the proposals in the application to provide enhanced public services, regulatory flexibility or other local incentives to areas inside of the proposed enterprise zone or to precertified and qualified business firms for at least the duration of each business firm's enterprise zone exemption on qualified property.

(c) Prepare within six months of designation, and maintain, a list and map of lands and buildings within the zone that are:

- (A) Owned by the state or by a municipal corporation;
- (B) Not used or designated for some public purpose; and
- (C) Suitable for an eligible business firm in terms of land use zoning ordinances; and

(d) Assist in making real property identified under subsection (c) of this section available for lease or purchase by precertified or qualified business firms, conditional on the leasing or purchasing firm's prompt development of the real property for a precertified use; and

(e) Create within six month of designation, and maintain, indices identifying the land within the zone (but only in the case of a proposed urban enterprise zone) pursuant to ORS 285B.671(1)(h).

(5) Attest to and report on implementation of OAR 123-065-1530(5).

(6) Highlight other characteristics of the application or the proposed zone as deemed appropriate by the Sponsoring Government.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.656(4), ORS 285B.659(1) & ORS 285B.668(1)

Stats. Implemented: ORS 285B.656, ORS 285B.671 & ORS 285B.674

Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 5-1999(Temp), f. & cert. ef. 8-20-99 thru 10-23-99; EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99

123-065-1550

Department's Designation Process

(1) The Department shall have published in no fewer than three newspapers of general circulation in this state a formal notice specifying the deadline for applications and the minimum and maximum number of enterprise zones to be designated in that Round of Designation. Such notice shall be published at least once not less than 60 days in advance of the specified deadline.

(2) The Department shall complete a review of all received applications for enterprise zone designation within 60 days of the deadline specified under section (1) of this rule and determine which Applicants meet the requirements and mandatory qualifications under OAR 123-065-0010, 123-065-0080, 123-065-1510 and 123-065-1520, in fulfillment of ORS 285B.659(2).

(3) OAR 123-065-1560, 123-065-1570, 123-065-1580 and 123-065-1590 each entail a category of criteria for evaluating and awarding points on the need, likelihood of success and other qualities of a proposed enterprise zone, such that:

(a) Total points for all of the categories and criteria shall not exceed 2,000 points.

(b) OAR 123-065-1560(1) to (5) carries a maximum of 750 points, and 123-065-1580 carries a maximum of 500 points.

(c) For each criterion without a definite formula, the Department shall assign points based on a comparison among the Applicants in that Round of Designation.

(d) No penalty shall be associated with either the response or the absence of a response to any criterion.

(e) If two or more Applicants have the same number of total points for all categories, then as necessary, the tie shall be broken by a method determined by the Director.

(4) In order to be accepted by the Department, all responses to criteria in OAR 123-065-1570, 123-065-1580 and 123-065-1590 must be submitted at the time of the application as required under OAR 123-065-1520(1), unless:

(a) Stipulated otherwise for the particular criterion; or

(b) In the public notice under section (1) of this rule, the Department allows for such responses to be submitted within 30 calendar days following the specified deadline, in which case the Department shall, as soon as possible after the deadline, provide a preliminary indication to all Applicants of the state of review under section (2) of this rule and the potential importance of such responses for section (5) of this rule.

(5) Pursuant to sections (2), (3) and (4) of this rule, the Department shall prepare staff reports to the Director, as follows:

(a) When the number of qualified Applicants exceeds the maximum number of zones to be designated, or if requested by

the Director, the Applicants shall be rated using criteria as described in section (3) of this rule.

(b) When the number of qualified Applicants equals or exceeds the minimum number of zones to be designated, but the number is equal to or less than the maximum, then a recommendation shall be made to designate either all Applicants or only certain Applicants that exhibit sufficient commitment, readiness and so forth for the zone, per criteria under section (3) of this rule.

(c) When the number of qualified Applicants is less than the minimum number of zones to be designated, the Round of Designation is canceled, and a new Round of Designation may begin immediately.

(6) Within 30 days of receiving staff reports under section (5) of this rule or sooner as necessitated under ORS 285B.689(1), the Director shall take appropriate actions and designate one or more enterprise zones:

(a) Subject to section (8) of this rule;

(b) Equal to at least the minimum number of zones to be designated in that Round of Designation; and

(c) Based on those Applicants' proposals with the greatest potential for accomplishing the purposes of ORS 285B.650 to 285B.728.

(7) The Department shall contact all unsuccessful Applicants within 30 days of the Director's determination, notifying them in writing of the reasons for the denial of their applications.

(8) For purposes of designating enterprise zones in a Round of Designation:

(a) All zones that are available for designation under ORS 285B.689(1) to replace zones that have Terminated by Statute shall be designated insofar as there are qualified Applicants;

(b) Any remaining zone that was to have replaced a zone that Terminated by Statute or any other remaining zone shall be made available in a future Round of Designation to be determined by the Director; and

(c) No enterprise zone shall be designated when the maximum number as described under OAR 123-065-0048 has been reached.

(9) The Director's order of designation shall acknowledge:

(a) The particular statutory basis for the designation;

(b) The basic features of the new enterprise zone, such as its Sponsoring Governments and supporting documentation describing the zone's area;

(c) The effective designation date and the latest expected termination date for the new enterprise zone;

(d) If applicable, that the new zone is the continuation of a Preexisting Enterprise Zone, in which case the policies or decisions of the previous zone are maintained, subject to alteration by the Applicant in the application; and

(e) That the new enterprise zone shall exempt qualified property of hotels, motels and destination resorts, as allowed in accordance with OAR 123-065-0610, such that except for a Preexisting Enterprise Zone, all of the Sponsoring Governments have adopted resolutions requesting such tax exemptions prior to the effective date of designation.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.659(1), ORS 285B.668(1) & ORS 285B.689(4)

Stats. Implemented: ORS 285B.653 - ORS 285B.662, ORS 285B.665, ORS 285B.668, ORS 285B.677, ORS 285B.686 & ORS 285B.689

Hist.: EDD 4-1994, f. & cert. ef. 2-24-94; EDD 10-1995, f. & cert. ef. 12-19-95; EDD 1-1997, f. & cert. ef. 1-7-97; Renumbered from 123-065-0030; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 5-1999(Temp), f. & cert. ef. 8-20-99 thru 10-23-99; EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99

123-065-1560

Competitive Criteria: Economic Hardship and Betterment

The following criteria measure the economic hardship of the proposed enterprise zone, and a response to one of the following sections is required pursuant to OAR 123-065-1510, but additional responses may be made at the Applicant's discretion:

(1) Ten points shall be awarded for every percent that the per capita mean income or per household median income of the zone is below the equivalent statewide income.

(2) High unemployment may be scored in either of two ways:

(a) One point for every Basis Point by which the zone's unemployment rate exceeds the statewide rate; or

(b) One point for each month in which the unemployment rate for any county or labor market area in which the zone is located exceeds the statewide rate for that same month, during the most recent 120 months for which revised data that have not been seasonally adjusted are available from the Employment Department.

(3) Four points shall be awarded for every 10 Basis Points by which the zone's percentage of persons or households below the poverty level exceeds the equivalent statewide percentage.

(4) Four points shall be awarded for every 30 Basis Points by which the baseline population growth of the state during the most recent ten-year period exceeds the change in the Enterprise Zone Population over the same ten-year period.

(5) One hundred points shall be awarded for each distressed area under division 024 of this chapter of administrative rules that is either a Sponsoring Government or entirely contained within the boundary of the proposed zone.

(6) Points may be awarded at the discretion of the Department for other economic statistics or circumstances, such as local closures and job losses or special studies of overall economic conditions, as presented and documented by the Applicant, or if the Department finds that designation of the proposed zone is likely to contribute significantly to opportunities for growth in an economically lagging region of the state or in a distressed area as identified under division 024 of this chapter of administrative rules.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.656(4), ORS 285B.668(1) & ORS 285B.689(4)

Stats. Implemented: ORS 285B.659, ORS 285B.662, ORS 285B.665 & ORS 285B.689

Hist.: EDD 4-1994, f. & cert. ef. 2-24-94; EDD 10-1995, f. & cert. ef. 12-1-95; EDD 1-1997, f. & cert. ef. 1-7-97; Renumbered from 123-065-0040; EDD 1-1999, f. & cert. ef. 1-26-99

123-065-1570

Competitive Criteria: Successful and Sound Development

The following criteria evaluate the proposed enterprise zone's potential to induce additional investment and thereby stimulate local economic opportunity through new jobs, wealth and business diversity, and to otherwise integrate the enterprise zone into efforts to create and sustain a healthy community. Responses may be made at the Applicant's discretion or may consolidate two or more of the following criteria:

(1) Available or planned education and training opportunities, as well as career/personal counseling, job placement or similar services, for eligible employers and employees that:

(a) Could influence eligible business firms to locate, start up, expand or remain in the proposed enterprise zone; or

(b) Are capable of enhancing skill levels, productivity and earnings for the eligible employers and employees located in the proposed enterprise zone.

(2) History of economic and community development activities on the part of the Applicant or other jurisdictions and groups that are proposing to play an active role in promoting the proposed enterprise zone (maximum 150 points). For Preexisting Enterprise Zones:

(a) One point shall be awarded under this section for each of the first 150 jobs created by qualified business firms within the terminated or terminating zone since its most recent designation; and

(b) The Department shall determine the most recent figures for the jobs created and associated with such a zone based on information reported by the county assessor under ORS 285B.695, subject to revision through communications of the Department with qualified business firms or the assessor. This subsection relieves a relevant Applicant of having to report job figures in its enterprise zone application.

(3) Existing or planned availability or efficiency of public services within applicable areas of the proposed enterprise zone, including but not limited to utilities, transportation access, fire fighting and police services.

(4) Proposed package of local incentives and regulatory flexibility available to precertified and qualified business firms for the

duration of their exemptions within applicable areas of the proposed enterprise zone, such as: Reduction of permit fees, user fees or business and occupational license taxes, special zoning districts, simplified permitting procedures, or exceptions from local ordinances, other than regulations pertaining to land use, workers' health and safety, working conditions, wage and hour restrictions, and environmental concerns:

(a) Elements of local incentives and regulatory flexibility adopted within one year prior to the application deadline may be included in this package; and

(b) Applicants shall consider and comment on the fiscal impact to all relevant governmental entities of proposed reductions in direct service fees.

(5) A plan for marketing the proposed enterprise zone or the local area with respect to the expansion, retention, start-up or recruitment of eligible business firms.

(6) A Strategic Plan or activities related to "Strategic Planning" that are applicable to the proposed enterprise zone, and that identify and describe local assessments, objectives, actions and anticipated results in accordance with OAR 123-065-1650.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.656(4), ORS 285B.668(1) & ORS 285B.689(4)

Stats. Implemented: ORS 285B.659, ORS 285B.665, ORS 285B.671 & ORS 285B.689

Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99

123-065-1580

Competitive Criteria: Immediate Investment Prospects

The following criteria assess the immediate investment prospects within the proposed enterprise zone by eligible business firms considering a location or an expansion in employment within the zone, and responses may be made at the discretion of the Applicant and such firms:

(1) Such immediate prospects must be offered by eligible business firms, as defined under ORS 285B.707, on investments reasonably expected to qualify within the proposed enterprise zone no later than January 1 following the second full calendar year after the zone is to be designated.

(2) Evidence of such prospects shall take the form of:

(a) An approved precertification application;

(b) A list of precertified business firms prepared by the Applicant; or

(c) A letter from an executive officer of the eligible business firm on its letterhead to the Director or designee, stating:

(A) That the enterprise zone designation weighs crucially in the firm's decision to locate or expand;

(B) Any specific sites that the firm is considering for its investment;

(C) The estimated number of new employees to be hired within the zone by the time that the firm's investment will qualify for the enterprise zone exemption; and

(D) The estimated cost of the investment in qualified property as defined under ORS 285B.713.

(3) One point shall be awarded for each new employee to be hired by such a prospect.

(4) Three points shall be awarded for each \$1,000,000 to be invested in qualified property by such a prospect.

(5) Relevant evidence under section (2) of this rule must be received by the Department within 30 calendar days of the application deadline specified under OAR 123-065-1550(1).

(6) An eligible business firm may submit only one letter under subsection (2)(c) of this rule for each Round of Designation. If the firm submits two or more letters no points shall be awarded, but a letter may be withdrawn and replaced with a new letter, that is received by the Department within the time limit set out in section (5) of this rule.

(7) The Department shall award only 1/3 of the usual points under section (3) and (4) of this rule for an immediate investment prospect that plans to locate on a site inside of an enterprise zone that terminated within three years prior to the application deadline or on a site within five miles of a current enterprise zone, unless the Applicant or the eligible business firm sufficiently justify why:

(a) The prospective investment cannot now qualify under ORS 285B.686(2)(b) or any other provision of ORS 285B.650 to 285B.728, including allowances for changes in an existing enterprise zone boundary; or

(b) The designation of the enterprise zone is nevertheless indispensable to the firm's investment.

(8) If a final investment decision is made by the eligible business firm prior to the designation of the enterprise zone by the Director, no points shall be awarded for that investment. Evidence of such a decision includes but is not limited to a public announcement or official action by the firm.

(9) The Department reserves the right to seek information on the creditworthiness and business credibility of the eligible business firm before awarding points under this section.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.656(4), ORS 285B.668(1) & ORS 285B.689(4)

Stats. Implemented: ORS 285B.659, ORS 285B.665, ORS 285B.668 & ORS 285B.689

Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99

123-065-1590

Competitive Criteria: Miscellaneous

The following criteria characterize the likelihood that the proposed enterprise zone will function effectively and will achieve the economic development goals of the state as a whole, and responses may be made at the Applicant's discretion or may consolidate two or more criteria:

(1) A plan for managing the proposed zone, including but not limited to the appointment of a local enterprise zone manager or co-managers through provisions in the application or approved actions by the Sponsoring Governments.

(2) Existing or proposed arrangements for coordinating actions among the Sponsoring Governments, county assessor and other key participants in the proposed zone, including but not limited to the creation or naming of a Zone Association that is or will be empowered and constituted by resolution or agreement of the Sponsoring Government(s).

(3) Evidence of broad-based public support for the proposed zone by the local community, including but not limited to:

(a) A record of formal public discussion and involvement in the decisions to make application and to define the area for the zone; and

(b) Resolutions or letters of support for the zone from local organizations, institutions or property tax districts received by the Department within 30 calendar days of the application deadline specified under OAR 123-065-1550(1).

(4) For a proposed urban enterprise zone, the absence within the metropolitan statistical area of any other urban zone that will not be Terminated by Statute before the zone is to be designated (maximum of 150 points).

(5) The distance between a proposed nonurban enterprise zone and the nearest current enterprise zone that will not be Terminated by Statute before the zone is to be designated (three points for every mile of the shortest distance over paved roadways, up to a maximum of 300 points).

(6) The Enterprise Zone Population for a proposed nonurban enterprise zone (one point for every 50 inhabitants, up to a maximum of 150 points).

(7) Number of cities or counties participating in the proposed zone (100 points for each Sponsoring Government in excess of two).

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.656(4), ORS 285B.668(1) & ORS 285B.689(4)

Stats. Implemented: ORS 285B.659, ORS 285B.665, ORS 285B.671 & ORS 285B.689

Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99

Economic Information in Local Applications

123-065-1600

Definitions

In addition to terms defined in OAR 123-065-0000 and 123-065-1500, the following definitions apply to applications for designation of an enterprise zone:

(1) "Magnet Enterprise Zone" means a nonurban enterprise zone that has:

(a) A Sponsoring Government that is the most populous city of the county or counties in which the zone is located; and

(b) An Enterprise Zone Population equal to at least 25 percent of the population of the county or one of the counties in which the zone is located.

(2) "Population" as used in ORS 285B.662 means the number of inhabitants as determined by the most recently available data from the federal Bureau of Census or the Center for Population Research and Census (CPRC) at Portland State University.

(3) "Poverty level" as used in ORS 285B.662 is as defined by the U.S. Bureau of Labor Statistics of the U.S. Department of Labor.

(4) "Regional academic institution" as used in ORS 285B.662 means a nonprofit or not-for-profit center or institute that is engaged in demographic, economic, social or related studies and is associated with an accredited college or university, including but not limited to extension services offices.

(5) "Target Community" means an extensive residential area or group of such areas that is:

(a) Proximate to the proposed enterprise zone boundary;

(b) Dominates much of the proposed zone's immediate vicinity; and

(c) Encompasses the populace that the proposed zone is intended by the Applicant to help through employment opportunities or through relevant public or private activities that would make the Target Community economically stronger and more sustainable.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.662(3), ORS 285B.668(1) & ORS 285B.689(4)

Stats. Implemented: ORS 285B.656 - ORS 285B.662, ORS 285B.665 & ORS 285B.689

Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99

123-065-1610

Sources of Statistical Measures

Data submitted pursuant to OAR 123-065-1510 and 123-065-1560 as part of an application for designation of an enterprise zone shall adhere to the following guidelines:

(1) Unless otherwise stipulated, statistical measures must be based on annual data (not monthly or quarterly values) from an official source such as:

(a) The federal decennial census;

(b) Other federal agencies or sources;

(c) State agencies such as the Employment Department;

(d) Center for Population Research and Census (CPRC) at Portland State University;

(e) Regional academic institutions;

(f) Regional service centers or databases, which may include or be obtained from local planning offices, Council of Governments, or public, people's or municipal utilities;

(g) Special studies contracted with and performed by any of the above; or

(h) Published, official or peer-reviewed documents, reports or resources.

(2) No matter what source of data is chosen by an Applicant, the most recently available data from that particular source must be used.

(3) For any given statistical comparison, data for the proposed enterprise zone and data for the state or metropolitan statistical area must be of the same origin and cover the same year or years.

(4) In the application the Applicant shall:

(a) Cite sources of data;

(b) Provide bibliographic details; and

(c) Identify by letter of the alphabet the appendix to the application in which the Applicant:

(A) Inserts worksheets or analyses, as applicable;

(B) Includes a copy of any special report that is used or referenced in the application; or

(C) Inserts photocopies of the title page and any relevant sections, charts or tables from an official source document, as applicable.

cable. Properly labeled tables that consolidate isolated data from various pages of the same document may be substituted for copies of those pages.

(5) Nothing in this rule is meant to restrict an Applicant's ability to employ private, for-profit consultants, except that all analyses, estimates or conclusions by such consultants must be independently and plainly corroborated through official data.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.656(4), ORS 285B.668(1) & ORS 285B.689(4)

Stats. Implemented: ORS 285B.656 - ORS 285B.662, ORS 285B.665 & ORS 285B.689

Hist.: EDD 10-1995, f. & cert. ef. 12-19-95; EDD 1-1997, f. & cert. ef. 1-7-97; Renumbered from 123-065-0070; EDD 1-1999, f. & cert. ef. 1-26-99

123-065-1620

Correlation with Proposed Zone

For purposes of OAR 123-065-1510, 123-065-1560 and 123-065-1610:

(1) The Applicant of any proposed enterprise zone that is located entirely within a metropolitan statistical area may use equivalent data for the metropolitan statistical area instead of statewide data, regardless of whether the equivalent data represents only the in-state portion of the metropolitan statistical area.

(2) Unless otherwise stipulated, economic measures and statistics for a proposed enterprise zone may be based entirely on:

(a) Zone-specific data, in that the figures approximate economic conditions within the proposed boundaries and the immediate vicinity of the zone;

(b) Citywide data that is averaged and weighted by city population, but only if no less than 75 percent of the inhabitants residing within the proposed boundaries of the zone also reside inside of the incorporated area of the same city or cities;

(c) Countywide data, but only if the zone is a Magnet Enterprise Zone; or

(d) Metropolitan statistical area data, but only for a proposed urban zone.

(3) An Applicant proposing an enterprise zone designation may exercise the following latitude in developing zone-specific economic measures based on or derived from published income, employment, population and other data for Census Statistical Units:

(a) Special studies or documented analyses may be used to estimate or infer the actual population, employment or income levels for the relevant parts of Census Statistical Units that are divided by the proposed enterprise zone boundary;

(b) The Applicant may ignore the available data for Census Statistical Units that are divided by the proposed enterprise zone boundary, if no more than 25 percent of the inhabitants inside of the zone boundary reside within all such ignored Census Statistical Units;

(c) The Applicant may utilize the available data for Census Statistical Units that are divided by the proposed enterprise zone boundary, if no less than 75 percent of the inhabitants of each utilized Census Statistical Unit reside within the zone boundary;

(d) The requisite percentages in subsections (b) and (c) of this section must be verified in writing either by the person submitting the application for the Applicant or by the preparer of a study or report under OAR 123-065-1610(1), on the basis of personal knowledge or observation;

(e) For the purposes of estimating relative declines in Enterprise Zone Population, data from Census Statistical Units completely contained within unincorporated territory may be ignored;

(f) Notwithstanding the specific parameters of subsections (b), (c) and (d) of this section, the Applicant for designation of a proposed urban enterprise zone may use a Target Community that the Applicant identifies and demonstrates as conforming with OAR 123-065-1600(5) to the satisfaction of the Department (not applicable to nonurban zones).

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.662(3), ORS 285B.668(1) & ORS 285B.689(4)

Stats. Implemented: ORS 285B.656 - ORS 285B.662, ORS 285B.665 & ORS 285B.689

Hist.: EDD 1-997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99

123-065-1650

Strategic Planning

The Strategic Plan for purposes of OAR 123-065-1570(6) will be evaluated on its relevancy to the proposed enterprise zone and in terms of how completely and effectively it contains, addresses or utilizes the following:

(1) Coordinated economic, human, community and physical development for the zone, local area or region based on goals and a strategic vision for change arising from a broad-based consensus among local entities and people of various backgrounds.

(2) Involvement of local stakeholders and community institutions from the public, private and nonprofit sectors as full partners in developing and implementing this Strategic Plan and arrangements for maintaining such partnerships among the stakeholders and institutions, including as appropriate:

(a) Partnership arrangements by the Sponsoring Governments with other local governments throughout a region of this state or with part of a neighboring state;

(b) Partnership roles with state and federal agencies responsible for land use, transportation, human services, housing, the environment and so forth; or

(c) Formal governance or organization structures for purposes of this Strategic Plan.

(3) Assessments of community and regional circumstances, as well as analyses that identify how to capitalize on:

(a) Local and regional trends, challenges, strengths, opportunities and so forth;

(b) Other elements of this Strategic Plan, in particular the use of measurable outcomes and accountability under sections (9) and (10) of this rule; and

(c) Any type of attribute or resource (whether tangible and intangible) that is capable of enhancing development (for example, infrastructure, other economic incentives, human capital, past successes, desirable quality of life or renowned attractions).

(4) Funding or financing requested or received from any institution or governmental program, especially insofar as such financial resources are effectively integrated with other public or private investments in innovative ways, to support development in the proposed zone.

(5) Linkages to other elements of the application for designation of the proposed zone under OAR 123-065-1570 and 123-065-1590.

(6) Efforts aimed at furthering a favorable business climate, an active and involved private sector, locally created enterprises, expansion of existing commerce and industry, or local gains from international trade.

(7) Strategies, programs and projects to improve such matters as local public safety or social support systems for helping individuals and families to overcome personal problems and dependencies that restrict their ability to seize the economic opportunities envisioned by this Strategic Plan or the proposed zone or to contribute fully to their local community, over the near and long term.

(8) Strategies, municipal programs for capital improvement, comprehensive land use plans or designations and so forth, designed to achieve sustainable, high-quality development through:

(a) Public facilities, infrastructure and services, including systems for drinking water and wastewater disposal, that not only satisfy basic health and safety needs, but that can also be cost-effectively provided and maintained due to sufficient density of planned land uses;

(b) Compact build-out and well-mixed development of various land uses that occur within urban growth boundaries;

(c) The availability of various modes of transportation and telecommunication for business and personal needs or choices;

(d) A balanced range of housing that is suitable to the jobs and disposable household incomes that exist or are projected to exist within the applicable community; and

(e) Compatibility with community and regional concerns for the environment and for natural resources and habitat, especially efforts that strengthen the local economy by improving environ-

mental conditions or rectifying damage, including but not limited to the redevelopment of potentially contaminated land.

(9) Method or methods for measuring the success of this Strategic Plan, such as benchmarks, performance indicators or statistical techniques, including but limited to favorable changes in the social or economic data used under OAR 123-065-1560.

(10) An action plan or plans that describe immediate and progressively longer-term programs, activities, projects and so forth, along with a schedule:

(a) For achieving specified results or objectives for particular elements or for this overall Strategic Plan; and

(b) For reviewing the progress toward such results and objectives and for adjusting the Strategic Plan, as appropriate, within the original framework of consensus and partnership.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.656(4), ORS 285B.668(1) & ORS 285B.689(4)

Stats. Implemented: ORS 285B.659, ORS 285B.665, ORS 285B.671 & ORS 285B.689

Hist.: EDD 1-1999, f. & cert. ef. 1-26-99

Federal Enterprise Zones

123-065-1700

Purpose and Scope

OAR 123-065-1700 to 123-065-1799 are intended to address the way in which the Department and the enterprise zones under ORS 285B.650 to 285B.728 relate to Federal Enterprise Zones for purposes of ORS 285B.677.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.677(5) & ORS 285B.668(1)

Stats. Implemented: ORS 285B.677

Hist.: EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99

123-065-1710

Definitions

For purposes of this division of administrative rules:

(1) As used in ORS 285B.677(5)(b), "all areas within both the federal enterprise zone and the city or county are included in a state enterprise zone" means that for any designation or boundary change under OAR 123-065-1720 or 123-065-1730:

(a) All current areas of the Federal Enterprise Zone must be inside the boundary of the enterprise zone, as effected by the designation or change, inasmuch as they are also in a city or county that requests the designation or change and that sponsors the zone;

(b) Any area of the Federal Enterprise Zone inside a city or county that does not sponsor the zone is excluded; and

(c) The prohibition of OAR 123-065-0080(5) against overlapping zones must be maintained, irrespective of OAR 123-065-0080(6).

(2) **Federal Enterprise Zone** means any designation by any agency of the federal government that meets the following criteria, regardless of the name, including but not limited to Enterprise Communities and Empowerment Zones under sections 1391 et seq., **Internal Revenue Code** of 1986, such that the designation is:

(a) Not terminated;

(b) Located at least partially in this state;

(c) Delimited by formal boundaries and an established period of existence of at least five years from the time of the federal designation;

(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 subsection (d) of this section;

(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 285B.662; and

(g) Subject to a significant degree of national selectivity and specialness, in relation to subsection (f) of this section, such that having more than five of any designation type awarded to this state would be highly unlikely.

(3) As used in ORS 285B.677(2), "federal enterprise zone program" means the official activities related to the application,

designation or operation of a Federal Enterprise Zone or benefits exclusive to the designation that must or may involve state government participation, for which the lead agency role ascribed to the Department does not necessarily prevent another state agency from having primary responsibility for such an activity, as appropriate or required under state policies or federal guidelines.

[Publications: The publications referenced in this rule are available for review at the agency.]

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.677(5) & ORS 285B.668(1)

Stats. Implemented: ORS 285B.677

Hist.: EDD 5-1999(Temp), f. & cert. ef. 8-20-99 thru 10-23-99; EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99

123-065-1720

Designation Based on Federal Enterprise Zone Status

For purposes of a local request for designation of an enterprise zone under ORS 285B.677(3):

(1) City or county governments may apply (in a manner generally consistent with the provisions of OAR 123-065-1520, 123-065-1530 and 123-065-1540) for designation of a zone corresponding to the boundary of a single Federal Enterprise Zone located in the government's jurisdiction, such that:

(a) Application may occur at any time without regard to deadlines, a Round of Designation or an application form;

(b) Besides a map and legal description of the proposed enterprise zone, the application must document the Federal Enterprise Zone's official existence, location and satisfaction of OAR 123-065-1710(2), except to the extent that the Department is already knowledgeable of such satisfaction;

(c) Information related to local economic hardship, land use/zoning or estimated surface area is not necessary;

(d) The governments must engage in timely communication only with affected special service districts, comparable to what is required under OAR 123-065-1530(5);

(e) Any cosponsor of a zone terminated by order of the Director is not excluded from applying, irrespective of OAR 123-065-1520(3)(c);

(f) Application may include a request for hotels, motels or destination resorts to be eligible business firms in the zone consistent with ORS 285B.656(9);

(g) Proposals by a cosponsor for enhanced public services, local incentives for business firms and so forth shall not be binding; and

(h) The designation may not serve as the redesignation of a Preexisting Enterprise Zone.

(2) The designation of the zone may be made without regard to any limitation on the:

(a) Number or location of enterprise zones as authorized by state law; or

(b) Size or dimensions of an enterprise zone pursuant to OAR 123-065-0080 and 123-065-0090.

(3) The zone must still conform with the requirements for:

(a) Sponsorship, in accordance with OAR 123-065-0010;

(b) Being either urban or nonurban, pursuant to OAR 123-065-0100, except for a special waiver and determination, at the Director's discretion, as to the more suitable categorization; and

(c) Inclusion of all area in each cosponsor that is in the Federal Enterprise Zone, pursuant to OAR 123-065-1710(1).

(4) The Director's order of designation shall essentially follow OAR 123-065-1550(9).

(5) A cosponsor of an existing zone may not seek designation of an enterprise zone to include areas of a Federal Enterprise Zone under this rule, whenever:

(a) The Federal Enterprise Zone overlaps with a portion of the existing zone; or

(b) The cosponsor is a city with less than 100,000 in population.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.677(5) & ORS 285B.668(1)

Stats. Implemented: ORS 285B.677

Hist.: EDD 5-1999(Temp), f. & cert. ef. 8-20-99 thru 10-23-99; EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99

123-065-1730**Boundary Change to Incorporate a Federal Enterprise Zone**

For purposes of a local request to change the boundary of an existing enterprise zone under ORS 285B.677(4):

(1) The request for the boundary change shall be treated like any such request under ORS 285B.680, pursuant to OAR 123-065-0300 to 123-065-0399, except for applicable allowances and stipulations described in OAR 123-065-1720.

(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 under this rule, the existing zone is Terminated by Statute or may be terminated by order of the Director, as normal under ORS 285B.686, irrespective of the boundary change.

(4) If the Federal Enterprise Zone is prematurely terminated by the federal government for nonperformance, violation of federal guidelines or similarly unusual circumstances, then the Director may rescind the order changing the boundary of the zone under this rule, as if that boundary change had never occurred, except that any business firm located in an area removed from the zone shall be treated consistent with the relevant provisions in statute and law for location in a terminated enterprise zone.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.677(5) & ORS 285B.668(1)

Stats. Implemented: ORS 285B.677

Hist.: EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99

123-065-1740**Further Changes to Enterprise Zones under this Subdivision**

Once an enterprise zone has been designated or its boundary changed under OAR 123-065-1720 or 123-065-1730, a change in the boundary of the zone may be requested and done under ORS 285B.680, as otherwise allowed under applicable provisions, with the following clarifications:

(1) If the total area of the enterprise zone equals or exceeds 12 square miles, additional areas may be included, pursuant to OAR 123-065-1730, only if those areas are located:

(a) In parts of the Federal Enterprise Zone within a city or county requesting to 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 or county that sponsors the zone.

(2) If the zone exceeds the maximum overall allowed distance that is applicable to the zone, pursuant to OAR 123-065-0080(1) or 123-065-0090(2), additional areas may be included in one of the following ways, as allowed:

(a) Consistent with section (1) of this rule, whenever total area of the zone will or already does equal or exceed 12 square miles;

(b) Where such areas do not increase the overall distance within the zone, as described in ORS 285B.683(2)(b) and (c); or

(c) By virtue of a waiver in accordance with section 4(4), chapter 460, Oregon Laws 1999.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.677(5) & ORS 285B.668(1)

Stats. Implemented: ORS 285B.677

Hist.: EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99

123-065-1750**Termination of Enterprise Zones Designated under this Subdivision**

For an enterprise zone designated under OAR 123-065-1720:

(1) The zone is Terminated by Statute as normal under ORS 285B.686(3), subsequent to the effective date of designation by order of the Director, regardless of any intervening termination of the Federal Enterprise Zone by programmed operation of federal statutes or guidelines or by repeal of the operative federal law.

(2) The zone may terminate consistent with ORS 285B.686(4), by request of the zone sponsor or for failure of the sponsor to perform its duties.

(3) With respect to termination under either section (1) or (2) of this rule, an enterprise zone shall or may, respectively, be designated under ORS 285B.689 to replace the terminated zone, subject to all the regular provisions for a new zone.

(4) In addition, the zone may also be terminated by order of the Director, if the Federal Enterprise Zone is prematurely terminated by the federal government for nonperformance, violation of federal guidelines or similarly unusual circumstances. In this case, there is no provision for a replacement designation under ORS 285B.689, and the Director shall effectively rescind the order designating the zone, as if it had never existed, except that any business firm located in the zone shall be treated consistent with the relevant provisions in statute and law for location in a terminated enterprise zone

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.677(5) & ORS 285B.668(1)

Stats. Implemented: ORS 285B.677

Hist.: EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99

Director's Waiver**123-065-2000****Waiver of Provisions Not Required by Statute**

The Director or the Director's designee may waive non-statutory requirements of this division of administrative rules if such a waiver serves to further the goals and objectives of ORS 285B.650 to 285B.728 and results in sound economic development and job creation in the state.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110, ORS 285B.656(4), ORS 285B.668(1), ORS 285B.680(5) & ORS 285B.689(4)

Stats. Implemented: ORS 285B.650 - ORS 285B.728

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 1-1999, f. & cert. ef. 1-26-99

Long-Term Rural Tax Incentive**123-065-3000****Purpose and Scope**

OAR 123-065-3000 to 123-065-3999 clarify and establish provisions of sections 36 to 43, chapter 835, Oregon Laws 1997 (C-Engrossed House Bill 2143), for the determinations, procedures and requirements relevant to the 15-year property tax exemption and corporate excise tax credit available to business firms that undertake a qualifying investment inside a nonurban enterprise zones in a county experiencing particular economic hardship, but these rules do not control the fiscal parameters for the actual implementation of the exemption or credit by the county assessor or the Department of Revenue, and they are not intended to supersede the need for administrative rules in OAR chapter 150 for such purposes.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: OL 1997, Ch. 835, Sections 36 - 43

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98

123-065-3030**Relationship to Rest of Division**

OAR 123-065-3000 to 123-065-3999 do not affect the administrative rules elsewhere in this division that interpret ORS 285B.650 to 285B.728, and unless the context or specific references demand otherwise, such other parts of this division of administrative rules likewise do not apply to OAR 123-065-3000 to 123-065-3999, except for such fundamental matters as the existence and attributes of an enterprise zone or the enterprise zone system.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: OL 1997, Ch. 835, Sections 36 - 43

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98

123-065-3110**Definition of Economic Terms**

As used in section 36(1), chapter 835, Oregon Laws 1997:

(1) "The most recently revised annual average unemployment rate available" means the estimated percent of the civilian labor force that is unemployed on average for the entire pre-

vious year and other relevant prior years, as benchmarked and reported by the Employment Department in cooperation with the U.S. Bureau of Labor Statistics, as well as subsequent revisions to those percentages.

(2) "The median ratio of the unemployment rate of the county to the equivalent rate of the entire United States for each year" means that for each year the annual unemployment rate for the county is divided by the same year's national unemployment rate, and then from among the resulting quotients an equal number of the highest and lowest values are ignored, and if there are two remaining quotients, they are added together and divided by two.

(3) "At least 1.3 over the last 20 years or over the last 10 years" means that the figure derived under section (2) of this rule is computed separately for the most recent 20 consecutive years and the most recent 10 consecutive years, and that at least one of the two resulting figures is equal to or greater than 1.3 round to the nearest tenth.

(4) "The current unemployment rate of the county is at least one percentage point higher than the unemployment rate of the county for the immediately prior year" means, for example, that if a county's most recently revised annual average unemployment rate is 7.2 percent, then the equivalent annual unemployment rate of the county for the immediately prior year is equal to or less than 6.2 percent.

(5) "The current unemployment rate of the county is . . . at least 50 percent higher than the current unemployment rate of this state" means that the difference between the county's most recently revised annual average unemployment rate and the equivalent statewide unemployment rate divided by that same statewide rate equals or exceeds 0.50 rounded to the nearest hundredth.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: OL 1997, Ch. 835, Sections 36

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98

123-065-3130

Definition of Facility

As used in sections 36 to 40, chapter 835, Oregon Laws 1997, "facility" or "facility site" means and includes all of the following:

(1) A building or group of one or more associated buildings and/or structures, located at a common site or adjacent sites entirely inside the boundary of a single nonurban enterprise zone, each of which individually meets the following criteria:

(a) The building or structure is newly constructed after the application for certification; or

(b) In the case of a previously constructed or occupied building or structure, at least 15 percent of the total investment cost, as calculated for purposes of section 37(8)(a), chapter 835, Oregon Laws 1997, (see OAR 123-065-3500) consists of:

(A) New additions or modifications to the building or structure; and

(B) Other real or personal property newly acquired by the firm and newly installed in, at or on the building or structure.

(2) All of the real or personal property located on, at or inside a building or structure described in section (1) of this rule. (Vehicles, as well as devices that are pulled, pushed or carried by a vehicle, that are designed to hold and transport people, goods or property on highways, waterways or railways beyond the zone boundaries, including but not limited to aircraft, barges, carriages, railroad cars, trailers, trucks or ships, are excepted under this rule.)

(3) The taxable unit of land on which a building or structure described in section (1) of this rule is located.

(4) Any improvements to the land described in section (3) of this rule.

(5) Any property, otherwise described in this rule, that is leased by the business firm certified to receive the exemption under section 38, chapter 835, Oregon Laws 1997, but only if the firm is fully responsible for and pays all of the applicable ad valorem taxes potentially levied on such leased property through explicit provisions of the lease agreement.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: OL 1997, Ch. 835, Sections 36 - 40

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98

123-065-3140

Definition of Facility in Service

As used in sections 36 to 40, chapter 835, Oregon Laws 1997, "the facility is placed in service" has the same meaning as the beginning of operation of the facility and equivalent terminology.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: OLs 1997, Ch. 835, Sections 36 - 40

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98

123-065-3170

Definition of Sponsor

As used in sections 36 to 40, chapter 835, Oregon Laws 1997, "sponsor" or "zone sponsor" means the city or county government or governments that sponsor the nonurban enterprise zone in which the facility is located, because it or they applied for the zone's designation or a change in the zone boundary, consistent with relevant provisions in ORS 285B.650 to 285B.728, one consequence of which is that all cosponsors of the zone shall jointly approve or exercise any and all actions under sections 36 to 40, chapter 835, Oregon Laws 1997.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: OL 1997, Ch. 835, Sections 37 & 40

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98

123-065-3200

Determining Eligible Counties

For purposes of determining if a county satisfies section 36(1), chapter 835, Oregon Laws 1997, as a "county with chronic unemployment" pursuant to OAR 123-065-3110:

(1) Each calendar year upon receipt of the benchmarked annual unemployment rates from the Employment Department for the previous year, the Department shall analyze these rates, along with the most recently revised rates available for other relevant prior years, and ascertain which counties in the state satisfy the definition set forth in section 36(1), chapter 835, Oregon Laws 1997.

(2) The Department shall furnish a list, map or similar materials identifying all such counties with chronic unemployment and any existing nonurban enterprise zone in those counties to the respective local zone managers and county assessors and to any other manager or assessor in counties identified as having chronic unemployment in the previous year.

(3) The annual determination under this rule shall first take effect on the first day of the second month following the month indicated on the Employment Department tabulation of the benchmarked unemployment rates referenced in section (1) of this rule. This effective date shall be specified on applicable maps, lists or other associated communications by the Department.

(4) The determination under this rule, which will typically occur in the spring of each year, is final until the next year's determination, except as revised under OAR 123-065-3230 during the current calendar year.

(5) The Department shall regularly attempt to consult with the Employment Department each year in anticipation of the release of the benchmarked annual unemployment rates under section (1) of this rule and communicate as appropriate to affected parties, regarding conservative expectations about the earliest possible time of such release.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: OL 1997, Ch. 835, sections 36 & 37

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98

123-065-3230

Revisions to Currently Eligible Counties

For purposes of ensuring that the counties currently deemed as having chronic unemployment for the year accurately reflect

the most recently revised unemployment rates for the nation, state and county, following the determination under OAR 123-065-3200:

(1) During the course of the calendar year, the Department shall review any revision or correction to one or more relevant annual unemployment rates for the previous year and other prior years, as publically issued by the Employment Department or by the U.S. Bureau of Labor Statistics.

(2) The Department shall analyze such revised rate or rates in order to determine, based on the revised rate or rates, whether any county currently determined to have chronic unemployment does not, in fact, satisfy the requirements of section 36(1), chapter 835, Oregon Laws 1997, and whether any county currently determined not to have chronic unemployment does, in fact, satisfy such requirements.

(3) Pursuant to section (2) of this rule, if any county is to be thus removed or added to the counties currently identified under OAR 123-065-3200, the Department shall:

(a) Set a date of effectiveness for such changes comparable with OAR 123-065-3200(3);

(b) Notify the county assessor and local zone managers of nonurban enterprise zones in any county that is removed or added and when such a change is effective; and

(c) Revise and reissue relevant lists, maps and other materials, as appropriate.

(4) A prior determination under OAR 123-065-3200 or 123-065-3260 or under this rule may not be retroactively altered.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: OL 1997, Ch. 835, Sections 36 & 37

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98

123-065-3260

Initially Eligible Counties

Following October 4, 1997, until the effective determination under OAR 123-065-3200 based on revised 1997 annual unemployment rates, the following 20 counties have chronic unemployment under section 36(1), chapter 835, Oregon Laws 1997, based on the most recently revised annual unemployment rates for 1996: Baker, Columbia, Coos, Crook, Curry, Deschutes, Douglas, Grant, Harney, Hood River, Josephine, Klamath, Lake, Morrow, Tillamook, Umatilla, Union, Wallowa, Wasco and Wheeler County.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: OL 1997, Ch. 835, Sections 36 & 37

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98

123-065-3300

Written Agreement

For purposes of validating the existence of a requisite written agreement between a business firm and the sponsor of the non-urban enterprise zone under section 37(3)(c) and (d), chapter 835, Oregon Laws 1997:

(1) The agreement must consist at a minimum of the following:

(a) Acknowledgment of the firm's planned or pending application for certification under 37(1), chapter 835, Oregon Laws 1997;

(b) Concise description of the firm's proposed investments, facility and workforce;

(c) Explanation of how the proposed investments, facility and workforce are expected to satisfy the particular requirements under section 37(8), chapter 835, Oregon Laws 1997 (These requirements are not in any way superseded by the agreement);

(d) Identification of all the parties to the agreement and their representatives;

(e) Recognition of the zone sponsor's approval for the firm to receive the property tax exemption under section 38, chapter 835, Oregon Laws 1997; and

(f) With respect to additional conditions or requirements by the zone sponsor under section 37(2)(e) and (3)(c), chapter 835, Oregon Laws 1997:

(A) Indication that no such condition or requirement is imposed or requested; or

(B) Specification of any such condition or requirement, including at a minimum methods for demonstrating satisfaction of the condition or requirement and explicit consequences for failure to satisfy the condition or requirement.

(2) The agreement may be:

(a) Part of a broader accord involving parties other than the firm and the sponsor insofar as such an accord contains and cites the elements listed under section (1) of this rule; and

(b) Preauthorized, directly sanctioned by resolution or approved by other means of the zone sponsor or of each cosponsor as described in OAR 123-065-0520(3) or (4).

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: OL 1997, Ch. 835, Section 37

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98

123-065-3330

Timing of Written Agreement

For purposes of the requisite written agreement under section 37(3)(c) and (d), chapter 835, Oregon Laws 1997, between a business firm and the sponsor of a nonurban enterprise zone in a county with chronic unemployment as determined pursuant to OAR 123-065-3200, 123-065-3230 and 123-065-3260:

(1) The agreement must be concluded, signed and dated by an authorized representative or representatives of the firm and of the zone sponsor or of each cosponsor:

(a) On or after the effective dates on which:

(A) The zone is designated or the facility site is amended into the zone through a change in the boundary of the zone; and

(B) The county is determined to have chronic unemployment; and

(b) Before the corresponding effective dates on which:

(A) The zone is terminated; and

(B) The county is determined not to have chronic unemployment.

(2) The sponsor shall provide a copy of the concluded, signed and dated written agreement to the Department, which shall review the agreement and, if the following are accurate, issue a letter to be attached to the written agreement confirming that:

(a) As of the date of the agreement, the county is a county with chronic unemployment, and one party to the agreement is the sponsor of the nonurban enterprise zone; and

(b) The agreement conforms with the requirements of OAR 123-065-3300.

(3) Following the certification of the business firm under OAR 123-065-3430 or an effective date under subsection (1)(b) of this rule, the agreement may not be substantially modified, replaced, amended, supplemented or terminated, except as:

(a) Specifically contemplated in the original version of the agreement; and

(b) Mutually accepted and documented by all parties to the agreement.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: OL 1997, Ch. 835, Section 37

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98

123-065-3360

County/City Resolutions

For purposes of resolutions adopted by the governing body of a county or city for a business firm seeking certification for the property tax exemption on a proposed facility:

(1) Under section 37(3)(a), chapter 835, Oregon Laws 1997, a criterion for certification is adoption of such a resolution approving the exemption for the facility by the county and any city in whose jurisdiction the facility is located, such that:

(a) Both the county and the city must adopt such a resolution if any part of the facility is located in incorporated territory, but only the county, if the facility is located entirely in unincorporated territory;

(b) If such a county or city is the sponsor or a cosponsor of the zone, any authorization or approval of a written agreement pursuant to OAR 123-065-3300 by formal resolution of the city's or county's governing body shall automatically fulfill this criterion; and

(c) If such a county or city is neither the sponsor nor a cosponsor, it may nevertheless be a party to the written agreement in accordance with OAR 123-065-3300, but this criterion necessitating adoption of a formal resolution remains in effect.

(2) A resolution by the governing body of a city or county under section (1) of this rule or to approve a written agreement pursuant to OAR 123-065-3300 may be adopted at any time with respect to conclusion of the agreement or the effective dates under OAR 123-065-3330(1). However, if the resolution substantially contains, implements or provides for all or part of the agreement by the zone sponsor, as opposed to merely endorsing an otherwise operable agreement, the resolution must be adopted after final conclusion of the agreement and prior to termination of the zone in order for the business firm to be certified.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: OL 1997, Ch. 835, Section 37

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98

123-065-3400

Application for Certification

For purposes of the application for certification under section 37(1) and (2), chapter 835, Oregon Laws 1997:

(1) In order for a business firm to receive the exemption under section 38, chapter 835, Oregon Laws 1997:

(a) The firm must do the following before hiring new employees to work at the proposed facility and before commencing any physical work on the facility, such as construction, reconstruction, additions, modifications or installations of any qualifying property:

(A) Fill out the latest revision of 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;

(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 is located; and

(D) Submit a photocopy of the signed original of the form to either the local zone manager or the county assessor, whichever one does not receive the signed original under paragraph (C) of this subsection.

(b) With respect to the nonurban enterprise zone, submission of the application form under subsection (a) of this section must occur:

(A) On or after the effective date of the zone's designation or of a change to the zone boundary adding the facility site; and

(B) Before the effective date of the zone's termination.

(2) Submission of the application form under section (1) of this rule may occur before or after any relevant resolution, commitment, written agreement or effective date of determination of the county as a county with chronic unemployment.

(3) Estimated numbers, anticipated dates or other expectations indicated in the application form under section (1) are to be based on the best and most current information available to the business firm and shall not be construed as binding in and of themselves. The business firm shall inform the local zone manager and county assessor in writing of any significant changes to such expectations.

(4) Any commitment made by the business firm in the application form under section (1) or otherwise during the certification process shall be accepted as it is for purposes of certifying the firm, but such a commitment shall not relieve the firm of actually meeting any requirement as provided under section 37, 38, 39 or 40, chapter 835, Oregon Laws 1997.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: OL 1997, Ch. 835, Section 37

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98

123-065-3430

Certification

For purposes of section 37(3), (4) and (6), chapter 835, Oregon Laws 1997, following submission of the application for certification pursuant to OAR 123-065-3400:

(1) The signatures of the local zone manager and county assessor approving the certification application are not valid if either signature occurs:

(a) After any part of the facility begins commercial operations or is placed in service;

(b) After December 30, 2002; or

(c) Before any of the following:

(A) The commitments by the firm in the application to meet the requirements of section 37(8), chapter 835, Oregon Laws 1997;

(B) The relevant written agreement and the corresponding letter of confirmation by the Department, pursuant to OAR 123-065-3330;

(C) Any resolution by the sponsor or a cosponsor of the zone that endorses or effects the written agreement in paragraph (B) of this subsection; or

(D) The relevant resolution or resolutions by the county or city in which the facility is located, pursuant to OAR 123-065-3360.

(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 at or for the facility, although the cost of such work completed prior to certification shall not be considered in meeting the requirement of section 37(8)(a), chapter 835, Oregon Laws 1997.

(3) Upon satisfaction of the criteria under section 37(3), chapter 835, Oregon Laws 1997, except as conditioned in this rule and OAR 123-065-3460, the local zone manager and the county assessor must approve the certification application, at which point:

(a) The business firm is "certified," such that it is eligible for the exemption described in section 38, chapter 835, Oregon Laws 1997; 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(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: OL 1997, Ch. 835, Section 37

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98

123-065-3460

Post-Certification

Following certification pursuant to OAR 123-065-3430:

(1) In order for a certified business firm to qualify for the property tax exemption, the firm is responsible for providing written notification and information to the county assessor (and/or to the zone sponsor, Department or Department of Revenue, as requested) including but not limited to easily understood documentation on the following:

(a) All property comprising the facility and how it complies with OAR 123-065-3130;

(b) Ownership of any leased property at the facility and corresponding lease agreements;

(c) When and how the requirements under section 37(8), chapter 835, Oregon Laws 1997 are satisfied; and

(d) When and by what measure the facility is placed in service or begins operations.

(2) In the absence of or in addition to, but not in lieu of, applicable provisions in this division of administrative rules or OAR chapter 150, the county assessor may arrange with the business firm in writing for certain methods and mechanisms that verify or enforce compliance with section (1) of this rule and the requirements of section 37(8), chapter 835, Oregon Laws 1997, as

a condition of the county assessor's approval of the certification application, regardless of the zone sponsor's concurrence or incorporation of such arrangements in the written agreement under section 37(3)(c), chapter 835, Oregon Laws 1997.

(3) Failure by the county assessor to seek or obtain the arrangements described in section (2) of this rule shall not relieve the business firm of the obligation to demonstrate its compliance with and satisfaction of any applicable requirement.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: OL 1997, Ch. 835, Sections 37, 38 & 39

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-1998

123-065-3480

Subsequent Investments

For purposes of real or personal property initially located or completed at the facility site after January 1 of the assessment year during which the property tax exemption is triggered in accordance with the first sentence of section 38(2), chapter 835, Oregon Laws 1997:

(1) Any such property is subject to the tax exemption while located at the facility for the remainder of the 15 tax years available under section 38(3), chapter 835, Oregon Laws 1997.

(2) Neither the undertaking of additional operations, nor the construction, reconstruction, modification or installation of such property, at the facility shall automatically initiate any new or additional years of exemption on that or any property.

(3) A certified business firm may receive another (potentially overlapping) 15 years of exemption for all or part of the same facility only if the firm, in accordance with section 37, chapter 835, Oregon Laws 1997, again:

(a) Applies for certification;

(b) Meets the relevant criteria for certification;

(c) Satisfies the applicable requirements to qualify for the exemption; and

(d) Undertakes additional operations at the facility.

(4) The firm or the applicable facility must accomplish the items under section (3) of this rule entirely independent of and in addition to the respective actions and investments pertaining to any previously granted exemption under section 38, chapter 835, Oregon Laws 1997.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: OL 1997, Ch. 835, Sections 37 & 38

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98

123-065-3500

Minimum Qualifying Investment

For purposes of the minimum investment in the facility under section 37(8)(a), chapter 835, Oregon Laws 1997, to be made by a certified business firm in order to receive the property tax exemption, the total cost of the investment must equal or exceed \$50 million, such that:

(1) The relevant costs shall include only expenditures that can be documented through existing records or retrospective compilation of evidence, and that are incurred in association with property to be owned or leased by the firm and described in OAR 123-065-3130:

(a) For the construction, reconstruction, modification or installation of such property, including but not limited to materials, supplies, labor, building contractors, engineering, physical connections to utilities and so forth; or

(b) For the purchase of such property. (Alternatively, the current real market value shall be used for such property that is newly moved or transferred to the facility but that was already owned or leased by the firm.)

(2) Regardless of association with the facility or property included under OAR 123-065-3130, the relevant costs do not include:

(a) Cost of financing, public permit or service charges, legal fees, the value of the firm's own management, expenditures to maintain finished property and so forth;

(b) The value of property that at the time of certification under OAR 123-065-3430 is:

(A) Already owned or leased by the firm or owned by the current lessor of the property; and

(B) Located at the facility site.

(c) Expenditures associated with construction, reconstruction, modifications or installations that are completed at the time of certification (see OAR 123-065-3430(2)(b)); or

(d) Expenditures associated with purchases or with construction, reconstruction, modifications or installations of property that are completed on or after January 1 immediately following when the facility is placed in service.

(3) The property tax exemption may be triggered in accordance with the first sentence of section 38(2), chapter 835, Oregon Laws 1997, prior to satisfaction of the minimum investment required under section 38(7)(a), chapter 835, Oregon Laws 1997, if the facility is placed in service on or after January 1 but before July 1, because relevant expenditures made by the firm throughout the calendar year may continue to be counted under this rule, even though the exemption is triggered with the intervening tax year beginning on July 1.

(4) The firm shall provide evidence to the assessor in writing that this requirement is satisfied as soon as possible after such satisfaction is achieved.

(5) Property excluded under this rule does not necessarily affect what property may be exempted under section 38, chapter 835, Oregon Laws 1997, which depends on the definition of the facility pursuant to OAR 123-065-3130.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)

Stats. Implemented: OL 1997, Ch. 835, Section 37

Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98

123-065-3530

Minimum Qualifying Hiring

For purposes of the minimum hiring and employment to be met or maintained at an exempted facility under section 37(8)(b), chapter 835, Oregon Laws 1997, by a certified business firm seeking or receiving the property tax exemption:

(1) Employees are persons each working directly or indirectly for the firm at least 32 hours per week (consistent with OAR 123-065-0120(2)) in an established, permanent position.

(2) On or before December 31 five years after December 31 of the year in which the facility is placed in service:

(a) The number of employees of the firm in the state as a whole other than at the facility site must be the same or greater than the corresponding number of employees under subsection (3)(a) of this rule; and either

(b) One hundred or more employees must be located and performing their jobs at the facility site in addition to the corresponding number of employees under subsection (3)(b), in the case of a positive finding under section (4) of this rule; or

(c) One hundred or more employees must be located and performing their jobs at the facility site, in the case of a negative finding under section (4) of this rule.

(3) The firm shall establish and make available information showing the total number of employees, twelve months prior to when the facility is placed in service, each of whose job is located and performed:

(a) Within the state as a whole other than at the facility site; and

(b) At the facility site, as necessary under subsection (2)(b) of this rule.

(4) The firm shall establish and make available information showing whether any employee was located and performing work at the facility site at the time of the certification application's submission pursuant to OAR 123-065-3400. (A "negative finding" under this section means that there were no such employees; a "positive finding" means that there were one or more such employees.)

(5) The firm shall provide evidence to the assessor in writing that section (2) of this rule is satisfied as soon as possible after

such satisfaction is achieved. Satisfaction of subsection (2)(a) must occur after the facility is placed in service, but it is not required to occur at the same time as satisfaction of either subsection (2)(b) or (2)(c).

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)
Stats. Implemented: OL 1997, Ch. 835, Section 37
Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98

123-065-3560

Minimum Qualifying Annual Average Wage

For purposes of the minimum average annual wage to be met and maintained at an exempted facility under section 37(8)(c), chapter 835, Oregon Laws 1997, by a certified business firm seeking or receiving the property tax exemption:

(1) The total cash directly paid during a calendar year in the form of wages, salary, bonuses, shift differential, overtime or special awards or incentives (excluding benefits such as insurance, pensions and so forth) to any employee located and performing work directly or indirectly for the firm at the facility site shall be considered, regardless of hours worked per week or the permanence of the employee's position.

(2) For each job at the facility in which the employee works less than 40 hours per week or for less than the entire calendar-year period, the actual cash pay under section (1) of this rule shall be multiplied by the appropriate inverse time factor in order to approximate the equivalent level of annual pay, as if the employee had worked full-time for the entire period.

(3) Each employee's total cash pay under section (1) or (2) of this rule shall be summed and divided by the number of applicable employees or positions to derive an average.

(4) On or before December 31 five years after December 31 of the year in which the facility is placed in service, the computed average under section (3) of this rule must equal or exceed 150 percent of (1.5 times) the most recent average annual covered payroll per employee for all industries in the county in which the facility is located, as currently available and reported by the Employment Department.

(5) The firm shall provide evidence to the assessor in writing that section (4) of this rule is satisfied as soon as possible after such satisfaction is achieved.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)
Stats. Implemented: OL 1997, Ch. 835, Section 37
Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98

123-065-3600

Maintaining Employment and Average Wage

Following initial satisfaction of the minimum requirement for total employment or annual average wage pursuant to OAR 123-065-3530 and 123-065-3560 at a facility receiving an exemption under section 38, chapter 835, Oregon Laws 1997:

(1) In order to retain the exemption, the employment level at the facility may never be less than the minimum level required under either OAR 123-065-3530(2)(b) or (2)(c), whichever is applicable, until December 31 immediately preceding the end of the last tax year of the exemption.

(2) In order to retain the exemption, the annual average wage at the facility for the current calendar year may never be less than 150 percent of the county average annual payroll figure, as available and established at the time that this requirement is initially met, until December 31 immediately preceding the end of the last tax year of the exemption, regardless of how much:

(a) The facility's annual average wage initially exceeded this minimum wage level; or

(b) The county's average wage subsequently rises during the exemption period.

(3) Notwithstanding sections (1) and (2) of this rule, the employment level or annual average wage at the facility may fall below the mandatory minimum level under certain exceptional circumstances, including but not limited to the following:

(a) A natural disaster substantially disrupting the facility's operations;

(b) Twelve or more months of severe economic collapse or military conflict significantly affecting the United States, other major foreign economies and the firm's industry;

(c) Unforeseen coincidence of vacant positions at the facility, such as the case in which previously hired persons have died, voluntarily quit or been fired for cause; or

(d) Temporary curtailment in the operation of the facility lasting no longer than twelve months to undertake major repairs in order to correct mechanical breakdowns that are unusual and unexpected within normal engineering parameters and maintenance programming.

(4) Notwithstanding section (1) of this rule, the employment level of the facility may fall below the mandatory minimum level as a result of a temporary curtailment in the operation of the facility lasting no longer than twelve months to respond to situations, such as an excess accumulation of inventory or a reduction in demand for the facility's output, arising from an economic slowdown or recession affecting the nation, the western region of the nation, the state or the facility's overall industrial sector in North America, as evidenced by economic statistics (eventually) released by an agency of the state or federal government.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110 & ORS 285B.668(1)
Stats. Implemented: OL 1997, Ch. 835, Sections 37 & 39
Hist.: EDD 7-1998(Temp), f. & cert. ef. 4-30-98 thru 8-31-98; EDD 14-1998, f. 8-31-98, cert. ef. 9-1-98

DIVISION 68

INDUSTRIAL MODERNIZATION PROGRAM

123-068-0001

Purpose and Objectives

(1) The 1993 Oregon Legislative Assembly directed the Oregon Economic Development Department to establish an Industrial Extension Service in ORS 329.930(2) and ORS 285.175 to 285.179. This service will be managed by the Industrial Modernization Program.

(2) The objective of the Industrial Extension Service is to provide client-directed assistance to help traded sector firms determine and adopt the appropriate technology, management techniques, work organization, and workforce strategies to remain competitive in a global economy.

Stat. Auth.: ORS 285.065, ORS 285.175 - ORS 285.179 & ORS 329.930(2)
Stats. Implemented: ORS 285.065 - ORS 285.179 & ORS 329.930(2)
Hist.: EDD 8-1994(Temp), f. & cert. ef. 4-14-94; EDD 10-1994, f. 7-12-94, cert. ef. 7-15-94

123-068-0010

Rule Definitions

As used in this division of Administrative Rules, unless the context requires otherwise, the following terms mean:

(1) "Appropriate Technology": The application of activities, manufacturing methods, or products determined to best fulfill needs of a Small to medium-sized manufacturing firm to remain globally competitive.

(2) "Commission": The Oregon Economic Development Commission appointed under ORS 285.009.

(3) "Department": The State of Oregon Economic Development Department.

(4) "Director": The Director of the Department.

(5) "Industrial Extension Service": Problem-solving assessment and implementation services for small to medium-sized manufacturing firms, including, but not limited to, assistance to adopt appropriate technology, work organization, management techniques, or workforce development. A part of the services of the Industrial Modernization Program.

(6) "Industrial Modernization Program" or "Program": The activities of the Department including, but not limited to, the management of the Industrial Extension Service.

(7) "Manufacturing Firms": Traded sector companies as identified by rule of the Department under ORS 285.765 to 285.780 with fewer than 500 full-time equivalent employees.

(8) "Matching funds": Funds or in-kind contributions that are used in conjunction with Industrial Modernization Program funds to complete a project. Matching funds may include private funds, other public funds, services, materials, labor or other items related directly to the Project.

(9) "Project": A task, improvement or action needed to help implement the Industrial Modernization Program.

(10) "Technology Assessment": An audit performed by local Industrial Extension Service staff to determine the type of activity, product or expertise needed by the manufacturing firm.

(11) "Technology Deployment": The process of assisting manufacturing firms to assess, purchase, install and effectively use techniques, equipment or processes that improve quality and productivity.

(12) "Value Added": Sales minus cost of materials and labor.

Stat. Auth.: ORS 285.065, ORS 285.175 - ORS 285.179 & ORS 329.930(2)

Stats. Implemented: ORS 285.175 - ORS 285.179 & ORS 329.930(2)

Hist.: EDD 8-1994(Temp), f. & cert. ef. 4-14-94; EDD 10-1994, f. 7-12-94, cert. ef. 7-15-94

123-068-0020

Program Administration

(1) The Department's Industrial Modernization Program will manage the Industrial Extension Service. The program will provide funding and administrative services to the Industrial Extension Service. The program will also manage and participate in activities that promote technology transfer, appropriate manufacturing techniques, and workforce development. It will focus on building partnerships among public, private sector entities, and Industrial Extension Service providers to achieve these objectives.

(2) The Department shall designate public or private entities to provide access to or deliver Industrial Extension Services throughout the state. Eligible applicants shall include those set forth in ORS 285.175 to 285.179. The Industrial Extension Service provider is accountable to the Industrial Modernization Program.

(3) The Department will first operate a pilot program using the Oregon Advanced Technology Consortium (OATC) as the fiscal agent. The pilot program will deliver Industrial Extension Services through OATC, Oregon State University Extension, and other service providers as necessary. Once the pilot is complete in January 1995, the Department shall establish an application process that will give preference to non-profit entities whose boards consist of a majority from the private manufacturing sector. An entity shall be responsible for:

(a) One-on-one assistance to participating manufacturing firms, including a Technology Assessment of their business.

(b) Outreach and Marketing of Industrial Extension Service activities to manufacturing firms in Oregon.

(c) Establishment of a review process to determine the appropriateness of services to be delivered and to monitor results. This review body shall include a Department representative.

(d) Receiving Industrial Modernization Program funds to contract for or directly provide services or products at a reasonable cost to participating manufacturing firms.

(e) Contracting with manufacturing firms on a performance-basis. Manufacturing firms will request services from the Industrial Extension Service entity, which will work with the manufacturing firm to identify Matching Funds and monitor their use in the project.

(f) Monitoring performance of the manufacturing firm. Performance shall be monitored against the benchmarks defined in ORS 285.178 and shall include but not be limited to the following:

(A) Type of service provided;

(B) Name of manufacturing firm, industry, and location;

(C) Size of manufacturing firm measured by gross sales and employees;

(D) Impact of service on manufacturing firm measured by outcome including dollars saved, additional revenues, new markets (foreign and domestic), value added, or other quantifiable measures that best demonstrate Industrial Extension Service impact and return on investment;

(E) Number of manufacturing firms gaining industry recognition or certification, including supplier certification from major customers.

(g) Ongoing service to the Manufacturing Firm to assist with application of Appropriate Technology, Technology Deployment or service being applied;

(h) Reporting on a quarterly basis to the Department and Commission on the program's achievement of benchmarks as defined in ORS 285.178 and set forth in OAR 123-068-0020(2)(f).

Stat. Auth.: ORS 285.065, ORS 285.175 - ORS 285.179 & ORS 329.930(2)

Stats. Implemented: ORS 285.175 - ORS 285.179 & ORS 329.930(2)

Hist.: EDD 8-1994(Temp), f. & cert. ef. 4-14-94; EDD 10-1994, f. 7-12-94, cert. ef. 7-15-94

123-068-0030

Waivers

The Director may waive non-statutory requirements of this program if it is demonstrated that such a waiver would serve to further the goals and objectives of the Industrial Modernization Program.

Stat. Auth.: ORS 285.065, ORS 285.175 - ORS 285.179 & ORS 329.930(2)

Stats. Implemented: ORS 285.175 - ORS 285.179 & ORS 329.930(2)

Hist.: EDD 8-1994(Temp), f. & cert. ef. 4-14-94; EDD 10-1994, f. 7-12-94, cert. ef. 7-15-94

DIVISION 70

JOB TRAINING PARTNERSHIP ADMINISTRATION

First Source Hiring Agreements

123-070-0300

Purpose

The purpose of these rules is to implement ORS 461.740. Some of the provisions of these rules also apply to the Enterprise Zones provided for under Oregon Revised Statutes (ORS) 285.560 to 285.617.

Stat. Auth.: ORS 293.550, ORS 285.035(5) & ORS 285.065

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

123-070-0310

Rule Definitions

As used in OAR 123-070-0300 through 123-070-0370, the following definitions apply:

(1) "Benefitted Business" means:

(a) Any business that benefits directly or substantially from any program financed by state lottery funds.

(A) "Business that benefits directly or substantially from any program financed by state lottery funds" means any business firm which benefits from the following state lottery-funded programs: Regional Strategies (Oregon Revised Statutes 285.630 to 285.651 and 285.655); Strategic Reserve (ORS 285.653); Special Public Works Fund (ORS 285.700 to 285.750); Oregon Business Development Fund (ORS 285.403 to 285.447); Rural Investment Fund (ORS 285.648 and 285.649); and, Strategic Investment Program (ORS 285.398 to 285.402 and 307.123).

(B) All other state lottery-funded programs are not subject to these rules except as provided in OAR 123-070-0330(2).

(C) Firms which receive funds directly or indirectly for marketing or research programs are not subject to these rules. In addition, firms that are not considered Benefitted Businesses under these rules, but who receive contracts or purchase orders from a Benefitted Business are not subject to these rules.

(D) A firm that receives any grant or loan from the Department of \$50,000 or less is not a Benefitted Business and is not subject to these rules.

(b) A "precertified business firm" as defined under ORS 285.560(7).

(2) "Contact Agency" is defined as the entity designated to represent publicly funded job training providers as specified in OAR 123-070-0340(3)(a).

(3) "Department" means the Economic Development Department.

(4) "Directly Benefits from State Lottery-Funded Programs" as used in section (1)(a) of this rule means the firm is receiving a loan or grant directly from the Department or a grantee as defined in OAR 123-070-0320(2).

(5) "Director" means the Director of the Economic Development Department.

(6) "First Source Agreement" means the contract between a Contact Agency and a Benefitted Business pursuant to these rules.

(7) "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 Benefitted Business will honor the terms of the First Source Agreement entered into with the Contact Agency for local Publicly Funded Job Training Providers as specified in OAR 123-070-0350.

(8) "Interagency Agreement" is the agreement entered into between Publicly Funded Job Training Providers as specified in OAR 123-070-0340.

(9) "Program Manager" means the Department staff person authorized by the Director to manage a program listed in section (1)(a)(A) of this rule or the Enterprise Zone program.

(10) "Publicly Funded Job Training Provider," hereinafter referred to in these rules as "Provider", means the Employment Department, Adult and Family Services Division, and the Vocational Rehabilitation Division of the Department of Human Resources; administrative agents for the Job Training Partnership Act (JTPA) programs; and, community colleges. Other agencies may also be included in this definition if they are included in an Interagency Agreement entered into between these agencies as specified in OAR 123-070-0340.

(11) "Qualified Applicants" means applicants who meet the Benefitted Business minimum requirements for education, experience, and skills or who are able to meet these requirements within a reasonable time period (as negotiated with the Benefitted Business) with training provided either by the Benefitted Business or by a Provider.

(12) "Received Job Training Assistance" means the individual has received intake or other services from a Provider.

(13) "Substantially Benefits from State Lottery-Funded Programs" as used in subsection (1)(a) of this rule means that the business firm will receive benefits through facility or infrastructure improvements or modifications financed by another entity which receives state lottery-funded loan or grant assistance from the programs listed in paragraph (1)(a)(A) of this rule to implement such facility or infrastructure improvements or modifications. In addition, a business firm substantially benefitting must be the firm or firms for which the improvements were made and which had received notice under OAR 123-070-0330(1) that the First Source Agreement was a condition of receipt of benefit from lottery funds.

Stat. Auth.: ORS 293.550, ORS 285.035(5) & ORS 285.065

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

123-070-0320

Department Responsibilities

(1) Each Program Manager responsible for the programs defined in OAR 123-070-0310(1)(a)(A) is responsible for:

(a) Identifying the Benefitted Businesses that are subject to the First Source Agreement requirements of these rules;

(b) Notifying the appropriate Contact Agency when Benefitted Businesses have been identified;

(c) Notifying the applicant for lottery funds that the Benefitted Businesses must enter into a First Source Agreement;

(d) Including the First Source Agreement requirements in the program documents and loan or grant application forms and instructions;

(e) Promulgating the appropriate administrative rules for implementation of the First Source Agreement process in their program; and

(f) Notifying the appropriate Contact Agency when a Benefitted Businesses is required to enter into a First Source Agreement under the conditions of OAR 123-070-0330(2) and when the First Source Agreement requirement for an applicant for lottery funds is waived by the Director pursuant to OAR 123-070-0330(3) or (4).

(2) The responsibilities specified in section (1) of this rule may be delegated by contract to a grantee. In the Regional Strategies and Rural Investment Fund programs, "grantee" means a direct recipient of lottery funds which in turn provides such funds to a Benefitted Business. Grantees shall require Benefitted Business to enter into a First Source Agreement with the Contact Agency as specified in OAR 123-070-0350.

Stat. Auth.: ORS 293.550, ORS 285.035(5) & ORS 285.065

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

123-070-0330

Process for Entering Into a First Source Agreement

(1) Application materials for each program listed in OAR 123-070-0310(1)(a)(A) shall include a model First Source Agreement and related information for use by applicants for assistance under the program.

(2) The Director or designee may determine that business firms in addition to those Benefitted Businesses that receive lottery funds from the programs listed in OAR 123-070-0310(1)(a)(A) must enter into a First Source Agreement.

(3) Upon written recommendation of the Program Manager, the Director or designee may exclude from the First Source Agreement professional, managerial, technical and seasonal positions when it is determined such positions cannot be filled by persons likely to be referred by the Contact Agency or the Providers represented by the Contact Agency.

(4) Upon written recommendation of the Program Manager, the Director or designee may waive the requirement of entering into a First Source Agreement if it can be demonstrated that such waiver would serve to further the goals and objectives of the program.

(5) Any applicant for lottery funds may request an exemption from the requirements of these rules from the Program Manager at the time of application for the grant or loan, or before the contract is signed. Upon receiving an exemption request, the Program Manager shall submit the request to the Director or his designee who shall make the final decision. Waivers shall be granted only if it can be demonstrated that the waiver would serve to further the goals and objectives of the program. The Program Manager will notify the applicant if the request is granted or denied.

(6) The First Source Agreement entered into by a Benefitted Business will apply only to the Benefitted Business' operations at the site benefitted by the state lottery-funded program, unless other locations are designated by the Program Manager or specifically agreed to by the Benefitted Business and the Contact Agency for the Providers involved in the First Source Agreement.

Stat. Auth.: ORS 293.550, ORS 285.035(5) & ORS 285.065

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 9-1991, f. 9-6-91, cert. ef. 9-9-91; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96

123-070-0340

Local Interagency Agreement

(1) The Providers as defined in OAR 123-070-0310(10) that serve a common, defined geographic area shall enter into a written Interagency Agreement for that area.

(2) The Providers entering into the local Interagency Agreement shall design a process by which qualified job applicants are directed to Benefitted Businesses through a mutually agreed upon source of referral. The use of this referral source shall not preclude the Providers from developing a joint process for intake,

screening, and selecting qualified job applicants to be referred to a Benefitted Business.

(3) The written Interagency Agreement between the local Providers shall contain the following elements:

(a) Which Providers shall be the Contact Agency in negotiating and signing First Source Agreements;

(b) The geographic area to be covered by the Providers entering into the agreement;

(c) What services will be offered to the Benefitted Businesses and the entities responsible for providing these services;

(d) A description of the process by which applicants will be selected and referred to Benefitted Businesses with a First Source Agreement;

(e) The process for collecting the required data and transmitting it to the Contact Agency and to the Department;

(f) Any necessary conditions to assure the confidentiality of information collected or used through the Interagency Agreement; and

(g) Any other conditions agreed to by all parties to the Interagency Agreement;

(h) A sample First Source Agreement to be entered into by the Contact Agency and the Benefitted Business.

(4) The Interagency Agreement is subject to approval of the Director. If local parties to the Interagency Agreement are unable to agree on a Contact Agency, the Director will designate a Contact Agency.

(5) Any proposed modifications to the approved Interagency Agreement shall be submitted in writing to the Director for approval.

(6) The Contact Agency determined by the Interagency Agreement shall submit the name of the Contact Person for the Interagency Agreement to the Director, Attention: Job Training Partnership Act (JTPA) Administration Manager.

(7) The Contact Agency shall notify the Director within 10 business days if a new Contact Person or Contact Agency is chosen.

(8) The Contact Agency shall submit to the Director, Attention: JTPA Administration Manager, copies of all First Source Agreements entered into with Benefitted Businesses within 10 business days after signature of all parties.

Stat. Auth.: ORS 293.550, ORS 285.035(5) & ORS 285.065

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

123-070-0350

First Source Agreement

(1) The First Source Agreement shall contain at least the following provisions:

(a) This First Source Agreement for referral of qualified job applicants is entered into by _____, hereinafter referred to as the "CONTACT AGENCY," who represents the following agencies: _____; and, _____ hereinafter referred to as the "EMPLOYER."

(b) The EMPLOYER is or will be receiving benefits from the following programs (check only those that apply):

_____ State lottery-funded program, specify _____

_____ Enterprise Zone program

_____ Requesting extended exemption period (up to five years);

_____ Other; specify _____

(c) Under this First Source Agreement, the EMPLOYER will use the CONTACT AGENCY as its first source for referral of qualified applicants for all job openings of the EMPLOYER at the following location(s) _____. The EMPLOYER agrees to notify the CONTACT AGENCY of all job openings beginning on the date this agreement is effective through the end date of the agreement. Each notice shall include job qualifications and a deadline for referrals. The EMPLOYER shall assure that the CONTACT AGENCY has sufficient lead time (minimum lead time is _____ business days before the application close date, except in temporary or emergency situations) and

information as agreed upon by EMPLOYER and CONTACT AGENCY to make referrals for jobs that will be filled by the EMPLOYER. The EMPLOYER agrees that all job information will be shared with all agencies represented by the CONTACT AGENCY.

(d) To the extent that qualified applicants are available, The CONTACT AGENCY agrees to refer those individuals to the EMPLOYER for job openings.

(e) The EMPLOYER agrees to consider for employment the job applicants referred by the CONTACT AGENCY by the referral deadline; to notify the CONTACT AGENCY when such job applicants are hired by the EMPLOYER, and to inform the CONTACT AGENCY of the total number of filled job openings on a schedule agreed to among all parties to this Agreement.

(f) The EMPLOYER agrees to comply with all applicable State and federal laws regarding employment of qualified applicants.

(g) The EMPLOYER will make all final decisions on hiring new employees. After the EMPLOYER has hired the employees, the EMPLOYER assumes full responsibility for them as employees.

(h) All persons hired under this Agreement are subject to the EMPLOYER's regular personnel policies and procedures and have no special or additional rights arising from this Agreement.

(i) If the terms of this Agreement conflict with the terms of a collective bargaining agreement to which the EMPLOYER is a party, the bargaining agreement shall prevail.

(j) Both CONTACT AGENCY and EMPLOYER agree to attempt to resolve all areas of misunderstanding, disagreement or dissatisfaction with each other as soon as they arise. If the parties are unable to resolve the issue, either may:

(A) Initiate a meeting between the EMPLOYER and all parties to the Interagency Agreement; or

(B) Request assistance from the Oregon Economic Development Department.

(k) This agreement shall take effect on _____ and shall be in full force and effect until _____ (see: section (5) of this rule), or if an Enterprise Zone Agreement, until the end of the exemption period (see: OAR 123-070-0370(4)).

(l) APPROVED:

CONTACT AGENCY:

By _____
Name Title

Date

Contact Agency Contact Agency
Address Phone

EMPLOYER:

By _____
Name Title

Employer Unemployment Insurance Account Number

Employer Employer
Address Phone

(2) The Benefitted Business and the Contact Agency of the Providers may, through mutual agreement, add other components to this First Source Agreement as long as these components do not modify or nullify the intent of any of the provisions specified above.

(3) The inclusion of additional items in the First Source Agreement cannot be a condition for the Benefitted Business to

receive benefit from a state lottery-funded program or the Enterprise Zone program.

(4) Notwithstanding sections (2) and (3) of this rule, a locally developed model agreement may be approved by the Director if Benefitted Businesses will receive locally administered incentives in addition to state lottery funds or Enterprise Zone benefits. Such local agreement shall include all provisions in section (1) of this rule and may include additional provisions if those provisions are conditions for receiving additional incentives other than the state lottery funds or Enterprise Zone benefits.

(5) The term of agreement for Benefitted Businesses under the state lottery funded programs listed in OAR 123-070-0310(1)(a)(A) shall be at least 18 months from the date the Benefitted Business first requests referrals under the First Source Agreement.

(6) With the consent and approval of the sponsor of an urban Enterprise Zone, conditions that are derived directly from the policy adopted by the sponsor under ORS 285.577(4) may be added to the First Source Agreement.

Stat. Auth.: ORS 293.550, ORS 285.035(5) & ORS 285.065
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

First Source Agreements

123-070-0360

Data Collection

(1) The Contact Agency may collect the following data by Benefitted Business and by referring agency (Provider):

(a) The Benefitted Business' name, address and unemployment insurance account number;

(b) The name of the Provider that referred each person to the Benefitted Business;

(c) The names, sex, age, race, and income status of all persons referred to each Benefitted Business that has entered into a First Source Agreement with the Contact Agency and which of the referrals were hired by the Benefitted Business; and

(d) The total number of individuals hired by each Benefitted Business.

(2) Data collection may be accomplished through State level agency data bases, if available, or alternatively through hard copy documentation, such that it either is entered into the Employment Department database or is submitted to the Director (Attention: JTPA Administration Manager) in the format prescribed by the JTPA Administration, per the schedule outlined in section (3) of this rule.

(3) Any data that is collected under section (2) of this rule shall be submitted or entered as follows:

(a) For lottery Benefitted Businesses, the data shall be collected for the following quarters: January 1 through March 30; April 1 through June 30; July 1 through September 30; and October 1 through December 31. Each quarterly report shall include data not previously reported for each Benefitted Business that has entered into a First Source Agreement and is due within 30 calendar days after the end date of each quarter.

(b) For Enterprise Zone Benefitted Businesses, the data shall be collected on an annual basis subject to modification under section (4) or (5) of this rule, on June 30 at the end of each tax year during which the First Source Agreement is in effect, until the end of the Enterprise Zone exemption period. The report is due within 30 calendar days after June 30.

(4) If a Benefitted Business is receiving both state lottery funds and Enterprise Zone benefits, the data for the Benefitted Business shall be reported as specified in subsection (3)(a) of this rule during the period described in OAR 123-070-0350(5), with an annual compilation every June 30.

(5) For any Enterprise Zone Benefitted Business in an urban Enterprise Zone or for any Benefitted Business that is receiving an extended property tax abatement up to five years, the sponsor of the Enterprise Zone:

(a) May specify particular types and formats of data that the Benefitted Business must provide in order to demonstrate compli-

ance under ORS 285.605(2), (3)(b), (4), (5) or (6)(b) and to satisfy other information needs of the sponsor related to the Benefitted Business' hiring, employment, training, compensation and so forth;

(b) May request to have such data transmitted in conjunction with the data described in section (1) of this rule on either an annual or a quarterly basis insofar as is practical, and to the extent that the data specified under subsection (a) of this section relates to the First Source Agreement under OAR 123-070-0350; and

(c) Shall take appropriate and necessary safeguards to ensure the confidentiality of the data submitted under subsection (b) of the section in accordance with legal constraints affecting the Contact Agency.

(6) For Benefitted Businesses under the state lottery-funded programs listed in OAR 123-070-0310(1)(a)(A), the Employment Department and the JTPA Administration shall report appropriate compilations of data that is submitted under section (2) of this rule to the respective Program Managers, as requested by the Director.

(7) In instances where there is no activity within the reporting period, a negative report may be submitted by the Contact Agency.

Stat. Auth.: ORS 285.035(5), ORS 285.065 & ORS 285.183(4)
Stats. Implemented: ORS 285.605 & 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 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

123-070-0370

Enterprise Zones

(1) An "eligible business firm" as defined in ORS 285.560(2) shall enter into a First Source Agreement under OAR 123-070-0350 after the local manager of an Enterprise Zone has approved an application for precertification of the eligible business firm and before hiring new employees to qualify under ORS 285.600. The First Source Agreement shall take effect immediately after it has been signed by both the Contact Agency and the eligible business firm, or shortly thereafter, as agreed by both parties.

(2) In addition to the requirement under OAR 123-070-0340(8), the Contact Agency shall provide copies of a First Source Agreement with an Enterprise Zone Benefitted Business to the local zone manager, the county assessor and the Department of Revenue within ten business days of when the First Source Agreement is signed by all parties.

(3) The First Source Agreement shall apply to all of the Benefitted Business' sites within the Enterprise Zone.

(4) An Enterprise Zone exemption period - and thus the obligations of the Benefitted Business and Contact Agency under the First Source Agreement - ends when one of the following occurs:

(a) The county assessor refuses an application for precertification or an exemption under ORS 285.613 or 285.615, and the Benefitted Business either does not exercise or has exhausted its right to appeal such a refusal;

(b) The Benefitted Business formally withdraws its pending or approved precertification application;

(c) The county assessor disqualifies the Benefitted Business' exemption under ORS 285.617; or

(d) June 30 of the final tax year of the Benefitted Business' property tax exemption passes.

(5) If a Benefitted Business precertifies for an additional investment before the end of an outstanding exemption period, the effective period of the existing First Source Agreement shall be extended until the Benefitted Business' final Enterprise Zone property tax exemption for that zone has ended, as defined in section (4) of this rule.

(6) Unless the Contact Agency and the Enterprise Zone Benefitted Business agree otherwise, "job openings" for the purposes of OAR 123-070-0350(1)(c) may exclude positions and persons that are not recognized for the purposes of the Enterprise Zone requirements under ORS 285.600 - i.e., those employees who are temporary, seasonal, part-time (32 hours or less per week), hired solely to construct qualified property or working at ineligible operations as provided under ORS 285.603(4).

(7) Whenever an Enterprise Zone Benefitted Business 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 90 days prior to the closure date of the job opening, the Benefitted Business must indicate this situation and include the name of the prospective hire in its notification to the Contact Agency under OAR 123-070-0350(1)(c). On receiving such notification from a Benefitted Business, the Contact Agency is released, though not necessarily prohibited, from exercising its duty under OAR 123-070-0350(1)(d). This section does not excuse the Benefitted Business from OAR 123-070-0350(1)(e) or any other requirement.

(8) Within five business days after receiving a precertification application or being informed by a local Enterprise Zone manager of a precertification, the Contact Agency shall contact the Benefitted Business and arrange an opportunity to enter into a First Source Agreement. The Benefitted Business shall not be deterred from initiating such contact or from pursuing a prompt agreement.

(9) The local managers and the county assessors of the Enterprise Zone within the geographic area covered by an Interagency Agreement shall be notified along with the Director under OAR 123-070-0340(7), if a new contact person or Contact Agency is chosen.

Stat. Auth.: ORS 293.550, ORS 285.035(5), ORS 285.065 & ORS 285.575(1)
Stats. Implemented: ORS 461.740, ORS 285.575(7) & ORS 285.605(1)
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

123-070-0510 [Renumbered to 581-070-0510]

DIVISION 71

TARGETED TRAINING FUND

123-071-0000

Targeted Training Fund

From funds appropriated for such purposes, the Economic Development Department will make grants to community colleges for approved training programs. Programs must meet the following criteria in order to be eligible for grant funding:

(1) The training program must be clearly related to:

(a) The creation of new jobs with a new or expanding industry; or

(b) The workforce retraining needs of an existing industry facing closure, or serious disruption, if such retraining is not provided.

(2) The training program must be designed in cooperation with the affected industry, and the industry must provide reasonable assurance that qualified persons completing the program will be hired or retained.

(3) The training program must demonstrate evidence of cooperative planning with other publicly supported employment and training providers; the program must also demonstrate cooperative planning with other community colleges as appropriate on curriculum development.

(4) The training program must comply with all applicable federal and state laws.

(5) The training program must demonstrate a clear and positive economic impact by the business on the community, including the influx of dollars from outside of the community or state, or both.

(6) If the training program involves the needs of an industry that is relocating within the state, there must be a clear demonstration of economic gain for the state as a whole.

(7) The training program grants may not be used to supplant or replace Federal Jobs Training Partnership Act funds, or other funds available to the colleges.

(8) The training program must include a contribution from the affected industry. The contribution, which may be in cash or in-kind, must total not less than 50 percent of the grant award.

(9) The community college must agree to conduct an evaluation of the program. The evaluation shall include a description of the completed project's compliance with sections (1) through (8) of this rule. Additional information reports may be required by the Economic Development Department.

(10) Community colleges submitting multiple programs for funding may be requested to prioritize their proposals.

Stat. Auth.: ORS 285.223
Stats. Implemented: ORS 329.930
Hist.: EDD 25-1988, f. & cert. ef. 6-24-88

123-071-0010

Application and Awarding

(1) Colleges that intend to seek a grant for an eligible training program must submit a typewritten request that complies with the eligibility criteria. The request must be submitted to the Director of the Economic Development Department, and a duplicate copy must be submitted to the Commissioner for Community college Services. Requests will be reviewed by a committee composed of three people. The committee will be composed of the Commissioner for Community College Services and two others to be appointed by the Director of the Economic Development Department.

(2) The review committee will attempt to respond to all requests within 14 working days of receipt. Decisions of the review committee are subject to the approval of the Director of the Economic Development Department.

(3) The review committee shall ensure that all requests comply with the eligibility criteria. The review committee, however, shall also consider the following factors as it selects eligible projects for grant awards:

(a) Wage levels, career opportunities, degree of permanences, and other qualitative factors related to the jobs that are subject to the training program;

(b) The relative economic impact of the training program on the local community;

(c) The instructional quality of the training program; and

(d) The degree to which other resources are committed to the training program.

Stat. Auth.: ORS 285.223
Stats. Implemented: ORS 329.930
Hist.: EDD 25-1988, f. & cert. ef. 6-24-88

123-071-0020

Fund Operation

(1) This training program is supported by Oregon State Lottery Funds which are available to the Economic Development Department only in quarterly payments.

(2) The total amount available during the biennium is \$755,000.

(3) The review committee will seek to limit grant amounts to the resources available through the quarterly lottery payments. The review committee, however, may elect to allocate resources over two, or more, quarters to fund projects which demonstrate exceptional economic development potential.

Stat. Auth.: ORS 285.223
Stats. Implemented: ORS 329.930
Hist.: EDD 25-1988, f. & cert. ef. 6-24-88

123-071-0030

Targeted Training Grant Application Guidelines

(1) Carefully read the Administrative Rules regarding the Targeted Training Funds. Questions regarding the rules may be addressed to Economic Development Department (373-1200) or Office of Community College Services (378-8549).

(2) Completed applications must be typewritten, signed by the President of the applicant community college, and submitted to Bob Baugh within the Department of Economic Development and the Commissioner for Community Colleges. Mr. Baugh will need three copies and the Commissioner one copy.

(3) The completed applications must include the following:

(a) A comprehensive narrative description of the proposed project. The description should outline the nature of the training program (job creation or retraining), and the consequences that will follow if funding is not provided;

(b) The applicant college should list other publicly funded employment and training providers that have cooperated in planning the project. The list should include the names and telephone numbers of the key contact people representing other providers, and the nature and extent of their cooperation must be fully described;

(c) A similar listing must be developed for other community colleges that have assisted the applicant college with curriculum matters. A community college will not be required to divulge information that is proprietary in nature to a particular business;

(d) The applicant college must provide an assessment of the economic impact the training program will have on the affected community. This assessment can be tailored to fit the preferences of the applicant college, but it must — at a minimum — include:

(A) An estimate of the number of jobs affected by the training program; and

(B) A description of the wage levels of the jobs affected by the training program.

(4) If the proposed training project involves an industry relocating within the State of Oregon, the applicant college must contact Bob Baugh prior to submitting an application. Special documentation will be required for such applications.

(5) The applicant college must attach to the application a proposed budget for the training program. The college must formally certify that the state targeted training funds will not supplant JTPA, or other federal funds, that would be available for the project.

(6) Attached to the application must be a letter signed by an authorized representative of the affected industry. This letter must include certification that:

(a) The company has been involved in the design of the training program;

(b) Persons served by the training program will be hired or retained by the company;

(c) The company has contributed cash, or in-kind support, equal to, or greater than, 50 percent of the requested grant.

(7) If a college submits more than one application, the college must indicate which of the applications has higher institutional priority.

(8) Please note the four factors mentioned in the OAR that will also be considered by the Review Committee. If these factors are not fully addressed by your responses to sections (1) - (7) of this rule, please include a separate section discussing these items.

Stat. Auth.: ORS 285.223

Stats. Implemented: ORS 329.930

Hist.: EDD 25-1988, f. & cert. ef. 6-24-88

DIVISION 72

KEY INDUSTRY TRAINING

123-072-0001

Key Industry Training

Key Industry Training is part of the Work Force Development Fund established by Chapter 961, 1989 Oregon Session Laws, in the Oregon Economic Development Department (OEDD) to assist in the development of a trained, productive, and flexible work force. The State goal of the program is to promote the development and improvement of the work skills and basic literacy skills of employees working in all sectors of the State economy.

Stat. Auth.: ORS 285.205

Stats. Implemented: ORS 329.925

Hist.: EDD 3-1990, f. & cert. ef. 2-5-90

123-072-0005

Eligibility Criteria

From funds appropriated for such purposes, the Economic Development Department will make grants to community colleges for approved training programs. Programs must meet the following criteria in order to be eligible for grant funding:

(1) Proposals must be submitted by two or more firms in a single business, professional or industry sector, with preference given to programs developed in cooperation with business, professional, or industry association.

(2) Training proposals must lead to, sustain, or create family wage jobs.

(3) Training must provide employees with literacy or customized skill training.

(4) Training programs must provide employees with long-term comprehensive skills development.

(5) Businesses or industry must provide reasonable assurance that qualified persons completing the program will be hired or retained.

(6) Training programs must demonstrate evidence of cooperative planning with other publicly supported employment and training providers, as well as cooperative planning with other community colleges as appropriate on curriculum development.

(7) Training programs must comply with all applicable federal and state laws.

(8) Grant funds may not be used to supplant or replace Federal Job Training Partnership Act Funds, or other funds available to the colleges.

(9) At a minimum, training program grants must be matched on a dollar per dollar basis by the affected businesses or industry.

(10) The community college must agree to conduct an evaluation of the program. The evaluation shall include a description of the completed project's compliance with sections (1) through (8) of this rule. Additional informational reports may be required by the Economic Development Department.

(11) Community colleges submitting multiple programs for funding may be requested to prioritize their proposals.

Stat. Auth.: ORS 285.205

Stats. Implemented: ORS 329.925

Hist.: EDD 3-1990, f. & cert. ef. 2-5-90

123-072-0010

Submission Process

Applications by community colleges or colleges must comply with all eligibility criteria. Three copies of the application must be submitted to the Oregon Economic Development Department, Work Force Development Section. Funding will be subject to the availability of moneys in the Key Industry Training Fund. Applications will be accepted at any time.

Stat. Auth.: ORS 285.205

Stats. Implemented: ORS 329.925

Hist.: EDD 3-1990, f. & cert. ef. 2-5-90

DIVISION 73

OREGON DISLOCATED WORKER PROGRAM

123-073-0000

Purpose and Objectives

(1) The purpose of these rules is to describe the distribution requirements and methodology for the Oregon Dislocated Worker Fund so that assistance may be provided to eligible dislocated workers who become dislocated from employment in Oregon and who are Oregon residents.

(2) Projects funded under this program shall meet one or more of the following program objectives:

(a) Provide training services to eligible dislocated workers;

(b) Provide emergency medical assistance, child care, transportation, or other services required for the successful completion of training to eligible dislocated workers;

(c) Provide tuition and training related tools and materials to eligible dislocated workers;

(d) Develop curricula to enhance employability of eligible dislocated workers;

(e) Provide services to eligible dislocated workers who have been laid off or who have received a notice of layoff which will assist them to become reemployed;

(3) Projects funded under this program shall be evaluated by the Economic Development Department in conjunction with the Office of Community College Services and the Employment Department.

(4) Projects funded under this program shall demonstrate that federal funding is reduced, inadequate or otherwise not available for the proposed activities.

Stat. Auth.: ORS 285.035(5) & ORS 293.550

Stats. Implemented: Ch. 688, OL 1991

Hist.: EDD 18-1991(Temp), f. & cert. ef. 12-20-91; EDD 15-1992, f. 11-4-92, cert. ef. 11-13-92; EDD 6-1993(Temp), f. & cert. ef. 8-13-93; EDD 11-1993, f. & cert. ef. 10-7-93; EDD 13-1994, f. & cert. ef. 11-2-94

123-073-0010

Definitions

(1) "Eligible Dislocated Workers" are individuals who:

(a) Have been dislocated from employment in Oregon and are Oregon residents;

(b) Have been terminated or laid off or who have received a notice of termination or layoff, are eligible for or have exhausted their entitlement to unemployment compensation and are unlikely to return to their previous industry or occupation;

(c) Have been terminated or have received a notice of termination of employment, as a result of any permanent closure of or any substantial layoff at a plant, facility or enterprise;

(d) Are long term unemployed and have limited opportunities for employment or reemployment in the same or a similar occupation in the area in which such individuals reside, including older individuals who may have substantial barriers to employment by reason of age; or

(e) Were self-employed, including farmers and ranchers, and are unemployed as a result of general economic conditions in the community in which they reside or because of natural disasters.

(2) "Training Services": Training which is for occupations or skills for which there are, or are expected to be, reasonable employment opportunities in the area in which the individual resides, or in another area to which the individual is willing to relocate, or which relate to the development of a self-employment enterprise for which there is reasonable opportunity for success.

(3) "Emergency Medical Assistance": Medical intervention required for an eligible dislocated worker to begin or continue training services.

(4) "Child Care": Care required for dependent children of an eligible dislocated worker so that the worker can attend training services.

(5) "Tuition": Fees charged by private and public training or educational institutions for eligible dislocated workers to attend classes approved on the dislocated worker's Individual Service Strategy.

(6) "Activities Authorized by the Economic Development Department":

(a) Any service required by the eligible dislocated worker to successfully complete the training services;

(b) Reasonable and prudent administrative costs associated with providing training services, emergency medical assistance, child care and tuition for eligible dislocated workers.

(7) "Fund": The Oregon Dislocated Worker Fund created by Oregon Laws 1991, Chapter 688, Section 6(1).

(8) "Department": The Oregon Economic Development Department.

(9) "Local Planning Groups": Representatives from JTPA, Office of Community College Services and Employment Department and shall be geographically consistent with the Workforce Quality Council regions.

Stat. Auth.: ORS 129, ORS 285.035(5), ORS 293.550 & ORS 688

Stats. Implemented: Ch. 688, OL 1991

Hist.: EDD 18-1991(Temp), f. & cert. ef. 12-20-91; EDD 15-1992, f. 11-4-92, cert. ef. 11-13-92; EDD 6-1993(Temp), f. & cert. ef. 8-13-93; EDD 11-1993, f. & cert. ef. 10-7-93; EDD 2-1995, f. 2-28-95, cert. ef. 3-1-95

123-073-0020

Project Administration

(1) The Department, in conjunction with Office of Community College Services and Employment Department, shall require local planning groups to develop plans and apply for funds, to provide training services, emergency medical assistance, child care, tuition and activities authorized by the Department to assist eligible dislocated workers.

(2) Local plans and applications for funds shall be reviewed and approved by Administrators from the Department, Office of Community College Services, and the Employment Department.

(3) Bids shall be reviewed by a committee selected by the Department which shall make recommendations to the Administrators.

(4) Upon selection of a service provider, a contract or intergovernmental agreement shall be entered into between the Department and the service provider.

(5) Service providers shall be reimbursed for actual expenses for services included in the contract or intergovernmental agreement.

(6) Service providers shall provide such information as is requested by the Department and agreed upon in the contract negotiation process.

(7) Services providers' expenditures shall be reviewed during the term of the contract and unexpended funds may be captured and reallocated. Distribution of funds from the Fund is subject to Lottery fund shortfalls.

Stat. Auth.: ORS 129, ORS 285.035(5), ORS 293.550 & ORS 688

Stats. Implemented: Ch. 688, OL 1991

Hist.: EDD 18-1991(Temp), f. & cert. ef. 12-20-91; EDD 15-1992, f. 11-4-92, cert. ef. 11-13-92; EDD 6-1993(Temp), f. & cert. ef. 8-13-93; EDD 11-1993, f. & cert. ef. 10-7-93

123-073-0030

Appeals

(1) Eligible dislocated workers who receive training services and can demonstrate that they have exhausted appeal processes provided by the service provider may appeal to the Director of the Department.

(2) The Director shall make an administrative decision on an appeal within 30 days of receiving all pertinent information from the interested parties. The Director's decision shall be final and not subject to review.

Stat. Auth.: ORS 129, ORS 285.035(5), ORS 293.550 & ORS 688

Stats. Implemented: Ch. 688, OL 1991

Hist.: EDD 18-1991(Temp), f. & cert. ef. 12-20-91; EDD 15-1992, f. 11-4-92, cert. ef. 11-13-92; EDD 6-1993(Temp), f. & cert. ef. 8-13-93; EDD 11-1993, f. & cert. ef. 10-7-93

DIVISION 74

WORKFORCE DEVELOPMENT: CAPACITY BUILDING

123-074-0000

Program Purpose

Capacity building in the private sector is an activity which can be funded from the Workforce Development Fund. The purpose is to develop the capacity of existing business, labor, trade, and professional organizations to organize and implement partnership activities in workforce development and/or high performance work systems.

Stat. Auth.: ORS 285.220(4)(b)

Stats. Implemented:

Hist.: EDD 7-1992(Temp), f. & cert. ef. 4-15-92; EDD 2-1993, f. & cert. ef. 3-9-93

123-074-0010

Definition

"High Performance Work System" means a system with a well-trained and well-educated workforce capable of: Improving a

company's work organization and production processes; adapting existing machine technology and selecting new equipment; developing new and improved products or services; and engaging in continuous learning, both on-the-job and in the classroom.

Stat. Auth.: ORS 285.220(4)(b)

Stats. Implemented: Ch. 765, OL 1993

Hist.: EDD 7-1992(Temp), f. & cert. ef. 4-15-92; EDD 2-1993, f. & cert. ef. 3-9-93

123-074-0020

Eligibility Criteria

From funds appropriated for such purposes, the Oregon Economic Development Department shall make grants to business, trade, labor, and professional organizations that lead to partnership activities with schools and colleges focused on workforce improvement and/or high performance work systems. Schools and colleges are not eligible directly as recipients of these funds. Activities may include, but not be limited to:

- (1) Promote and market education and workforce information;
- (2) Organize recruit and train members for participating in partnerships;
- (3) Provide for student participation in work experience, curriculum development and teacher in service;
- (4) Assist in program evaluation, research and policy development;
- (5) Sponsor conferences and seminars;
- (6) Develop high performance work and learning systems; and
- (7) Assist labor-management cooperative program.

Stat. Auth.: ORS 285.220(4)(b)

Stats. Implemented: Ch. 765, OL 1993

Hist.: EDD 7-1992(Temp), f. & cert. ef. 4-15-92; EDD 2-1993, f. & cert. ef. 3-9-93

123-074-0030

Submission Process

(1) Applicants shall comply with all eligibility criteria of these rules. Three copies of proposals shall be submitted to the Oregon Economic Development Department, Workforce Development Section, 775 Summer Street, N.E., Salem, OR. Proposals will be accepted at any time.

(2) Proposals shall be submitted in a format that includes, at a minimum, the following:

- (a) Objectives: What applicant proposes to accomplish with the funds;
- (b) Benefit: Number of people or organizations that will be served;
- (c) Capability: Previous experience of applicant to carry out this proposal;
- (d) Match: Source and amounts of matching funds. Documentation of economic hardship if applicable;
- (e) Evaluation: How achievement of proposed objectives will be measured and reported;
- (f) Partnership: How the proposal meets the requirement of partnerships with schools and colleges;
- (g) State Priorities: How proposal addresses one or more of the state priorities listed in ORS 285.243 (1):

(A) Compatibility with adopted statewide economic development strategies;

(B) Develop skills for employment in family wage jobs;

(C) Demonstrate business and community financial support and participation;

(D) Secure commitments from business or the community to continue the program;

(E) Coordinate activities and resources with other training program;

(F) Provide for follow-up and evaluation of program results;

(G) Provide access to training for women, members of minority groups and the economically disadvantaged.

(3) Funding will be subject to the availability of lottery funds.

(4) Grants shall be matched, in cash or in kind, by the applicant on a 1:1 basis. However, at the Director's discretion, the 100 percent matching requirements may be modified if the Director determines that the amount of the match is reasonable.

(5) Compliance with eligibility criteria of these rules does not necessarily entitle a project to funding. Funding is at the sole discretion of the Director of the Oregon Economic Development Department after consultation with the Office of Community College Services. Consideration will be given to available funds, actual or potential competing proposals or uses for remaining funds, and the priorities of the Department in implementing ORS 285.220(4)(b).

Stat. Auth.: ORS 285.220(4)(b)

Stats. Implemented: Ch. 765, OL 1993

Hist.: EDD 7-1992(Temp), f. & cert. ef. 4-15-92; EDD 2-1993, f. & cert. ef. 3-9-93

123-074-0040

Distribution of Funds

(1) In each fiscal year, of the moneys reserved by law for the programs described in ORS 285.210 to 285.220, 285.225, and 285.223 to 285.237:

(a) Not less than 33 percent of such moneys shall be expended on programs organized and operating within urban areas of this state; and

(b) Not less than 33 percent of such moneys shall be expended on programs organized and operating outside urban areas in this state.

(2) OEDD may reduce the expenditures for programs within urban or nonurban areas to less than the percentage of available moneys required under section (1) of this rule when grant applications from either the urban areas or nonurban areas are not sufficient to allow expenditure of moneys as required under section (1) of this rule.

(3) As used in this section, "urban area" means any territory situated within the urban growth boundaries of the cities of Portland, Salem, Keizer, and Eugene.

Stat. Auth.: ORS 285.220(4)(b)

Stats. Implemented: Ch. 765, OL 1993

Hist.: EDD 7-1992(Temp), f. & cert. ef. 4-15-92; EDD 2-1993, f. & cert. ef. 3-9-93

123-074-0050

Project Administration

(1) Upon being awarded funding under the Capacity Building Program, the recipient and OEDD shall enter into an agreement that describes the responsibilities of each partner in the implementation of the funded project.

(2) This agreement shall include, but is not limited to:

(a) A work program;

(b) Method for documentation of matching funds;

(c) Reporting requirements on use of funds, status and impacts of the project;

(d) Grant drawdown procedures; and

(e) Remedies for non-performance.

(3) Recipients shall indicate the project is a partnership with the Oregon Lottery and the Workforce Development Program.

Stat. Auth.: ORS 285.220(4)(b)

Stats. Implemented: Ch. 765, OL 1993

Hist.: EDD 7-1992(Temp), f. & cert. ef. 4-15-92; EDD 2-1993, f. & cert. ef. 3-9-93

DIVISION 75

COMMUNITY FACILITIES GRANT PROGRAM

123-075-0000

Purpose

As provided in Chapter 937, Oregon Laws 1989, to make grant awards to municipalities to acquire, construct, alter or rehabilitate community facilities.

Stat. Auth.: Ch. 937, OL 1989

Stats. Implemented: Ch. 937, OL 1989

Hist.: EDD 7-1990, f. 4-5-90, cert. ef. 4-6-90

123-075-0005

Definitions

(1) "Community Facilities": Buildings, structures and other property, including real property, owned and operated by a municipality, non-profit corporation or other governmental agency that provides educational, commercial, recreational, cultural, social or similar services to the public, but does not include projects funded through the Special Public Works Fund or the County Fairs and Special Events Grant programs.

(2) "Department" or "OEDD": The Oregon Economic Development Department.

(3) "Director": The Director of the Oregon Economic Development Department or his designee.

(4) "Municipalities": Cities, counties, water districts, port districts, metropolitan service districts, and federally-recognized Indian tribes.

(5) "Urban Project": A project located within the acknowledged Portland Metropolitan Area Regional Urban Growth Boundary or within the acknowledged urban growth boundaries of the cities of Eugene, Springfield, Salem, Keizer or Medford or a project which principally benefits one of these areas.

(6) "Rural Project": Any project which does not fit the definition of "urban project."

Stat. Auth.: Ch. 937, OL 1989

Stats. Implemented: Ch. 937, OL 1989

Hist.: EDD 7-1990, f. 4-5-90, cert. ef. 4-6-90

123-075-0010

Eligible Applicants

The governing bodies of municipalities defined in OAR 123-075-0005 may submit Community Facilities grant applications to OEDD.

Stat. Auth.: Ch. 937, OL 1989

Stats. Implemented: Ch. 937, OL 1989

Hist.: EDD 7-1990, f. 4-5-90, cert. ef. 4-6-90

123-075-0015

Eligible Activities

(1) Acquisition, construction, alteration, or rehabilitation of community facilities.

(2) A "project" is a single eligible activity, but may include other related activities if they are necessary to the completion of the project. The Department reserves the right to eliminate one or more specific proposed activities from an application prior to grant award if it determines that those activities do not relate to the central purpose of the project.

Stat. Auth.: Ch. 937, OL 1989

Stats. Implemented: Ch. 937, OL 1989

Hist.: EDD 7-1990, f. 4-5-90, cert. ef. 4-6-90

123-075-0020

Ineligible Activities

Grant funds may not be used for:

(1) Payment of administrative costs, costs for preliminary planning, legal, fiscal and economic investigations, reports and studies.

(2) Payment of costs associated with ordinary maintenance of facilities such as painting, minor repairs, or other work normally done on a repeated basis during the life of a facility to keep it in good repair.

(3) Facilities intended for the general conduct of government, such as city halls, police stations or courthouses.

(4) Projects which have been funded through the Special Public Works Fund program or the County Fairs and Special Events Grant Program. In addition, applications for projects which are eligible under current rules for the Special Public Works Fund program will not be accepted for consideration under the Community Facilities program rules unless applications for those projects have been submitted to and have been rejected for funding from the Special Public Works Fund program during the current biennium.

Stat. Auth.: Ch. 937, OL 1989

Stats. Implemented: Ch. 937, OL 1989

Hist.: EDD 7-1990, f. 4-5-90, cert. ef. 4-6-90

123-075-0025

Maximum Awards

(1) The Director shall establish the maximum grant award amount in the **Applicant's Handbook** prepared for the program. No more than 85 percent of the total cost of a project may be paid with a Community Facilities grant.

(2) During any one biennium, the Department shall award not less than 33 percent of the Community Facilities grant funds to rural projects and not less than 33 percent of the Community Facilities grant funds to urban projects. The percentages shall be applied to funds available for award to projects after allowable funds for Department administration have been subtracted.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: Ch. 937, OL 1989

Stats. Implemented: Ch. 937, OL 1989

Hist.: EDD 7-1990, f. 4-5-90, cert. ef. 4-6-90

123-075-0030

Program Information

(1) The program will be administered by OEDD.

(2) The Department will prepare an **Applicant's Handbook** for the program. The Applicant's Handbook will address the program schedule, the required content of applications, and project selection procedures, and will outline basic administrative requirements.

(3) The most current edition of the **Applicant's Handbook** on file with the Department for the Community Facilities Grant Program is adopted as part of these rules by reference.

(4) Applications will be accepted only at times specified and announced by the Director.

(5) Applications may be made only on State of Oregon Community Facilities Grant Program application forms, or on a clear copy of the forms. Application forms must be filled out completely and signed by the highest elected official of the applicant.

(6) Funding decisions will be made by the Director following receipt of a staff report and recommendation.

(7) Appeals of decisions regarding Community Facilities applications shall be handled as follows:

(a) Appeals of local decisions must be made at the local level;

(b) The Director will consider appeals of the Department's funding decisions as provided in the **Applicant's Handbook**. Only the applicant may appeal. The Director's decision regarding an appeal is final.

(8) Applicants which are awarded Community Facilities grants by the Department must enter into a contract with the department.

(9) Contracts must be signed by the highest elected official of the applicant or another authorized official.

(10) Project amendments must have prior approval of OEDD through a contract amendment if they change the cost, scope, location, objectives, time frame of the approved activities, or beneficiaries. Failure to gain prior approval for amendments may result in sanctions.

(11) The Department shall prepare and provide to Community Facilities grantees a **Grant Management Handbook** which specifies requirements for local grant management, reporting, and recordkeeping, and outlines the Department's monitoring and grant closeout procedures.

(12) Grantees will be monitored by OEDD and must maintain records sufficient for monitoring.

(13) Grantees must display conspicuously on the site information specifying that the project is being financed by the Oregon State Lottery. OEDD will furnish posters for this purpose.

(14) Recaptured funds are those which are returned to the state through close-out of the project, termination for cause, or other means. Funds recaptured will be added to the Community Facilities account and disbursed through the process described in the **Applicant's Handbook**.

(15) Any money not used for approved project activities must be returned to the state.

(16) A facility assisted with a Community Facilities grant must be operated and maintained for the purposes described in the application for five years following completion of the project and closeout of the grant. Ownership and operation of the facility must remain with an eligible applicant, another public entity, or a non-profit organization. Sale of the facility or change of use within this period of time may result in the state's demand for return of the full grant amount. In the case where the grantee is not the owner of the facility, the grantee is responsible for ensuring that the other public entity non-profit owner complies with this condition.

(17) The Director may waive non-statutory requirements of these program rules if it is demonstrated that such a waiver would serve to further the purpose of the program.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: Ch. 937, OL 1989

Stats. Implemented: Ch. 937, OL 1989

Hist.: EDD 7-1990, f. 4-5-90, cert. ef. 4-6-90

123-075-0035

Sanctions

- (1) The state may:
 - (a) Bar a grantee from applying;
 - (b) Revoke the award;
 - (c) Require return of unexpended funds;
 - (d) Require repayment of expended funds;
 - (e) Withhold other state funds which may be due the grantee from the Special Public Works Fund; or
 - (f) Exercise other remedies available under state law.
- (2) The sanctions may be invoked if any of the following conditions are applicable:
 - (a) A signed grant contract is not returned by the grantee within sixty days of the receipt of contract documents; or
 - (b) None of the project activities have begun within four months after execution of the grant contract; or
 - (c) Third party agreement is not legally binding within six months of the grant award; or
 - (d) State regulations have not been met; or
 - (e) There is a significant deviation from the grant-funded activities; or
 - (f) The Department has found that significant corrective actions are necessary to protect the integrity of the project funds, and those corrective actions have not been or will not be made within a reasonable time; or
 - (g) The grantee is not complying with provisions of the grant contract; or
 - (h) The project is not completed within two years of the execution of the grant contract; or
 - (i) Ownership of the facility funded by the grant is transferred to a non-eligible applicant or entity or the use of the facility is significantly changed from the use set out in the application.
- (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 grant contract.
- (4) No action will be taken by the state until the grantee, in accordance with terms of the grant contract, has been notified in writing and has been given a reasonable time to respond and to correct the deficiencies noted.

Stat. Auth.: Ch. 937, OL 1989

Stats. Implemented: Ch. 937, OL 1989

Hist.: EDD 7-1990, f. 4-5-90, cert. ef. 4-6-90

DIVISION 80

OREGON COMMUNITY DEVELOPMENT BLOCK GRANT (OCDBG) PROGRAM

123-080-0000

Purpose

(1) As provided in Oregon Revised Statutes (ORS) 285A.075, the Oregon Economic and Community Development Department (Department) 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 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.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 285A.075 & ORS 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 120-021-0000; 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

123-080-0010

Definitions

- (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).

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 285A.075 & ORS 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 120-021-0002; 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; ED 1-1995, f. 1-31-95, cert. ef. 2-1-95; EDD 12-1999, f. & cert. ef. 10-11-99

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.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 285A.075 & ORS 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

123-080-0030

Program Information

- (1) The Department 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 the relative importance has been 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 are to 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 method of distribution section of the 1999 Annual Update to the State of Oregon Consolidated Plan for Housing and Community Development on file with the Department is adopted as part of these rules by reference.

(4) The Department shall prepare and provide to Community Development Block Grant recipients a Grant Management Handbook which specifies requirements for local grant management, reporting, and recordkeeping, and the Department's monitoring and grant closeout procedures.

(5) The Department 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 Chapter 279 of the Oregon Revised Statutes, Chapters 137 (Divisions 030, 035 and 040) and 125 (Divisions 300, 310, and 360) of the Oregon Administrative Rules, and ORS Chapter 244. The State's performance under a grant contract is conditioned upon the recipient's compliance with the provisions of ORS 279.312, 279.314, 279.316, 279.320, and 279.555 (1997), which are incorporated by reference herein. The State's model rules for public bidding and public contract exemptions shall govern procurements under grant contracts even if the recipient or its public contract review board does not adopt those, or similar, rules. If the recipient or its public contract review board has adopted similar rules, those rules shall apply.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 285A.075 & ORS 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 120-021-0010; 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

123-080-0040

Program Sanctions

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 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) & ORS 190

Stats. Implemented: ORS 285.680 - ORS 285.690

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

DIVISION 85

POLICY GUIDELINES FOR LOANED PERSONNEL

123-085-0000

Purpose

Consistent with the policies set forth in ORS 184.010, the Economic Development Department has developed the following guidelines for loaned personnel based on the premise that the Department and the private sector will both benefit from a formal Loaned Personnel Program. Utilization of loaned personnel extends state resources and brings new talent and expertise to the Department. Loaned personnel return to their companies with a greater understanding of state government and improved job skills without having to sever all relationships with their parent companies.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.040

Hist.: EDD 33-1988, f. 11-30-88, cert. ef. 12-1-88

123-085-0010

Definition of Loaned Personnel

For purposes of this rule, "loaned personnel" means individuals who are on the payroll of a private entity, or have taken a leave of absence without pay from a private entity and have agreed for a period of time to work for the State. Other than reimbursement for expenses, a loaned employee shall not receive any compensation from the State of Oregon during the period of time in which he or she is working for the State.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.040

Hist.: EDD 133-1988, f. 11-30-88, cert. ef. 12-1-88

123-085-0020

Use of Loaned Personnel Within the Economic Development Department

(1) Loaned personnel may be used to advise and assist State personnel, and/or to carry out a specific task or assignment for which they have particular expertise. The duration of employment of loaned employee shall not exceed two years.

(2) Loaned personnel will be considered volunteers for administrative purposes and may be assigned:

(a) To fill limited duration or temporary positions to work on special projects or pilot projects;

(b) To fill certain positions within the Department which have been identified as "loaned personnel" positions and which will be filled on an ongoing basis by rotating loaned personnel;

(c) To fill authorized positions in unusual cases.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.040

Hist.: EDD 33-1988, f. 11-30-88, cert. ef. 12-1-88

123-085-0030

Application of Ethics Laws

(1) For the purposes of ORS Chapter 244, loaned personnel are public officials and are subject to and will comply with all Oregon ethics laws.

(2) Upon becoming a loaned employee with the Department, each individual shall read the ethics statutes and rules: ORS 171.725 to 171.790, ORS Chapter 244 and OAR Chapter 199; and sign a statement indicating that he or she understands that during his/her tenure as a loaned employee, he or she is a public official and will comply with Oregon's ethics laws and rules. Compliance with all ethics laws and rules is the responsibility of the loaned employee.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.040

Hist.: EDD 33-1988, f. 11-30-88, cert. ef. 12-1-88

123-085-0040

Preventing Potential Conflicts of Interest

(1) To prevent loaned employee conflicts of interest:

(a) All loaned personnel recruitment and project assignments shall be approved by the Director; and

(b) Loaned personnel will not be assigned to any projects which create any potential conflicts of interest or the appearance thereof; and

(c) The following is a summary of applicable ethics laws and is not controlling if inconsistent with such laws as administered by the Oregon government Ethics Commission:

(A) As defined by ORS 244.020(5), “potential conflict of interest” means any action or any decision or recommendation by a loaned employee serving in the capacity of a public official, the effect of which would be to the private pecuniary benefit or detriment of the loaned employee, a member of the loaned employee’s household, or company from which the person is on loan or any other businesses which the person is associated with;

(B) At any time that a potential conflict of interest is identified, the loaned employee shall report such a potential conflict immediately in writing to his or her immediate Economic Development Department supervisor and the Economic Development Department Director. At the time of such a report, the Economic Development Department Director shall determine if a conflict of interest does exist and if so, how the conflict will be avoided or resolved. The Director may consult with the Attorney General’s office, the Ethics Commission, or the Executive Department, as appropriate. The determination shall be made by the Director in writing and placed in the loaned employee’s personnel file and the files of any projects with respect to which the potential conflict exists;

(C) The loaned individual shall not use confidential information gained with the Department for his or her own personal benefit or for the competitive advantage of the company from which the loaned individual is loaned or any business with which he or she is associated or otherwise use his or her office to obtain financial gain for himself or herself or any associated businesses. Prior to beginning work in the Department, the loaned individual shall sign a statement agreeing to the above terms.

(2) An entity having loaned personnel with the Economic Development Department is not thereby precluded from competing for State contracts.

(3) The individual loaned employee is required to comply with all of the guidelines set forth in this document, ORS Chapter 171.725 to 171.790, ORS Chapter 244 and OAR Chapter 199, ORS Chapter 179 and other applicable rules and statutes governing state contracting.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.040

Hist.: EDD 33-1988, f. 11-30-88, cert. ef. 12-1-88

123-085-0050

Liability and Worker’s Compensation

(1) The loaned person is a public official while serving in that capacity and performing within the scope of assigned duties and functions and is covered for tort claims as provided in ORS 30.260 to 30.300.

(2) The State of Oregon will be solely responsible for workers’ compensation insurance for loaned personnel and will give appropriate notice to the Risk Management Division in the Department of General Services.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.040

Hist.: EDD 33-1988, f. 11-30-88, cert. ef. 12-1-88

123-085-0060

Expenses

A loaned individual shall be entitled to reimbursement for actual authorized expenses subject to any additional requirement the Director may impose such as preauthorization requirements or maximum amounts.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.040

Hist.: EDD 33-1988, f. 11-30-88, cert. ef. 12-1-88

123-085-0070

Orientation of Loaned Personnel

(1) Upon beginning work as a loaned employee, each person shall be given an orientation to the Department that shall include a review of all ethics laws and rules, **Policy Guidelines for Loaned Personnel**, and the **State Executive Handbook**.

(2) Each loaned employee shall be assigned one Economic Development staff person to serve as a mentor.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.040

Hist.: EDD 33-1988, f. 11-30-88, cert. ef. 12-1-88

123-085-0080

Reporting Loaned Personnel Support

(1) The Economic Development Department shall notify the Ethics Commission, the Executive Department, and any other pertinent agency of state government within two weeks after the first day of work of any loaned employee at the Economic Development Department. For example, the Public Utility Commission will be notified of loaned personnel received from regulated utilities.

(2) The Economic Development Department shall issue biannual reports to the Executive Department indicating all loaned personnel support received by the Department during the preceding six months. The report shall include the estimated value of the loaned employee should the State have contracted for those services and a brief listing of the projects that the loaned employee has completed or is working on during the reporting period.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.040

Hist.: EDD 33-1988, f. 11-30-88, cert. ef. 12-1-88

DIVISION 86

POLICY GUIDELINES FOR EMPLOYEES WHOSE SALARIES ARE CONTRIBUTED BY THE PRIVATE SECTOR

123-086-0000

Purpose

(1) Consistent with the policies set forth in ORS 184.010, the Economic Development Department has developed this rule for personnel who are on the state payroll, but whose salary is contributed to the state by the private sector. For the purposes of this document these employees shall be referred to as “private sector supported employees”.

(2) The Economic Development Department recognizes that the use of private sector supported employees extends state resources and brings new talent and expertise to the Department. The private sector supported employee gains experience, a greater understanding of state government and improved job skills.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.040

Hist.: EDD 34-1988, f. 11-30-88, cert. ef. 12-1-88

123-086-0010

Definition of Private Sector Supported Employees

(1) For purposes of this document, “private sector supported employees” shall refer to an employee who, for all other purposes, is a state employee and who receives a state salary but whose salary is contributed to the state by one or more private sector entities.

(2) A private sector supported employee shall not receive any direct compensation from any private entity for services performed as a state employee during the period of time in which he or she is working for the state.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.040

Hist.: EDD 34-1988, f. 11-30-88 cert. ef. 12-1-88

123-086-0020

Compensation of the Private Sector Supported Employee

(1) The private sector supported employee’s salary may be donated by one or more private entities. Funds will be paid into a Special Projects Revolving Fund in the Economic Development Department and designated for that employee’s salary.

(2) The private sector supported employee shall receive the same salary any other state employee would receive for the same

position. The Department will identify the salary range and classification of the position to be filled by the private sector supported employee prior to beginning employment.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.040

Hist.: EDD 34-1988, f. 11-30-88, cert. ef. 12-1-88

123-086-0030

Use of Private Sector Supported Employee Within the Economic Development Department

(1) Private sector supported personnel will be used in the following ways:

(a) To fill limited duration or temporary positions to work on special projects or pilot projects;

(b) To fill certain positions within the Department which have been identified as “loaned personnel” positions and which will be filled on an ongoing basis by rotating loaned personnel;

(c) To fill authorized positions in unusual cases.

(2) Private sector supported personnel shall not be used to displace or replace an existing state employee.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.040

Hist.: EDD 34-1988, f. 11-30-88, cert. ef. 12-1-88

123-086-0040

Application of Ethics Laws

(1) For the purposes of ORS Chapter 244, private sector supported personnel shall be regarded as any other state public official and be subject to and shall comply with all state ethics laws accordingly.

(2) Upon becoming a private sector supported employee with the Department, each individual shall read the ethics statutes and rules: ORS Chapter 171.725 to 171.790, ORS Chapter 244 and OAR Chapter 199; and sign a statement indicating that they understand that they are regarded as a public official and will comply with all of the ethics laws and rules accordingly. Compliance with all ethics laws and rules is the personal responsibility of the private sector supported employee.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.040

Hist.: EDD 34-1988, f. 11-30-88, cert. ef. 12-1-88

123-086-0050

Preventing Potential Conflicts of Interest

(1) To prevent conflicts of interest:

(a) All private sector supported personnel recruitment and project assignments must be approved by the Director;

(b) The Economic Development Department will not assign any private sector support personnel to a project which creates any potential conflicts of interest or the appearance thereof;

(c) The following is a summary of applicable ethics laws and is not controlling if inconsistent with such laws as administered by the Oregon Government Ethics Commission:

(A) As defined by ORS 244.020(5), “potential conflict of interest” means any action or any decision or recommendation by a private sector supported employee serving in the capacity of a public official, the effect of which would be to the private pecuniary benefit or detriment of the private sector supported employee, a member of the private sector supported employee’s household, or company which the person is supported by or any other businesses which the person is associated with;

(B) At any time that a potential conflict of interest is identified, the private sector supported employee shall report such a potential conflict immediately in writing to their immediate Economic Development Department supervisor and the Economic Development Department Director. At the time of such a report, the Economic Development Department Director shall determine if a conflict of interest does exist and if so, how the conflict will be avoided or resolved. The Director may consult with the Attorney General’s office, the Ethics Commission or the Executive Department, as appropriate. The determination shall be made by the Director in writing and placed in the private sector supported

employee’s personnel file and the file of any project with respect to which the potential conflict exists;

(C) The private sector supported employee shall not use confidential information gained within the Department for their own personal benefit or for the competitive advantage of the company which the private sector supported individual is supported by or of any business they are associated with, or otherwise use their office to obtain financial gain for themselves or any associated business. At commencement of work in the Department, the private sector supported employee shall sign a statement agreeing to the above terms.

(2) An entity providing financial contributions to the Economic Development Department is not thereby precluded from competing for state contracts.

(3) The individual private sector supported employee is required to comply with all of the guidelines set forth in this document, ORS Chapter 171.725 to 171.790, ORS Chapter 244 and OAR Chapter 179 and other applicable rules and statutes governing state contracting.

(4) Entities providing resources used to pay for private sector support personnel are not entitled to any special rights, privileges or information from the state.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.040

Hist.: EDD 34-1988, f. 11-30-88, cert. ef. 12-1-88

123-086-0060

Employee Benefits, Worker’s Compensation, Liability Issues and Expense Reimbursement

(1) For purposes of employee benefits, workers’ compensation coverage, and expense reimbursement, the private sector supported employee shall be regarded as any other state employee and shall receive the same entitlements as other state employees of the same salary range and classification.

(2) The private sector supported employee is a public official while serving for the agency in that capacity and performing within the scope of assigned duties and functions and is covered for tort claims as provided in ORS 30.260 to 30.300.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.040

Hist.: EDD 34-1988, f. 11-30-88, cert. ef. 12-1-88

123-086-0070

Orientation of Donated Personnel

(1) Upon beginning work as a new private sector supported employee, each person shall be given an orientation to the Department that shall include a review of all ethics laws and rules, **Policy Guidelines for Loaned Personnel**, and the **State Executive Handbook**.

(2) Each private sector supported employee shall be assigned one Economic Development staff person to serve as a mentor.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.040

Hist.: EDD 34-1988, f. 11-30-88, cert. ef. 12-1-88

123-086-0080

Reporting Private Sector Supported Employees and Donated Funds

(1) The Economic Development Department shall notify the Ethics Department, the Executive Department and any other pertinent agency of state government of each private sector supported employee and the source of the contributions received to pay for that employee’s salary within two weeks after the first day of work of that employee.

(2) The Economic Development Department shall issue biannual reports to the Executive Department, the Ethics Commission, the Secretary of State, and any other appropriate state agencies, identifying all contributions received by the Department, including contributions designated to pay for private sector supported employees.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.040

Hist.: EDD 34-1988, f. 11-30-88, cert. ef. 12-1-88

DIVISION 87

POLICY GUIDELINES FOR PRIVATE SECTOR CONTRIBUTIONS

123-087-0000

Purpose

Consistent with the policies set forth in ORS 184.010, the Economic Development Department has developed the following guidelines for soliciting, accepting and reporting private sector contributions. These guidelines are based on the premise that building a stronger economy for Oregon is best accomplished by both the public and private sector working together to support existing Oregon businesses and encouraging economic growth in the state.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.086

Hist.: EDD 35-1988, f. 11-30-88, cert. ef. 12-1-88

123-087-0010

Description of Private Sector Support

For the purpose of this rule, "private sector support" shall refer to financial contributions and/or in-kind goods and services received by the Department that have a market value over \$500. Such donations may be received from individuals, partnerships, or corporations, or any other private entities.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.086

Hist.: EDD 35-1988, f. 11-30-88, cert. ef. 12-1-88

123-087-0020

Solicitation and Use of Private Support

(1) The Department may solicit and use private sector support for the following:

(a) Special projects or promotional activities that support economic growth in the state;

(b) Employees who are hired by the state but whose salary is paid by donations received by the Department from one or more private entities;

(c) Activities related to the expansion, retention or recruitment of businesses to the State of Oregon.

(2) Solicitation of private sector support for the Department shall be approved by the Director.

(3) Contributors to the Department shall not receive any special benefit, service or information as a result of their contribution to the Department.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.086

Hist.: EDD 35-1988, f. 11-30-88, cert. ef. 12-1-88

123-087-0030

Avoiding Conflicts of Interest

(1) The Department shall solicit and receive private support only for the purpose of promoting economic growth in the state.

(2) Private sector support may not be received or used for the personal benefit of any state employee or the direct benefit of any entity providing support.

(3) If, in the judgement of the director, an entity is offering or providing support in an effort to receive special consideration, services or information from the state, the Director shall refuse or return the support offered. The Director may consult with the Executive Department, Attorney General, Ethics Commission or other state agencies in order to determine whether receipt of such support is appropriate.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.086

Hist.: EDD 35-1988, f. 11-30-88, cert. ef. 12-1-88

123-087-0040

Reporting Private Sector Support

The Economic Development Department shall report all financial contributions and in-kind goods and services received by

the Department with a market value over \$500. This report shall be issued biannually and shall be provided to the Executive Department, the Ethics Commission, the Secretary of State and any other state agencies that are appropriate. The report will include the amount of the contributions, the entities providing the contributions, and the projects or purposes for which the contributions were received.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 285.086

Hist.: EDD 35-1988, f. 11-30-88, cert. ef. 12-1-88

DIVISION 90

STRATEGIC RESERVE FUND

123-090-0000

Purpose

The Strategic Reserve Fund was established by the 1987 Oregon Legislative Assembly in ORS 284.055 as one of several programs designed to support economic development with funds from the Oregon Lottery. Particular emphasis shall be placed on cost effective, long-term projects which assist the creation, expansion, and preservation of Oregon's principal traded sector industries, including, but not limited to, agriculture, forest products, electronics, and other diversified manufacturing.

Stat. Auth.: ORS 284

Stats. Implemented: ORS 285.653

Hist.: EDD 26-1988(Temp), f. & cert. ef. 7-13-88; EDD 29-1988, f. & cert. ef. 8-30-88

123-090-0010

Definitions

As used in this division of Administrative Rules, unless the context requires otherwise:

(1) "Administrative Expenses" means any agency expenditures included under the classifications of expenditures, except categories of debt serve and special payments, which are prepared and prescribed for purposes of agency budget-making and accounting.

(2) "Fund" means the Strategic Reserve Fund established in ORS 285.653 by the 1987 Legislative Assembly.

(3) "Department" means the Economic Development Department of the State of Oregon.

(4) "Director" means the Director of the Economic Development Department of the State of Oregon.

(5) "Debt Retirement" means payment in full of the balance owed on the principal of a loan.

(6) "Debt Service" means the interest and charges currently payable on a debt, including principal payments.

(7) "Family Wage Job" means any employment which yields an annual income no lower than the average annual wage in covered employment of the county or counties in which the investment financed under this division of rules is made.

(8) "State-Wide Strategies Under ORS 284.010 to 284.045", and in ORS 284.055(1), is the State's overall economic development strategy referenced in ORS 284.035(2).

Stat. Auth.: ORS 285.035(5) & ORS 285.653

Stats. Implemented: ORS 285.653

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

123-090-0020

Funding Eligibility

The Strategic Reserve Fund, hereinafter known as the Fund, shall be used to finance the following kinds of economic development projects:

(1) Projects which can reasonably be expected to result in new jobs, retention of jobs, or higher incomes for Oregonians.

(2) Assistance for individual companies which are considering starting, expanding, or relocating in Oregon. The assistance for such companies must result in a significant long-term economic impact on the county in which they are or will be located.

(3) Projects of state-wide or regional significance for long-term economic development which may not have sufficient impact on a single constituency to generate active local support or which may not produce direct jobs in the short run but which are believed to be a foundation or catalyst for future economic development, or which result in improved utilization of existing Oregon resources.

Stat. Auth.: ORS 285

Stats. Implemented: ORS 285.653

Hist.: EDD 26-1988(Temp), f. & cert. ef. 7-13-88; EDD 29-1988, f. & cert. ef. 8-30-88

123-090-0030

Ineligible Expenditures

The following expenditures from the Fund are prohibited:

(1) Expenditures that result in relocation of a business from one part of the state to another, except for businesses which would otherwise relocate outside Oregon:

(a) No business firm shall be eligible for these funds if it, a subsidiary or parent firm, or any other firm similarly related to it by common control, closes or permanently curtails operations in another part of the state more than 30 miles over paved roadway from the proposed project site;

(b) The restriction in subsection (a) of this section may be waived if the Director finds that such closure or permanent curtailment is expected to diminish employment by less than 0.1 percent of the civilian labor force in the county in which such closure or curtailment occurs.

(2) Expenditures for debt service or debt retirement for any public or private entity.

(3) Expenditures for administrative expenses of the Department without legislative authorization.

Stat. Auth.: ORS 285.035(5) & ORS 285.653

Stats. Implemented: ORS 285.653

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

123-090-0040

Director's Review

(1) No projects shall be funded through the Fund in the absence of findings by the Director 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 long-term benefits to the state;

(c) The project will not require continuing state subsidies;

(d) The project does not supplant private investment or duplicate or undermine similar efforts;

(e) The project meets or reasonably can be expected to meet at least one of the following criteria:

(A) Uses existing human and natural resources to harness Oregon's economic comparative advantage;

(B) Promotes economic recovery in rural or economically depressed areas and among populations suffering economic hardship;

(C) Creates or leads to the creation or retention of family wage jobs for Oregonians or of higher incomes for Oregonians;

(D) Promotes the development of new national and international markets for goods and services produced in Oregon.

(f) The project complies with the standards listed in ORS 285.025(1) and (3) to (5).

(2) If the project affects land use, it satisfies 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 184.125(5) & ORS 284.055

Stats. Implemented: ORS 285.653

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

DIVISION 95

KEY INDUSTRIES DEVELOPMENT PROGRAM

123-095-0000

Purpose and Objectives

The purpose of these rules is to govern the award of grants under the Key Industries Development Program, in accordance with ORS 285.770.

Stat. Auth.: ORS 285.035 & ORS 285.765 - ORS 285.780

Stats. Implemented: ORS 285.765 - ORS 285.780

Hist.: EDD 4-1992(Temp), f. & cert. ef. 3-18-92; EDD 1-1993, f. & cert. ef. 1-15-93

123-095-0010

Definitions

As used in these rules:

(1) "Department" means the State of Oregon Economic Development Department.

(2) "Director" means the Director of the State of Oregon Economic Development Department.

(3) "Entity" means a person or organization legally capable of entering into a contract.

(4) "Family Wage Job" means a job that has no anticipated end at the time it is created or retained and has an annual income greater than or equal to the average annual covered wage in Oregon. The most current covered wage information from the Oregon Employment Division shall be used to determine the family wage job rate for the state.

(5) "Industry Association" means an alliance of key industry firms joined together for common benefits and strategic services which may include industry strategic planning and the implementation of plans to improve key industry competitiveness.

(6) "Key Industries" means industries defined as key industries under ORS 285.765(3) or which were the subject of a strategic plan in Part III, **Oregon Shines. An Economic Strategy for the Pacific Century, (OEDD, May 1989)**, available from the Oregon Progress Board, 775 Summer Street N.E., Salem, OR 97310. The Key Industries include, but are not limited to, forest products, agricultural products, high technology, primary and fabricated metals, fisheries, interstate tourism, film and video production, biotechnology, software, environmental services, plastics, aerospace, and producer services.

(7) "Key Industries Development Program" means the activities of the Department undertaken to implement ORS 285.770.

(8) "Oregon's Benchmarks" means the benchmarks in **Oregon Benchmarks, Setting Measurable Standards for Progress**, Report to 1991 Legislature, Oregon Progress Board, January, 1991, or an updated version thereof, available from the Oregon Progress Board, Economic Development Department, 775 Summer Street N.E., Salem, OR 97310.

(9) "Project" means an activity which contributes to the stability, growth, development, or competitiveness of a key industry.

(10) "Recipient" means an entity (or entities) including a group of three or more firms, that has been awarded Key Industries Development Program funding.

(11) "Small Businesses" means firms with 49 or fewer employees.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 285.035 & ORS 285.765 - ORS 285.780

Stats. Implemented: ORS 285.765 - ORS 285.780

Hist.: EDD 4-1992(Temp), f. & cert. ef. 3-18-92; EDD 1-1993, f. & cert. ef. 1-15-93

123-095-0020

Eligible Applicants

Industry associations and groups of three or more key industries firms are eligible for grants under the Key Industries Development Program. In special cases, at the discretion of the Director, the Department may award grants to other public or private entities.

Stat. Auth.: ORS 285.035 & ORS 285.765 - ORS 285.780

Stats. Implemented: ORS 285.765 - ORS 285.780
Hist.: EDD 4-1992(Temp), f. & cert. ef. 3-18-92; EDD 1-1993, f. & cert. ef. 1-15-93

123-095-0030

Eligible Activities

(1) Eligible Projects that may be assisted with funds from the Key Industries Development Program include, but are not limited to, those activities described in ORS 285.770.

(2) Projects to be funded under the Key Industries Development Program must meet both of the following requirements:

(a) Are industry-driven, having substantial support and sponsorship by key industries firms and involving key industries firms in planning and implementation;

(b) Assure that Key Industry Development Program funds are matched by cash or in-kind contributions from private industry sources on a 1:1 basis. However, at the Director's discretion, the 100 percent matching requirement may be modified if the Director determines that the amount of the match is reasonable.

(3) In determining whether Projects will be funded under the Key Industries Development Program, the Department will consider the extent to which the Projects meet the following criteria:

(a) Are state-wide in scope;

(b) Support the formation of industry associations or the activities of industry associations in developing or implementing strategic plans to improve the competitiveness of key industries;

(c) Will not require continuing state subsidies;

(d) Encourage the retention or creation of long-term, permanent, family wage jobs for Oregon;

(e) Emphasize the growth and development of existing and emerging in-state businesses, including the expansion of small businesses;

(f) Are implementation and results-oriented. Proposals for studies should include as part of the proposal an action plan for following through to implement the results of the study;

(g) Are compatible with achievement of Oregon's Benchmarks.

(4) Compliance with sections (1), (2), and (3) of this rule does not necessarily entitle a Project to funding. Funding of any particular Project is at the discretion of the Director. Consideration will be given to available funds and actual or potential competing proposals or uses for remaining funds.

Stat. Auth.: ORS 285.035 & ORS 285.765 - ORS 285.780

Stats. Implemented: ORS 285.765 - ORS 285.780

Hist.: EDD 4-1992(Temp), f. & cert. ef. 3-18-92; EDD 1-1993, f. & cert. ef. 1-15-93

123-095-0040

Project Administration

(1) Proposals for the funding of a Project by the Key Industries Development Program must be delivered to the Oregon Economic Development Department, 775 Summer Street N.E., Salem, OR 97310 and addressed to the Program Manager, Key Industries Development Program. Proposals should be on an application form supplied by and available from the Department. Within 30 days of receipt by the Department of the proposal, the Program Manager will mail a written notice of the Department's action on the proposal. The action may include denial, acceptance, proposed modification, or delay of a decision until a later time specified in the notice.

(2) Upon being awarded grant funding under the Key Industries Development Program, the Recipient and the Department shall enter into an agreement that describes the responsibilities of each partner in the implementation of the Project. This agreement shall include, but is not limited to, a work program and shall describe the responsibilities of each party in the agreement, appropriate Department monitoring and follow-up on the use of funds, periodic reporting from the Recipient to the Department on the status and impact of the Project, grant drawdown procedures, and remedies for non-performance.

(3) Any firm receiving an award of \$50,000 or more through the Key Industries Development Program shall enter into a first source agreement as if it were a benefitted business under OAR

123-070-0310(1)(a)(A) and shall accordingly be subject to the first source agreement rules of this Department, OAR 123-070-0300 through 123-070-0370.

(4) Pursuant to ORS 280.518 recipients shall display conspicuously on the site or as part of Project information that the Project is financed in part with Oregon Lottery funds of the Key Industries Development Program.

(5) Any Project funded by the Key Industries Development Program that affects land use shall comply with applicable requirements of OAR Chapter 123, Division 008.

(6) Records in the possession of the Department shall be subject to the Public Records Law, ORS 192.410 to 192.505, including the exemptions from disclosure in ORS 192.501 to 192.505.

Stat. Auth.: ORS 285.035 & ORS 285.765 - ORS 285.780

Stats. Implemented: ORS 285.765 - ORS 285.780

Hist.: EDD 4-1992(Temp), f. & cert. ef. 3-18-92; EDD 1-1993, f. & cert. ef. 1-15-93

DIVISION 96

FLEXIBLE NETWORKS PROGRAM

123-096-0000

Purpose and Objectives

(1) The purpose of these rules is to govern grant awards and selection of network broker trainees as part of the Department's Flexible Networks Program, in accordance with ORS 285.773.

(2) The Flexible Networks Program seeks to promote Oregon's industrial competitiveness in national and international markets, increase output and products shipped by Oregon's Key Industries, and to increase jobs and income for Oregon citizens by encouraging the formation of Flexible Networks.

Stat. Auth.: ORS 285.035(5) & ORS 285.765 - ORS 285.780

Stats. Implemented: ORS 285.773

Hist.: EDD 10-1992(Temp), & cert. ef. 6-5-92; EDD 4-1993, f. & cert. ef. 3-30-93

123-096-0010

Definitions

(1) "Department": The State of Oregon Economic Development Department.

(2) "Director": The Director of the Department.

(3) "Flexible Network": A group of three or more private sector firms working cooperatively to manufacture, sell or market products, develop technologies or create or disseminate information.

(4) "Flexible Networks Program": A program administered by the Department to train Network Brokers and promote creation of Flexible Networks.

(5) "Key Industry": A traded sector industry defined in ORS 285.765(3) or as identified in **Oregon Shines**, the state's strategic plan, Part III, An **Economic Strategy for the Pacific Century**, (OEDD, May 1989), available from the Oregon Progress Board, 775 Summer Street N.E., Salem, OR 97310.

(6) "Key Industry Association": An alliance of Key Industry firms joined together for common benefits and strategic services which may include industry strategic planning and implementation of plans to improve Oregon's Key Industry competitiveness.

(7) "Network Broker": An individual who is trained to assist private sector firms in organizing and forming Flexible Networks in Oregon.

(8) "Network Broker Training": Training made available on a competitive application basis from the Department to individuals interested in becoming Network Brokers.

(9) "Network Project": Activities undertaken to plan and implement Flexible Networks.

(10) "Oregon Benchmarks": Benchmarks identified in **Oregon Benchmarks, Setting Measurable Standards for Progress**, Report to 1991 Legislature, Oregon Progress Board, January 1991, available from the Oregon Progress Board, Oregon Economic Development Department, 775 Summer Street N.E., Salem, OR 97310.

(11) "Phase 1 Challenge Grants": A matching grant of up to \$10,000 to a Key Industry Association or to three or more Oregon Key Industry private sector firms to initiate broad, industry-wide discussion to examine potential applications of Flexible Networks.

(12) "Phase 2 Challenge Grants": A matching grant of up to \$10,000 to three or more Oregon key industry private sector firms to form and implement Flexible Networks.

(13) "Small Business": Firms with 49 or fewer employees.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 285.035(5) & ORS 285.765 - ORS 285.780

Stats. Implemented: ORS 285.773

Hist.: EDD 10-1992(Temp), & cert. ef. 6-5-92; EDD 4-1993, f. & cert. ef. 3-30-93

123-096-0020

Eligible Applicants

(1) Key Industry Associations and groups of at least three Oregon Key Industry private sector firms are eligible to apply for Phase 1 Challenge Grants.

(2) Groups of at least three Oregon Key Industry private sector firms are eligible to apply for Phase 2 Challenge Grants.

Stat. Auth.: ORS 285.035(5) & ORS 285.765 - ORS 285.780

Stats. Implemented: ORS 285.773

Hist.: EDD 10-1992(Temp), & cert. ef. 6-5-92; EDD 4-1993, f. & cert. ef. 3-30-93

123-096-0030

Eligible Activities

(1) Phase 1 Challenge Grants are to be used to support Key Industry discussions of competitive strategy, of problems and opportunities common to the industry, of potential applications of Flexible Networks, and the process of Network Broker recruitment.

(2) Phase 2 Challenge Grants are to be used to form and implement Flexible Networks.

Stat. Auth.: ORS 285.035(5) & ORS 285.765 - ORS 285.780

Stats. Implemented: ORS 285.773

Hist.: EDD 10-1992(Temp), & cert. ef. 6-5-92; EDD 4-1993, f. & cert. ef. 3-30-93

123-096-0040

Criteria for Funding

(1) Phase 1 Challenge Grants will be awarded on a competitive basis for proposals that demonstrate potential applications of Flexible Networks, Key Industry leadership and ability to assist in meeting the purpose and objectives of the Flexible Networks Program.

(2) Applications for Phase 1 Challenge Grants will be evaluated by the Department based upon:

(a) Clarity and fit of applicants' work plan with the purpose and objectives of the Flexible Networks Program;

(b) Strength of applicants' ties to a Key Industry, and leadership role within the industry;

(c) Scope of participation and the potential to reach and involve a broad segment within the Key Industry across Oregon (rather than a single community);

(d) Demonstrated understanding of the common competitive challenges facing a Key Industry; and

(e) Applicants' ability and willingness to work with the Department to help implement the Flexible Networks Program.

(3) A Phase 1 Challenge Grant must be matched by cash or in-kind contributions from private industry sources on at least a 1:1 basis.

(4) Phase 2 Challenge Grants will be awarded on a competitive basis for proposals that form and implement Flexible Networks, and demonstrate ability to assist in meeting the purpose and objectives of the Flexible Networks Program.

(5) Proposals for Phase 2 Challenge Grants will be considered for funding by the Department if the following minimum requirements are met:

(a) At least three or more Oregon Key Industry private sector firms are applicants;

(b) The Network Project will bring about an increased level of effort and output. (Key Industries Development funds will not be used to reduce or replace applicants' normal investments.);

(c) The Network Project includes a private industry match of at least 1:1, either cash or in-kind; and

(d) The Network Project is ready to begin; it includes an adequate budget, a clear and innovative concept, appropriate timeline and project team to be successful.

(6) Proposals for Phase 2 Challenge Grants that meet the minimum requirements will be evaluated by the Department based upon the following criteria:

(a) The ability of the Network Project to address an important competitive challenge to the Key Industry and demonstrate Flexible Network benefits;

(b) The degree of economic impact of the Network Project. (Impact includes number and location of participating firms, increase in competitiveness in national and international markets, increase in output and products shipped, and increase in jobs and income for Oregonians.);

(c) The Phase 2 Challenge Grant is to be a catalyst to implement a Flexible Network that would not otherwise be created;

(d) The Network Project is sustainable and will not require continuing state subsidies;

(e) The Network Project design and objectives are applicable to other Key Industry companies; applicants are willing to share Network Project results;

(f) The Network Project leverages other funds in excess of the required match (private industry, community colleges, federal labs, Key Industry Associations);

(g) The Network Project contributes to achievement of Oregon Benchmarks;

(h) The Network Project emphasizes growth and development of existing and emerging Oregon businesses, including expansion of Small Businesses.

(7) Compliance with sections (1) through (6) of this rule does not necessarily entitle a Network Project to funding. Funding of any particular Network Project is at the sole discretion of the Director.

Stat. Auth.: ORS 285.035(5) & ORS 285.765 - ORS 285.780

Stats. Implemented: ORS 285.773

Hist.: EDD 10-1992(Temp), & cert. ef. 6-5-92; EDD 4-1993, f. & cert. ef. 3-30-93

123-096-0050

Application Process

(1) Application for a Phase 1 or 2 Challenge Grant shall consist of a proposal that describes the competitiveness problem or opportunity to be addressed within a Key Industry, proposed objectives, a work plan, and how grant funds and matching funds will be used to accomplish the objectives. It shall also include a description of the applicants and any others intended to participate in the Network Project, including a description of the applicants' backgrounds and knowledge of a particular Key Industry. A proposal shall not exceed six pages.

(2) Deadlines for receiving Phase 1 or 2 Challenge Grant applications shall be established by the Department.

Stat. Auth.: ORS 285.035(5) & ORS 285.765 - ORS 285.780

Stats. Implemented: ORS 285.773

Hist.: EDD 10-1992(Temp), & cert. ef. 6-5-92; EDD 4-1993, f. & cert. ef. 3-30-93

123-096-0060

Grant Administration

(1) If an application for a Phase 1 or 2 Challenge Grant is accepted, the recipient(s) and the Department shall enter into an agreement. This agreement shall include, but is not limited to, a work plan, a description of responsibilities of each party, appropriate Department monitoring and follow-up on the use of funds, periodic reporting from the recipient(s) to the Department on the status and impact of the Network Project, grant drawdown procedures, and remedies for non-performance.

(2) A single firm may be a recipient only if the firm has letters of agreement to jointly participate in Network Project activities with at least two other private sector firms.

(3) The Department may accept, deny, propose modification of, or delay a decision on Network Project proposals.

(4) Recipient(s) shall indicate in any written publicity materials that the Flexible Network is financed in part with Oregon Lottery funds of the Oregon Economic Development Department's Key Industries Development Program.

(5) Any Flexible Network, paid for in whole or in part with a Phase 1 or 2 Challenge Grant, that affects land use shall comply with applicable requirements of OAR Chapter 123, Division 8.

(6) Records in the possession of the Department shall be subject to the Public Records Law, ORS 192.410 to 192.505, including the exemptions from disclosure in ORS 192.501 to 192.505.

Stat. Auth.: ORS 285.035(5) & ORS 285.765 - ORS 285.780

Stats. Implemented: ORS 285.773

Hist.: EDD 10-1992(Temp), & cert. ef. 6-5-92; EDD 4-1993, f. & cert. ef. 3-30-93

123-096-0070

Network Broker Training

(1) Network Broker Training will be made available on a competitive application basis. The dates, times, and locations of training shall be established by the Department. The Department may charge a fee to cover costs of the training.

(2) The Department will select Network Broker trainees on a competitive application basis. Applicants will be selected that best demonstrate Key Industry support, expertise in their field, and ability to rally firms around a project or idea to build competitiveness of Key Industries through Flexible Networks.

(3) Deadlines for receiving applications shall be established by the Department.

Stat. Auth.: ORS 285.035(5) & ORS 285.765 - ORS 285.780

Stats. Implemented: ORS 285.773

Hist.: EDD 10-1992(Temp), & cert. ef. 6-5-92; EDD 4-1993, f. & cert. ef. 3-30-93

DIVISION 125

SCREENING AND SELECTION PROCEDURES FOR PERSONAL SERVICES CONTRACTS OF THE ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT RELATING TO ITS FOREIGN TRADE OFFICES

123-125-0000

Purpose

The Economic and Community Development Department sometimes has the need for the services of an independent contractor to assist the Department in the operation and delivery of services in connection with its Foreign Trade Offices. The purpose of these rules is to specify the screening and selection procedures to be used by the Department in the selection of contractors and the award of personal services contracts (but not in the hiring of employees) relating to its Foreign Trade Offices.

Stat. Auth.: ORS 285A.075(5), ORS 279.712(2)(f) & ORS 279.051

Stats. Implemented: ORS 285A.090(14), ORS 279.051; & OL 1999, Ch. 817

Hist.: EDD 13-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00

123-125-0020

Definitions

For purposes of this division of administrative rules, the following terms have the following meanings:

(1) "Department" means the Economic and Community Development Department.

(2) "Director" means the Director of the Economic and Community Development Department.

(3) "Emergency" means circumstances, not reasonably foreseen by the Department, that create a substantial risk of loss, damage or interruption of services or a threat to public health, safety or the environment that require prompt execution of a contract to remedy the condition.

(4) "Foreign Trade Office" means offices or contract representation in a foreign nation designed primarily to:

(a) Assist Oregon businesses in finding international markets for their goods and services;

(b) Assist local units of government in Oregon in locating foreign businesses within their jurisdiction; and

(c) Promote awareness in foreign countries of Department policy, programs and services and of assistance and economic incentives available from government at all levels.

(5) "VIP System" means the on-line electronic vendor information program administered by the Transportation, Purchasing & Print Services division of the Department of Administrative Services.

Stat. Auth.: ORS 285A.075(5), ORS 279.712(2)(f) & ORS 279.051

Stats. Implemented: ORS 285A.090(14), ORS 279.051 & OL 1999, Ch. 817

Hist.: EDD 13-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00

123-125-0040

Determination of Screening and Selection Procedure

(1) The policy of the Department is to select contractors to provide personal services with respect to its Foreign Trade Offices in the most expeditious and efficient manner consistent with the goal of obtaining high quality services that represent a good value for the State of Oregon. The Department will use either the informal selection process described in OAR 123-125-0060 or the formal selection process described in OAR 123-125-0080 to select contractors and award personal services contracts with respect to its Foreign Trade Offices. The Department will decide the appropriate selection process based on the following factors:

(a) The size of the anticipated payments under the contract. This factor favors an informal process when the anticipated payments under the contract are less than \$100,000 and favors a formal process when the anticipated payments under the contract are in excess of \$100,000.

(b) The nature of the services to be provided under the contract. This factor favors an informal process when the delivery of the services will require unique skills, expertise, experience or knowledge or highly unusual skills, expertise, experience or knowledge and the Department is aware of one or more potential contractors possessing the unique or highly unusual skills, expertise, experience or knowledge. This factor favors a formal process when delivery of the services will require skills, expertise, experience and knowledge likely possessed by a large pool of potential contractors.

(c) The Department's knowledge of or past experience with one or more potential contractors. This factor favors an informal process if the Department has recently received similar services from (or is aware of similar services delivered to another person or entity by) one or more potential contractors and the services were of high quality and represented a good value. This factor favors a formal process if the Department has no knowledge of or past experience with one or more potential contractors in the delivery of similar services.

(d) The legal and business constraints or requirements, if any, imposed by the legal or business environment of the nation in which the Foreign Trade Office operates. This factor may favor (or require) a formal or informal selection process.

(e) The opportunity to use existing infrastructure or trade representation operated by another state, group of states or an agency or instrumentality of the federal government. This factor favors an informal process when infrastructure or trade representation in the foreign nation already exists and the Department's utilization of the infrastructure or trade representation will decrease the Department's Foreign Trade Office costs in that nation or increase the effectiveness of the Department's foreign trade representation in that nation because of the similar interests or objectives of the State of Oregon and the operator of the existing infrastructure or trade representation.

(f) Other factors the Director considers relevant to the selection of a contractor to deliver the particular services.

(2) In determining the appropriate selection process, no single factor described in section (1) of this rule is necessarily deter-

minative. Nevertheless, if one factor strongly favors one type of selection process it may outweigh one or more other factors that favor the other type of selection process. Even when the factors described in section (1) of this rule favor an informal selection process, the Department may use the formal selection process if it determines that it is in the public interest to do so.

Stat. Auth.: ORS 285A.075(5), ORS 279.712(2)(f) & ORS 279.051
 Stats. Implemented: ORS 285A.090(14), ORS 279.051 & OL 1999, Ch. 817
 Hist.: EDD 13-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00

123-125-0060

Informal Selection Process

(1) Except as set forth in sections (2) and (3) of this rule, the Department will conduct its informal selection process for Foreign Trade Office personal services contractors as follows:

(a) The Department will post on the VIP System a notice of its desire to receive responses or proposals from potential contractors and, in accordance with ORS 200.035, send a copy of the notice to the Advocate for Minority, Women & Emerging Small Businesses. If appropriate, the Department will also post additional notices and advertise for potential contractors in newspapers or other media.

(b) The Department will, to the extent practicable under the circumstances, seek responses or proposals from at least three potential contractors. The Department will also accept responses or proposals from any other potential contractor who wishes to submit a response or proposal.

(c) The Department will make available to potential contractors a brief description of the work, the anticipated size of payments under the contract and a list of the selection criteria.

(d) The Department will rank all responses or proposals based on the selection criteria and will award the contract to the potential contractor submitting the highest ranked response or proposal.

(2) If the Department anticipates that the contract will result in payments of more than \$5,000 and either determines that the skills, expertise, experience or knowledge required to deliver the services are unique to a particular contractor or so unusual that it is unlikely that another potential contractor would possess them or determines that the Department has the opportunity to use existing infrastructure or trade representation under the circumstances described in OAR 123-125-0040(1)(e), then the Department will conduct its informal selection process for Foreign Trade Office personal services contractors as follows:

(a) The Department will post on the VIP system a notice of its intent to contract with a particular contractor for the services and, in accordance with ORS 200.035, send a copy of the notice to the Advocate for Minority, Women & Emerging Small Businesses. The notice will include the date, time and place for a public hearing where the Department will explain its decision and provide the public with an opportunity to comment on that decision.

(b) The Department will furnish the results of the hearing, including any public commentary, to the International Trade Commission.

(c) If, after considering the results of the public hearing, including any public commentary, and consulting with the International Trade Commission as necessary, the Department determines that it is still appropriate to contract for the services with the proposed contractor, the Department will award the contract to the proposed contractor, subject to successful completion of contract negotiations.

(3) If the Department anticipates that the contract will not result in payments of more than \$5,000, the Department may obtain the services through direct negotiation with a contractor.

Stat. Auth.: ORS 285A.075(5), ORS 279.712(2)(f) & ORS 279.051
 Stats. Implemented: ORS 285A.090(14), ORS 279.051 & OL 1999, Ch. 817
 Hist.: EDD 13-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00

123-125-0080

Formal Selection Process

The Department will conduct its formal selection process for Foreign Trade Office personal services contractors as follows:

(1) The Department will prepare a formal written Request for Proposals (RFP) that describes specific services to be performed within a defined period of time. The RFP will set forth criteria and methods for screening, selecting and ranking the best proposal(s). The RFP may result in contracts with more than one provider.

(a) The RFP will either describe the situation and background for which proposals are being requested and state the outcome(s) desired, or propose a statement of work. The RFP will describe any conditions affecting the delivery of the services and the time period in which the services are to be completed. The RFP will also include, as appropriate, the following information:

(A) Minimum standards and qualifications required to be met by the proposer(s) to be eligible to provide the services;

(B) The evaluation process and criteria to be used to select the contractor(s), including the weight or points applicable to each criterion;

(C) A requirement to provide a list of similar services completed by the proposer(s) with references concerning past performance;

(D) The closing date and time of the solicitation and the delivery location(s) for proposals;

(E) Reservation of the right to seek clarifications of each proposal, and the right to negotiate the statement of work within the scope of work described in the RFP;

(F) Reservation of the right to reject any or all proposals and cancel the solicitation without liability, if such rejection would be in the public interest;

(G) Reservation of the right to cancel the solicitation, if such cancellation would be in the public interest;

(H) Contractual provisions that will be contained in the resulting contract;

(I) The possibility of any interviews;

(J) Any other information to be used to evaluate, rank and select the best proposer(s);

(K) Unless compensation is expressly provided for in the RFP, a statement that the Department is not responsible for any costs of any proposers incurred while submitting a proposal, and that all proposers who respond to the solicitation do so solely at their own expense;

(L) A statement notifying proposers of potential contract amendments to extend the period during which services will be performed; and

(M) Protest procedures.

(b) All formal RFPs will be advertised in the VIP System and, if the Department determines it appropriate, in one or more newspapers of general circulation. All advertisement(s) for formal RFPs will be first published and appear at least once, no fewer than 14 calendar days before close of the solicitation, unless the Department determines that a shorter period is deemed necessary in the public interest for a particular procurement.

(c) All advertisement(s) will contain, at a minimum, a brief summary of the proposed contract, a description of the services sought, where copies of the RFP may be obtained, and the deadline for submitting a proposal.

(2) A pre-proposal meeting (voluntary or mandatory) may be held for all potential contractors to discuss the proposed services, solicitation provisions and contract requirements. The RFP will include the date, time and place of the meeting(s).

(3) An evaluation committee will evaluate proposals. The Department will provide the evaluation committee with guidelines for completing evaluations consistent with the process described in the RFP. The evaluation committee may consist of state employees and members of the community with experience in related services. Evaluators will be selected on the basis of their ability to provide an objective, impartial evaluation of the proposals. If there is a conflict of interest, the evaluator must declare this in writing and will be excluded from participating in the evaluation. Each member of the evaluation committee will read and score all proposals;

(4) The proposal evaluation committee will review, score and rank all responsive proposals according to the evaluation criteria

in the RFP which may include, but are not limited to, the following:

- (a) Availability and capability to perform the work;
 - (b) Experience of key staff on comparable projects, or in performing comparable services;
 - (c) Demonstrated ability to successfully complete similar projects or perform similar services on time and within budget;
 - (d) References from past clients, public and private;
 - (e) Performance history in meeting deadlines, submitting accurate estimates, producing quality work, and meeting financial obligations;
 - (f) Status and quality of any required licensing or certification;
 - (g) Knowledge and understanding of the required services as shown through the proposed approach to staffing and scheduling needs;
 - (h) Fees or costs;
 - (i) Results from oral interviews, if conducted;
 - (j) Availability of any specific required resources or equipment;
 - (k) Geographic proximity to the project or the area where the services will be performed;
 - (l) Identity of proposed subcontractors and their qualifications; and
 - (m) Any other criteria deemed relevant to the provision of services.
- (5) Final ranking will be based on the evaluation criteria consistent with the process described in the RFP. Price will be considered, but will not necessarily govern selection of the contractor(s);
- (6) Contracts entered into under the formal selection procedure may be amended, if the services to be provided under the amendment are included within, or directly related to, the scope of the project or the scope of the services described in the solicitation document.

Stat. Auth.: ORS 285A.075(5), ORS 279.712(2)(f) & ORS 279.051
Stats. Implemented: ORS 285A.090(14), ORS 279.051 & OL 1999, ch 817
Hist.: EDD 13-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00

123-125-0100

Protest Procedures

All protests of formal selection processes or documents are limited to the following issues and filing times:

(1) Solicitation protest: Unless a different deadline is specified in the solicitation document, potential contractors must submit a written protest or request for change of particular solicitation provisions, specifications, or contract terms and conditions to the Department no later than seven calendar days prior to close of the solicitation. The proposer shall submit in writing the reasons for the protest or request and any proposed changes to the solicitation provisions, specifications or contract terms and conditions. The Department will not consider a solicitation protest submitted after the deadline established in this subsection or the deadline provided in the solicitation document, if different.

(2) Selection protest: The Department will notify every proposer who submits a proposal of its selection status. Unless a different deadline is specified in the solicitation document, a proposer who claims to have been adversely affected or aggrieved by the selection of a competing proposer shall have seven calendar days after receiving notification to submit a written protest. To be adversely affected or aggrieved, the proposer must demonstrate

that all higher-ranked proposers were ineligible for selection. The Department will not consider a protest submitted after the deadline established in this subsection, or the deadline provided in the solicitation document, if different.

(3) The Director or the Director's designee will settle or resolve a written protest submitted in accordance with sections (1) or (2) of this rule.

(4) There is no formal administrative protest process for an informal selection process unless otherwise stated in the solicitation document

Stat. Auth.: ORS 285A.075(5), ORS 279.712(2)(f) & ORS 279.051

Stats. Implemented: ORS 285A.090(14), ORS 279.051 & OL 1999, ch 817

Hist.: EDD 13-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00

123-125-0120

Emergency Contracts

Regardless of the factors set forth in OAR 123-125-0040, the Department may enter into Foreign Trade Office personal service contracts without conducting a formal or informal selection process if an Emergency, as defined in OAR 123-125-0020(3), exists. The Department will, to the extent reasonable under the circumstances, attempt to solicit responses/proposals from potential contractors.

Stat. Auth.: ORS 285A.075(5), ORS 279.712(2)(f) & ORS 279.051

Stats Implemented: ORS 285A.090(14), ORS 279.051 & OL 1999, ch 817

Hist.: EDD 13-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00

123-125-0140

Applicability of Rules

These screening and selection procedures set forth in this division of administrative rules apply to all Foreign Trade Office personal services contracts entered into by the Department after the effective date of this division of administrative rules. OAR 123-006-0005 to 123-006-0025 shall not apply to Foreign Trade Office personal service contracts entered into by the Department after the effective date of this division of administrative rules.

Stat. Auth.: ORS 285A.075(5), ORS 279.712(2)(f) & ORS 279.051

Stats. Implemented: ORS 285A.090(14), ORS 279.051 & OL 1999, ch 817

Hist.: EDD 13-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00

