

Chapter 123 Economic and Community Development Department

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DIVISION 155

**STATE INCOME/EXCISE TAX EXEMPTION FOR
SMALL CITY BUSINESS DEVELOPMENT**

123-155-0000	Purpose and Scope
123-155-0050	Preliminary Certification From 2006 Through 2010 (HB 3350-05)
123-155-0100	Definitions
123-155-0150	Qualified Locations
123-155-0175	Unique Operations
123-155-0200	Preliminary Certification Application
123-155-0250	Determination of Preliminary Certification
123-155-0270	Local Objection and Relevant Preliminary Certification Requirements
123-155-0300	Annual Certification
123-155-0350	Issues of Initial and Subsequent Annual Certifications
123-155-0400	Waivers

DIVISION 1

PROCEDURAL RULES

Rulemaking

**123-001-0050
Definitions**

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

(1) **Commission** means the State of Oregon Economic and Community Development Commission appointed under ORS 285A.040, which is interchangeable with the “Economic Development Commission” as it existed prior to July 6, 1999.

(2) **Department** means the State of Oregon Economic and Community Development Department as (re)organized under ORS 285A.070, which is interchangeable with the “Economic Development Department” as it existed prior to July 6, 1999.

(3) **Director** means the director of the Department as appointed under ORS 285A.070.

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

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

Stats. Implemented: ORS 183.335, 183.341, 183.355, 285A, 285B & OL 1999, Ch. 509
Hist.: EDD 4-2003, f. & cert. ef. 3-26-03

123-001-0100

Notice Rule (Proposed Permanent Rulemaking)

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

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

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

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

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

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

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

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

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

(A) Associated Press;

(B) Association of Oregon Counties;

(C) Capitol Press Room;

(D) League of Oregon Cities; and

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

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

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

Stats. Implemented: ORS 183.335, 183.341, 183.355, 197.040, 197.180, 285A & 285B
Hist.: EDD 4-2003, f. & cert. ef. 3-26-03

123-001-0200

Model Rules of Procedure

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

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

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

Stats. Implemented: ORS 183.335, 183.341, 183.355, 285A & 285B
Hist.: EDD 4-2003, f. & cert. ef. 3-26-03

123-001-0300

Waivers of Provisions Provided by Rule in This Chapter

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

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

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

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

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

Stats. Implemented: ORS 285A & 285B

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

Special Roles of the Economic and Community Development Commission

123-001-0500

Commission Committees

For purposes of advisory and technical committees for the Commission:

(1) These committees are wholly *different from*, and this rule in no way applies to, statutory boards or commissions that are part of the Department, but whose appointment, authority, duties and relationship to the Commission, if any, are prescribed entirely apart from the Commission, in accordance with ORS 285A.110(2) and the following statutes:

(a) International Trade Commission under ORS 285A.125 to 285A.139;

(b) Oregon Arts Commission under ORS 359.010 to 359.137;

(c) Oregon Progress Board under ORS 285A.150 to 285A.168;

(d) Oregon Tourism Commission under ORS 285A.255 to 285A.285; and

(e) Any other public body similarly established by the Legislative Assembly.

(2) The committees under this rule, which are part of the Department and are public bodies as subsidiaries to the Commission, consist of two types:

(a) Statutory committees, whose existence, or certain attributes of which, are determined by law, and for which section (3) of this rule applies only insofar as it does not contradict the provisions of any such law; and

(b) **Ad Hoc Committees** established solely by authority of the Commission and operating at its discretion under ORS 285A.060.

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

(a) It must be created by a formal and public action of the Commission for a certain definite period, or otherwise it may exist and operate until terminated or suspended by action of the Commission;

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

(c) The different geographic regions of this state shall be reflected in its representation, and at least 20 percent of the total number of its members shall equal (after rounding) the number of members residing east of the Cascade Range;

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

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

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

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

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

Stats. Implemented: ORS 285A.060

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

123-001-0520

Finance Committee for the Commission

The **Finance Committee** is an Ad Hoc Committee that has been formed and empowered by the Commission in accordance with OAR 123-001-0500(3), such that:

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

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

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

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

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

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

(B) Credit Enhancement Fund (Division 021);

(c) Immediate oversight and approval of private investment projects for the partial exemption from property taxes under the Strategic Investment Program (Division 023); and

(d) Immediate oversight and the approval of projects and proposals and of agreements with port districts under the Port Revolving Loan Fund (division 030).

(2) The Finance Committee's members:

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

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

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

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

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

(4) The supervisor of the Department's business finance programs is authorized to administer the operations of the Finance Committee, officially carry out its decisions, prepare business for its consideration with the chairperson's consent and serve as an ex officio member on behalf of the Director.

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

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285B.062(1)(f), 285B.206(3), 285B.377(3)

Stats. Implemented: ORS 285A.060, 285A.666 - 285A.732, 285B.050 - 285B.098, 285B.200 - 285B.218, 285B.320 - 285B.377 & 285B.383 - 285B.392

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

Contested Case Procedural Rules

123-001-0700

Purpose, Scope and Definitions

(1) OAR 123-001-0700 to 123-001-0799 establish procedural steps and options for handling appeals, in the manner of a contested case under ORS 183.310 to 183.550, when the Department denies one of the following applications for tax benefits (as so described in divisions of this chapter of administrative rules):

(a) Application for certification as an advanced telecommunication facility respective to the tax credit under ORS 315.511 (Division 106);

(b) Application for certification as a vertical housing development project for the partial exemption from property taxes under ORS 285C.471 (Division 145); and

(c) Application either for preliminary certification or for annual certification to exempt the taxable income apportionable to a facility under ORS 316.778 or 317.391 (Division 155), other than when denial results from objection to preliminary certification by the city, county or port.

(2) Except as described in section (1) of this rule (or as otherwise provided under state law or elsewhere in this chapter of administrative rules), a proceeding, hearing, determination or decision by the Depart-

ment, Director, Commission or any subsidiary body thereto shall be neither appealable in the manner of a contested case nor construed in any way as a contested case hearing, process or order.

(3) OAR 123-001-0700 to 123-001-0799 are intended only to supplement mandatory elements of contested case proceedings under the Administrative Procedures Act for matters specific to the Department. Therefore, OAR 137-003-0501 to 137-003-0700 are incorporated into and adopted as part of this division of administrative rules, by reference.

(4) For purposes of OAR 123-001-0700 to 123-001-0799, unless the context demands otherwise:

(a) "Applicant" means the person (including but not limited to a business firm) that sought approval for certification by submitting the respective application listed in section (1) of this rule, as identified in the application form; such person is thus the affected party or appellant for purposes of the contested case, and the address given in the form is assumed correct for mailing the Notice.

(b) "Notice" means the formal written statement on Department letterhead that is initially sent to the Applicant, who would be denied certification, in accordance with OAR 123-001-0725.

Stat. Auth.: ORS 183.341(2), 183.415(4), 183.464(2), 285A.075(5), 285A.110(1) & 285C.530(3)
Stats. Implemented: ORS 183.415, 183.464, 285C.465, 285C.503, 285C.506 & 285C.530
Hist.: EDD 12-2004, f. & cert. ef. 7-27-04

123-001-0725

Steps and Reservations of the Department

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

(a) The Notice shall be sent by registered or certified mail;

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

(c) A copy is also furnished to the Department of Revenue/county assessor as appropriate.

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

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

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

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

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

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

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

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

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

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

(6) The administrative law judge will issue a proposed order, pursuant to applicable proceedings of the contested case hearing, and except as set forth in subsection (7)(a) or (b) of this rule, that proposed

order shall become final by order of the administrative law judge not less than 45 calendar days after the issuance of the proposed order.

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

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

(b) Within 30 calendar days from issuance of the proposed order, a party files written exceptions that concisely present the party's entire argument against the proposed order, and the Department subsequently requests in writing that the administrative law judge undertake further steps, such as an official response to the exceptions or hearing new or additional evidence; such exceptions must be filed with both the Department and the administrative law judge.

Stat. Auth.: ORS 183.341(2), 183.415(4), 183.464(2), 285A.075(5), 285A.110(1) & 285C.530(3)
Stats. Implemented: ORS 183.415, 183.464, 285C.465, 285C.503, 285C.506 & 285C.530
Hist.: EDD 12-2004, f. & cert. ef. 7-27-04

123-001-0750

Representations by Agency Representative

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

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

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

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

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

(A) The jurisdiction to hear the contested case;

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

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

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

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

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

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

(D) The admissibility of evidence; and

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

Stat. Auth.: ORS 183.452(2), 285B.075(5) & 285A.110(1)
Stats. Implemented: ORS 183.452
Hist.: EDD 12-2004, f. & cert. ef. 7-27-04

DIVISION 5

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

123-005-0000

Applicability of Rules

This division of administrative rules applies to all public records for which the Department is custodian, for purposes of which, unless the context demands otherwise:

(1) **Department** means the State of Oregon Economic and Community Development Department as (re)organized under ORS 285A.070.

(2) **Director** means the director of the Department as appointed under ORS 285A.070.

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
Stats Implemented: ORS 192.410 - 192.505, 285A & 285B
Hist.: EDD 12-1993, f. & cert. ef. 12-2-93; EDD 4-2003, f. & cert. ef. 3-26-03

123-005-0010**Access to Records**

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

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

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

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

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

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

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

123-005-0020**Requests to Inspect or Obtain Copies of Public Records**

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

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

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

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

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

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

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

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

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

123-005-0030**Payment for Inspection and Copies of Public Records**

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

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

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

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

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

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

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

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

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

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

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

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

DIVISION 6

**PROCEDURES FOR PERSONAL SERVICE CONTRACTS
ENTERED INTO WITH THE ECONOMIC AND
COMMUNITY DEVELOPMENT DEPARTMENT**

123-006-0005**Purpose**

Pursuant to ORS 285A.075(7), the department may enter into personal services contracts as required or appropriate to carry out its authorized mission. This rule sets forth the Department's personal services screening and selection procedures.

Stat. Auth.: ORS 285A.075

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

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

123-006-0015**Definitions**

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

(2) "Department" means the Economic & Community Development Department.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075 & 279.051

Hist.: EDD 4-1991, f. & cert. ef. 5-20-91; EDD 11-2003(Temp), f. & cert. ef. 12-23-03 thru 6-15-04; EDD 11-2004(Temp), f. & cert. ef. 6-15-04 thru 8-5-04; EDD 21-2004, f. & cert. ef. 8-5-04

123-006-0020**Standard Procedures and Exceptions**

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

(1) For Architectural, Engineering, Land Surveying and Related Services contracts, a special class of personal services contracts, the Department will comply with OAR 137, division 048.

(2) For public contracts specified in ORS 285A.075(8), the Department may directly contract with a vendor, or may follow any method of source selection and negotiation allowed in ORS Chapter 279B. For all specified contract review approvals, the Department Director or delegate shall exercise such authority.

(3) For personal services contracts relating to the Department's foreign trade offices operating outside the state, the Department will comply with OAR 123, division 125.

(4) For personal services contracts, other than those identified in (1) to (3) of this rule, that are best implemented as multiple work order contracts under an Agreement-to-Agree, the Department will comply with OAR 123-006-0025.

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

(6) The Public Notice for Sole-source Procurements in OAR 137-047-0275(2) shall be given at least ten (10) days before Award of the Contract, unless the Department determines that a shorter interval is in the public's interest and documents specific reasons to the file.

(7) The provisions of OAR 137-047-0670 (regarding cancelled offers) shall not apply to personal services contracts by the Department.

Stat. Auth.: ORS 285A.075

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

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

123-006-0025**Use of Work Order Contracts**

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

(2) The Department and the selected vendor will sign a non-binding Agreement for Services, in which the vendor acknowledges its readiness to enter into separate work order contracts with the Department that will describe, among other things, the specific services to be performed, the timeline for delivery of the services, and the com-

pensation for the services. Each Work Order Contract subsequently executed with the vendor pursuant to the non-binding Agreement for Services must be within the scope of the solicitation, if any, and will constitute a separate legally binding contract between the Department and the vendor.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075 & 279.070

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

123-006-0030

Electronic Public Notice

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

Stat. Auth.: ORS 285A.075

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

Hist.: EDD 11-2005, f. 11-30-05, cert. ef. 12-1-05

123-006-0035

Contract Amendments

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

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

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

(c) If the original Contract was selected according to the Small Procurement method, the total compensation does not exceed \$5000, or, if selected according to the Intermediate Procurement method, the total compensation does not exceed \$150,000.

(2) Anticipated Amendments.

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

(A) The possibility of one or more Amendments;

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

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

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

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

(3) Unanticipated Amendments.

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

(b) Limited Amount. An Authorized Agency may make one or more Unanticipated Amendments to a Contract without any additional competitive process, provided the cumulative amounts of all Unanticipated Amendments do not exceed 20% of the Original Contract amount, and subject to section (1) of this rule.

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

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

(B) The Unanticipated Amendment does not represent any important general change that alters the essential identity or main pur-

pose of the original Contract, nor is of such importance that it should be a new undertaking; and

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

(4) Cost Overruns.

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

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

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

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

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

(5) Reinstatements.

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

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

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

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

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

(D) The request to reinstate must be made no later than 90 days after expiration of the original Contract.

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

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

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285A.075 & 279.070

Hist.: EDD 11-2005, f. 11-30-05, cert. ef. 12-1-05

123-006-0040

Contracts Must be Authorized Prior to Performance

All personal services Contracts, including any amendments, must be in writing and fully executed before any Work or Services may be

performed or payment made. Contractors are not entitled to payment for any Work or Services performed prior to such execution.

Stat. Auth.: ORS 285A.075
 Stats. Implemented: ORS 285A.075 & 279.070
 Hist.: EDD 11-2005, f. 11-30-05, cert. ef. 12-1-05

DIVISION 8

QUALITY DEVELOPMENT AND LAND USE COORDINATION

123-008-0005

Purpose and Scope

This division of administrative rules is primarily intended to establish policies and procedures for mandatory compatibility with Oregon's Planning Goals and associated land use plans and standards.

Stat. Auth.: ORS 285B.075(5) & 285A.110(1)
 Stats. Implemented: ORS 197.180, 285A & 285B
 Hist.: EDD 9-1990, f. & cert. ef. 5-23-90; EDD 4-2003, f. & cert. ef. 3-26-03

123-008-0010

Policy

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

(2) It is further the policy of the Commission and the Department that a critical way to achieve effective and efficient land use policies, as well as to provide other important benefits for the people of Oregon, is through the Quality Development Objectives and the interagency coordination envisioned under ORS 285B.045(5).

Stat. Auth.: ORS 285B.075(5) & 285A.110(1)
 Stats. Implemented: ORS 197.180, 285A & 285B
 Hist.: EDD 9-1990, f. & cert. ef. 5-23-90; EDD 4-2003, f. & cert. ef. 3-26-03

123-008-0015

Definitions

For purposes of this division of administrative rules, unless the context demands otherwise:

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

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

(3) **Department** means the State of Oregon Economic and Community Development Department as (re)organized under ORS 285A.070.

(4) **Director** means the director of the Department as appointed under ORS 285A.070.

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

(6) **Quality Development Objectives** mean the primary directives articulated in Executive Order No. EO 97-22, as found in *Oregon Bulletin* 37(2) (February 1998) and amendments to it.

Stat. Auth.: ORS 285B.075(5) & 285A.110(1)
 Stats. Implemented: ORS 197.180, 285A & 285B
 Hist.: EDD 9-1990, f. & cert. ef. 5-23-90; EDD 4-2003, f. & cert. ef. 3-26-03

123-008-0020

Compliance with Planning Goals

(1) The Commission and Department shall achieve Planning Goal compliance whenever possible by taking actions that are compatible with the applicable acknowledged comprehensive plan of a

county or city government and land use regulations of this state and local zone ordinances.

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

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

(b) Identify which Planning 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 in accordance with OAR chapter 660, whenever applicable; and

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

Stat. Auth.: ORS 285B.075(5) & 285A.110(1)
 Stats. Implemented: ORS 197.180, 285A & 285B
 Hist.: EDD 9-1990, f. & cert. ef. 5-23-90; EDD 4-2003, f. & cert. ef. 3-26-03

123-008-0025

Compatibility with Acknowledged Comprehensive Plans and Land Use Regulations

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

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

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

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

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

Stat. Auth.: ORS 285B.075(5) & 285A.110(1)
 Stats. Implemented: ORS 197.180, 285A & 285B
 Hist.: EDD 9-1990, f. & cert. ef. 5-23-90; EDD 4-2003, f. & cert. ef. 3-26-03

123-008-0030

Dispute Resolution

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

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

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

(c) Request assistance from the Department of Land Conservation and Development; or

(d) A compatibility determination as described in OAR 660-030-0070(6) to (12).

Stat. Auth.: ORS 285B.075(5) & 285A.110(1)
Stats. Implemented: ORS 197.180, 285A & 285B
Hist.: EDD 9-1990, f. & cert. ef. 5-23-90; EDD 4-2003, f. & cert. ef. 3-26-03

123-008-0035

Compliance and Compatibility of New or Amended Programs

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

Stat. Auth.: ORS 285B.075(5) & 285A.110(1)
Stats. Implemented: ORS 197.180, 285A & 285B
Hist.: EDD 9-1990, f. & cert. ef. 5-23-90; EDD 4-2003, f. & cert. ef. 3-26-03

123-008-0040

Consistency with Local Economic Development Plans

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

Stat. Auth.: ORS 285B.075(5) & 285A.110(1)
Stats. Implemented: ORS 197.180, 285A & 285B
Hist.: EDD 9-1990, f. & cert. ef. 5-23-90; EDD 4-2003, f. & cert. ef. 3-26-03

DIVISION 9

OREGON 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 with flexibility in funding and decision-making to respond to economic development needs on a statewide and regional basis.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285A.227(2)
Stats. Implemented: ORS 285A.227
Hist.: EDD 3-1998, f. & cert. ef. 2-26-98; EDD 4-1999(Temp), f. & cert. ef. 8-5-99 thru 2-1-00; EDDS 5-2000, f. & cert. ef. 2-7-00

123-009-0060

Definitions

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

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

(2) "Commission" means the five-member Oregon Economic and Community Development Commission appointed under ORS 285A.040.

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

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

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285A.227(2)
Stats. Implemented: ORS 285A.227
Hist.: EDD 3-1998, f. & cert. ef. 2-26-98; EDD 4-1999(Temp), f. & cert. ef. 8-5-99 thru 2-1-00; EDDS 5-2000, f. & cert. ef. 2-7-00

123-009-0070

Commission Allocations

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

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

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285A.227(2)
Stats. Implemented: ORS 285A.227
Hist.: EDD 3-1998, f. & cert. ef. 2-26-98; EDD 4-1999(Temp), f. & cert. ef. 8-5-99 thru 2-1-00; EDDS 5-2000, f. & cert. ef. 2-7-00

123-009-0080

Commission Responsibilities

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

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

(3) The Commission is not bound by previously determined targets in terms of the eventual allocations of such funds.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285A.227(2)
Stats. Implemented: ORS 285A.227
Hist.: EDD 3-1998, f. & cert. ef. 2-26-98; EDD 4-1999(Temp), f. & cert. ef. 8-5-99 thru 2-1-00; EDDS 5-2000, f. & cert. ef. 2-7-00

123-009-0090

Criteria for Allocations

The Commission shall make biennial allocations from the Fund 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 for rural and distressed communities and for existing Oregon businesses.

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

(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), 285A.110 & 285A.227(2)
Stats. Implemented: ORS 285A.227
Hist.: EDD 3-1998, f. & cert. ef. 2-26-98; EDD 4-1999(Temp), f. & cert. ef. 8-5-99 thru 2-1-00; EDDS 5-2000, f. & cert. ef. 2-7-00

123-009-0100

Director's Review and Approval of Awards Under Allocation Plan

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

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285A.227(2)
Stats. Implemented: ORS 285A.227
Hist.: EDD 3-1998, f. & cert. ef. 2-26-98; EDD 4-1999(Temp), f. & cert. ef. 8-5-99 thru 2-1-00; EDDS 5-2000, f. & cert. ef. 2-7-00

DIVISION 11

OREGON ECONOMIC DEVELOPMENT REVENUE BONDS

123-011-0020

Purpose

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

Stat. Auth.: ORS 285A.075(5) & 285A.110
Stats. Implemented: ORS 285B.320 - 285B.371
Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988(Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05

123-011-0021

Commission Powers

For the purposes of these rules, the 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) & 285A.110
 Stats. Implemented: ORS 285B.320 - 285B.371
 Hist.: EDD 36-1988, f. & cert. ef. 12-15-88; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05

123-011-0025

Definitions

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

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

(2) "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.371.

(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.

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

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

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

Stat. Auth.: ORS 285A.075(5) & 285A.110
 Stats. Implemented: ORS 285B.320 - 285B.371
 Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988(Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 14-1994(Temp), f. & cert. ef. 11-10-94; EDD 4-1995, f. 4-28-95, cert. ef. 5-3-95; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05

123-011-0027

Delegation

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

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

(3) The Department 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 and to attend each Finance Committee meeting, as each individual Commissioner may in his or her sole discretion determine.

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

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

(6) If at any time the Commission 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) & 285A.110
 Stats. Implemented: ORS 285B.320 - 285B.371
 Hist.: EDD 9-1988(Temp), f. & cert. ef. 3-18-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05

123-011-0030

Application

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

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

(3) A 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) & 285A.110
 Stats. Implemented: ORS 285B.320 - 285B.371
 Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988(Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 13-1990, f. & cert. ef. 6-7-90; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05

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) Aquaculture 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 that 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 that 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 headquarter function. Corporate headquarters do not include professional corporations for medicine, law, dentistry, or finance or office space to be leased to others;

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

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

(F) "Pollution Control" equipment may qualify as part of projects that otherwise 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 competition 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. Only Finance Committee members and Department staff will ask questions.

(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.

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

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

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

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

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

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

123-011-0040

Extension

(1) The Department may extend the eligibility granted by the Finance Committee for up to six months if the Department determines that the project still constitutes an eligible activity and that there is a

reasonable prospect of the bonds being issued within the six-month extension period. The Applicant must provide updated financial information, 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 the Department denies extended eligibility or if the initial extension granted by the Department under section (1) of this rule has expired. The Finance Committee must determine that the project still constitutes an eligible activity, and that there is a reasonable prospect of the bonds being issued within the extension period. The applicant must provide updated financial information, 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) & 285A.110
Stats. Implemented: ORS 285B.320 - 285B.371
Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 1-1986, f. 1-28-86, ef. 2-1-86; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988(Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05

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 initial fee shall not exceed \$50,000 for any single bond issue or single project eligibility.

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

(3) An Applicant for a current refunding of an outstanding bond shall pay to the Department a processing fee of \$250 that shall accompany the request for the refunding.

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

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

Stat. Auth.: ORS 285A.075(5) & 285A.110
Stats. Implemented: ORS 285B.326
Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988(Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 15-1994, f. & cert. ef. 11-10-94; EDD 10-1996(Temp), f. & cert. ef. 12-4-96; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 14-2000(Temp), f. & cert. ef. 12-14-00 thru 6-12-01; Administrative correction 6-14-01; EDD 10-2001(Temp), f. & cert. ef. 12-13-01 thru 6-1-02; Administrative correction 11-29-02; EDD 4-2005, f. & cert. ef. 5-5-05

123-011-0050

Confidential Records

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

(2) The person requesting records will be charged for preparing and mailing such records. Costs 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 may determine.

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

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

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

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

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

(e) Personal financial statement;

(f) Financial statements of applicants;

(g) Customer lists;

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

(i) Production, sales or cost data; and

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

Stat. Auth.: ORS 285A.075(5) & 285A.110
Stats. Implemented: ORS 285B.320 - 285B.371
Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988(Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05

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) management 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 - 183.550 & 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 - 285B.098

Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 3-1988, 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) Fifteen percent of the available money in the Fund shall be set aside for loans to emerging small enterprises that are located in or draw their work forces from within distressed areas.

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

Stat. Auth.: ORS 285A.110

Stats. Implemented: ORS 285B.050 - 285B.059, 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; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05

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 - 285B.098

Hist.: EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01

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 285A.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 has a significant impact on the regional tourism economy and has the capacity to be marketed to national or international markets. Incidental food service facilities may be included. Sleeping accommodations without unique attraction capabilities are not eligible.

Stat. Auth.: ORS 285A.110

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

Hist.: EDD 2-1983(Temp), f. & cf. 5-25-83; EDD 1-1984, f. & cf. 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; EDD 6-2001, f. & cert. ef. 10-9-01

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, 285B.080(3) & 285B.092

Hist.: EDD 2-1983(Temp), f. & cf. 5-25-83; EDD 1-1984, f. & cf. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 25-1990 (Temp), f. & cert. ef. 9-13-90; EDD 29-1990, f. & cert. ef. 12-12-90; EDD 6-1991(Temp), f. & cert. ef. 6-18-91; EDD 8-1996(Temp), f. & cert. ef. 8-13-96; EDD 4-1997, f. & cert. ef. 3-25-97; EDD 9-1997(Temp), f. & cert. ef. 10-7-97; EDD 8-1998, f. & cert. ef. 5-22-98; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01

123-017-0020

Preference

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

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

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

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

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

(e) Employ displaced workers in the area;

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 285A.110

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

Hist.: EDD 2-1998(Temp), f. & cert. ef. 5-25-83; EDD 1-1984, f. & cert. ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 6-1991(Temp), f. & cert. ef. 6-18-91; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05

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) If a loan request is approved, the Department shall prepare the documents necessary to close the loan transaction. Such documents shall reflect all terms and conditions upon which the Finance Committee or the Director may have conditioned approval of the loan. Any material modifications of those terms and conditions must be approved by the Chair of the Finance Committee or his/her designee, or the Director for loans of \$50,000 or less.

Stat. Auth.: ORS 285A.110

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

Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-87; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05

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 40 percent of the total amount of the eligible project costs, except that Fund financing may be up to 50 percent when an application is submitted through a Financial institution.

(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 and Community Development Commission 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.

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

(g) The applicant has not received or entered into a contract or contracts exceeding \$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. These restrictions do not apply to loans of \$100,000 or less, to loans to emerging small businesses or to loans to projects in distressed areas.

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

(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 & 285B.092

Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 8-1996(Temp), f. & cert. ef. 8-13-96; EDD 4-1997, f. & cert. ef. 3-25-97; EDD 9-1997(Temp), f. & cert. ef. 10-7-97; EDD 8-1998, f. & cert. ef. 5-22-98; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05

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(1)(c), that shall set forth, among other matters:

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

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

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

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

(d) Shall set forth a schedule of payments and the period of loan which shall not exceed the usable life of the contracted project or 25 years from the date of the contract, whichever is less. The 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 that accrues during any period of delay in repayment authorized by subsection (a) of this section, and the payment schedule may require payments of varying amounts for collection of accrued interest;

(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 ensure 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 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, or Director for loans under \$50,000, may waive this requirement.

(10) In the case of loans of more than \$50,000 that are funded by proceeds from the Oregon Lottery, that the Borrower shall make a good faith effort to hire and retain low-income individuals who have received job training assistance from publicly funded job training providers and enter into a first-source hiring agreement with a publicly funded job training provider.

(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 that deal directly with the general public in the normal and usual course of their business, and to facilities in which business is customarily transacted by and with members of the general public.

vision applies only to firms that deal directly with the general public in the normal and usual course of their business, and to facilities in which business is customarily transacted by and with members of the general public.

(12) If 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(2).

Stat. Auth.: ORS 285A.110

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

Hist.: EDD 2-1983(Temp), f. & ef. 5-25-83; EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 25-1990 (Temp), f. & cert. ef. 9-13-90; EDD 29-1990, f. & cert. ef. 12-12-90; EDD 8-1996(Temp), f. & cert. ef. 8-13-96; EDD 4-1997, f. & cert. ef. 3-25-97; EDD 9-1997(Temp), f. & cert. ef. 10-7-97; EDD 8-1998, f. & cert. ef. 5-22-98; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05

123-017-0037

Appeals, Servicing, Amendments and Modifications

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

(a) Affirm the Director's denial; or

(b) Decide to consider the loan request itself.

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

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

(4) An applicant whose appeal of the Director's or the Finance Committee's decision has been denied by the Finance Committee must submit a new application, including 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 the Department receives its payment by the due date.

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

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

Stat. Auth.: ORS 285A.110

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

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

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 & 285.035(5)

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; EDD 6-2001, f. & cert. ef. 10-9-01

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 in a distressed area or for which the ODBF loan being sought is not more than \$50,000. In no case shall the Department make any payment of more than \$10,000 for any one project. In no case shall the Department make any payment to any third party until the loan has been closed and the Department has collected the fee specified in section (2) of this rule.

Stat. Auth.: ORS 285A.110

Stats. Implemented: ORS 285B.056, 285B.068 & 285B.092

Hist.: EDD 2-1983(Temp), f. & cert. ef. 5-25-83; EDD 1-1984, f. & cert. ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-13-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01

DIVISION 18

CAPITAL ACCESS PROGRAM

123-018-0000

Purpose and Scope

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

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

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

Stats. Implemented: ORS 285.507 - 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; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0010

Definitions

As used in this division of administrative rules, the following definitions apply, unless the context requires otherwise:

(1) "Agreement" means a contract between a Financial Institution and the Department authorizing the Financial Institution to participate in the Program as required under ORS 285B.132.

(2) "Borrower" means a Qualified Business that has received a Qualified Loan from a Participating Financial Institution, including but not limited to a corporation, partnership, limited liability company, joint venture, sole proprietorship or cooperative.

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

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

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

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

(7) "Financial Institution" means a financial institution, as defined in ORS 706.008.

(8) "Fund" means the Capital Access Fund in the State Treasury under ORS 285B.147.

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

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

(11) "Participating Financial Institution" means a Financial Institution that has executed an Agreement with the Department to participate in the Program and has enrolled one or more qualified loans.

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

(13) "Program" means the Capital Access Program authorized by ORS 285B.126 to 285B.147.

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

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

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

(b) A loan for the purchase of real property that is not used for the business operations of the Borrower; and

(c) A loan for the refinancing of an existing loan when and to the extent that the outstanding balance is not increased.

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

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285B.135(3), 285B.139(2)

Stats. Implemented: ORS 285B.126 - 285B.147 & 285B.150

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. & cert. ef. 5-27-94, cert. ef. 6-1-94; EDD 10-1997(Temp), f. & cert. ef. 10-7-97; EDD 9-1998, f. & cert. ef. 5-22-98; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0020

Authority to Implement Program

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

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285B.135(3) & 285B.139(2)
 Stats. Implemented: ORS 285B.126 - 285B.147 & 285B.150
 Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0030

Program Registration Procedure

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

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

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

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
 Stats. Implemented: ORS 285B.126 & 285B.132
 Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0040

Agreement

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

(1) For the creation of a Loss Reserve Account by the Department, owned by the Department for the benefit of the Participating Financial Institution in accordance with ORS 285B.135;

(2) That the liability of the State of Oregon and the Department to the Participating Financial Institution under the Agreement is limited to the outstanding balance in the Loss Reserve Account for that Participating Financial Institution;

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

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

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

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

(7) For payment by the Department from the Loss Reserve Account to the Participating Financial Institution to reimburse it for such Losses, up to the total amount then currently credited to the Loss Reserve Account.

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

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

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

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

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

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

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

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

(16) That the Department may require from the Participating Financial Institution information relating to the Participating Financial

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

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

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)
 Stats. Implemented: ORS 285B.132, 285B.135, 285B.138 & 285B.141
 Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0050

Establishing a Loss Reserve Account

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

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)
 Stats. Implemented: ORS 285B.135 & 285B.138
 Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0060

Ownership, Control, Investment of Loss Reserve Account

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

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

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)
 Stats. Implemented: ORS 285B.135 & 285B.147
 Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0065

Loan Eligibility

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

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

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

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)
 Stats. Implemented: ORS 285B.135 & 285B.147
 Hist.: EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0070

Fees

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

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

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

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

Stats. Implemented: ORS 285B.138

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

123-018-0080

Procedure for Enrollment of a Qualified Loan

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285B.135(3) & 285B.139(2)

Stats. Implemented: ORS 285B.135, 285B.138 & 285B.139

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

123-018-0085

State Contributions to Loss Reserve Accounts

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

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

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

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

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

(3) For purposes of this rule, and incorporating the definitions in OAR chapter 123, division 135, "environmental action on a brownfield(s)" means activities undertaken to:

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

(b) Conduct a feasibility study;

(c) Plan for remedial action or removal; or

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

(4) Whenever the Department's total Loss Reserve Account deposits described in section (2) of this rule are greater than 35 percent of the total appropriated to the Fund, then the Department may deposit no more than 150 percent of the minimum allowed by section (1) of this rule.

(5) Whenever the Department's total Loss Reserve Account deposits pursuant to section (2) of this rule are 40 percent of the total appropriated to the Fund, the Department may deposit no more than the minimum allowed by section (1) of this rule.

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

(7) When the Department executes an Agreement with a Participating Financial Institution for the first time or more than year after termination of a prior Agreement, the Department may make an additional deposit not to exceed \$50,000. These additional deposits are not in lieu of future transfers and the total of all additional deposits may not exceed \$250,000 each biennium.

(8) The Department may not transfer:

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

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

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

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285B.135(3) & 285B.139(2)

Stats. Implemented: ORS 285B.135, 285B.138 & 285B.139

Hist.: EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0090

Procedure for Making Claim for Reimbursement of Loss

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

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

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

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

Stats. Implemented: ORS 285B.141

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

123-018-0100

Payment of Claims by Department

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

(2) Except as described in OAR 123-018-0150, all interest earnings shall be available to pay Loss claims, until such time as the Department deems a change in this process is required, at which time

earnings available for withdrawal by the Department from the Loss Reserve Account 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. This payment will fully satisfy the claim and the Participating Financial Institution will have no further right to receive any other amount with respect to such claim.

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

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)
 Stats. Implemented: ORS 285B.135, 285B.138 & 285B.141
 Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0110

Recoveries on Loans Subsequent to Payment of Claim

(1) If, subsequent to the payment of a Loss claim by the Department, the Participating Financial Institution recovers from the Borrower, through liquidation of collateral or from any other source, amounts for which Participating Financial Institution was reimbursed from the Loss Reserve Account, the Participating Financial Institution shall promptly repay into the Loss Reserve Account the amount received up to the amount of the reimbursement.

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

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)
 Stats. Implemented: ORS 285B.135, 285B.138 & 285B.141
 Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0120

Available Collateral, Guarantees and Other Security Not Realized

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)
 Stats. Implemented: ORS 285B.135 & 285B.141
 Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0130

Subrogation

(1) The Department may request to be subrogated to the rights of a Participating Financial Institution to the pledges and security, pursuant to OAR 123-018-120.

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

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

(b) Full or partial recovery of the Lender's loss has occurred through reimbursement of the Loss claim by the Department or by combination of such reimbursement and by liquidation or realization of pledges and security.

(3) In response to such a request, the Lender shall promptly subrogate its rights to the Department, providing the Department with originals of all applicable documents, accompanied by enforceable assignments and conveyances to the Department.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)
 Stats. Implemented: ORS 285B.135 & 285B.141
 Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0140

Reporting

(1) When a Loss Reserve Account is domiciled with the Participating Financial Institution, the Participating Financial Institution shall provide the Department with a monthly statement providing details of the balance and the payments and receipts activity in the Loss Reserve Account for the prior month.

(2) On or before February 15, May 15, August 15, and November 15 of each year, a Participating Financial Institution must file a quarterly report with the Department indicating the number and aggregate outstanding balance of all its Enrolled Loans.

(3) When a Participating Financial Institution computes the aggregate outstanding balance of all its Enrolled Loans, it may only consider the balance of the portion of a loan enrolled in the Program.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)
 Stats. Implemented: ORS 285B.135 & 285B.144
 Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0150

Withdrawal of Excess Deposits in Loss Reserve Accounts

Upon and after a formal determination or order by the Director of the Department

(1) The following shall apply to all interest earnings on moneys transferred by the Department to match transmitted fees, as described in OAR 123-018-0085, for any loan enrolled after the date of Director's order:

(a) All Participating Financial Institutions shall continually remove such interest earnings from the Loss Reserve Account, sequestering them in a separate account;

(b) Such interest earnings shall not be available to cover any Loss, regardless of when they are effectively sequestered or transferred as described in this rule; and

(c) Such interest earnings shall be paid or transferred to the Department consistent with policies and directions of the Department, pursuant to the Director's determination; and

(2) Interest earnings arising from prior match funds or from any fee assessed on or paid by a Borrower or Lender shall remain in the Loss Reserve Account and available to cover Losses.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)
 Stats. Implemented: ORS 285B.135 & 285B.147
 Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

123-018-0160

Termination of and Withdrawal from Program

(1) The Department may terminate enrollment of Qualified Loans under the Program for a Participating Financial Institution on the date specified in the Department's notice of termination to the Participating

Financial Institution, or for all Participating Financial Institutions under the Program upon 90 days notice, or such earlier date should the balance in the Fund reach zero, or should the Department anticipate that the balance in the Fund will reach zero, regardless of authority under ORS 285B.150. Termination shall not apply to any Qualified Loans made before the date of termination.

(2) Should a Loss Reserve Account have a zero balance, the Department may terminate the Agreement at its sole discretion.

(3) A Participating Financial Institution may withdraw from the Program after giving written notice to the Department. After receipt of this notice, the Department shall determine when to withdraw any remaining balance in the Participating Financial Institution's Loss Reserve Account.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)

Stats. Implemented: ORS 285B.135 & 285B.147

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

123-018-0170

Disposition of Funds Withdrawals from Loss Reserve Accounts

The Department shall deposit moneys withdrawn by the Department from Loss Reserve Accounts as described in OAR 123-018-0040, 123-018-0150 and 123-018-0160 into the Fund.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)

Stats. Implemented: ORS 285B.135 & 285B.141

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

123-018-0180

Inspection of Files

The Department may inspect a Participating Financial Institution's files relating to Enrolled Loans at any time during normal business hours. The Department is not required to provide a Participating Financial Institution with prior notice of an inspection.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)

Stats. Implemented: ORS 285B.132 & 285B.135

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

123-018-0190

Reports of Regulatory Agencies

The Department may require from the Participating Financial Institution information relating to the Participating Financial Institution's status and performance, as developed by or for applicable state or federal regulatory bodies, and relevant to the Participating Financial Institution's participation in the Program or the financial health of institution, or the Department may obtain public information from state or federal regulatory bodies such as the Oregon State Department of Consumer and Business Services, Division of Finance and Corporate Securities. The Department shall not disclose any confidential information obtained as described in this rule, to the extent permitted by law.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)

Stats. Implemented: ORS 285B.132

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

123-018-0200

Administrative Costs of Program

The Department may charge actual and necessary administrative expenses in operating the Program to the Fund.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285B.135(3)

Stats. Implemented: ORS 285B.135 & 285B.147

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

DIVISION 19

OPERATION OF OREGON ENTREPRENEURIAL DEVELOPMENT LOAN FUND

123-019-0000

Purpose

The purpose of these rules is to provide procedures, standards and criteria for the making of loans from the Oregon Entrepreneurial

Development Loan Fund for applications received by the 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: Publications referenced 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 - 183.550 & 285.450 - 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. Notwith-

standing 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 appli-

cation process was commenced, the Department shall be under no obligation to disburse any loan fund.

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

Stat. Auth.: ORS 183.310 - 183.550 & 285.450 - 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 - 183.550 & 285.450 - 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 - 183.550 & 285.450 - 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 - 183.550 & 285.450 - 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 - 183.550 & 285.450 - 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

123-020-0100

Purpose and Scope

This division of administrative rules describes the steps and necessary elements for the Commission to approve the formation of a Port, as required under ORS 285A.627(2).

Stat. Auth.: ORS 285.075(5) & 285A.110(1)

Stats. Implemented: ORS 285A.627

Hist.: EDD 14-2004, f. & cert. ef. 8-2-04

123-020-0105

Definitions

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

(1) "Applicant" means an entity that may legitimately seek and propose the formation of a new Port, and that submits a request for the Commission's approval.

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

(3) "Department" means the State of Oregon Economic and Community Development Department as organized under ORS 285A.070.

(4) "Port" means a municipal corporation organized under ORS Chapter 777 or 778, which may be known as a "port authority" or "port district."

(5) "Director" means the Director of the Economic and Community Development Department.

Stat. Auth.: ORS 285.075(5) & 285A.110(1)

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04; Renumbered from 123-020-0005, EDD 14-2004, f. & cert. ef. 8-2-04

123-020-0110

Application

An Applicant for the formation of a port must:

(1) Send the following, prior to any official filing with the appropriate county, to Attn: Port Formation Application, Oregon Economic and Community Development Department, State Lands Building Suite 200, 775 Summer Street NE, Salem, OR 97301-1280:

(a) A sample of the petition or order to be used for purposes of ORS 198.705 to 198.955, as applicable;

(b) A letter formally requesting formation of the proposed Port;

(c) A legal description and map of the port boundaries; and

(2) The Department may assess and collect an application fee to help cover some or all the costs of reviewing an application. The costs to be covered, the amount of the fee and when it will be assessed will be an adopted Department policy. The Applicant should request the current Department policy on application fees prior to submitting its application.

(3) Materials requested in OAR 123-020-0015 to 123-020-0035.

Stat. Auth.: ORS 285.075(5) & 285A.110(1)

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04; Renumbered from 123-020-0010, EDD 14-2004, f. & cert. ef. 8-2-04

123-020-0115

Criteria

In carrying out its function as statewide coordinating, planning, and research agency for all Ports in the State of Oregon, and to insure the most orderly, efficient, and economical development of the state port system, the Commission, through the Department, will take into consideration and may request information from the Applicant regarding the following:

(1) The need for port services in the territory to be included within the proposed Port;

(2) The adequacy of funding for the proposed Port; and

(3) The orderly development of the proposed Port and its effects upon the development of a state port system.

Stat. Auth.: ORS 285.075(5) & 285A.110(1)

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04; Renumbered from 123-020-0015, EDD 14-2004, f. & cert. ef. 8-2-04

123-020-0120

Need for Port Services

In evaluating the need for port services, the Commission will take the following into account:

(1) That reasonable alternatives to the formation of a Port have been considered;

(2) That significant adverse effects on other public or private agencies offering similar services within the proposed service area have been considered;

(3) That economic benefits and opportunities such as increased employment, income, and cost savings have been considered; and

(4) That proposed Port boundaries are reasonable in terms of tax assessment and property ownership.

Stat. Auth.: ORS 285.075(5) & 285A.110(1)

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04; Renumbered from 123-020-0020, EDD 14-2004, f. & cert. ef. 8-2-04

123-020-0125

Viability of Formation

In reviewing the viability and merits of a proposed Port, the Commission will consider the following, in addition to the latest draft copy of the economic feasibility statement for district formation, if applicable, under ORS 198.749:

(1) A proposed budget of the proposed Port showing, among other things, capital improvements, staffing, and other sums and expenses required to implement and operate the proposed Port for a reasonable period;

(2) Adequacy of the existing tax base and proposed tax rate and the source and amounts of any other revenues estimated to be required; and

(3) Other financial information requested.

Stat. Auth.: ORS 285.075(5) & 285A.110(1)

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04; Renumbered from 123-020-0025, EDD 14-2004, f. & cert. ef. 8-2-04

123-020-0130

Orderly Development of Port and State Port System

The Department encourages and seeks public views on the following issues as they relate to the formation of a specific port district:

(1) Relationship of the proposed Port activities to locally approved land use plans and the provision of other local public services or utilities;

(2) Coordination with affected environmental, economic, and social agencies, including the impact on affected taxing jurisdictions; and

(3) Effects of the proposed activities on transportation facilities and services.

Stat. Auth.: ORS 285.075(5) & 285A.110(1)

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04; Renumbered from 123-020-0030, EDD 14-2004, f. & cert. ef. 8-2-04

123-020-0135

Commission Request for Additional Information

In addition to what is described in this division of administrative rules, the Commission or the Department may request such other relevant facts or information, as is deemed appropriate in considering the formation of a new Port.

Stat. Auth.: ORS 285.075(5) & 285A.110(1)

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04; Renumbered from 123-020-0035, EDD 14-2004, f. & cert. ef. 8-2-04

123-020-0140

Review and Commission Approval or Denial

(1) An Applicant will not seek, nor will any agency of a county government do either of the following, until such time as the Commission approves the formation of the port:

(a) Conduct a deciding vote on port formation by the governing body of the county; or

(b) Place the question of the port's formation on the ballot of a special or general election.

(2) Upon receipt of a request under OAR 123-020-0010, the Department will review the submitted materials and may request additional information that the Department believes necessary for the Commission's deliberation.

tion. Following its review and receipt of any additional information, the Department will assemble materials and information along with a summary of the proposed port's advantages and disadvantages relative to OAR123-020-0015 to 123-020-0030 that may include a recommendation of action.

(4) The Department, through its Director will submit proposal summary and recommendation to the Commission.

(5) The Commission schedules a meeting to consider final approval of the requested port formation. The agenda for this meeting must be publicly available and be sent to the Applicant and other interested parties at least 21 days prior to such meeting. The meeting must afford an opportunity for public commentary.

(6) At the meeting described in this rule or a subsequent meeting, the Commission will formally approve or deny the proposed port's formation, as it deems appropriate.

(7) If the Commission denies a port formation request, it will indicate in writing the reasons and the remedies, if any, that would allow the applicant to be reconsidered, (8) If formation of the port is approved by the Commission:

(a) The Commission will issue a formal declaration of its approval that the Department will provide to the Applicant and to the Chair of the Board of County Commissioners for the respective county or counties; and

(b) The Applicant will proceed with and abide by all applicable procedures and requirements under ORS Chapters 198 and 777.

Stat. Auth.: ORS 285.075(5) & 285A.110(1)

Stats. Implemented: ORS 285A.627

Hist.: EDD 6, f. & ef. 4-30-76; EDD 2-2003(Temp), f. & cert. ef. 3-4-03 thru 8-29-03; EDD 7-2003(Temp), f. 8-28-03, cert. ef. 8-30-03 thru 2-20-04; EDD 3-2004(Temp), f. 2-3-04, cert. ef. 2-21-04 thru 8-1-04; Renumbered from 123-020-0040, EDD 14-2004, f. & cert. ef. 8-2-04

DIVISION 21

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 & 285.466 - 285.481

Stats. Implemented: ORS 285.466 - 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) & 285A.110

Stats. Implemented: ORS 285B.200 - 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) & 285A.110

Stats. Implemented: ORS 285B.200 - 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) & 285A.110

Stats. Implemented: ORS 285B.200 - 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 & 285.466 - 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 - 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 & 285.466 - 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 - 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 & 285.466 - 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 percent 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 percent, 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. 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 percent 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 percent 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 percent 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 percent 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:

$$\frac{\text{Guaranteed Loan Amount} \\ \text{(as set out in Authorization)}}{\text{Total credit facility made available}} \times \\ \text{(Principal outstanding upon default} \\ \text{plus accrued interest and liquidation charges)}$$

(c) Qualified businesses include persons or enterprises with existing line of credit Working capital loans. 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 & 285.466 - 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; EDD 13-2002(Temp), f. & cert. ef. 6-18-02 thru 12-13-02; Administrative correction 4-15-03; EDD 6-2005(Temp), f. & cert. ef. 8-5-05 thru 1-31-06; EDD 1-2006, f. & cert. ef. 2-10-06

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 & 285.466 - 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 & 285.466 - 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 & 285.466 - 285.481

Stats. Implemented: ORS 285.476(2), 285.476(5) & 285.471(1)(b)

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94

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 & 285.466 - 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 & 285.466 - 285.481

Stats. Implemented: ORS 192.430 & 285.035(5)

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94

DIVISION 22

SMALL BUSINESS DEVELOPMENT CENTERS

123-022-0060

Purpose

The purpose of these rules is to provide procedures, standards, and criteria for making grants under ORS 285B.168 and 285A.340 to 285A.349 to community college and community college service districts to assist in the improvement and formation of small business development centers.

Stat. Auth.: ORS 285A.075 & 285A.110

Stats. Implemented: ORS 285A.340 - 285A.349 & 285B.165 - 285B.180

Hist.: EDD 6-1998, f. & cert. ef. 4-22-98

123-022-0070

Definitions

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 & 285A.110

Stats. Implemented: ORS 285A.340 - 285A.349 & 285B.165 - 285B.180
Hist.: EDD 6-1998, f. & cert. ef. 4-22-98

123-022-0080

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 & 285A.110

Stats. Implemented: ORS 285A.340 - 285A.349 & 285B.165 - 285B.180

Hist.: EDD 6-1998, f. & cert. ef. 4-22-98

123-022-0090

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 & 285A.110

Stats. Implemented: ORS 285A.340 - 285A.349 & 285B.165 - 285B.180

Hist.: EDD 6-1998, f. & cert. ef. 4-22-98

123-022-0100

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 & 285A.110

Stats. Implemented: ORS 285A.340 - 285A.349 & 285B.165 - 285B.180

Hist.: EDD 6-1998, f. & cert. ef. 4-22-98

123-022-0110

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(5) & 285A.110(1)

Stats. Implemented: ORS 285C.600 - 285C.620 & 307.123

Hist.: EDD 6-1998, f. & cert. ef. 4-22-98

DIVISION 23

STRATEGIC INVESTMENT PROGRAM

123-023-1000

Purpose

The purpose of this division of administrative rules is to clarify and establish procedures, standards and criteria for operation of the Strategic Investment Program (SIP) under ORS 285C.600 to 285C.620.

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

Stats. Implemented: ORS 285C.600 - 285C.620 & 307.123

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99; EDD 10-2004, f. & cert. ef. 5-24-04, Renumbered from 123-023-0201

123-023-1100

Definitions

As used in this division of administrative rules, unless the context clearly indicates otherwise:

(1) **Applicant** means a business firm, including but not limited to a publicly or privately held corporation, for which the governing body of the County has officially requested approval for the Exemption, and that submits an Application to the Department.

(2) **Application** means the form, prescribed by the Department, and all supplemental attachments, exhibits and so forth that the Applicant completes or furnishes for the Strategic Investment Program.

(3) **Approved Project** means an investment or investments in taxable property that:

- (a) The Applicant owns or leases;
- (b) Is authorized to receive Exemption by determination of the Finance Committee;
- (c) Conforms with the project definition established with the Finance Committee's determination; and
- (d) Complies with all requirements and conditions set forth in the Application or its approval, as well as applicable laws, administrative rules and local agreements.

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

(5) **County** means the Oregon county in which the Approved Project is located, except when the location is inside the reservation of a federally recognized Oregon Indian tribe, in which case "County" refers to the tribe/tribal.

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

(7) **Exemption** means that property of an Approved Project is subject to taxation and assessment under ORS 307.123.

(8) **Existing Property** means property:

- (a) Comprising any part of a another Approved Project, unless the property was never actually subject to Exemption; or
- (b) Owned or leased by the Applicant (regardless of location) prior to the County's receipt of the Application.

(9) Finance Committee means the Finance Committee for the Commission as described in OAR 123-001-0520.

(10) **Urban Project** means an Approved Project located entirely outside a "rural area," as defined under ORS 285C.600, and hence, at least partially inside the urban growth boundary, as acknowledged and in effect on December 1, 2002, for:

- (a) The Portland metropolitan region; or
- (b) Any city, for which the most recently available population figure at the time of Application equals or exceeds 30,000.

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

Stats. Implemented: ORS 285C.600 - 285C.620 & 307.123

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99; EDD 10-2004, f. & cert. ef. 5-24-04, Renumbered from 123-023-0351; EDD 3-2006(Temp), f. & cert. ef. 5-26-06 thru 11-22-06

123-023-1300

Local Hiring

For purposes of ORS 285C.603:

(1) Prospective Applicants and County/local governments are urged in negotiating an agreement, to consider creative and coopera-

tive means to promote gainful work for persons already residing in the proximate area or region of the Approved Project for:

(a) Jobs at the operations or facility in which investment is made; and

(b) Persons employed in the construction or installation of property or by other types of contractors, vendors or suppliers to the project.

(2) Such means shall not create any:

(a) Undue burden on the Applicant, relative to the nature, needs or competitiveness of the Approved Project; or

(b) Explicit bias against anyone's rights or access to the privilege of employment, such as specifying residency-based hiring criteria as proscribed by OP-8236, Oregon Attorney General (April 20, 1995).

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

Stats. Implemented: ORS 285C.603 & 285C.609

Hist.: EDD 10-2004, f. & cert. ef. 5-24-04

123-023-1400

Making Application

(1) An Applicant desiring approval for the Exemption must submit an Application to the Department.

(2) In addition to what is required by the Application or in this division of administrative rules, the Applicant shall submit any information requested by the Department for purposes of evaluating the Application.

(3) Not less than 21 days after having received a complete Application as described in OAR 123-023-1500, the Department shall arrange for the Finance Committee to initially consider it at a regular or special meeting. Under extenuating circumstances, the Department may waive this minimum period.

(4) The application form may be obtained from, and shall be submitted to: Manager of Business Finance, Oregon Economic & Community Development, State Lands Building Suite 200, 775 Summer Street NE, Salem OR 97301-1280.

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

Stats. Implemented: ORS 285C.600 - 285C.620

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99; EDD 10-2004, f. & cert. ef. 5-24-04, Renumbered from 123-023-0401

123-023-1500

Contents of Application

A complete Application must include all of the following:

(1) With respect to the local official action requesting Exemption on the Applicant's proposed investment(s):

(a) Copy of the official action by the governing body of the County; and

(b) Evidence that action was taken by affirmative vote of a majority of the governing body (not merely the members present) at a regular or duly called special meeting.

(2) A copy of the agreement:

(a) Between the Applicant and the County in partnership with any city in which the site is located;

(b) Duly executed before the official action in section (1) of this rule;

(c) Fully adhering to ORS 285C.609(4); and

(d) Specifying requirements, if any, under ORS 285C.609(5).

(3) Evidence that the County held a public hearing, regarding the Applicant's proposal, before executing the agreement in section (2) of this rule.

(4) The latest version of any document submitted to County/local governments for purposes of or pursuant to sections (1) to (3) of this rule.

(5) A copy of a first-source hiring agreement, according to division 70 of this chapter of administrative rules, that is in effect beginning no later than when hiring for the Approved Project commences, and ending no sooner than June 30 of the final tax year of Exemption.

(6) Any other information required with the Application as stated in the form, including but not limited to full company identification, proof of basic credit-worthiness, hiring/payroll projections, detailed description of proposed investment(s), and estimated impacts on public services.

(7) Commitment to provide timely notification or evidence to the county assessor or the Department of Revenue, as requested or otherwise necessary under ORS 307.123 or other applicable laws, including but not limited to the date when any taxable property is initially occupied, used or operated commercially.

(8) Commitment that the ultimate lessee will be responsible for the payment of property taxes levied on leased property that comprises any part of an Approved Project.

(9) As described in OAR 123-023-1800:

(a) Full amount of the nonrefundable application fee; and

(b) Commitment to pay additional fee, if approved.

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

Stats. Implemented: ORS 285C.600 - 285C.620 & 307.123

Hist.: EDD 10-2004, f. & cert. ef. 5-24-04

123-023-1600

Consideration and Approval

(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.

(3) In evaluating an Application the Finance Committee shall:

(a) Hold one or more meetings open to the public, at which the matter is an agenda item for discussion, and for which appropriate and customary public notice is made;

(b) Invite from the public oral statements or written comments; and

(c) Have the Applicant appear in order to give a statement and to answer questions submitted in advance or posed by Department staff or by members of the Finance Committee or the Commission, exclusively.

(4) Upon giving the Commission notice and opportunity to comment, the Finance Committee may in light of extenuating circumstances dispense with some or all of the elements in section (3) of this rule as otherwise permitted under ORS Chapter 192.

(5) Pursuant to evaluation of the Application, the Applicant's investment(s) qualifies for the Exemption if the Finance Committee finds that:

(a) The project will satisfy the criteria for eligibility (if any), as established by the Commission or the Finance Committee;

(b) The project will directly benefit a traded sector industry under ORS 285B.280;

(c) The total cost of the project will equal or exceed:

(A) \$25 million, except for paragraph (B) of this subsection; or

(B) \$100 million for a proposed Urban Project;

(d) The project will not consist of any Existing Property or any property formerly or currently exempt under ORS 285C.175 and the Applicant is not authorized for any investment at the same location in an enterprise zone;

(e) Information described in OAR 123-023-1500 is completely and accurately provided; and

(f) The Applicant has agreed to comply with any additional reasonable conditions imposed by the Finance Committee related to the Strategic Investment Program, including requirements that continue for the term of the Exemption.

(6) Once the Finance Committee has taken formal action to authorize the Exemption, that determination is final and may be reversed, revoked or withdrawn only by a formal finding of the Commission that there was a material error or omission among submitted Application information, or that there is effectively a noncompliance.

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

Stats. Implemented: ORS 285C.600 - 285C.620 & 307.123

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99; EDD 12-2002(Temp), f. & cert. ef. 6-5-02 thru 11-29-02; Administrative correction 4-15-03; EDD 10-2004, f. & cert. ef. 5-24-04, Renumbered from 123-023-0451

123-023-1700

Establishment of Exempt Property

(1) The Finance Committee's determination pursuant to OAR 123-023-1600 needs to adequately define the Approved Project for purposes of the Exemption, consistent with the Application and County/local approval of the Applicant.

(2) The following are examples of defining an Approved Project as described in section (1) of this rule:

(a) Describing the site(s) and overall facilities/operation, in/at which applicable property must be located, used and occupied for commercial purposes;

(b) Delimiting what may be covered by Exemption in terms of:

(A) Property's maximum cost or value; or

(B) Specific time period in which property must be completed or placed in service;

(c) Generally identifying all real and personal property to be acquired, constructed, reconstructed, improved, added to, modified or installed, by referencing the description of investment(s) in the Application or further information from the Applicant (whether requested or not by the Department or Finance Committee), including but not limited to:

(A) List of structures or property items (or representative examples or descriptors thereof) with the location, function and cost;

(B) Timelines for completion of construction, installations and so forth, in order for later property to be covered by the Exemption starting at a future point for the remainder of 15-year period; and

(C) Indication of property that replaces existing property to be retired, or for which the Exemption covers only a portion — or only an increase in the assessed value — of the property, as a result of additions to or the modification, remodeling, renovation, refurbishment, retrofitting or upgrading of existing building, structure, machinery or equipment; or

(d) Using comparable methods as necessary and appropriate.

(3) Property or an investment in property is not disqualified from the Exemption if built on, installed in or done to Existing Property, insofar as the Existing Property (or its existing assessed value) is simply excluded from the Exemption.

(4) In the event that another business firm acquires the Applicant or the Approved Project:

(a) The ongoing Exemption shall continue as authorized and continuously exempt property is not Existing Property, subject to subsections (b) and (c) of this section;

(b) The acquiring firm must comply with all terms and conditions under the Application, its approval or the local agreement included with it (see OAR 123-023-1500(2)), as well as applicable requirements of law and this division of administrative rules, as if the acquiring firm were the Applicant; and

(c) The owner or chief executive officer of the acquiring firm must provide and authorize a formal statement to the Department and the parties to the agreement, attesting to the firm's full assumption of relevant obligations and requirements formerly incumbent on the Applicant in order to retain the Exemption.

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

Stats. Implemented: ORS 285C.600 & 307.123

Hist.: EDD 10-2004, f. & cert. ef. 5-24-04

123-023-1800

State Application and Approval Fees

With respect to ORS 285C.612 and the fees payable to and collected by the Department:

(1) Irrespective of subsequent approval, the following amount must accompany the Application:

(a) \$5,000; or

(b) \$10,000 for a proposed Urban Project.

(2) After the Finance Committee decides to approve the Application, but pending formal authorization, the Applicant must pay the following amount (of which the Department shall transfer 50 percent to the Department of Revenue to administer ORS 307.123):

(a) \$10,000; or

(b) \$50,000 for a proposed Urban Project.

(3) The Commission will allocate payments collected and retained by the Department, as described in sections (1) and (2) of this rule, consistent with relevant provisions in division 9 of this chapter of administrative rules.

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

Stats. Implemented: ORS 285C.612

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99; EDD 10-2004, f. & cert. ef. 5-24-04, Renumbered from 123-023-0501

123-023-1900

Community Service Fee

(1) The local agreement that is included with the Application (see OAR 123-023-1500(2)) shall specify:

(a) Matters related to the community service fee under ORS 285C.609(4); and

(b) How the Applicant annually makes payment of the fee to the County government, beginning not earlier than December 1 of the first tax year for which Exemption is claimed under ORS 307.123(1)(b), including arrangements for invoicing or issuance of a receipt to the Applicant.

(2) Depositing of community service fee moneys (under ORS Chapter 294) and their allocation, distribution and transfer do not affect the Approved Project's eligibility.

(3) The County government shall see to the entire annual distribution of community service fee funds, among some or all of the following:

(a) County government;

(b) City government(s) if any part of Approved Project is located within incorporated territory;

(c) Any (other) local taxing district that levies taxes on property located in a tax code area containing any part of the Approved Project; or

(d) Potentially, other local organizations or programs recognized as providing a relevant and significant community service, even without direct tax levy authority.

(4) A distribution formula shall determine the exact percentage of the community service fee received or retained by an entity listed in section (3) of this rule. A schedule of distribution formulae for each year is allowable.

(5) The annual formula must be established in only one of the following two ways:

(a) By official action of the Finance Committee, if an agreement consistent with subsection (b) of this section is not executed on or before the same date of the third month following the Finance Committee's formal action authorizing the Approved Project; or

(b) By an agreement to which at least all of the following are parties:

(A) County government;

(B) City government as described in subsection (3)(b) of this rule; and

(C) Local taxing districts listed in ORS 198.010 or 198.180 and described in subsection (3)(c) of this rule, to the extent that the sum of effective tax rates for such participating districts equals or exceeds 75 percent (0.75) of the total for all such districts (prorated by the expected proportion of the Approved Project among tax code areas).

(6) In the case where an agreement as described in subsection (5)(b) of this rule is not executed within the requisite three-month period, the Finance Committee:

(a) Shall take necessary steps as soon as reasonably possible for purposes of subsection (5)(a), as described in section (7), of this rule; or

(b) May delay official action, at its sole discretion, if informed that a sufficient set of parties as described in subsection (5)(b) of this rule are having productive negotiations, with which they wish to continue. (Under such circumstances, the Finance Committee may simply act to officially sanction an agreement reached when negotiations successfully conclude.)

(7) In determining a distribution formula the Finance Committee shall:

(a) Adjust proportions according to the Approved Project's demand or direct impact on the public service(s) provided by each entity, taking account of expected new property tax revenues even with the Exemption, as well as consideration of the goals and purposes of applicable state policies;

(b) Set an annual distribution percentage for each included entity; and

(c) In the process of issuing the distribution formula to the County government, notify all entities of this official, final action.

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

Stats. Implemented: ORS 285C.609

Hist.: EDD 10-2004, f. & cert. ef. 5-24-04

123-023-2000

Confidential Records

As provided under ORS 192.502, 285A.090 and 285C.620:

(1) Prior to the County governing body holding the public hearing under ORS 285C.609(4) (or a public notice for the hearing naming an expected Applicant), the Department shall not release any information identifying or pertaining to the expected Applicant or to discussions among it, local governments, or the Department and members of the Commission or Finance Committee.

(2) Prior to the official action requesting approval for Exemption by the County governing body and the Department's receipt of a complete Application, the Department shall not release any Application

materials, preliminarily submitted by an expected Applicant that specifically describe investment plans.

(3) As otherwise allowable under ORS 192.410 to 192.595, the department shall seek to keep confidential certain sensitive records or communications, as may be obtained with an Application, including but not limited to the following:

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

(b) Financial statements, tax returns, business records, employment history, personnel files and comparable data submitted by or for an Applicant, or analysis of such data;

(c) Intra-departmental advisory memoranda preliminary to a decision and draft Application information;

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

(e) Personal financial statements;

(f) Information of an Applicant pertaining to litigation to which the Applicant is a party if the complaint has been filed, or that the Applicant shows is reasonably likely to occur if the complaint has not been filed (This exemption does not apply to litigation that 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);

(g) Production, sales or cost data, customer lists, or detailed descriptions or identifications of business property; or

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

(4) Subject to sections (1), (2) and (3) of this rule, the Department shall provide records pertaining to the Strategic Investment Program upon written request, as described in division 5 of this chapter of administrative rules.

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

Stats. Implemented: ORS 285C.620

Hist.: EDD 7-1999, f. & cert. ef. 9-30-99; EDD 10-2004, f. & cert. ef. 5-24-04, Renumbered from 123-023-0551

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, 285B.062 & 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 State of Oregon Economic Development and Community Department as (re)organized under ORS 285A.070.

(2) "Director" means the Director of the State of Oregon Economic and Community Development Department as appointed under ORS 285A.070.

(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) & 285A.110(1)

Stats. Implemented: ORS 285A.095, 285B.062 & 285B.065

Hist.: EDD 12-1998, f. & cert. ef. 8-14-98; EDD 4-2003, f. & cert. ef. 3-26-03

123-024-0021

Distressed Area List

At least once per biennium, the department will review the economic conditions in Oregon and prepare a list of distressed areas. The distressed area list on file with the department's Director's Office is adopted as part of these rules by reference. The department will make the distressed area list available to all interested parties. A copy of the distressed area list, as well as further information related to the methodology described in OAR 123-024-0031 and so forth, may be obtained from the Director's Office, Oregon Economic and Community Development Department, State Lands Building Suite 200, 775 Summer Street NE, Salem, Oregon 97301-1280.

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

Stats. Implemented: ORS 285A.095, 285B.062 & 285B

Hist.: EDD 12-1998, f. & cert. ef. 8-14-98; EDD 4-2003, f. & cert. ef. 3-26-03

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, 285B.062 & 285B.065

Hist.: EDD 12-1998, f. & cert. ef. 8-14-98; EDD 3-2005(Temp), f. & cert. ef. 4-21-05 thru 10-15-05; Administrative correction 10-19-05; EDD 7-2005(Temp), f. & cert. ef. 10-24-05 thru 12-21-05; EDD 10-2005(Temp), f. & cert. ef. 11-4-05 thru 12-21-05; Administrative correction 1-19-06

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 OAR 660-022-0010(9).

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

Stats. Implemented: ORS 285A.095, 285B.062 & 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 285A.654 through 285A.660.

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

Stats. Implemented: ORS 285A.654 - 285A.660

Hist.: EDD 8-1985(Temp), f. 10-22-85, ef. 11-1-85; EDD 5-1987, f. & ef. 10-9-87; EDD 6-1997, f. & cert. ef. 4-25-97; EDD 5-2001(Temp) f. & cert. ef. 7-13-01 thru 1-9-02; EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction 8-18-04

123-025-0010

Definitions

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

(1) "Department" means the State of Oregon Economic and Community Development Department.

(2) "Director" means the Director of the Department.

(3) "Port" means a municipal corporation organized under ORS Chapter 777 or 778, which may be known as a "port authority" or "port district."

(4) "Fund" means Port Planning and Marketing Fund.

(5) "Project" means any activity that is eligible for assistance from the Port Planning and Marketing Fund.

(6) "Peer Review Committee" means a committee of representatives from Oregon Ports that sets standards for typical Port Planning and Marketing Fund projects and reviews products of funded projects prior to disbursement of final payment.

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

Stats. Implemented: ORS 285A.654 - 285A.660

Hist.: EDD 8-1985(Temp), f. 10-22-85, ef. 11-1-85; EDD 5-1987, f. & ef. 10-9-87; EDD 6-1997, f. & cert. ef. 4-25-97; EDD 5-2001(Temp) f. & cert. ef. 7-13-01 thru 1-9-02; EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04

123-025-0012

Annual Funding of Program

The Department will transfer 2.25% of the assets of the Port Revolving Fund, not to exceed the annual accrued net income from the Port Revolving Fund into the Port Planning and Marketing Fund annually as calculated on receipt of the Fund Audit each year.

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

Stats. Implemented: ORS 285A.654 - 285A.660

Hist.: EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04

123-025-0015

Application Requirements

(1) An eligible port district may submit an application after consulting with Department staff on a preliminary determination of eligibility and otherwise following the Department's procedures for submitting applications.

(2) The application must be in the form provided by the Department and must contain or be accompanied by such information as the Department may require. The Department will process only completed applications.

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

Stats. Implemented: ORS 285A.654 - 285A.660

Hist.: EDD 8-1985(Temp), f. 10-22-85, ef. 11-1-85; EDD 5-1987, f. & ef. 10-9-87; EDD 6-1997, f. & cert. ef. 4-25-97; EDD 5-2001(Temp) f. & cert. ef. 7-13-01 thru 1-9-02; EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04

123-025-0017

Application Review and Approval

(1) Upon receipt of a completed application the Department will determine whether the Project is eligible for funding. Projects that meet the following criteria are eligible:

(a) The Project will enhance the Port's ability to conduct trade and commerce;

(b) The Project is not an unnecessary duplication of marketing efforts among Ports. However it is recognized that regional or cooperative projects may require Ports to simultaneously perform similar tasks;

(c) The Project does not subsidize regular Port operating expenses; and

(d) The Project will not require or rely upon continuing subsidies from the Department.

(2) If the Project is not eligible, the Department will, within 60 days:

(a) Reject the application; or

(b) Require the applicant to submit additional information as may be necessary.

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

Stats. Implemented: ORS 285A.654 - 285A.660

Hist.: EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04

123-025-0021

Project Funding Priorities

At the beginning of each state fiscal year the Department and the Ports will make reasonable efforts to identify and initiate high priority projects. Funding of up to 50% of the that year's transfer of funds will be reserved exclusively for high priority projects for the first four months of the state fiscal year, after which it will become available for any eligible project. High priority projects are:

(1) Regional or cooperative projects that benefit more than one Port.

(2) Projects that leverage other marketing and development efforts by the state or other government units.

(3) Projects to develop strategic business, marketing or financial plans for Ports or updates to such plans that are required to keep the plans current for a period of five years.

(4) Projects must meet the standards set by the Peer Review Committee.

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

Stats. Implemented: ORS 285A.654 - 285A.660

Hist.: EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04

123-025-0023

Grant Awards and Match

(1) Grant awards must be the lesser of \$25,000 or 75% of the total Project cost.

(2) The required local share of the Project cost can be cash or a combination of cash and in-kind services. If both cash and in-kind services are used for the required 25% match, cash must be 75% or more of the total and in-kind services must be 25% or less of the total match.

(3) Grants will be awarded only when there are sufficient funds available in the Fund.

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

Stats. Implemented: ORS 285A.654 - 285A.660

Hist.: EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04

123-025-0025

Project Administration

(1) The Department and the Port must execute a grant contract prior to disbursement of grant funds.

(2) Documentation of Project costs incurred by a Port must be submitted to the Department prior to disbursement of funds.

(3) Disbursement of grant funds to a Port will not exceed one disbursement per month. Ten percent of the grant funds will be withheld until the Peer Review Committee approves the appropriate deliverables of the project.

(4) Upon request the Port must provide the Department with a copy of documents, studies, reports, and materials developed during the Project, including written report on activities or results of the Project, or any other information that may reasonably be requested by the Department.

(5) Prior to final disbursement, the Peer Review Committee will review all documents produced as a result of the project. The Committee will evaluate and make recommendations to the Department on value of resulting document(s) and how closely the project delivered the outcome anticipated in the application.

(6) Any monies disbursed but not used for an approved project, must be returned to the Department.

Stat. Auth.: ORS 285A
 Stats. Implemented: ORS 285A.654 - 285A.660
 Hist.: EDD 8-1985(Temp), f. 10-22-85, ef. 11-1-85; EDD 5-1987, f. & ef. 10-9-87; EDD 5-2001(Temp), f. & cert. ef. 7-13-01 thru 1-9-02; EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 5-2006, f. 10-30-06, cert. ef. 10-31-06

123-025-0030

Sanctions, Exceptions and Appeals

(1) The Department may invoke sanctions against Ports that fail to comply with the requirements governing the Fund. Sanctions will not be imposed by the department until the Port 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 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.

(2) One or more of the following sanctions may be imposed by the Department:

- (a) Bar a Port from applying for future assistance;
 - (b) Revoke an existing award;
 - (c) Withhold unexpended funds;
 - (d) Require the return of unexpended funds or repayment of expended funds;
 - (e) Withhold other state funds such as state-shared revenues; and
 - (f) Other remedies that may be incorporated into grant contracts.
- (3) The remedies set forth in this rule are cumulative, not exclusive, and in addition to any other rights and remedies provided by law or under contract.

(4) Appeals of local government decisions regarding a project must be made at the local level.

(5) The Director will consider appeals of the Department's funding decisions. Only the Port may appeal. Appeals must be submitted in writing to the Director within 30 days of the event or action that is being appealed. An application that would have been funded but for 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.

(6) The Director may waive non-statutory requirements of this program if it is demonstrated such a waiver would serve to further the goals and objectives of the program.

Stat. Auth.: ORS 285A.075(5)
 Stats. Implemented: ORS 285A.654 - 285A.660
 Hist.: EDD 1-2002, f. & cert. ef. 1-30-02; EDD 4-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 15-2004, f. & cert. ef. 8-2-04; EDD 5-2006, f. 10-30-06, cert. ef. 10-31-06

DIVISION 27

MARINE NAVIGATION IMPROVEMENT FUND

123-027-0035

Purpose

The purpose of these rules is to provide procedures, standards and criteria for operation of the Marine Navigation Improvement Fund authorized by ORS 777.262 to 777.267.

Stat. Auth.: ORS 285A.075(5) & 285A.110
 Stats. Implemented: ORS 777.262 - 777.267
 Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction 8-18-04

123-027-0040

Definitions

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

(1) "Department" means the State of Oregon Economic and Community Development Department.

(2) "Director" means the Director of the Economic and Community Development Department.

(3) "Federally authorized project" means a project that has been authorized or qualifies for federal funding from the United States Army Corps of Engineers.

(4) "Non-federal project" means a navigation project that is eligible under these rules but does not qualify for federal funding from the United States Army Corps of Engineers.

(5) "Fund" means the Marine Navigation Improvement Fund.

(6) "Project" means studies, necessary permits, dredging, acquisition, modification and maintenance of dredge disposal sites and construction of a new navigation improvement project that is sponsored by a port and is eligible for assistance from the Fund. A project can be either a federally authorized project or a non-federally authorized project.

(7) "Non-Federal Share" means that portion of a project cost not paid for by the United States Army Corps of Engineers.

(8) "Port" means a port incorporated under ORS chapter 777 or 778, and may be known as a "port authority" or "port district."

(9) "State of Oregon" means State of Oregon government departments or agencies.

(10) "New Navigation Improvement Project" means, for the purpose of ORS 777.267(1)(b) a water project that directly supports, or provides access to, a federally authorized navigation improvement project or a federally authorized navigation channel. To be characterized as 'new', the dredging activity must go beyond previously maintained improvements such as deeper channel depths or wider breadth of area being served. However, "New Navigational Improvement project" does not include dredging deeper than the depths of the federally authorized navigation improvement project.

Stat. Auth.: ORS 285A.075(5) & 285A.110
 Stats. Implemented: ORS 777.262 - 777.267
 Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 14-2002, f. & cert. ef. 6-21-02; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction 8-18-04; EDD 22-2004, f. & cert. ef. 8-19-04; EDD 24-2004, f. 10-25-04, cert. ef. 11-8-04; EDD 2-2006, f. & cert. ef. 2-10-06

Federally Authorized Projects

123-027-0050

Project Eligibility, Priority and Funding

(1) To be eligible for funding, Federally Authorized Projects must meet the following criteria:

- (a) The project is federally authorized;
- (b) The project is listed in the Port's business or strategic plan; and

(c) The project has confirmed positive benefit/cost ratios as required by the National Economic Development Plan and has completed all federally required studies.

(2) First priority for assistance from the Fund shall be given to eligible Federally Authorized Projects.

Stat. Auth.: ORS 285A.075(5) & 285A.110
 Stats. Implemented: ORS 777.262 - 777.267
 Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 14-2002, f. & cert. ef. 6-21-02; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction 8-18-04; EDD 22-2004, f. & cert. ef. 8-19-04; EDD 2-2006, f. & cert. ef. 2-10-06

123-027-0056

Federally Authorized Project Application Requirements

The Port shall notify the Department of a potential federally authorized project at the time it initiates the project with the United States Army Corps of Engineers and it shall submit written documentation to the Department evidencing its participation with the United States Army Corps of Engineers. The written documentation must:

- (1) Describe the nature and purpose of the project, including: proposed project scheduling; project term; estimated project cost; the Port's estimated non-federal share of the total project cost; and, the required schedule for payment of the Port's non-federal share of the total project cost;

(2) Contain federal documents that authorize the project, including Reconnaissance/Feasibility Studies; and

(3) Contain a copy of the Port's proposed Local Cost Share Agreement with the United States Army Corps of Engineers for undertaking and carrying out the project.

Stat. Auth.: ORS 285A.075(5) & 285A.110
 Stats. Implemented: ORS 777.262 - 777.267
 Hist.: EDD 22-2004, f. & cert. ef. 8-19-04; EDD 2-2006, f. & cert. ef. 2-10-06

123-027-0060

Federally Authorized Project Application Review and Approval

Based upon a review of the information described in OAR 123-027-0056, the Department will determine whether the project is eligible for assistance from the Fund. If the documentation is not adequate to determine eligibility, the Department will require the Port to submit additional information as may be necessary.

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

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 14-2002, f. & cert. ef. 6-21-02; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction, 8-18-04; EDD 22-2004, f. & cert. ef. 8-19-04; EDD 2-2006, f. & cert. ef. 2-10-06

123-027-0070

Federally Authorized Project Award and Funding

(1) The Department and the Port shall execute a contract prior to disbursement of moneys from the Fund. The contract shall be in a form and content as provided by the Department.

(2) Payments from the Fund shall be disbursed in accordance with the executed contract.

(3) The Port must provide the Department with a written report, records, and a detailed accounting of costs in the format required by the Department:

(a) Within 30 days following the close of each federal fiscal year; and

(b) Within 90 days following final completion of a project.

(4) Any amount disbursed from the Fund and not used for a project must be returned to the Department.

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

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 14-2002, f. & cert. ef. 6-21-02; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction 8-18-04; EDD 22-2004, f. & cert. ef. 8-19-04; EDD 24-2004, f. & cert. ef. 11-8-04; EDD 2-2006, f. & cert. ef. 2-10-06

Non-Federal Projects

123-027-0106

Non-Federal Project Eligibility

Non-federally authorized projects that meet the following criteria are also eligible for assistance from the Fund:

(1) The project is listed in a Port's business or strategic plan;

(2) The project is ready to begin in the biennium for which funding is requested;

(3) The project is a new navigation improvement project; and

(4) The project meets the criteria of a freight project, or a commercial/recreation project, as follows:

(a) A freight project facilitates transportation for at least 5,000 tons of freight or cargo annually;

(b) A commercial/recreation project supports at least 1,000 use days annually as evidenced by information from the State Marine Board, the Ports Reporting System, the U.S. Coast Guard, or other similar source of reliable data, or it is to support the operation of at least one tour boat.

(5) Navigation improvement projects that can't meet the criteria listed in subsection (4) may still qualify for funding if:

(a) The proposed improvement project is designed to facilitate usage to a level that exceeds the criteria in subsection (4); and

(b) Usage of the proposed improvement project is reasonably forecasted to meet the criteria in subsection (4) within the first two years of operation and exceed the minimum criteria thereafter.

Stat. Auth.: ORS 285.075(5) & 285A.110

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 14-2002, f. & cert. ef. 6-21-02; Renumbered from 123-027-0100 by EDD 22-2004, f. & cert. ef. 8-19-04; EDD 24-2004, f. & cert. ef. 11-8-04; EDD 2-2006, f. & cert. ef. 2-10-06

123-027-0156

Non-Federal Project Application Requirements

(1) A Port may submit an application after consulting with Department staff on a preliminary determination of eligibility and otherwise following the Department's procedures for submitting applications.

(2) The application must be in the form provided by the Department and must contain or be accompanied by such information as the Department may require. The Department will process only completed applications.

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

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 22-2004, f. & cert. ef. 8-19-04; EDD 2-2006, f. & cert. ef. 2-10-06

123-027-0161

Non-Federal Project Application Review and Approval

To approve an application for assistance from the fund, the Department must make the determinations as follows:

(1) The project is an eligible project. If the Department determines that the project is not eligible, it may reject an application or require further documentation from the Port;

(2) The requisite need for the project has been demonstrated to the Department in the application or the local planning process;

(3) If application is for a loan, the loan security includes the pledge of revenues and/or other funds, and is sufficient, when considered with other security, to assure repayment;

(4) The Port is willing and able to enter into a contract with the Department; and

(5) Moneys in the fund are or will be available for the project.

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

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 22-2004, f. & cert. ef. 8-19-04; EDD 2-2006, f. & cert. ef. 2-10-06

123-027-0166

Non-Federal Project Award and Funding

(1) The Department and the Port will execute a contract prior to disbursement of moneys from the Fund. The contract will be in a form and content as provided by the Department.

(a) Payments from the fund will be disbursed in accordance with the executed contract.

(b) The Port must provide the Department with written reports, records, and an accounting of detailed costs for a project as described in the contract.

(2) All eligible projects may be awarded loan funding of up to 100% of the total project cost, or for the required local match, under the following terms:

(a) Interest rates will be determined by Department at time of award, according to Department policy; and

(b) The loan term will not exceed 25 years.

(3) If the Department determines 100% loan funding is not feasible due to the financial hardship of the port, grants may be awarded if Department determines at least one of the following circumstances exists:

(a) Job creation and/or retention will be a direct result of the project;

(b) There is an urgent need for environmental remediation and the Department's financial analysis determines that the Port's borrowing capacity is insufficient to finance the project;

(c) The project deals with critical public safety issues and the Department's financial analysis determines that the Port's borrowing capacity is insufficient to finance the project; or

(d) There is imminent threat that the Port will lose any applicable permits and the Department's financial analysis determines that the Port's borrowing capacity is insufficient to finance the project.

(e) The Department's financial analysis determines that the project cannot proceed without a grant.

(4) Projects eligible due to the provisions of subsection 0106 may be awarded grant funding up to 75 percent of the project cost. A 25 percent local match is required. In-kind services from the Port may be no more than 10 percent of the total project cost.

(5) The Port must secure, and be able to provide upon request, a land use compatibility statement from the appropriate jurisdiction(s) for the project.

(6) Any amount disbursed from the Fund and not used for a project must be returned to the Department.

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

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 22-2004, f. & cert. ef. 8-19-04; EDD 24-2004, f. & cert. ef. 11-8-04; EDD 2-2006, f. & cert. ef. 2-10-06; EDD 4-2006, f. & cert. ef. 10-1-06

Federal and Non-Federal Projects

123-027-0211

Federal and Non-Federal Project Appeals and Exceptions

(1) Appeals of local government decisions regarding a Project must be made at the local level.

(2) The Director will consider appeals of the Department's funding decisions. Only the Port may appeal. Appeals must be submitted in writing to the Director within 30 days of the event or action that is being appealed. The Director's decision is final.

(3) The Director may waive non-statutory requirements of this program if it is demonstrated such a waiver would serve to further the goals and objectives of the program.

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

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 14-2002, f. & cert. ef. 6-21-02; Renumbered from 123-027-0110 by EDD 22-2004, f. & cert. ef. 8-19-04; EDD 2-2006, f. & cert. ef. 2-10-06

DIVISION 30

PORT REVOLVING FUND

123-030-0000

Purpose

The purpose of these rules is to provide procedures, standards and criteria for operation of the Port Revolving Fund program authorized by ORS 285A.666 through 285A.732.

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

Stats. Implemented: ORS 285A.666 - 285A.732

Hist.: EDD 8-2002, f. & cert. ef. 5-1-02

123-030-0004

Definitions

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

(1) "Commission" means the Economic and Community Development Commission.

(2) "Department" means the State of Oregon Economic and Community Development Department.

(3) "Director" means the Director of the Department.

(4) "Finance Committee" means the Finance Committee appointed by the Oregon Economic and Community Development Commission.

(5) "Flexible manufacturing space project" means a project for the acquisition, construction, improvement or rehabilitation, in whole or in part, of any building suitable for the conduct of manufacturing processes and, by design, able to be readily modified when necessary to accommodate the operations of the tenants of the building. The term includes any pre-project planning activities for a flexible manufacturing space project.

(6) "Fund" means the Oregon Port Revolving Fund.

(7) "Port" means a municipal corporation organized under ORS chapter 777 or 778, that may be known as a "port authority" or "port district."

(8) "Project" means any activity that is eligible for assistance from the Port Revolving Fund.

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

Stats. Implemented: ORS 285A.666 - 285A.732

Hist.: EDD 8-2002, f. & cert. ef. 5-1-02; EDD 1-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 16-2004, f. & cert. ef. 8-2-04; EDD 6-2006, f. 10-30-06, cert. ef. 10-31-06

123-030-0010

Need for the Port Revolving Fund Project

(1) Applications must include sufficient information that will demonstrate the need for the project. The information must include, but not be limited to, the following:

(a) Whether reasonable alternatives to the proposed 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 project; and

(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 project to facilitate the location or expansion of an industry pursuant to ORS 285A.666-285A.732, the industry expansion to be induced by the loan must include 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; or

(m) Other activities consistent with the target industries or reverse investment programs of the Oregon Economic and Community Development Department.

(3) Need for the 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 firm engaging in in-state plant relocation has demonstrated that the relocation is necessary for reasons beyond its control;

(b) The relocation will provide a substantial increase or prevent a substantial direct reduction in total Oregon employment.

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

Stats. Implemented: ORS 285A.666 - 285A.732

Hist.: EDD 9, f. & ef. 10-14-77; EDD 17-1990, f. & cert. ef. 6-28-90; EDD 8-2002, f. & cert. ef. 5-1-02; EDD 1-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 16-2004, f. & cert. ef. 8-2-04

123-030-0020

Application Requirements

An eligible port district may submit an application after consulting with Department staff on a preliminary determination of eligibility and otherwise following the Department's procedures for submitting applications.

(1) The application must be in the form provided by the Department and must contain or be accompanied by such information as the Department may require. The Department will process only completed applications.

(2) A fee of \$100 will be charged for each loan application submitted to the Department. All application fees will be made by check or money order and made payable to the Oregon Port Revolving Fund.

(3) All applications for loans from the Oregon Port Revolving Fund must indicate the proposed collateral to secure the loan and must include the following information:

(a) If the port's taxing authority is proposed to be pledged as collateral, a statement certified by the county assessor's office that sets forth the current mileage rate, the projected new mileage rate, if required to pay off the loan, the port's maximum current limitation, and a statement indicating whether the proposed pledge is within the port's current maximum mileage limitation;

(b) If any of the port's personal or real property is proposed to be pledged as collateral, the Department may require a formal appraisal, certified by an appropriate licensed authority, attesting to the value of all collateral proposed to be held as security.

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

Stats. Implemented: ORS 285A.666 - 285A.732

Hist.: EDD 8-2002, f. & cert. ef. 5-1-02; EDD 1-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 16-2004, f. & cert. ef. 8-2-04; EDD 6-2006, f. 10-30-06, cert. ef. 10-31-06

123-030-0030

Application Review and Approval

(1) To approve an application for assistance from the fund, the Finance Committee must make the determinations as follows:

(a) The project is consistent with the requirements governing assistance from the Fund. If the Department determines that the applicant and/or the proposed project do not meet the requirements of this section, the Department may reject an application or require further documentation from the applicant;

(b) The requisite need for the project has been demonstrated in the application or the local planning process;

(c) The port has certified to the Department that there will be adequate funds available to repay any loans made;

(d) The loan security includes the pledge of revenues and/or other funds are sufficient, when considered with other security, to assure repayment;

(e) The applicant is willing and able to enter into a contract with the Department for repayment of the loan;

(f) The applicant has applied for all necessary permits required by federal, state and local agencies;

(g) The project activities constitute an eligible project;

(h) Moneys in the fund are or will be available for the project;

(i) The requirements under ORS 285A.055 for approval have been satisfied;

(j) The applicant will not owe more than \$3 million to the Port Revolving Fund if the loan is approved.

(2) The Finance Committee may provide preliminary approval of a loan application at any time and identify all necessary requirements for final approval.

(3) If the application is denied, the matter will be set aside unless the applicant requests further action under ORS Chapter 183.

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

Stats. Implemented: ORS 285A.666 - 285A.732

Hist.: EDD 8-2002, f. & cert. ef. 5-1-02; EDD 1-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 16-2004, f. & cert. ef. 8-2-04; EDD 6-2006, f. 10-30-06, cert. ef. 10-31-06

123-030-0040

Loan Contract Terms and Conditions

(1) Interest rates will be set by the Department at market rates, but not less than Treasury Notes of a similar term minus 1 percent.

(2) The term of the loan will not exceed the useful life of the contracted project or 25 years from the year of project completion, whichever is less.

(3) For a flexible manufacturing space project, the loan contract may provide that no interest accrue until the building is 25 percent occupied, or until three years after the date of the loan contract, whichever is earlier.

(4) The loan contract will:

(a) Be in a form as provided by the Department, and

(b) Provide that the Finance Committee may institute appropriate action to prevent use of project facilities financed by the fund if the port is delinquent in its repayments.

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

Stats. Implemented: ORS 285A.666 - 285A.732

Hist.: EDD 8-2002, f. & cert. ef. 5-1-02; EDD 1-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 16-2004, f. & cert. ef. 8-2-04; EDD 6-2006, f. 10-30-06, cert. ef. 10-31-06

123-030-0050

Sanctions, Exceptions and Appeals

(1) The Department may invoke sanctions against Ports that fail to comply with the requirements governing the Fund. The Department will not impose sanctions 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) State statutory requirements have not been met; or

(b) There is a deviation from the contract.

(2) One or more of the following sanctions may be imposed by the Department:

(a) bar a Recipient from applying for future assistance;

(b) revoke an existing award;

(c) Withhold undisbursed funds;

(d) Require return of unexpended funds or repayment of expended funds;

(e) Withhold other state funds such as state-shared revenues; and

(f) Other remedies that may be incorporated into Grant 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) Appeals of local government decisions regarding a Project must be made at the local level.

(5) The Director will consider appeals of the Department's funding decisions. Only the Applicant may appeal. Appeals must be submitted in writing to the Director within 30 days of the event or action that is being appealed. 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 and eligible under these rules. The Director's decision is final.

(6) The Director may waive non-statutory requirements of this program if it is demonstrated such a waiver would serve to further the goals and objectives of the program.

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

Stats. Implemented: ORS 285A.666 - 285A.732

Hist.: EDD 8-2002, f. & cert. ef. 5-1-02; EDD 1-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 16-2004, f. & cert. ef. 8-2-04; EDD 6-2006, f. 10-30-06, cert. ef. 10-31-06

DIVISION 35

OREGON PORTS REPRESENTATION GROUP PROCEDURAL RULES

123-035-0000

Purpose

The purpose of these rules is to provide procedures and standards for the Ports Representation Group authorized by ORS.

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

Stats. Implemented: ORS 285A.666 - 285A.732

Hist.: EDD 2-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 17-2004, f. & cert. ef. 8-2-04

123-035-0005

Definitions

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

(1) "Department" means the State of Oregon Economic and Community Development Department.

(2) "Director" means the Director of the Department.

(3) "Commission" means the Economic and Community Development Commission.

(4) "Port" means a municipal corporation organized under ORS Chapter 777 or 778 that may be known as a "port authority" or "port district."

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

Stats. Implemented: ORS 285A.666 - 285A.732

Hist.: EDD 2-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 17-2004, f. & cert. ef. 8-2-04

123-035-0010

Purpose and Duties

(1) The Oregon Ports Representation Group will consist of the general manager and one commissioner, or their designees, from each Oregon port.

(2) The Group will meet annually.

(3) Decisions require a quorum.

(4) The purpose of the Group is to serve as a body to advise the Economic and Community Development Department, the Economic Development Commission and the Governor and the Legislative Assembly on matters relating to the development and implementation of state policies and programs related to ports and to assist in the coordination of such activities.

(5) The Group will evaluate and develop recommendations for a statewide policy agenda to help guide this state's efforts to facilitate port development. The agenda will be in the form of:

(a) Analysis

(b) Conclusions

(c) Recommendations

(6) This agenda will help set state and federal policies that affect ports. Such policies include but are not limited to:

(a) Policies related to dredging by the United States Army Corps of Engineers;

(b) Developing multimodal transportation facilities for the movement of goods through ports;

(c) Converting facilities to productive economic use;

(d) Resolving natural resource and habitat issues that affect ports; and

(e) Promoting local economic development efforts in port districts.

(7) The Group will submit a report to the Oregon Economic and Community Development Commission to be included in its biennial report to the Legislative Assembly. The report will include:

- (a) The findings of the Group on the effectiveness of state efforts to promote port development and maritime commerce;
 - (b) An analysis of conditions that impede increased port development and maritime commerce;
 - (c) Identification of conditions that impede competitiveness of the ports in Oregon; and
 - (d) Recommendations for the removal of those conditions.
- Stat. Auth.: ORS 285A.075(5)
 Stats. Implemented: ORS 285A.666 - 285A.732
 Hist.: EDD 2-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 17-2004, f. & cert. ef. 8-2-04

DIVISION 42

SPECIAL PUBLIC WORKS FUND PROGRAM

123-042-0010

Purpose and Objectives

Pursuant to ORS 285B.419, the Oregon Economic and Community Development Department is required to adopt rules that implement the Special Public Works Fund Program. These rules are promulgated under authority granted by ORS 285B.419(1) and 285A.075(5).

Stat. Auth.: ORS 285B.419

Stats. Implemented: ORS 285B.410 - 285B.464

Hist.: IRD 1-1986(Temp), f. & ef. 1-14-86; IRD 9-1986, f. 6-30-86, ef. 7-1-86; EDD 3-1987(Temp), f. 8-17-87, ef. 8-20-87; EDD 5-1988, f. & cert. ef. 2-17-88, Renumbered from 120-050-0010; EDD 26-1990, f. & cert. ef. 10-11-90; EDD 14-1991(Temp), f. & cert. ef. 10-17-91; EDD 9-1992, f. & cert. ef. 4-29-92; EDD 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 4-2002, f. & cert. ef. 2-26-02; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction 8-19-04

123-042-0020

Definitions

As used in this division of administrative rules, all capitalized terms have the meanings set forth below, unless the context clearly indicates otherwise.

- (1) "Award" means the department's determination that the project is eligible for funding and that the department has identified the specified funding type and amount for the activities described in the staff recommendation.
- (2) "Award Date" means the date of the final department management signature approving the award.
- (3) "Brownfield" has the meaning given in ORS 285A.185.
- (4) "Department" means the Oregon Economic and Community Development Department.
- (5) "Designated Disaster Area" means any county, city or special district in the state identified with emergency or major disaster affected areas that has been determined eligible for federal assistance.
- (6) "Development project" means a project for the acquisition, improvement, construction, demolition, or redevelopment of municipally owned utilities, buildings, land, transportation facilities or other facilities that assist the economic and community development of the municipality, including planning project activities that are necessary or useful as determined by the Economic and Community Development Department.
- (7) "Direct Project Management Costs" means expenses directly related to a project that are incurred by a municipality solely to support or manage a project eligible for assistance under ORS 285B.410 to 285B.482. "Direct Project Management Costs" does not include routine or ongoing expenses of the municipality.
- (8) "Distressed Area" has the meaning given that term by ORS 285A.010(5).
- (9) "Eligible Commercial Jobs" means jobs that are created or retained by businesses selling goods or services in markets for which national or international competition exists.
- (10) "Eligible Commercial Jobs Project" means a project that creates or retains eligible commercial jobs.
- (11) "Eligible Commercial Uses" means non-industrial activities by businesses selling goods or services in markets for which national or international competition exist or the promotion of downtown revitalization through improvements to municipally owned property that clearly serve to render a downtown area or main street more competitive or improve its economic vitality.
- (12) "Emergency Project" means a development project resulting from an emergency as defined in ORS 401.025 to which federal disaster relief has been committed.

(13) "Essential Community Facilities" means only the following: city halls; city and county courts; county courthouses; community centers, including senior centers, youth centers, boys and girls club facilities, head start facilities and day care centers; domestic violence centers; emergency services buildings, including 911 facilities, ambulance facilities and fire stations; emergency shelters, including homeless shelters and shelters for people with disabilities; facilities for abused children; facilities for migrant farm workers; food banks; police stations; jails; juvenile justice centers; libraries; medical facilities, including public health clinics, drug and alcohol treatment facilities, mental health treatment facilities, and transitional housing for mentally ill persons.

(14) "Facility" means something that is built or installed to perform some particular function.

(15) "Firm Business Commitment" means a project in response to a specific business development, expansion or retention proposal where assistance is necessary to enable the proposal to proceed and where permanent, full-time equivalent jobs will be created or retained. The project shall support industrial development and be consistent with local comprehensive plans and implementing ordinances.

(16) "Fund" means the Special Public Works Fund created by ORS 285B.455.

(17) "Grant" means an award to a municipality of monies that can be used to reimburse eligible project costs. Grant funds are not required to be repaid when contract conditions are met.

(18) "Industrial Land" means a site of suitable size, type, location, and service level for a variety of industrial uses consistent with local comprehensive planning and zoning.

(19) "Industrial Land Development" means an activity undertaken for properly zoned parcels of land to prepare the sites for development or to make the land ready for use.

(20) "Industrial Site Certification" means an activity necessary or useful, as determined by the department, to the process of establishing and documenting the status of a site's readiness for industrial development.

(21) "Loan" means debt financing offered to a municipality.

(22) "Municipality" means an Oregon city, or county, the Port of Portland created by ORS 778.010, a county service district organized under ORS chapter 451, a district as defined in ORS 198.010, a tribal council of a federally recognized Indian tribe in this state, or an airport district organized under ORS 838, but does not include an ORS 190 entity.

(23) "Planning Project" means:

- (a) A project related to a potential development project for preliminary, final or construction engineering;
- (b) A survey, site investigation or environmental action related to a potential development project;
- (c) A financial, technical or other feasibility report, study or plan related to a potential development project; or
- (d) An activity that the department determines to be necessary or useful in planning for a potential development project.

(24) "Project" means a development, planning or emergency project as defined by this section. When there is otherwise no specific reference to development, planning or emergency project, the reference shall include all project types.

(25) "Renewable Energy Feasibility Study" means an activity necessary or useful, as determined by the department, to determine the viability of a new development project that uses a renewable energy resource as defined in ORS 469.185 (9)(a) for the purpose of generating electricity, heat or manufacturing a fuel.

(26) "Rural Area" has the meaning given that term in ORS 285A.010.

(27) "State Revenue Bonds" means revenue bonds issued by the State of Oregon at the request of the department that are payable from specific revenue sources pledged by a municipality and are not a pledge of the full faith and credit of the State of Oregon.

(28) "State Revenue Bond Loan" means a loan funded in whole or part through the sale of state revenue bonds.

Stat. Auth.: ORS 285B.419

Stats. Implemented: ORS 285B.410 - 285B.464

Hist.: EDD 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 7-2001(Temp), f. & cert. ef. 11-6-01 thru 3-29-02; EDD 4-2002, f. & cert. ef. 2-26-02; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 18-2004, f. & cert. ef. 8-2-04; EDD 10-2006, f. & cert. ef. 11-1-06

123-042-0026

Loan and Grant Information

(1) The moneys in the fund shall be used primarily to provide loans to municipalities for projects. Grants shall be given only when loans are not feasible due to the financial need of the municipality or special circumstances of the project. The department is authorized to determine the level of loan or grant funding, if any, on a case-by-case basis. The department makes awards in a manner that maximizes the use of available resources and maintains the desired credit standards of the fund; it shall determine the amount, type, interest rate, terms and conditions of an award; it may offer an alternate mix or lower amount of assistance than requested, and it may investigate and recommend other sources of funds for all or part of a proposed project. Not more than 100 percent of the total cost of any project, including capitalized interest, shall be financed from the fund.

(2) Not less than 60 percent of the grants awarded from the Special Public Works Fund in any biennium shall be used to provide assistance to distressed or rural areas.

(3) The department may not expend more than \$900,000 for grants or direct assistance, if any, for planning projects to municipalities in a biennium.

Stat. Auth.: ORS 285B.419, 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06

123-042-0036

Development Project Eligibility, Criteria and Funding

(1) A development project, as defined in ORS 285B.410(2), can include the acquisition, improvement, construction, demolition or redevelopment of any of the following municipally owned and operated facilities:

(a) Transportation system projects, including roads, marine facilities, railroads, and airports;

(b) Utility system projects, including solid waste disposal sites; water, sewage, storm water drainage, energy, or telecommunications systems; or

(c) Buildings, land or other facility projects that assist the economic and community development of the municipality and can include planning project activities and financing costs associated with the development project.

(2) The department will apply the following priorities and criteria when determining development project eligibility:

(a) The department will give priority to projects that it determines will help create or retain permanent jobs.

(b) The municipality must document the economic and community development benefits of the project and the department must determine, that at a minimum, the project has a strong likelihood of creating construction jobs or otherwise promoting or contributing to economic and community development;

(c) The municipality must document substantial local commitment to the project's success; and

(d) The municipality must document how the benefits of the project will be preserved over the project life.

(3) In addition to the requirements in OAR 123-042-0036(2), the following specific types of development projects have additional criteria. If the project consists:

(a) Solely of the acquisition of land by the municipality, the land must be identified in the applicable land use or capital plan as necessary for a potential development project or be zoned solely for commercial or industrial use, and a loan for such a project must be repaid if the land that is acquired through the proceeds of the loan is rezoned so as to be no longer zoned for industrial or commercial use.

(b) Of a privately owned railroad, the railroad must be designated by the owner and operator as subject to abandonment within three years, pursuant to federal law governing abandonment of common carrier railroad lines.

(c) Of a telecommunications system, the governing body of the municipality shall adopt a resolution, after a public hearing, finding that the proposed telecommunications system project is necessary and would not otherwise be provided by a for-profit entity within a reasonable time and for a reasonable cost.

(d) Of an energy system, the municipality and the serving utility must execute an ownership and operating agreement for the proposed energy system project. This sub-section does not apply when the ener-

gy system project will be located within the recognized service territory of the municipality.

(e) Of a marine facility project authorized under ORS 777.267, assistance from the fund shall only be a loan that may not exceed the amount of the required local match.

(4) A development project may receive loan funding as follows:

(a) The term is limited to the usable life of the contracted project, or 25 years from the year of project completion, whichever is less.

(b) The interest rate on a loan is based on market conditions for similar debt, and is set at the time of the award.

(c) The interest rate on a state revenue bond loan is equal to the coupon rates on the bonds. Until bonds are sold, the municipality will pay interest on loan funds drawn down at the rate established by the department.

(5) Maximum loan amount for a project will be determined on the basis of the department's financial analysis of the municipality's borrowing capacity, the availability of moneys in the fund and prudent fund management as described in the department's adopted policy.

(6) The loan shall be a full faith and credit obligation which is payable from any taxes which the municipality may levy within the limitations of Article XI of the Oregon Constitution and all legally available revenues and other funds of the municipality. Specific revenues of the municipality may also be required to be pledged, including revenues of the project, special assessment revenues and other collateral.

(7) A development project that qualifies as an eligible commercial jobs project or a firm business commitment project may be eligible to receive a grant. When making a determination to award a grant, the department will apply prudent fiscal management of the fund in order to manage constrained funding resources. In addition to the criteria and process contained in its policies on grant and loan funding, the department shall apply the following minimum criteria for grants:

(a) The department's financial analysis determines that the municipality's borrowing capacity is insufficient to support the amount of the loan requested for the project;

(b) Jobs will be created or retained as a result of the grant being awarded; and

(c) The department has received confirmation that the firm business commitment or the eligible commercial jobs project will not occur, or that the jobs will be lost, if the municipality does not receive a grant.

(8) If the department determines that the project meets the minimum criteria, the department will make a further determination on the amount of the grant. The maximum grant amount is \$500,000 per project or 85% of allowable project costs, whichever is less. The amount of grant will be based primarily on the number of jobs proposed to be created or retained with a maximum of \$5,000 for each job created or retained. The maximum grant amount will be awarded only in special circumstances as described in the department's adopted policy.

(9) If the grant is for the acquisition and improvement of real property, the maximum grant amount shall not exceed the fair market value of the real property after the improvements have been made or the value placed on the real property and improvements on the assessment rolls, whichever is less.

(10) The department shall receive in accordance with OAR chapter 123 division 70 a copy of the First Source Hiring Agreement or assurance from the municipality that one will be entered into before the grant is dispersed.

Stat. Auth.: ORS 285B.419, 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06

123-042-0045

Planning Project Eligibility, Criteria and Funding

(1) A planning project, as defined in ORS 285B.410(8), may be eligible for a loan. The department will make awards for loans based on availability of moneys in the fund and prudent fund management as well as its financial analysis of the municipality's ability to repay the loan;

(2) Planning projects listed in OAR 123-042-0045(3) and (4) may also be eligible for grant funding.

(3) A planning project conducted for the purpose of developing industrial lands, including industrial site certification, is eligible for a grant of up to \$60,000 per project or per site, or 85% of the allowable

project cost, whichever is less. This type of planning project must meet the following criteria:

- (a) The land must be zoned 'industrial';
- (b) The land meets marketability standards as determined by the department using its adopted policy; and
- (c) The industrial site or sites being studied are not required to be owned by the municipality, however the municipality must own all the materials and end products of the planning project.
- (4) A planning project conducted for the purpose of a renewable energy feasibility study is eligible for a grant of up to \$50,000 or 75% of allowable project cost, whichever is less. A renewable energy feasibility study award may also be in the form of a loan. The department will conduct a semi-annual competitive application process for renewable energy feasibility study grant awards. Information about the application process, the scoring criteria and process and the program requirements in general is contained in the program guideline. A new program guideline will be developed and provided for each competitive solicitation.

Stat. Auth.: ORS 285B.419, 285A.075
Stats. Implemented: ORS 285B.410 - 285B.482
Hist.: EDD 10-2006, f. & cert. ef. 11-1-06

123-042-0055**Emergency Project Eligibility, Criteria and Funding**

(1) An emergency project, as defined in ORS 285B.410, that meets the following criteria is eligible for assistance from the fund:

- (a) The project must result from an emergency as defined in ORS 401.025; and
- (b) The project must have federal disaster relief assistance funds committed;
- (2) The following apply to both grants and loans for emergency projects:

(a) The maximum award amount for an emergency project shall not exceed the required local match for the federal disaster relief assistance committed to the project;

(b) A grant award for an emergency project shall not exceed \$500,000 per project, or the amount of the federally required local match, whichever is less; and

(c) A loan for an emergency project shall meet the criteria set forth in OAR 123-042-0036.

(3) The department shall not expend more than \$2.5 million for emergency project grants, including grants for essential community facilities, in a biennium.

(4) Essential community facilities that are eligible under this subsection are defined in 123-042-0020(12).

(5) For the purposes of awards made under this OAR 123-042-0055, allowable project costs shall be those eligible for federal assistance, unless those costs are precluded by a restriction in state law or the Code of Federal Regulations.

(6) In the event of an emergency, the department may adopt a policy, after consultation with stakeholders and others, to guide implementation decisions regarding such matters as grant amounts and priorities.

Stat. Auth.: ORS 285B.419, 285A.075
Stats. Implemented: ORS 285B.410 - 285B.482
Hist.: EDD 10-2006, f. & cert. ef. 11-1-06

123-042-0065**Allowable Project Costs**

For purposes of projects funded under OAR chapter 123, division 42, the allowable costs of a project include:

- (1) Financing costs, including capitalized interest;
- (2) Direct project management costs;
- (3) Costs of consultant services and expenses;
- (4) Construction costs and expenses;
- (5) Costs of property acquisition, including any easement, or right of way directly related to and necessary for the project;
- (6) Costs incurred by the municipality prior to the award if such costs are allowable under the department's adopted policy for reimbursement of pre-award costs;
- (7) Costs of acquiring off-site property for purposes directly related to the project, such as wetland mitigation; and
- (8) Other costs that the department determines to be necessary or useful.

Stat. Auth.: ORS 285B.419, 285A.075
Stats. Implemented: ORS 285B.410 - 285B.482
Hist.: EDD 10-2006, f. & cert. ef. 11-1-06

123-042-0076**Ineligible Projects and Project Costs**

Expenses and costs expressly allowed under OAR chapter 123, division 42 are eligible for reimbursement from the fund. All other costs are ineligible for reimbursement including but not limited to:

- (1) Assistance to facilities that are or will be privately owned;
- (2) Purchase of motor vehicles and similar equipment not directly related to the project;
- (3) Assistance to projects that primarily focus on relocating business or economic activity from one part of the state to another, except in cases where the business or economic activity would otherwise locate outside of Oregon; and
- (4) Project operating or maintenance costs, except as allowed by statute.

Stat. Auth.: ORS 285B.419, 285A.075
Stats. Implemented: ORS 285B.410 - 285B.482
Hist.: EDD 10-2006, f. & cert. ef. 11-1-06

123-042-0122**Application Requirements**

(1) A municipality may submit an application to the department after consulting with the department on a preliminary determination of eligibility and following the department's procedures.

(2) The application shall be in the form provided by the department and shall contain or be accompanied by such information and documentation as the department may require. The department may, to the extent possible, assist municipalities in understanding program requirements and in completing applications. The department will process only completed applications.

(3) For a telecommunications system project the municipality must provide a resolution, adopted by its governing body after a public hearing, that includes findings and states that the proposed telecommunications system project is necessary and would not otherwise be provided by a for profit entity within a reasonable time at a reasonable cost.

(4) For an energy system project, the municipality and the serving utility must execute an ownership and operating agreement for the proposed energy system. This OAR 123-042-0122(4) does not apply when the energy system will be located within the recognized service territory of the municipality.

(5) For a renewable energy feasibility study project, the municipality shall use the application process described in the program guideline.

(6) For a project for a system that is functionally connected to, or anticipates connecting to, another municipality's system, an inter-governmental cooperation agreement that describes the duties and obligations of each entity in regard to the project and system is required. A certified copy of the fully executed intergovernmental agreement must be provided before the department will disburse funds.

Stat. Auth.: ORS 285B.419, 285A.075
Stats. Implemented: ORS 285B.410 - 285B.482
Hist.: EDD 10-2006, f. & cert. ef. 11-1-06

123-042-0132**Application Review and Approval**

(1) For a construction project the department must make the following determinations:

(a) The municipality has certified that the proposed project is feasible, is the most cost effective solution, and adequately serves the applicable land uses in both the short and long term;

(b) The loan is secured by the pledge of utility revenues or other revenues or payments from any owners of specially benefited properties, and such collateral is sufficient, when considered with other collateral, to assure repayment, and the municipality has certified to the department that there will be adequate funds available to repay the loans made to the municipality from the fund;

(c) The municipality is willing and able to enter into a contract with the department;

(d) The project is consistent with the requirements governing assistance from the fund. If the department determines that the municipality or the proposed project does not meet the requirements of OAR chapter 123, division 42, the department may reject an application or require further documentation from the municipality;

(e) Other funds that may be needed to complete the project are available or the municipality has a binding commitment for such

funds. If a portion of the other funds needed to complete the project is not available or committed at the time an award is made, the award shall be conditional on securing the other needed funds or a binding commitment for such funds; and

(f) The project is ready to begin and the municipality has committed in writing that, if awarded the assistance, it shall proceed immediately.

(2) For a planning project, the department must make the following determinations:

(a) The requirements set out in OAR 123-042-0132(1) are met, except for subsection (b) if no loan is being awarded;

(b) The planning activities must be for a project that is eligible under OAR chapter 123, division 42 and meets the criteria listed in OAR 123-042-0045; and

(c) The municipality has, or has demonstrated the ability to secure, the administrative capacity to undertake and complete the planning project.

Stat. Auth.: ORS 285B.419, 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06

123-042-0155

Contracts and Disbursements of Funds

(1) The department shall disburse monies from the fund only after entering into a binding contract with the municipality.

(2) The contract shall be in form and substance as provided by the department, and shall include:

(a) A provision that disbursements from the fund will be according to the terms of the contract;

(b) A provision that the liability of the department under the contract is contingent upon the availability of moneys in the fund for use in the project;

(c) For a development project, a provision requiring that the contracted project remain in municipal ownership for the life of the loan. If this condition is not met, any grant shall convert to a loan, and at the department's determination, may become immediately due and payable in full;

(d) For a planning project, a provision requiring that the land involved in the project must remain zoned as industrial and not be converted to another use for at least 5 years after completion of the project. If this condition is not met, any grant shall convert to a loan, and at the department's determination, may become immediately due and payable in full;

(e) If any portion of the assistance is in the form of a loan or the purchase of a bond of a municipality, a provision granting the department a lien on, or a security interest in, the collateral as determined by the department to be necessary to secure repayment of the loan or bond;

(f) A provision that for a period of up to six (6) years after project completion, the department may request that the municipality, at its own expense, submit data on the economic development benefits of the project, including but not limited to, information on new or retained jobs resulting from the project, and other information necessary to evaluate the success and economic impact of the project; and

(g) Other provisions that the department considers necessary or appropriate to implement the assistance.

(3) Other funds that may be needed to complete the project must be available or the municipality must have a binding commitment for such funds at the time the contract is executed. If a portion of the other funds needed to complete the project is committed but not available at the time an award is made or the contract executed, the contract shall require that the project be fully funded prior to any disbursement from the fund.

(4) The contract for a loan or grant shall be authorized by an ordinance, order or resolution adopted by the governing body of the municipality in accordance with the municipality's requirements for public notice and authorizing debt.

Stat. Auth.: ORS 285B.419, 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06

123-042-0165

Municipality Responsibilities

(1) The municipality must comply with all applicable state laws, regulations and requirements, such as Oregon prevailing wage rates, municipal audit law, and procurement regulations.

(2) The municipality shall maintain accounts and records for all activities associated with the contracted project and shall provide the department, and its representatives, reasonable access to such records. The municipality shall submit periodic reports on the project as requested by the department.

(3) The municipality shall certify that any service provider retained for their professional expertise is certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty.

(4) The municipality shall certify that it shall follow standard construction practices, such as bonding of engineers and contractors, requiring errors and omissions insurance, performing testing and inspections during construction, and obtaining as-built drawings.

(5) For a project funded with state lottery proceeds, the municipality shall comply with ORS 280.518 requiring public display of information on lottery funding of the project. At a minimum the municipality shall:

(a) Include the following statement, prominently placed, on all plans, reports, bid documents and advertisements relating to the project:

"This project was funded in part with a financial award from the Special Public Works Fund, funded by the Oregon State Lottery and administered by the State of Oregon, Economic and Community Development Department."; and

(b) For a construction project, post a sign, provided by the department, at the project site or, if more than one site is included in the project, at a site visible to the general public stating that the project is being funded by lottery proceeds.

(6) For a construction project, the municipality shall have a plan for ongoing operation and maintenance that will preserve the project benefits over its useful life.

Stat. Auth.: ORS 285B.419, 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06

123-042-0175

Eligibility Criteria for State Revenue Bond Loans

The department shall apply the following standards for determining the eligibility of development projects for revenue bond financing:

(1) Loan repayment must be secured by a full faith and credit pledge of the municipality;

(2) The loan must be of sufficient size as determined by the department;

(3) The loan must be fully amortized over its term with fixed annual principal and interest payments and the term of the loan shall not exceed the usable life of the contracted project;

(4) The loan must conform to the requirements of the bond indenture for the state revenue bonds; and

(5) The loan and the municipality must meet the minimum underwriting criteria for revenue bond financing as established by department policies.

Stat. Auth.: ORS 285B.419, 285A.075

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: EDD 10-2006, f. & cert. ef. 11-1-06

123-042-0180

Sanctions

The department may invoke remedies for an "event of default" as described in the contract with the municipality, including the withholding of amounts otherwise due to the municipality pursuant to ORS 285B.449.

Stat. Auth.: ORS 285B.419

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 18-2004, f. & cert. ef. 8-2-04; EDD 10-2006, f. & cert. ef. 11-1-06

123-042-0190

Appeals and Exceptions

(1) Appeals of decisions made by a municipality regarding a project must be made in accordance with the requirements and procedures of the municipality.

(2) The director of the department will consider appeals of the department's funding decisions. Only the municipality may appeal. An appeal must be submitted in writing to the director within 30 days of the event or action that is being appealed. A project that would have been funded but for a technical error in the department's review of the application will be funded as soon as sufficient moneys become avail-

able in the fund, 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 285B.419

Stats. Implemented: ORS 285B.410 - 285B.482

Hist.: ED 12-2000, f. 8-9-00, cert. ef. 8-14-00; EDD 5-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 18-2004, f. & cert. ef. 8-2-04; EDD 10-2006, f. & cert. ef. 11-1-06

DIVISION 43

WATER/WASTEWATER FINANCING PROGRAM

123-043-0000

Purpose and Objectives

Pursuant to ORS 285B.563, the Oregon Economic and Community Development Department is required to adopt rules that provide procedures, standards and criteria for the Water/Wastewater Financing Program. These rules are promulgated under authority granted by ORS 285B.563(7), and 285A.075.

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.572 - 285B.599

Hist.: EDD 10-1993(Temp), f. & cert. ef. 10-4-93; EDD 7-1994, f. & cert. ef. 4-7-94; EDD 7-2002, f. & cert. ef. 4-26-02

123-043-0010

Definitions

As used in this division of administrative rules, the following terms shall have the following meaning, unless the context clearly indicates otherwise:

(1) "DEQ" means the State of Oregon Department of Environmental Quality.

(2) "Department" means the State of Oregon Economic and Community Development Department.

(3) "Director" means the director of the department.

(4) "Facilities" means something that is built or installed to perform some particular function.

(5) "Fund" means the water fund created by ORS 285B.563.

(6) "Grant" means an award to a municipality of monies that can be used to reimburse eligible project costs. Grant funds are not required to be repaid when contract conditions are met.

(7) "Loan" means debt financing provided to a municipality for a project.

(8) "Municipality" means an entity defined in ORS 285B.560(4):

(a) Oregon City;

(b) Oregon County;

(c) District as defined in ORS 198.010;

(d) The Port of Portland created by ORS 778.010;

(e) County service district organized under ORS chapter 451;

(f) Tribal council of a federally recognized Indian Tribe in Oregon; or

(g) Airport district organized under ORS Chapter 838.

(9) "Non-compliance" means the municipality has received a notice of non-compliance with:

(a) Drinking water quality standards administered by the Oregon Department of Human Services Public Health Services Drinking Water Program; or

(b) Water quality statutes, rules, orders, or permits administered by DEQ or the Environmental Quality Commission.

(10) "Project" means an activity that is eligible for assistance from the fund as defined in ORS 285B.560(5) and (6).

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

(12) "Severely distressed community" means a community or area identified as severely distressed by the department under the procedures implementing OAR chapter 123, division 24.

(13) "System" means the interconnected facilities that are required or useful for performing the required function.

(14) "Technical Assistance" means preliminary engineering or planning; legal, financial, and economic investigations, reports and studies to determine the feasibility of a project.

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

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.572 - 285B.599

Hist.: EDD 10-1993(Temp), f. & cert. ef. 10-4-93; EDD 7-1994, f. & cert. ef. 4-7-94;

EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06

123-043-0015

Eligible Project Costs and Activities

(1) Eligible costs include the reasonable costs for eligible program activities and include:

(a) Project development costs;

(b) Construction contingencies for a project as approved by the department;

(c) Financing costs associated with the department's financing including capitalized interest, issuance and debt service reserve costs, when such costs are incurred in funding a project;

(d) Costs incurred by the municipality prior to the award if such costs are allowable under the department's adopted policy for reimbursement of pre-award costs; and

(e) At the discretion of the department, reasonable, new project management costs but not expenses for current staff that are already included in the municipality's adopted budget.

(2) Eligible project and program activities includes the construction, improvement or expansion of the following facilities owned and operated by a municipality:

(a) Domestic drinking water systems including all facilities necessary for source, supply, filtration, treatment, storage, transmission, and metering;

(b) Wastewater systems including all facilities necessary for collecting; conveying, pumping, treating and disposing of sanitary sewage, including correction of infiltration and inflow through replacement of lines, sliplining, or other corrective processes approved by the department;

(c) Water development projects, as defined in ORS 541.700, that are owned and operated by a municipality;

(d) Storm water systems including all facilities necessary for controlling, collecting, conveying, treating and discharging of storm water; and

(e) The acquisition of real property directly related to or necessary for the proposed project.

(f) Project development and the associated engineering, architectural and planning work involved in developing the facilities listed in (1) above, including technical assistance and support activities necessary to the construction of a project as determined by the department.

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06

123-043-0025

Ineligible Project Activities

Expenses and costs expressly allowed by OAR 123-043-0015 are eligible for reimbursement from the fund. All other costs, including but not limited to those listed below, are ineligible for reimbursement:

(1) Costs incurred for facilities that are or will be privately owned.

(2) Cost of purchase of equipment, such as motor vehicles, not directly related to the project.

(3) Cost of purchase of off-site property for uses not directly related to the project.

(4) Project operating or maintenance expenses.

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06

123-043-0035

Criteria and Limitations for Funding — Non-Technical Assistance Projects

(1) The intent of the Legislature was to provide funding to municipalities to assist in complying with the **Safe Drinking Water Act** and the **Clean Water Act**. Therefore, priority will be given to projects necessary to ensure that municipal water and wastewater systems comply with the requirements of:

(a) Drinking water quality standards administered by the Oregon Department of Human Services Public Health Services Drinking Water Program; or

(b) Water quality statutes, rules, orders, or permits administered by DEQ or the Environmental Quality Commission.

(2) If a municipal water or wastewater system has not been issued a notice of non-compliance by the governing regulatory authority, the department may determine that a proposed project is eligible for assistance upon a finding that one of the following has been met:

(a) A recent letter has been issued by the appropriate regulatory authority, typically the Department of Human Services Drinking Water Program, DEQ, or its contracted agent, which indicates a high probability that the system owner will soon be notified of non-compliance with either the **Safe Drinking Water Act** or the **Clean Water Act**; or

(b) The department deems it reasonable and prudent that an award from the fund will assist in bringing the drinking water, storm water or wastewater system into compliance with the requirements of the **Safe Drinking Water Act**, the **Clean Water Act**, those requirements proposed to take effect within the next two years, or the requirements of other regulatory agencies recognized by the department as having responsibility for the protection of water quality and the supply of clean drinking water.

(3) The department generally will not award funds for any wastewater treatment facility that discharges into water quality limited streams for which DEQ has not yet established Total Maximum Daily Loads. The department will consult with DEQ to determine if the project can be designed and constructed without establishment of Total Maximum Daily Loads. Water quality limited streams are designated by the Oregon Environmental Quality Commission.

(4) The project must be consistent with the acknowledged local comprehensive plan.

(5) The department encourages regionalization whenever feasible.

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

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06

123-043-0045

Criteria and Limitations for Funding — Technical Assistance Projects

(1) Awards are available to municipalities with populations of less than 15,000 people for technical assistance. If the project is for a facility plan or study required or recommended by a regulatory agency, the municipality is not required to document non-compliance.

(2) Technical assistance grants and loans are subject to the following limitations:

(a) A grant of up to \$20,000 may be awarded for a project.

(b) A loan of up to \$20,000 may be awarded for a project. Interest shall be at 75 percent of the annual interest rate for other loans made in accordance with the requirements of this OAR chapter 123, division 43. The loan term shall not exceed seven years; and

(c) No more than \$600,000 shall be expended from the fund on technical assistance in any biennium. When awarding a grant under this OAR 123-043-0045 the department will not first consider a municipality's ability to repay a loan. The department may determine the need for a grant due to the "special circumstances" of the project.

(d) The application must meet the requirements listed in OAR 123-043-0075(2).

(3) The loan shall be a full faith and credit obligation which is payable from any taxes which the municipality may levy within the limitations of Article XI of the Oregon Constitution and all legally available revenues and other funds of the municipality. A pledge of specific revenues of the municipality may be pledged in addition to the foregoing.

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

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06

123-043-0055

Loan and Grant Information

(1) The department may award financing in a manner that maximizes the use of available resources and maintains the desired credit standards of the fund. The department shall determine the amount, type, interest rate and terms of any financing awarded. It may offer an alternate mix or lower amount of assistance than requested. The amount of the award may be the minimum amount that the department

determines is necessary to enable the project to proceed, and the department may investigate and recommend other sources of funds for all or part of a proposed project. Projects that the department determines are not financially feasible will not be funded.

(2) Grants: When making a determination to award a grant, the department will apply prudent fiscal management of the fund in order to manage limited funding resources. In making its determination, the department shall, in addition to the criteria and procedures contained in the department's policies on grant and loan funding, apply the following criteria:

(a) The department's financial analysis determines that the municipality's financial resources, including its borrowing capacity, are insufficient to finance the project;

(b) If applicable, the projected annual residential utility rate for the system is at least equivalent to a minimum rate as determined by the department's policy. The department's policy incorporates the most recent U.S. Census data on median household income and annual adjustments for inflation since the most recent census; and

(c) If applicable, a grant would not cause the total amount of grants made by the department through all its programs to exceed \$10,000 per hookup per project.

(3) The department shall determine if the project meets the minimum criteria of a grant and make a determination on the amount of the grant based on financial need and other circumstances as described in the department's policies. A project in a severely distressed community may be eligible for a grant not to exceed \$750,000.

(4) Loans:

(a) The term of a loan is limited to the usable life of the contracted project, or 25 years from the year of project completion, whichever is less.

(b) Except as provided elsewhere in OAR chapter 123, division 43, the interest rate on a loan is based on market conditions for similar debt and is set at the time of the award.

(c) The interest rate on a bond funded loan is equal to the coupon rates on the state revenue bonds funding the loan. Until the state revenue bonds funding the loan are sold, the municipality will pay interest at a rate established by the department on loan funds disbursed to the municipality.

(d) Maximum amount for a loan for a project may be determined by the department on the basis of the department's financial analysis of the municipality's capacity for repaying the debt, the availability of moneys in the fund and prudent fund management as described in the department's adopted policies.

(5) The loan shall be a full faith and credit obligation which is payable from any taxes which the municipality may levy within the limitations of Article XI of the Oregon Constitution and all legally available revenues and other funds of the municipality. A pledge of specific revenues of the municipality may be required by the department to be pledged in addition to the foregoing.

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06

123-043-0065

Application Requirements

(1) A municipality may submit an application to the department at any time after the department has made a preliminary determination of eligibility and shall comply with the department's procedures for submitting applications. The department may, to the extent possible, assist municipalities in understanding program requirements and in completing applications.

(2) For a project that is part of a system that is, or will be, functionally connected to, another municipality's system, an intergovernmental cooperation agreement that describes the duties and obligations of each entity is required. The fully executed intergovernmental agreement must be provided before the financing contract will be executed by the department.

(3) The application shall be in the form provided by the department and shall contain or be accompanied by such information and documentation as the department may require. The department will process only completed applications.

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06

123-043-0075

Application Review and Approval

(1) For a non-technical assistance project, the department must make the following determinations:

(a) The municipality has certified that the proposed project is feasible, is the most cost effective solution, and adequately serves the applicable land uses in both the short and long term;

(b) The loan is secured by the pledge of utility revenues or other revenues or payments from owners of specially benefited properties, and these revenues or payments are sufficient, when considered with other security, to assure repayment of the loan and the municipality has certified to the department that there will be adequate funds available to repay the loans made to the municipality from the fund;

(c) Moneys in the appropriate accounts of the fund are or will be available for the project;

(d) The municipality is willing and able to enter into a contract with the department;

(e) The project is consistent with the requirements governing assistance from the fund. If the Department determines that the municipality or the proposed project does not meet the requirements of this OAR 123-043-0075, the department may reject an application or require further documentation from the municipality; and

(f) The project is ready to begin and the municipality has committed in writing that, if awarded the assistance it shall proceed immediately.

(2) To award assistance from the fund for a technical assistance project, the department must make the following determinations:

(a) Provisions of OAR 123-043-0075(1) are met;

(b) The technical assistance activities must be for a project that is eligible under OAR chapter 123, division 43 and meets the criteria listed in OAR 123-043-0045; and

(c) The municipality has, or has demonstrated the ability to secure, the administrative capacity to undertake and complete the project.

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06

123-043-0085

Contract Administration and Disbursement of Funds

(1) The department shall disburse monies from the fund only after entering into a binding contract with the municipality.

(2) The contract shall be in a form provided by the department, and shall include:

(a) A provision that disbursements from the fund will be according to the terms of the contract;

(b) A provision that the liability of the department under the contract is contingent upon the availability of moneys in the fund for use in the project;

(c) If any portion of the assistance is in the form of a loan or the purchase of a bond of a municipality, a provision granting the department a lien on or a security interest in the collateral as determined by the department to be necessary to secure repayment of the loan or bond;

(d) A provision that, for a period of up to six (6) years after project completion, the department may request that the municipality, at its own expense, submit data on the economic development benefits of the project, including but not limited to information on new or retained jobs resulting from the project, and other information necessary to evaluate the success and economic impact of the project;

(e) For a drinking water project, a provision requiring the municipality to install meters on all new active service connections from any distribution lines that may be included in the project;

(f) For a drinking water project with existing, active unmetered service connections, a provision requiring the municipality to install meters on such service connections; and

(g) Other provisions that the department considers necessary or appropriate to implement the assistance.

(3) Other funds that may be needed to complete the project must be available or the municipality must have a binding commitment for such funds at the time the contract is executed. If a portion of the other funds needed to complete the project is committed but not available at the time an award is made or the contract executed, the contract shall

require that the project be fully funded prior to any disbursement from the fund.

(4) The contract for a loan or grant shall be authorized by an ordinance, order or resolution adopted by the governing body of the municipality in accordance with the municipality's requirements for public notice and authorizing debt.

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06

123-043-0095

Recipient Responsibilities

(1) The municipality must comply with all applicable state laws, regulations and requirements, such as Oregon prevailing wage rates, municipal audit law, and procurement regulations.

(2) The municipality shall maintain accounts and records for all activities associated with the contracted project and shall provide the department and its representatives reasonable access to such records. The municipality shall submit periodic reports on the project as requested by the department.

(3) The municipality shall certify that a registered professional engineer will be responsible for the design and construction of the project and it shall follow standard construction practices, such as bonding of engineers and contractors, requiring errors and omissions insurance, performing testing and inspections during construction, and obtaining as-built drawings.

(4) For a project funded with state lottery proceeds, the municipality shall comply with ORS 280.518 for public display of information on lottery funding of the project. At a minimum the municipality shall:

(a) Include the following statement, prominently placed, on all plans, reports, bid documents and advertisements relating to the Project: "This project was funded in part with a financial award from the Water Fund, funded by the Oregon State Lottery and administered by the State of Oregon, Economic and Community Development Department."; and

(b) For a construction project, post a sign, provided by the department, at the project site or, if more than one site is included in the project, at a site visible to the general public stating that the project is being funded by lottery proceeds.

(5) For a construction project the municipality shall have a plan for ongoing operation and maintenance that will preserve the project's benefits over its useful life.

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

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06

123-043-0102

Eligibility Criteria for State Revenue Bond Loans

The department shall apply the following standards for determining the eligibility of projects for state revenue bond financing:

(1) Loan repayment must be secured by a full faith and credit pledge of the municipality;

(2) The loan must be of sufficient size as determined by the department;

(3) The loan must be fully amortized over its term with fixed annual principal and interest payments, and the term of the loan must not exceed the usable life of the contracted project or 25 years from the year of project completion, whichever is less;

(4) The loan must conform to the requirements of the bond indenture for the state revenue bonds; and

(5) The loan and the municipality must meet the minimum underwriting criteria for state revenue bond financing as established by department policies.

Stat. Auth.: ORS 285B.563, 285A.075

Stats. Implemented:

Hist.: EDD 11-2006, f. & cert. ef. 11-3-06

123-043-0105

Sanctions

(1) The department may pursue any remedies available to it against a municipality upon the occurrence of an event of default under the department's contract with the municipality, including barring the municipality from applying for future assistance from the fund and

withholding other state funds due to the municipality pursuant to ORS 285B.599.

(2) The Department may invoke sanctions against a municipality that fails to comply with the requirements governing the fund or if 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. Sanctions will not be imposed by the department until the municipality 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 award; or

(c) State statutory requirements have not been met; or

(d) There is a significant deviation from the contract, or breach of contract; or

(e) A municipality defaults on loan payments.

(3) One or more of the following sanctions may be imposed by the Department; bar a municipality from applying for future assistance; revoke an existing award; withhold unexpended funds; require return of unexpended funds or repayment of expended funds; withhold other state funds such as state-shared revenues; and, other remedies that may be incorporated into grant or loan contracts.

(4) 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.

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06

123-043-0115

Appeals and Exceptions

(1) Appeals of decisions made by the municipality regarding a project must be made at the local level in accordance with the requirements and procedures of the municipality.

(2) The director will consider appeals of the department's funding decisions. Only the municipality may appeal. Appeals must be submitted in writing to the director within 30 days of the event or action that is being appealed. A project that would have been funded but for a technical error in the department's review of the application, as determined by the director, will be funded as soon as sufficient moneys become available in the fund, provided the project is still viable. The director's decision is final.

(3) The director may waive any non-statutory requirements of OAR chapter 123, division 43 if it is demonstrated such a waiver will further the goals and objectives of the program.

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06

DIVISION 49

SAFE DRINKING WATER REVOLVING LOAN FUND

123-049-0005

Purpose, Scope and Incorporated Documents

(1) This division of administrative rules implements a federally funded State revolving fund to provide financing to Community and Nonprofit non-community drinking water systems for planning, design, construction or improvement of drinking water facilities or systems needed to maintain or achieve compliance with drinking water standards and to further public health protection goals of the federal **Safe Drinking Water Act Amendments of 1996** and this state's Drinking Water Quality Act.

(2) In accordance with ORS 285A.213, this division of administrative rules governs the administration of the moneys awarded through this Safe Drinking Water Revolving Loan Fund by the Economic and Community Development Department in cooperation with the State of Oregon's Health Services of the Oregon Department of Human Services, but not activities of Health Services itself.

(3) "SAFE DRINKING WATER IN OREGON: Program Guidelines & Applicant's Handbook for the Federally Funded Safe Drinking

Water Revolving Loan Fund & Drinking Water Protection Loan Fund" (July 2003), including but not limited to its appendices, is:

(a) The principal source of information on this program, as prepared by the Department;

(b) Available by contacting any of the Department's 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285A.213(4)

Stats. Implemented: ORS 285A.213

Hist.: EDD 6-1999, f. & cert. ef. 8-26-99; EDD 11-2000(Temp), f. 7-20-00, cert. ef. 7-20-00 thru 1-16-01; EDD 1-2001, f. 1-11-01, cert. ef. 1-12-01; EDD 8-2004, f. & cert. ef. 2-3-04

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 that is applying for a loan from the Fund.

(3) "Community water system" means a public water system, other than one owned by an agency of the federal government, that:

(a) Has 15 or more service connections used by year-round residents; or

(b) Regularly serves 25 or more year-round residents.

(4) "Contract" means a legally binding agreement between the Department and Recipient that sets out the terms and conditions for award of Project funds.

(5) "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 to pay for infrastructure improvements to eligible public water systems, and which includes moneys originating directly from federal capitalization grants (apart from set-asides), this state's match of such grants, program loan repayments, interest earnings and any additional funds provided by this state.

(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 Health Services 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 recognized under Oregon law as a nonprofit corporation.

(9) "Project" means facility design construction activities or related/preceding tasks identified in the Contract and loan agreement for which the Recipient may expend, obligate or commit funds to address a drinking water problem or a documented health hazard.

(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 consumption through pipe or other constructed conveyances, regardless of ownership, including but not limited to facilities for source of supply, filtration, treatment, storage, transmission or metering of that water.

(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 United States federal government.

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

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285A.213(4)
 Stats. Implemented: ORS 285A.213
 Hist.: EDD 6-1999, f. & cert. ef. 8-26-99; EDD 8-2004, f. & cert. ef. 2-3-04

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 prior nonperformance.

(2) Eligible and ineligible activities are defined in the Act and in USEPA's **Drinking Water State Revolving Fund Program Guidelines**, EPA 816-R-97-005 (February 1997), as well as subsequent revisions or editions of such guidelines.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285A.213(4)
 Stats. Implemented: ORS 285A.213
 Hist.: EDD 6-1999, f. & cert. ef. 8-26-99; EDD 8-2004, f. & cert. ef. 2-3-04

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.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285A.213(4)
 Stats. Implemented: ORS 285A.213
 Hist.: EDD 6-1999, f. & cert. ef. 8-26-99; EDD 8-2004, f. & cert. ef. 2-3-04

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, which may otherwise be made from any source of revenue at the Recipient's disposal, including but not limited to General Fund revenue.

(2) One or more of the following rights and remedies may be exercised by the Department if the Recipient fails to comply with Contract provisions and the Recipient fails to correct the deficiencies within a reasonable time after Recipient is notified of the deficiencies:

- (a) Bar a Recipient from applying for future Department assistance;
- (b) Revoke an existing Department award;
- (c) Withhold unexpended Department funds;
- (d) Require immediate return of unexpended Department funds;
- (e) Require repayment of expended Department funds;

(f) Withhold other state funds otherwise due to the Recipient, such as state-shared revenues; or

(g) Other remedies that may be incorporated into the contract.

(3) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the Contract.

(4) The Recipient shall be responsible for ensuring that any subcontractor complies with the applicable terms and conditions of the contract. Nothing in this rule shall restrict the Department's right to enforce independently the terms of any contract or to recover any sums that may become due as the result of a breach of such Contract.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285A.213(4)
 Stats. Implemented: ORS 285A.213
 Hist.: EDD 6-1999, f. & cert. ef. 8-26-99; EDD 8-2004, f. & cert. ef. 2-3-04

123-049-0050

Private Ownership and Regulation of Loan Subsidies for Public Benefit

(1) Only if a privately owned public water system is regulated under the jurisdiction of the State of Oregon Public Utility Commission (PUC) may it enjoy the benefits of a "disadvantaged community," pursuant to section 1452(d) of the Act, in receiving financial assistance through the Fund, including but not limited to principal forgiveness.

(2) For purposes of principal forgiveness of a loan by the Fund, the amount of forgiven principal shall not be treated as equity, but rather in all cases as a contingent liability on the balance sheet of the public water system receiving the loan and on the balance sheet of any entity that acquires that system or the assets financed by the loan.

(3) If a water system is sold that was awarded principal forgiveness by the Fund, the value of the principal forgiveness shall be effectively excluded from the purchase price, consistent with section (2) of this rule, such that the benefit of the principal forgiveness continues to accrue to the ratepayers or users of the system rather than to the seller. (This section also applies to the sale or lease of system assets financed by the loan, and it pertains but is not limited to the privatization of a publicly owned system)

(4) If section (2) or (3) of this rule is violated, then the water system shall repay the full amount of the forgiven principal into the Fund. The Department shall determine the schedule of such repayment, as it deems appropriate under the circumstances.

(5) The Oregon Public Utility Commission has full authority to enforce the effects of this rule through applicable regulation of an affected water system.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285A.213(4)
 Stats. Implemented: ORS 285A.213
 Hist.: EDD 11-2000(Temp), f. 7-20-00, cert. ef. 7-20-00 thru 1-16-01; EDD 1-2001, f. 1-11-01, cert. ef. 1-12-01; EDD 8-2004, f. & cert. ef. 2-3-04

123-049-0060

Drinking Water Protection Loan Fund

(1) For purposes of implementing section 1452(k)(1) of the Act, the Department shall administer loans to public water systems for protecting surface and underground sources of drinking water, in order to solve or prevent health problems before the water is collected or treated by the system.

(2) The moneys for these loans are derived from the "local assistance" set-aside of the federal capitalization grant, such that unused amounts will be transferred to the Fund, and repayments shall be either added to the Fund or placed in a dedicated account for further lending under this rule.

(3) The loans under this rule are distinct from the Fund. Relevant provisions of this division of administrative rules, however, shall apply to the administration of such loans.

(4) For purposes of this rule, administration includes underwriting assessments, loan awards, contract execution, disbursements, loan repayments and so forth.

(5) Health Services (Oregon Department of Human Services) and the Oregon Department of Environmental Quality shall handle determinations of eligibility, prioritization of loan recipients and related duties.

(6) More specific guidelines for the loans under this rule are available and included in the document incorporated by reference in OAR 123-049-0005(3).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285A.213(4)
 Stats. Implemented: ORS 285A.213
 Hist.: EDD 8-2004, f. & cert. ef. 2-3-04

DIVISION 55

REGIONAL BOARDS, PARTNERSHIPS
AND INVESTMENT PLANS

General

123-055-0100

Purpose and Scope

In implementing the Regional Economic Development Act under ORS 285B.230 to 285B.251 and 285B.269, pursuant to amendments by chapter 509, Oregon Laws 1999, this division of administrative rules is intended to clarify, facilitate and establish the following key pieces in the successful design, deliberation, execution and updating of a long-term planning framework for achieving economic development results:

(1) Regional associations and consensus among counties of this state;

(2) Boards of citizens for strategic planning and oversight of funded activities;

(3) Special, broad-based partnership arrangements to augment and, in some cases, to act as an umbrella for county-appointed boards;

(4) Processes for public development and approval of the locally determined investment Strategies; and

(5) Statewide interaction and support.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.236(1)

Stats. Implemented: ORS 285B.230 - 285B.251 & 285B.269

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04

123-055-0120

Definitions

For purposes of this division of administrative rules, unless the context demands otherwise:

(1) **Commission** means the State of Oregon Economic and Community Development Commission established by ORS 285A.040.

(2) **County-based Region** means a Region established by formal recognition of the Department on the basis of county government initiative, without a Regional Partnership.

(3) **Department** means the State of Oregon Economic and Community Development Department as (re)organized under ORS 285A.070.

(4) **Director** means the director of the Department as appointed under ORS 285A.070.

(5) **Fiscal Entity** means a unit of local government, intergovernmental entity or nonprofit corporation jointly designated by the governing bodies of the counties comprising the Region and responsible for assisting the Regional Board in developing, implementing and administering the Investment Strategy, such that:

(a) If the governing bodies of the counties comprising the Region establish the Regional Board as an intergovernmental entity, the Regional Board may be the Region's Fiscal Entity; and

(b) The Fiscal Entity must in all cases have the authority and legal power to enter into a contract with the Department for receipt of Regionally Controlled Funds and with other entities receiving such funds as authorized by the Regional Board pursuant to and for purposes of the Investment Strategy.

(6) **Investment Strategy** means the document described under ORS 285B.239 and prepared by the Regional Board under ORS 285B.242, in accordance with OAR 123-055-0300 to 123-055-0399.

(7) **Partnership-based Region** means a Region for which:

(a) A Regional Partnership is associated with the Regional Board through and with agreement of the county partners; and

(b) Its specific geographic area essentially coincides with that of the Regional Partnership. (This definition in no way limits the types or purposes of Regional Partnerships)

(8) **Region** means a geographic area under ORS 285B.230(1), as described in OAR 123-055-0200, and represented by a Regional Board that prepares and submits an Investment Strategy. It may be either a County-based Region or a Partnership-based Region.

(9) **Regional Board** means a group of individuals appointed by county courts and boards of county commissioners under ORS 285B.230(2) and 285B.242(1), as described in OAR 123-055-0200 to 123-055-0299.

(10) **Regional Partnership** means an association under ORS 285B.230(4), formed by agreement of local and regional partners with the requisite agencies of the state government. It includes but is not limited to a Partnership-based Region.

(11) **Regionally Controlled Funds** means the Regional Investment Fund and Rural Investment Fund, as described in division 057 of this chapter of administrative rules, and the moneys allocated, disbursed or expended there under for the projects of a particular Region, and all interest earned on such money by or for the Region. This term shall in no way be interpreted as affecting resources from any other fund or program under state law or associated with the Department.

(12) **Multi-Region Project** means a project that has a demonstratable economic impact in more than one Region where two or more Regional Investment Boards participate in the funding of the project.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.236(1)

Stats. Implemented: ORS 285B.230 - 285B.251 & 285B.269

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04; EDD 19-2004, f. & cert. ef. 8-2-04

Regions and Regional Investment Boards

123-055-0200

Formation and Reconfiguration

(1) Prior to designating a County-based Region, the Department shall do the following:

(a) Communicate with and assist representatives of county governments with considerations in forming a Region, which may include special meetings, fora, etc.; and

(b) Receive materials and advice from the counties= governing bodies, describing the Region's geographic area and the historical, cultural and economic linkages that underpin and justify its creation, including regional planning activities that already exist.

(2) The geographic area of a County-based Region may not include any area in another Region and shall consist of the following:

(a) Two or more counties

(b) The entire area of the counties comprising the Region, unless the remaining portion of a county is contained in a Partnership-based Region; and

(c) A common border between at least two member counties, although any other county in the Region need not be contiguous to any or all of the other counties.

(3) Each Regional Board and its members, as well as the associated Fiscal Entity, operate in the public trust and shall comply (in relevant part or in entirety) with state and local statutes, laws and regulations for the following, and are solely responsible for legal adherence

(4) A Partnership-based Region is not bound by section (1) or (2) of this rule, and may encompass any geographic area consistent with the participation/involvement of relevant sub-county partners. The Department shall recognize it, insofar as it:

(a) Contains no area of another Region;

(b) Includes area in at least two counties; and

(c) Is clearly described in or as part of the Regional Partnership memorandum of understanding or associated information as provided to the Department.

(5) In order for any county area to be divided among two or more Regions:

(a) At least part of the county must be in a Partnership-based Region;

(b) The county's governing body must be a party to each applicable agreement in OAR 123-055-0240 and must appoint one or more members to the respective Regional Boards; and

(c) No such constituent part of the county may be attached to a Region as established or recognized by the Department, until all such parts are associated with an acknowledged Region.

(6) Regions may be reconfigured pursuant to the mutual consent of all affected counties (and partners of an ongoing Regional Partnership), and subject to the preparation, modification or amendment and approval of an Investment Strategy or Strategies for the new/reconfigured Region(s).

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.236(1)

Stats. Implemented: ORS 285B.230, 285B.236 & 285B.242

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04

123-055-0220

Board Composition and Implications

(1) Every Region must have a Regional Board, whose members are:

(a) Named individuals appointed by the governing bodies of the counties, through any method of the bodies' choice, including by clear arrangement or extension of a Regional Partnership; and

(b) Effective representatives of the interests prescribed under ORS 285B.242(1).

(2) Each Regional Board and its members, as well as the associated Fiscal Entity, operate in the public trust and shall comply (in relevant part or in entirety) with state and local statutes, laws and regulations for the following, and are solely responsible for legal adherence and mandatory actions thereunder, regardless of any assistance provided by or through the Commission or Department:

- (a) Public bodies, meetings and records (ORS Ch. 192);
- (b) Government standards and practices (ethics, ORS Ch. 244);
- (c) Public contracting and procurement (ORS Ch. 279);
- (d) Public funds (ORS Ch. 295);
- (e) Minimum wage and hour standards;
- (f) Municipal budgeting and audit laws; and
- (g) Other similar matters.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.236(1)

Stats. Implemented: ORS 285B.230 & 285B.242

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00

123-055-0240

Regional Accords and Fiscal Entities

(1) The governing bodies of the counties comprising a Region shall jointly enter into a written agreement forming the Region and specifying applicable elements as follows:

(a) The size, makeup and organization of the Regional Board and the methods for nominating and appointing its members by the governing bodies;

(b) Indication of a Regional Partnership in the case of a Partnership-based Region;

(c) Any special name to be used in reference to the Region;

(d) Procedures, policies, duties and authority for the activities of the Regional Board and for the preparation and implementation of the Investment Strategy;

(e) If desired by the governing bodies of the counties comprising the Region, establishment of the Regional Board as an intergovernmental entity under ORS 190.010(5), 190.080 and 190.085 and designation of the Regional Board as the Region's Fiscal Entity; or

(f) Any other matters deemed appropriate by the governing bodies.

(2) If the agreement described in section (1) of this rule establishes the Regional Board as an intergovernmental entity and designates the Regional Board as the Region's Fiscal Entity, that agreement shall also specify the following Content of Regional Investment Strategy:

(a) The authority, duties and functions of the Regional Board in its capacity as the Fiscal Entity for Region;

(b) The Regional Board's financial responsibility and budgetary processes with respect to Regionally Controlled Funds; and

(c) Contractual terms and other relevant administrative or fiduciary issues.

(3) If the Regional Board is not established as an intergovernmental entity that acts as the Region's Fiscal Entity, then the governing bodies of the counties comprising the Region shall jointly designate the Fiscal Entity for the Regional Board and enter into an agreement with that Fiscal Entity (preferably, one that is subsequent to and separate from the agreement described in section (1) of this rule) that specifies the following:

(a) The corporate/legal identity, role, function and duties of the Fiscal Entity for purposes of assisting the Regional Board in developing, implementing and administering the Investment Strategy;

(b) Powers and responsibilities of the Regional Board over the Fiscal Entity;

(c) The authority, financial responsibility and budgetary processes of the Fiscal Entity with respect to decisions by the Regional Board and with respect to the receipt and use of Regionally Controlled Funds; and

(d) Contractual terms and other relevant administrative or fiduciary issues.

(4) The governing bodies of the counties comprising the Region shall jointly notify the Department in writing, as soon as reasonably possible, of the following:

(a) The identity of the Fiscal Entity; and

(b) Any actual or formally contemplated change in the designated Fiscal Entity.

(5) Alternatively for sections (3) and (4) of this rule, the Regional Board may directly designate and contract with the Fiscal Entity, and notify the Department accordingly, if it is established as an intergovernmental entity but not as the Region's Fiscal Entity.

(6) Other agreements that supplement or incorporate what is described in this rule may be executed as necessary and appropriate, especially for a Partnership-based Region.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.236(1)

Stats. Implemented: ORS 285B.230 - 285B.251 & 285B.269

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04

Content of Regional Investment Plan

123-055-0300

Statutory Priorities

The regional investment program is intended to identify, address and coordinate economic development priorities, as well as coordinate public and private resources, in accordance with ORS 285B.233. Therefore, an Investment Strategy shall explicitly do the following:

(1) Focus on priorities identified by the Regional Board, along with the following priorities, as taken from ORS 285B.230(3):

(a) Supporting communities and populations that have been left out of Oregon's economic expansion and diversification;

(b) Helping companies that are starting up or are already in business in Oregon to compete globally;

(c) Ensuring that economic strategies will reinforce Oregon's long-term prosperity and livability; and

(d) Coordinating regional efforts for economic development, education, workforce development, and;

(2) Demonstrate in measurable terms the extent to which, as well as how, the priorities in section (1) of this rule will be accomplished, as required under ORS 285B.236(2), by relating these to the regional performance measurements and regional benchmarks in the Investment Strategy under ORS 285B.239(7) and to Regional Performance Measures as described in OAR 123-055-0620.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.236(1)

Stats. Implemented: ORS 285B.230, 285B.233, 285B.236 & 285B.239

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04

123-055-0340

Using Other Planning Exercises

Regions are encouraged to take advantage of other planning activities or sources of helpful guidance that exist in association with federal programs or resources, at the local level and in other circumstances, such that:

(1) In preparing and developing an Investment Strategy, a Region may borrow and rely on technical resources, methods and format for strategic or economic planning, or the Region may integrate and make reference to recently completed planning work, including those associated with but not limited to the following:

(a) U.S. Economic Development Administration;

(b) U.S. Empowerment Zone/Enterprise Community Initiative; or

(c) Local comprehensive land use plans.

(2) In using models or relevant work as indicated in section (1) of this rule, the Region shall ensure that all of the elements required under ORS 285B.230 to 285B.251 for a complete Investment Strategy are still included therein and are easily identified or identifiable through use of a key or other instructions in the primary document that the Region adopts.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.236(1)

Stats. Implemented: ORS 285B.230 - 285B.251 & 285B.269

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04

Plan Development, Approval, Implementation and Update

123-055-0400

Strategy Preparation, Local Input, Refinement with Department and Regional Adoption

For purposes of developing Investment Strategies:

(1) The Department shall extend reasonable assistance to each Regional Board, its members and its Fiscal Entity, which may include provision of program guidance, attendance at local meetings or contact information for relevant organizations or government agencies, as the Department's time and resources permit. The Department shall neither guide nor lead counties in the development of Investment Strategies and is not responsible for performing in-depth research or information gathering for any Region.

(2) For all Regions:

(a) In addressing the general preparation and substance of the Investment Strategy, the Regional Board shall provide opportunity for consultation with applicable representatives in the Region from the following:

(A) Private industries, the for-profit business community, the nonprofit sector and workforce committees;

(B) Local/city governments and public service providers, including ports and other special districts;

(C) Tribal governments or councils; and

(D) State and federal agency partners, especially those listed under ORS 285B.230(4).

(b) In devising the two-year Implementation Strategy that shall describe projects and activities to be undertaken and funded, the Regional Board shall consult with and seek input from the parties described in subsection (a) of this section, either as a convened body or through liaison work by individual board members or the Fiscal Entity.

(c) The Regional Board may work with the Department in the refinement of the Investment Strategy through drafting stages and to ensure compliance with applicable statutes.

(d) Public hearings shall be scheduled and conducted, as follows:

(A) A public hearing shall be held in each county of the Region, no less than two weeks after published notice inviting public comments on the proposed Investment Strategy; and

(B) The Investment Strategy shall be made available to the public for inspection during the two-week period preceding the public hearing.

(e) The Regional Board shall submit the Investment Strategy to the county governing bodies of the Region after the public hearing in that county, so that the governing bodies may take formal action on the Investment Strategy.

(f) In order for the final Investment Strategy to be regionally adopted, it must be approved by motion or resolution of the following:

(A) All of the counties in the Region (by a majority vote of each county governing body, as specified in the county charter); and

(B) The Regional Board (pursuant to its own procedures or bylaws).

(3) In response to a recommendation from the Department, Commission, Governor or Regional Partnership, a final, adopted Investment Strategy may be modified, amended or appended by the Regional Board subject to formal consideration by the county governing bodies, which may at their discretion delegate authority for so changing the Investment Strategy.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.236(1)

Stats. Implemented: ORS 285B.242

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04

123-055-0420

Review/Approval by Commission and Governor or Through Regional Partnership

The Regional Board shall provide a complete copy of the final Investment Strategy, as developed and adopted consistent with OAR 123-055-0400, to the Department, at which point the Investment Strategy may be handled according to either section (1) or (2) of this rule:

(1) Review and approval shall be done through a Regional Partnership, such that:

(a) These functions have been delegated to the Regional Partnership either by communication from the Governor's Office to the Direc-

tor or by a joint recommendation of the state agency directors under ORS 285B.230(4) (or their regional designees);

(b) The review and approval of the Investment Strategy proceeds according to the Regional Partnership's discretion and criteria, including but not limited to compliance with all applicable statutes; and

(c) Final approval of the Investment Strategy is formally submitted to the Governor or the state agency directors under ORS 285B.230(4) (or their regional designees) for recognition by the Department.

(2) Without delegation under subsection (1)(a) of this rule, review and approval shall proceed as follows:

(a) The Department examines the Investment Strategy to ensure compliance with applicable statutes and may seek and obtain missing or corrected information, as necessary, from the Regional Board;

(b) The Department submits the Investment Strategy to the Commission with summaries or assessments, as are appropriate or requested by the Commission;

(c) The Commission considers the submission by the Department and;

(d) Pursuant to any consultation that it chooses to have with the Regional Board, the Commission takes action either by returning the Investment Strategy to the Regional Board with instructions for modification or by endorsing it, such that once endorsed by the Commission, the Investment Strategy is recommended to the Governor, and the Governor shall either finally approve the Investment Strategy or return it to the Commission or the Regional Board with appropriate indications.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.236(1)

Stats. Implemented: ORS 285B.242 & 285B.242

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04

123-055-0440

Strategy Implementation and Biennial Update

Once approved as described in OAR 123-055-0420:

(1) An Investment Strategy shall be implemented at the direction and by authority of the Regional Board, in cooperation with a Regional Partnership as applicable, such that:

(a) The Department shall assist with implementation, as staff resources and time permit, especially for purposes of coordination with resources at the Department's disposal;

(b) Leverage of resources and opportunities other than Regionally Controlled Funds are to be continually considered for effectively and efficiently achieving economic development results; and

(c) Measuring and reporting progress, spending and so forth under the Investment Strategy shall be integral to implementation.

(2) An Investment Strategy is a living document, and every two years, the Regional Board shall revise it as necessary and improve it wherever suitable, including but not limited to updating the rural action plan and the requisite preparation of a new implementation Strategy. The revised and updated Investment Strategy and the new two-year Investment Strategy shall be developed and approved consistent with OAR 123-055-0400 and 123-055-0420, such that: delegation or the lack thereof by the Governor in the prior biennium, as described OAR 123-055-0420(1), may be changed.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.236(1)

Stats. Implemented: ORS 285B.242 & 285B.245

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04

123-055-0460

Relationship of Plan to Regionally Based Funding

For purposes of disbursing Regionally Controlled Funds to a Region, in accordance with division 057 of this chapter of administrative rules:

(1) All disbursements of Regionally Controlled Funds will be made to the Region's Fiscal Entity, as designated in accordance with OAR 123-055-0240.

(2) Except for moneys described in OAR 123-057-0330 or 123-057-0430, the Department may make such disbursements only pursuant to final approval of the Investment Strategy and the two-year implementation Strategy corresponding to that biennium.

(3) Such disbursements further depend on an effective and enforceable contract between the Department and the Fiscal Entity, as described in OAR 123-057-0170 and will not be made without such a contract.

(4) If a Region fails to adopt, submit or have an Investment Strategy finally approved, it may not receive its counties' Regionally Controlled Fund allocations, and the Department at the end of the biennium may proportionally reallocate such moneys to other Regions.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.236(1)
Stats. Implemented: ORS 285B.230 - 285B.251 & 285B.269
Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04

Relating Provisions for Regional Partnerships

123-055-0501

Rule Number Reservation

OR 123-055-0500 to 123-055-0599 are reserved for use, as necessary, in describing the formation and efforts of Regional Partnerships and the relationship to entities and activities described in this division of administrative rules, for purpose of ORS 285B.230(1) and (4), 285B.236(3), and 285B.242(8)

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.236(1)
Stats. Implemented: ORS 285B.230 - 285B.251 & 285B.269
Hist.: EDD 6-2000, f. & cert. ef. 4-3-00

123-055-0525

Relationship of Local Entities to Partnership

For purposes of Regional Partnerships under ORS 285B.230(4):

(1) The memorandum of understanding among local partners and the directors of the seven state agencies may take the form of two or more agreements or memoranda for purposes of establishing certain structures, objectives and efforts of the Regional Partnership.

(2) The local partners may join together under separate arrangements to form a mutual agreement as a unit, in order to achieve the following or comparable purposes:

(a) Simplify and more efficiently execute an agreement or memorandum between such unit and the directors of the seven state agencies; and

(b) Allow for designation of one or more representatives of the local partners to do the following:

(A) Act on behalf of that unit (or the union between that unit and the seven state agencies);

(B) Interface with a fiscal agent for handling moneys (though not Regionally Controlled Funds) on behalf of that unit, regardless of whether this fiscal agent is the same as the Fiscal Entity for a corresponding Partnership-based Region.

(3) Not all of the local partners as indicated in ORS 285B.230(4) need to be included in a Regional Partnership, but shall participate only as interested. However:

(a) The county governments, as well as the major cities that are central to the regional economy, are expected to be part of the Regional Partnership; and

(b) No local partner that has a significant and applicable presence in the Regional Partnership's area shall be excluded if expressing a clear desire to actively participate in the general business of the Regional Partnership, prior to its formation. A Regional Partnership may make accommodations for revising its composition, whenever it redefines its basic objectives.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.236(1)
Stats. Implemented: ORS 285B.230
Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04

Interregional Coordination and Interim Indicators

123-055-0600

Agency Efforts

The following are matters for the Department in coordinating Regions and Investment Strategies under ORS 285B.230 to 285B.269 to achieve desirable economic development results across the state:

(1) Investment Strategies provide an opportunity by which the Department can:

(a) Identify commonality among the priorities and objectives of various Regions;

(b) Pursue methods and organized efforts to take advantage of strategic regional investment projects or activities consistent with ORS 285B.263(2); and

(c) Coordinate regional priorities and resources with existing state and local efforts and strategies, especially so that various types of resources may be used (or leveraged) in the most effective, efficient

and appropriate way possible, including in cooperation with federal programs and other state agencies.

(2) In response to the quality of a Region's investment planning, the Department shall strive to complement the Region's resources and the flexibility of Regionally Controlled Funds through special consideration in the use of programs and funding sources within the Department's authority.

(3) The Department shall strive to include all parts of the state in this program, by:

(a) Ensuring that every county is included in a Region (and if necessary, may delay Investment Strategy approval or disbursement of Regionally Controlled Funds, pending a county's inclusion in a Region); and

(b) Taking appropriate action to see that each Region's Investment Strategy is approved.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.236(1)
Stats. Implemented: ORS 285B.239, 285B.242, 25B.245 & 285B.248
Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04

123-055-0620

Regional Performance Measures and Periodic Performance Reports by Region

In direct relation to the regional benchmarks established in the Investment Strategy under ORS 285B.239(7):

(1) Every Regional Board shall identify quantitative targets for regional performance measures that measure and evaluate the accomplishments of the Region's adopted priorities, including target goals for measuring:

(a) Long-term and short-term job creation and retention, including the number of jobs created and retained and wage levels.

(b) Leveraging long-term investments.

(c) Maximizing moneys leveraged with short-term investments;

(2) Every Regional Board shall propose criteria for the use, distribution and evaluation of its investment funds consistent with its adopted and approved Implementation Strategy.

(3) The proposed regional performance measures and distribution criteria shall be submitted to the Department for review by the Commission, which may recommend changes to the Regional Board, such that the Regional Board may adopt the recommendation or make counter-proposals to the Commission, and so forth, or other procedures may be arranged for negotiating regional performance measures and distribution criteria between the Commission and the Region or Regions, in order to finalize regional performance measures and distribution criteria, which the Commission may ultimately resolve as necessary.

(4) In addition to sections (1) to (3) of this rule, the Commission and the Department may develop models or methods to coordinate and facilitate the adoption and use of regional performance measures and distribution criteria by Regions at their discretion, and as the time and resources of the Commission or Department allow.

(5) Each report under section (4) of this rule shall be submitted to the governing bodies of the counties comprising the Region, the Commission, the Governor, the Legislative Assembly, the Department and other parties of the Regional Board's choosing.

(6) Periodically as determined and described by the Department, every Regional Investment Board shall in accordance with ORS 285B.239(8) to submit reports on regional performance measures allowing the Department and its Commission, the Legislature and the Governor to evaluate the effectiveness of each regions implementation strategy and ensuring the resources are being effectively used.

(7) The reports under section (4) shall, at a minimum, relate to and be integrated with the Regional Board's biennial report to the Governor and the Legislative Assembly on the expenditure of Regional Controlled Funds under ORS 285B.257(4), 285B.235(7)(a), (b), (c) and 285B.263(6).

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.236(1)
Stats. Implemented: ORS 285B.239
Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04

123-055-0900

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 demonstrated to the satisfaction of the Director that such a waiver serves to further

the goals and objectives of ORS 285B.230 to 285B.251 and 285B.269, and that it contributes to sound economic or community development.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.236(1)
 Stats. Implemented: ORS 285B.230 - 285B.251 & 285B.269
 Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 19-2004, f. & cert. ef. 8-2-04

DIVISION 57

REGIONALLY BASED FUNDS

General

123-057-0110

Purpose and Scope

This division of administrative rules is intended to establish technical clarity for the actual allocation, distribution, uses and evaluation of a Regional Board's past performance of their implementation Strategies with moneys from the Regional Investment Fund and the Rural Investment Fund, under ORS 285B.254, 285B.257, 285B.260 and 285B.263, for effective implementation of long-term regional Investment Strategy in addition to other available resources.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1), 285B.254(3) & 285B.263(2)
 Stats. Implemented: ORS 285B.254, 285B.257, 285B.260 & 285B.263
 Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04

123-057-0130

Definitions

For purposes of this division of administrative rules, the definitions described in OAR 123-055-0120 apply. Moreover, unless the context demands otherwise:

(1) **Fixed Assets** mean plant, equipment or other tangible assets of an individual private business that have a useful life lasting longer than one year, and that are normally subject to depreciation for income tax purposes.

(2) **Grant Contract** means the contract between the Department and the Fiscal Entity for disbursement of Regionally Controlled Funds to the Region, as described in OAR 123-057-0170.

(3) **Strategic Regional Investment Opportunity Fund project** means a project or activity funded in collaboration by the department and regional boards, as determined under ORS 285B.263(2), to award projects or activities

(4) **Regional Fund** means the Regional Investment Fund under ORS 285B.260 and 285B.263.

(5) **Rural Fund** means the Rural Investment Fund under ORS 285B.254 and 285B.257.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1), 285B.254(3) & 285B.263(2)
 Stats. Implemented: ORS 285B.254, 285B.257, 285B.260 & 285B.263
 Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04

123-057-0150

Allocation to Regions

For purposes of allocating moneys from the Regionally Controlled Funds to each Region for a biennium:

(1) The Department shall in communication with interested parties devise a methodology for apportioning such moneys among all 36 counties, so that Regions may align as is most suitable for serving their needs and relationships.

(2) This methodology shall utilize demographic, economic, financial or other data and statistics to appropriately and effectively capture both the relative size and economic conditions of the counties and thus the Regions that comprise them.

(3) The Department shall report the methodology to the Commission for consideration.

(4) The Department shall review and may make improvements to the methodology with each biennium.

(5) The methodology that is used for the Regional Fund and Rural Fund will likely differ, such that the Rural Fund's methodology apportions greater money to rural areas of this state, including but not limited to netting out data for non-rural areas of applicable counties.

(6) In the case where a Region subdivides a county, the splitting of funds allocated to that county shall be determined by agreement among the Regions that contain parts of the county, and the county in

question shall provide the Department with ratios for disbursement to the respective Fiscal Entities, such that:

(a) The ratios for the Regional Fund shall not greatly deviate from those of the relative population in each part of the county;

(b) The ratios for the Rural Fund may use relative population, land area or other measures, less any county (urban) area; and

(c) The Department shall disburse no moneys to any affected Region until the ratios have been determined and reported, as described in this section.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1), 285B.254(3) & 285B.263(2)

Stats. Implemented: ORS 285B.254, 285B.257, 285B.260 & 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00

123-057-0170

Agreement of Department with Fiscal Entity

For purposes of the Department's distribution of moneys to the Regions:

(1) Prior to the disbursement of any Regionally Controlled Funds to the Region through the Fiscal Entity, there must be a Grant Contract between the Department and the Fiscal Entity, duly authorized, executed and delivered by the Fiscal Entity, such that the following shall already be in effect:

(a) Recognition of the Region as issued by the Director; and

(b) Either the agreement entered into by the governing bodies of the counties comprising the Region and their designated Fiscal Entity or the agreement designating the Regional Board as the Fiscal Entity, in accordance with OAR 123-055-0240, such that the agreement is attached to and referenced in the Grant Contract.

(2) The Department reserves the right to terminate the Grant Contract, terminate the disbursement of Regionally Controlled Funds or take legal action, if the Fiscal Entity fails to maintain its duties, violates its covenants or exceeds its authority under the Grant Contract, an agreement described in OAR 123-055-0240, the Investment Strategy or this division of administrative rule.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1), 285B.254(3) & 285B.263(2)

Stats. Implemented: ORS 285B.254, 285B.257, 285B.260 & 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04

123-057-0190

General Availability and Use of Funds

Subject to the Grant Contract:

(1) No moneys shall be disbursed to the Fiscal Entity until the Investment Strategy or its relevant update has been finally approved in accordance with division 055 of this chapter of administrative rules, except as described in OAR 123-057-0330 and 123-057-0430.

(2) Unless otherwise directed by the Department, Regionally Controlled Funds that are received by the Region through the Fiscal Entity shall be promptly returned to the Department:

(a) If not obligated by formal action of the Regional Board on or before July 1, one year after the end of the biennium; and

(b) If unexpended at the termination or expiration of the Grant Contract.

(3) Public entities that directly or indirectly receive Regionally Controlled Funds shall comply with public procurement guidelines, minimum wage and hour standards, municipal budget and audit laws, and other applicable state and local regulations.

(4) The Department's payment of Regionally Controlled Funds is subject to the availability of money in the Regional Fund and the Rural Fund. Regions shall proportionately share in any shortfall of lottery revenue.

(5) The Fiscal Entity shall maintain records of all activities associated with the Investment Strategy and expenditures of Regionally Controlled Funds. The Department is entitled to monitor the Fiscal Entity's records to verify compliance with the Grant Contract.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1), 285B.254(3) & 285B.263(2)

Stats. Implemented: ORS 285B.254, 285B.257, 285B.260 & 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04

Project-Specific Parameters for Both Funds

123-057-0210

Common Requirements

Regionally Controlled Funds for implementing the Investment Strategy shall be obligated and expended subject to the Regional Board's evaluation of the merit and readiness of the project, in accordance with

dance with the adopted project selection criteria and subject to the consistency of the project with the priorities of the Investment and Implementation Strategy, such that:

(1) All projects or activities funded meet the funding criteria as set forth in the Regional Investment Strategy approved by the Governor to ensure funded projects and activities are in compliance 285B.239(7)(a)–(c) and in accordance with OAR 123-055-0620.

(2) The expenditure of the Regional Controlled Funds must be authorized by the Regional Board, according to the Region's procedures governing such authorization.

(3) Regionally controlled funds shall not be used as prohibited in OAR 123-057-0230.

(4) Any activity or project funded through this division of administrative rules shall indicate that it is state lottery-funded and authorized by the Regional Board in all public documentation and on a publicly visible sign associated with any project involving construction activity. The sign shall be provided by the Regional Board funding the project and the sign shall be approved by the Department prior to placing the sign at the project site.

(5) Any public facility, as defined in ORS 447.210, for which construction costs are in any part paid for with Regionally Controlled Funds, shall be accessible to and made useable by handicapped persons in accordance with the U.S. Americans with Disabilities Act of 1990 (Public Laws 101-336).

(6) Any activity paid for in whole or in part with Regionally Controlled Funds that affects physical development of land shall comply with the applicable requirements of division 008 of this chapter of administrative rules, this state's land use laws and the local comprehensive plan.

(7) An individual private business receiving direct or substantial benefits from Regionally Controlled Funds may be required to comply with division 070 of this chapter of administrative rules for entering into a first-source hiring agreement, but only if required by the Region in the Investment Strategy.

(8) Regionally Controlled Funds may only be provided to private for-profit businesses for a project and activity, whether as a grant or a loan, if that project and activity is consistent in its own right with an activity specified in the Investment Strategy (apart from any general objective for financially inducing business development, recruitment or expansion).

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1), 285B.254(3) & 285B.263(2)
Stats. Implemented: ORS 285B.245, 254.285B, 285B.260, 285B.263 & 461.740
Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04; EDD 20-2004, f. & cert. ef. 8-2-04

123-057-0230

Common Prohibitions

Regionally Controlled Funds may not be used to do any of the following:

(1) Retire any debt;

(2) Reimburse any person or municipality for expenditures made or expenses incurred before final approval of the Investment Strategy, except for preparation and administration as described in 123-057-0430;

(3) Substitute for available budgeted resources in supporting ongoing public services or infrastructure that already exist, but rather shall support only new or enhanced local services benefiting the Region's capacity for economic development;

(4) Maintain existing staff of a public or private entity, except for staff time dedicated to:

(a) The administrative needs of the Investment Strategy or the Regional Board;

(b) Redirected or augmented efforts consistent with the Investment Strategy, such as new technical assistance for enhancing regional coordination or local economic development activities/capacity; or

(c) Continuing to fulfill objectives or activities of the Investment Strategy as initiated in a previous biennium; or

(5) Assist in any way with the relocation of a business facility within this state from one labor market area to another, unless:

(a) The job losses in the originating labor market area are less than or equal to 0.1 percent of the most recently available estimate for the civilian labor force therein; or

(b) The relocation entails an improvement in the quality and a significant increase in the size of the business's total in-state employ-

ment, without being detrimental to any rural area, subject to determinations of the Department.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1), 285B.254(3), 285B.257(7) & 285B.263(2)

Stats. Implemented: ORS 285B.245, 285B.254, 285B.257, 285B.260 & 285B.263
Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04

Rural Investment Fund: Specific Issues

123-057-0310

Objective and Geography

(1) The Rural Fund, as generally allocated by the Commission, provides a flexible source of financial assistance to benefit rural communities and to help them undertake locally-determined economic development projects and programs, potentially ineligible for support through other state or federal sources. It is intended to offer a vehicle by which Regional Boards can leverage other funding sources to the maximum extent possible for improving the economies of rural areas.

(2) The Rural Fund proportion of a project's funding out of Regionally Controlled Funds shall not significantly exceed the project's relative benefit for persons or communities in rural areas, as estimated by the Regional Board when authorizing the project.

(3) Location of the Rural Fund project or activity in a rural area is required, only if significant benefits accrue to the immediate vicinity where the project or activity takes place.

(4) A Regional Board may focus more strategically in defining what is meant by "Rural" for purposes of its Region, but as used in this division of administrative rule, "Rural areas" mean those parts of this state that are outside of:

(a) The acknowledged Portland Metropolitan Area Regional Urban Growth Boundary; and

(b) The acknowledged urban growth boundaries of cities with population of 30,000 or more, including Albany, Bend, Corvallis, Eugene, Springfield, Salem, Keizer or Medford.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1) & 285B.254(3)

Stats. Implemented: ORS 285A.010, 285B.254 & 285B.257

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04

123-057-0330

Rural Action Plan Development

Moneys from the Rural Fund may be dedicated to technical assistance and staff support for preparing or updating the rural action plan and for developing programs and projects under it, such that:

(1) The amount of money so dedicated is determined by the Regional Board;

(2) The Department may distribute moneys for such dedicated purposes prior to approval of the Investment Strategy with the rural action plan; and

(3) These moneys may be used to pay for relevant work after it has been completed, regardless of OAR 123-057-0230(2).

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1) & 285B.254(3)

Stats. Implemented: ORS 285B.257

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04

123-057-0350

Funding Pursuant to Rural Action Plan

For purposes of receiving and using Rural Fund money:

(1) A Region without an up-to-date rural action plan may not receive its counties Rural Fund allocations, and such moneys may be proportionally reallocated to other Regions by the Department at the end of the biennium.

(2) The rural action plan is an element of the Investment Strategy, and shall be reviewed and approved in the context of the regionally adopted or biennially revised Investment Strategy, although it may be approved separately, subject to satisfaction of OAR 123-055-0400 and 123-055-0420, as follows:

(a) At any time during and for the biennium, in order to be amended to an already approved Investment Strategy; or

(b) Prior to the Investment Strategy for purposes of this rule, in anticipation of its inclusion in an Investment Strategy that is already prepared in draft form and will be adopted/updated in the current biennium.

(3) The rural action plan may merely refer to and highlight other Investment Strategy elements for purposes of the Rural Fund, if the Investment Strategy is entirely or mostly oriented towards rural areas.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1) & 285B.254(3)
 Stats. Implemented: ORS 285B.254 & 285B.257
 Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 8-2000(Temp), f. 5-2-00, cert. ef. 5-2-00 thru 9-30-00; EDD 13-2000, f. & cert. ef. 8-15-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04

Regional Investment Fund: Specific Issues

123-057-0410

Regional Investment Fund: Specific Issues Components

(1) The Regional Fund, as allocated by the Commission, differs from the Rural Fund in that its moneys may be used for projects and activities that benefit any part of the Region.

(2) The Regional Fund is used for the following:

(a) Technical assistance and staff support for development and refinement of the Investment Strategy or for development and administration of a Regional Partnership, up to a limit set by the Commission;

(b) Personnel and expenses for administering the Investment Strategy and its implementation; and

(c) Projects and activities implementing the Investment Strategy.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1) & 285B.263(2)
 Stats. Implemented: ORS 285B.260 & 285B.263
 Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04

123-057-0430

Dedicated to Strategy Preparation

As determined by the Commission, a maximum percentage of the moneys from the Regional Fund in each biennium may be dedicated by a Regional Board for preparation of the Investment Strategy and for support of a Regional Partnership, such that:

(1) The maximum limit established by the Commission is expressly included in the Grant Contract;

(2) The Department shall take reasonable efforts to make such moneys available prior to approval of the Investment Strategy or a biennial update, including but not limited to executing the Grant Contract and specifically disbursing such moneys through it;

(3) The moneys may only be used for technical assistance and staff support for:

(a) Development and refinement of the Investment Strategy; or

(b) Development and administration of a Regional Partnership; and

(4) Such moneys may be spent on relevant work and expenses incurred prior to disbursement of the funds or final approval of the Investment Strategy, regardless of OAR 123-057-0230(2).

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.236(1)
 Stats. Implemented: ORS 285B.263
 Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04

123-057-0450

Guidelines for Financing Fixed Asset Acquisitions of Private Businesses

For purposes of grants or loans from the Regional Fund to individual private businesses for the acquisition of Fixed Assets, under ORS 285B.263(4), to complement existing public and private financing:

(1) Only a portion (not all) of the moneys for projects and activities (OAR 123-057-0410(3)(d)) in any biennium may be used for such purposes, including but not limited to the capitalization of a revolving loan fund or funds for private business projects.

(2) The Investment Strategy must contain the terms and conditions for such grants or loans, when the Investment Strategy is submitted for review pending final state-level approval, along with other provisions in the Investment Strategy applicable to relevant activities.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.236(1)
 Stats. Implemented: ORS 285B.263
 Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04

123-057-0470

Tourism and Industrial Marketing

For purposes of ORS 285B.245(2) and expending Regional Fund money for projects to market a Region for creating, expanding or retaining tourism or industrial activity, investments and related jobs:

(1) If a Region intends to use any of its Regional Fund allocation for such purposes, then the Investment Strategy must generally show how the projects to be funded will complement and will not conflict with statewide marketing campaigns and efforts aimed at travelers/tourists or at industrial investors, such that:

(a) This section may be fulfilled by describing procedural steps, criteria or the like for selecting and authorizing projects; and

(b) The Investment Strategy needs only to address the basic thrust of statewide campaigns, as they exist at the time that the Investment Strategy is locally adopted or updated in each biennium.

(2) Consistent with OAR 123-055-0600, the Department shall seek to coordinate such marketing efforts at the state and regional level, especially by emphasizing ways to effectively take advantage of each level's respective resources (or other types of resources).

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.236(1)
 Stats. Implemented: ORS 285B.245
 Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04

Strategic Regional Investment Opportunity Fund Projects

123-057-0510

Allocation

In each biennium: In accordance with ORS 285B.263(c)(2) and 285B.266(3), the Department may allocate a specific portion of the Strategic Reserve Fund to be used as the Strategic Regional Investment Opportunity Fund.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1) & 285B.263(2)
 Stats. Implemented: ORS 285B.263
 Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04

123-057-0530

Use and Criteria of Strategic Regional Investment Opportunity Project Moneys

In each biennium, the Commission shall allocate funds from the Strategic Reserve Fund to create a Strategic Regional Investment Opportunity Fund. The Department shall allocate a portion of the Fund to each Regional Investment Board based upon consultation with Association of Oregon Counties, League of Oregon Cities, and Oregon Public Ports Association. This allocation shall:

(1) Ensure that each Strategic Regional Investment Opportunity Fund Project actualizes one or more of the following:

(a) The project is developed and brought forward to the Department by a Regional Partnership or Board, Business Development Officers or business partners;

(b) The project can demonstrate a significant private business investment, short or long term job creation or other long-term economic development impacts that results in job creation.;

(c) Greater competitiveness and productivity by the Regions' traded-sector industries resulting in short term job creation or retention;

(d) The investment of these funds will close a critical gap in funding for one-time

(e) Significant improvement in the variety, wage level and quality of jobs in the participating Regions;

(f) Collaboration with one or more industries or institutions that are important to the Regions' future:

(A) Eliminate barriers that impede competitiveness of existing businesses;

(B) Foster new or expanded businesses emerging in the Regions;

(C) Internationally market goods and services from the Regions; or

(D) Diversify the regional economies; or

(i) Similar goals consistent with or conducive to statewide efforts and priorities for economic and community development.

(2) Insist that Strategic Regional Investment Opportunity Projects adhere to funding standards, as follows:

(a) By satisfying sound investment/underwriting principles;

(b) By combining with funds from private, local, regional, state or federal sources; and

(c) By ensuring that the project is ready to proceed in terms of delivering planned outcomes in a reasonable time, including but not limited to a thorough scope of work in the project application, contract and reporting requirements as described in this rule, clear commitment of other resources and the absence of barriers to the project's timely commencement.

(3) Forbid Strategic Regional Investment Opportunity Fund Projects that amount to the following:

(a) A subsidy for ongoing capacity of an organization or for ongoing operation and maintenance of a facility;

(b) Open-ended efforts that lack a demonstrable and realistic plan for effectively concluding the project, generating future resources or ensuring the usefulness of any deliverables/capacity in the future; or

(c) A failure to demonstrate the criteria as described in Section 1(b) if this rule.

(4) The Department shall fund projects in accordance with the following:

(a) The Department shall facilitate the identification and undertaking of Strategic Regional Investment Opportunity Fund Projects, through communications and assistance to Regional Boards and Fiscal Entities through the Department's Business Development Officers. Regions seeking to access their allocated portion of the funds shall do so through their regionally assigned Business Development Officer.

(b) Strategic Regional Investment Opportunity Fund projects addressing projects that meet the criteria as described in this rule may be advanced for approval upon joint recommendation of a Regional Partnership or Regional Boards Response Committee and a Business Development Officer. If the project is recommended, the Business Development Officer will draft a staff recommendation for signature.

(c) Following approval of project funding, projects are assigned to the most appropriate Division within the Department to negotiate final project conditions if any, performance measures and to develop and execute contract documents. The contract will specify the process and timing of disbursements of funds, conditions for reporting results, terms for repayment of funds where appropriate and the process for project closeout.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1) & 285B.263(2)

Stats. Implemented: ORS 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04

Biennial Report to the Governor and the Legislature

123-057-0710

General Guidance

For purposes of ORS 285B.257(4) and 285B.263(6), each Region shall prepare a biennial report to the Governor and Legislative Assembly:

(1) This biennial report shall be prepared and submitted in conformance with the following:

(a) Format and procedures that the Department may prescribe; and

(b) The Region's periodic performance reports and regional performance measures and distribution criteria including goals pursuant to OAR 123-055-0620 and ORS 285B.239.

(2) The final biennial report shall be due at a time determined by the Department in relation to each general session of the Legislature, and shall include information from prior biennia not covered in the previous biennial report, as well as the most currently available information for the ongoing biennium.

(3) The biennial report shall describe all expenditures of Regionally Controlled Funds and, where multiple state funds are invested in a job creation or retention projects such as Strategic Regional Investment Opportunity Fund projects, the department will:

(a) In some manner, differentiate and proportion between the funding sources when reporting these job creation projects to the Legislature.

(4) The biennial report shall indicate the success of projects and programs as funded or completed, not only in terms of the project or program itself, but also in terms of how each one contributes to:

(a) Carrying out the Investment Strategy as whole;

(b) Affecting performance measures and regional benchmarks specified therein; and

(c) Achieving identified priorities for regional economic priorities, as both defined in statute and by the Region itself in the Investment Strategy.

(5) The biennial report may (in addition to information about expenditures of Regionally Controlled Funds and about funded projects) address the Region's and the Investment Strategy's general progress and impact, especially in coordination with other resources and entities.

(6) The biennial report shall indicate the success of projects and activities as funded in accordance with the regionally adopted two year implementation strategy, and Governor approved, project funding criteria that has been established by the adoption of the strategy and goals as described in ORS 285B.239 thru 285B.263. Based on this report, the regions will be evaluated by Department Staff in accordance with ORS 285B.239(a)(b)(c). If the Department determines through evaluation of the biennial report, the region has funded projects not complying with the regions adopted distribution criteria, the Department will reduce future allocations from this fund in a like percent of the funds spent on the projects not meeting the adopted criteria established by the strategy.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1) & 285B.257(2)

Stats. Implemented: ORS 285B.260 & 285B.263

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00; EDD 6-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; EDD 20-2004, f. & cert. ef. 8-2-04

123-057-0910

Waiver of Nonstatutory Requirements

The Director or the Director's designee may waive non-statutory requirements of this division of administrative rules, if demonstrated that such a waiver serves to further the goals and objectives of ORS 285B.230 to 285B.269, and that it contributes to sound economic or community development. The burden of proof in justifying such a waiver shall be on the Region seeking the waiver.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.236(1), 285B.254(3) & 285B.263(2)

Stats. Implemented: ORS 285B.230 - 285B.269

Hist.: EDD 6-2000, f. & cert. ef. 4-3-00

DIVISION 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 285A.279, to eligible applicants for projects that contribute to the development and improvement of local economies and quality communities throughout this state by means of the enhancement, expansion and promotion of the visitor industry.

Stat. Auth.: ORS 285A.075(5) & 285A.264(6)

Stats. Implemented: ORS 285A.279

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; EDD 4-2000, f. & cert. ef. 2-3-00

123-062-0010

Definitions

As used in this division of administrative rules:

(1) "Commission" means the Oregon Tourism Commission, established under 285A.261.

(2) "Matching Grants Program" means the Commission Promotion and Development Matching Grants Program, created by ORS 285A.279.

(3) "Grant" means an award from the Matching Grants Program.

(4) "Grantee" means an applicant for funding under the Matching Grants Program which has received a Grant.

(5) "Administrator" means the Executive Director of the Commission, as appointed under ORS 285A.282.

Stat. Auth.: ORS 285A.075(5) & 285A.264(6)

Stats. Implemented: ORS 285A.279

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; EDD 4-2000, f. & cert. ef. 2-3-00

123-062-0020

Eligible Applicants

Cities, counties, port districts, federally recognized tribes and nonprofit 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 285A.075(5) & 285A.264(6)

Stats. Implemented: ORS 285A.279
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 4-2000, f. & cert. ef. 2-3-00

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 tourism for greater economic impact to an area or community. Eligible activities for such projects may not involve construction of facilities, or modification of eligible historic structures or items, but they do include, but are not limited to, any of the following that represent new efforts, initiatives or offerings, as opposed to only the continuation or maintenance of existing programs, products or services:

- (1) Brochure production and distribution;
- (2) Media production and placement;
- (3) Informational tourism signage;
- (4) Video production and distribution;
- (5) Tourism event promotion;
- (6) Market research; or
- (7) Visitor services projects.

Stat. Auth.: ORS 285A.075(5) & 285A.264(6)

Stats. Implemented: ORS 285A.279

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; EDD 4-2000, f. & cert. ef. 2-3-00

123-062-0040

Maximum Awards

The Administrator, under the direction of the 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, such that the applicant must show a minimum one-to-one match, from private or public sources.

Stat. Auth.: ORS 285.145

Stats. Implemented: ORS 285A.279

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; EDD 4-2000, f. & cert. ef. 2-3-00

123-062-0050

Program Information

(1) The Matching Grants Program will be administered by the Commission.

(2) At a minimum, the Matching Grants Program shall be undertaken every biennium, 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 pursuant to OAR 123-062-0080 shall be provided by each applicant, including but not limited to:

(a) A match of at least 50% of total project cost (up to one-half of the match amount could be in-kind).

(b) A description of how the project is focused on tourism development activities within an economic development context.

(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, such as... 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, such as... 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, such as... Is the project clearly going to stimulate and generate tourism economic development, in a new or enhanced way?; and

(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, the executive director of the port district, the tribe's chief executive or the chairperson of the nonprofit 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 may be made to the Grant agreement by mutual agreement of the Grantee and the Commission, such that:

(a) Items subject to amendment may include but are not limited to substantial alteration of cost, scope, location, objectives, or time-frame of the approved activities or project funded by the Grant; and

(b) Failure by a Grantee to gain prior approval from the Administrator or Commission for substantial changes may be a cause for sanctions, as delineated in OAR 123-062-0060.

(8) Grantees shall display conspicuously on the site of any significantly visible activity undertaken with the Grant, or in associated publications or advertisements that the project is being financed by Oregon Lottery funds and the Oregon Tourism Commission. The Commission will furnish camera-ready artwork that shall be used 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 grant period stated at the time when the Grant is awarded. Funds not expended by the end of a biennium shall be returned to the Commission.

Stat. Auth.: ORS 285A.075(5) & 285A.264(6)

Stats. Implemented: ORS 285A.279

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; EDD 4-2000, f. & cert. ef. 2-3-00

123-062-0060

Sanctions

(1) The Commission may at its discretion:

(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;

(b) State statutory regulations have not been met;

(c) There is a significant deviation from the Grant-funded activities;

(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 285A.075(5) & 285A.264(6)

Stats. Implemented: ORS 285A.279

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; EDD 4-2000, f. & cert. ef. 2-3-00

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 must be:

(a) Signed by the presiding elected official of the city or county managing the project or the chairperson of the entity making the application; and

(b) Received by the Commission during the application period specified by the Commission in its announcement.

Stat. Auth.: ORS 285A.075(5) & 285A.264(6)

Stats. Implemented: ORS 285A.279

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; EDD 4-2000, f. & cert. ef. 2-3-00

123-062-0080

Application and Grant Management Information

(1) The Administrator, under the direction of the Commission, will prepare applicant guidelines for the program each biennium or grant period. The guidelines will address the required content of appli-

cations, 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 Street NE, Salem, Oregon, 97301-1282.

(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 285A.075(5) & 285A.264(6)

Stats. Implemented: ORS 285A.279

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; EDD 4-2000, f. & cert. ef. 2-3-00

DIVISION 65

ENTERPRISE ZONE

[ED. NOTE: Department of Revenue forms referenced in this division are available from the Department of Revenue, Property Tax Division, 955 Center St NE, PO Box 14380, Salem OR 97309-5075, phone 503-378-4988, 800-356-4222, TTY 800-886-7204, fax 503-945-8737, web www.oregon.gov/DOR/PTD/ptd_forms.shtml]

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 as described in OAR 123-065-1500 to 123-065-1599.

(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: County, 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) **Department** means the State of Oregon Economic and Community Development Department, as (re) organized and created under ORS 285A.070, unless specified otherwise.

(4) **Director** means the Director of the Department appointed under ORS 285A.070.

(5) **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.

(6) **Sponsoring Government** means a county or city participating as an Applicant in proposing an enterprise zone.

(7) **Terminated by Statute** means the automatic termination of an enterprise zone by operation of law after more than ten years under ORS 285C.245(2).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 2285C

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; EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0005

Organization of this Division

(1) The first two digits of the final four digits of each rule number, as well as subtitles, indicate a "subdivision" of this division of administrative rules.

(2) These subdivisions are also grouped as follows, by reference to the first digit of the last four digits of the rule number:

(a) Zero/one: fundamental matters of Oregon enterprise zones, such as their creation, modification, termination and local sponsorship;

(b) Two: special issues, including but not limited to additional requirements imposed on a benefiting business by the local zone sponsor;

(c) Three: long-term rural enterprise zone tax incentives under ORS 285C.400 to 285C.420;

(d) Four: regular three to five-year exemption on qualified property of an eligible business firms;

(e) Seven: special features for electronic commerce investments; and

(f) Eight: energy or environmental matters, including Rural Renewable Energy Development Zones (RREDZs).

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.050(5), 285C.060(1), 285C.370

Stats. Implemented: ORS 285C

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

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 inside 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 that jurisdiction consists of stretches of road, tracks, waterways, transmission lines or right of ways that nominally 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.

(5) Except as provided under ORS 285C.115(3), neither a city nor county need sponsor a reservation enterprise zone designated under ORS 285C.306 or an amendment to such a zone that adds land:

(a) Held in trust by the U.S. for the benefit of the Indian Tribe governed by the zone sponsor; and

(b) Over which the non-sponsoring city or county government does not effectively have jurisdiction.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285B.668(1)

Stats. Implemented: ORS 285C.050, 285C.065, 285C.115, 285C.250, 285C.306 & 285C.320

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; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0049

Maximum Number of Enterprise Zones

(1) The maximum number of enterprise zones that may be designated is 49, plus:

(a) Any designation based on a Federal Enterprise Zone under ORS 285C.085; and

(b) Any designation of a reservation enterprise zone under ORS 285C.306. (Currently, Warm Springs Indian Reservation is the only place so allowed based on the most recent decennial census data)

(2) At the time of the last amendment of this rule, 49 enterprise zones are in existence by designation of the Director (or tribal government), as follows:

(a) Fourteen under ORS 285C.080;

(b) One under ORS 285C.085;

(c) Thirty-three under ORS 285C.250; and

(d) One under ORS 285C.306.

(3): This rule neither affects nor is it necessarily affected by the designation of any Federal Enterprise Zone (see OAR 123-065-1710).

Stat. Auth.: ORS 285A.075(5), 285A.110910 & 285B.668(1)

Stats. Implemented: ORS 285C.050, 285C.065, 285C.115, 285C.250, 285C.306 & 285C.320

Hist.: EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99; EDD 9-2000, f. & cert. ef. 5-2-00; Renumbered from 123-065-0048, EDD 1-2005, f. & cert. ef. 2-25-05

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 nominally connect separate areas of the zone.

(3) 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.

(4) No part of the zone may be inside the boundaries of another enterprise zone.

(5) No part of this rule shall be interpreted to exclude enterprise zones designated or amended under federal law or under ORS 285C.085 or 285C.306.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.065 & 285C.090

Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 13-1997, f. & cert. ef. 11-10-97; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0090

Extended Distances in Rural Zones

For purposes of ORS 285C.050(18) and 285C.090(4):

(1) This rule applies only to nonurban enterprise zones.

(2) The maximum distance allowed in 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 in section (5) of this rule; or

(b) Twenty lineal miles, if some but not all of the area of the zone lies in a county listed in section (5) of this rule.

(3) The maximum distance allowed in OAR 123-065-0080(3) is increased from 5 to 15 lineal miles if none of the separate area is in a county listed in section (5) of this rule.

(4) In accordance with ORS 285C.120(2), the Director may waive a limitation in section (2) or (3) of this rule, to allow even greater distance for a particular enterprise zone designation or boundary change:

(a) As specifically requested in resolutions adopted by the Applicant or the current zone sponsor and any proposed cosponsor;

(b) Such that the waiver is part of the Director's order designating or changing the boundary of the enterprise zone boundary; and

(c) If evidence or indications as evaluated by the Department satisfy points described in OAR 123-065-0095.

(5) The counties of this state that are too densely populated for purposes of this rule 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 (In this case, ORS 285C.120(1) would govern an enterprise zone, the dimensions of which had otherwise been allowed as described in this rule);

(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 a change in the county's circumstances contrariwise to subsection (a) of this section):

(A) Benton County;

(B) Clackamas County;

(C) Marion County;

(D) Multnomah County;

(E) Washington County; and

(F) Yamhill County.

(6) For purposes of section (5) 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.

(7) Nothing in this rule affects the restriction of up to but not more than 12 square miles for total enterprise zone area, as described in OAR 123-065-0080(2).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050, 285C.065, 285C.090, 285C.120, 285C.350

Hist.: EDD 13-1997, f. & cert. ef. 11-10-97; EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0095

Tests for Waiving Rural Distance Maxima

For a waiver as described in OAR 123-065-0090(4), the Director must find that each of the following three points is satisfied:

(1) The impracticality of separate enterprise zones as an alternative, such that, for example:

(a) An area or areas proposed for inclusion in the enterprise zone are isolated sites or small communities;

(b) Administration of such area as its own zone is infeasible; or

(c) The number of enterprise zones remaining to be designated is limited relative to future designations sought by larger places.

(2) Effective administration within the overall requested enterprise zone boundary is demonstrated by facts such as the following:

(a) Located entirely in one county;

(b) Relatively direct and efficient travel distances by road;

(c) As need be, appointed zone manager can actively serve entire zone;

(d) The existing zone sponsor devotes sufficient resources for management of the extended zone; or

(e) Local personage will act as special contact or co-manager for particular area.

(3) Furtherance of the goals and purpose of applicable state policies is indicated, if development of areas to be commonly included in the zone do not directly undermine state land use goals, and by special circumstances such as the following:

(a) The opportunity to efficiently and expeditiously site a significant business investment;

(b) The area exhibits particular hardship, but also the potential for economic development; or

(c) The local jurisdictions involved in the boundary change express strong preference for it as opposed to a separate enterprise zone.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.120(2)(b)

Stats. Implemented: ORS 285C.120

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

Explication of Statutory Terms

123-065-0100

Nonurban and Urban Zones

(1) "Enterprise zone" means an area designated, as defined in ORS 285C.050(8), and categorized as either "nonurban" or "urban" under ORS 285C.050(14) or (21).

(2) As used in ORS 285C.050(21), "regional or metropolitan urban growth boundary" means:

(a) The Metro/Portland-area regional urban growth boundary;

(b) The urban growth boundary encompassing:

(A) Bend;

(B) Corvallis;

(C) Eugene and Springfield; or

(D) Salem and Keizer; or

(c) The urban growth boundaries encompassing Medford and Central Point.

(3) For the purposes of ORS 285C.050(21), "inside" means that an enterprise zone may not be designated nor amended, such that the zone includes areas both inside and outside of a regional or metropolitan urban growth boundary as defined in section (2) of this rule, except for a (nonurban) reservation enterprise zone.

(4) If a new or newly modified regional or metropolitan urban growth boundary intersects an existing 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), 285A.110(1) & 285B.668(1)

Stats. Implemented: ORS 285C.050 - 285C.250

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 13-1997, f. & cert. ef. 11-10-97; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0140

The Sponsor of an Enterprise Zone

As defined under ORS 285C.050(19), described in OAR 123-065-0010, and used in ORS 285C.050 to 285C.250 and in this division of administrative rules:

(1) "Sponsor" or "zone sponsor" means:

(a) The single city or county (and/or tribal government) 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 (and/or tribal government) 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 285C.115(7).

(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 included in subsection (1)(b) of this rule, although no such reference shall be construed as superseding or interfering with ORS 285C.105(2), which compels all cosponsors to act jointly in fulfilling the duties of the zone sponsor and in taking any action with respect to the zone, except for:

(a) Restriction on hotel/resort eligibility; or

(b) Local incentives.

(3) The zone sponsor does not include and is not any city or county that simply consented to having part of its territory contained in the zone (see OAR 123-065-0010).

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285C.660(1)

Stats. Implemented: ORS 285C.050 - 285C.250 & 285C.320

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0150

Assessment and Tax Years

As used in ORS 285C.050 to 285C.250 and this division of administrative rules (consistent with the definitions under ORS 285C.050(1), (20) and (22) and 308.007), “year” or “assessment year” means a calendar year of January 1 to December 31, unless:

(1) Modified as (property) “tax year” which is the 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), 285A.110 & 285C.660(1)

Stats. Implemented: ORS 285C

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 1-2005, f. & cert. ef. 2-25-05

Duties and Options of Sponsoring Jurisdictions

123-065-0200

Local Zone Manager

For purposes of ORS 285C.105(1)(a):

(1) The appointment of a local zone manager by the sponsor of an enterprise zone shall be accomplished through an official declaration 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 up to but not more than two persons 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 adoption of a resolution by the sponsor’s governing body or bodies under ORS 285C.050 to 285C.250 or as described in 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), 285A.110 & 285C.660(1)

Stats. Implemented: ORS 285C.105

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0210

Reporting by the Enterprise Zone Sponsor

(1) Within six months after 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 the following information (even if contained in the application for designation):

(a) A description and examples of marketing plans, efforts or materials for the zone;

(b) A final inventory and references to associated enabling instruments (such as local ordinances) for any local incentive proposed as binding in the application;

(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 285C.110 (see OAR 123-065-0255);

(d) For an urban zone, indices identifying all land within the zone (specific tax lots or street addresses needed only for property at which eligible development may occur);

(e) Description of any policies, conditions or reasonable requirements that have been adopted or that the sponsor would seek to implement and enforce under ORS 285C.150, 285C.155 or 285C.160 with respect to authorized business firms;

(f) Confirmation/appointment of local zone manager as described in OAR 123-065-0200; and

(g) The final form of election to allow hotel, motel or destination resorts as eligible business firms in all or certain jurisdictions of the enterprise zones, for which newly adopted resolution(s) are necessary to effectively change an election made by resolution(s) adopted for purposes of the application.

(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 enterprise zone:

(a) A list of all outstanding investments proposed by business firms that have been and remain actively authorized in the zone, but that are not yet qualified for (most of) the investment, along with any updated estimates of expected new jobs or the cost of proposed qualified property;

(b) Commentary on efforts to assist authorized and qualified business firms or the county assessor with new or ongoing enterprise zone exemptions; and

(c) Updated information or recently revised materials pertaining to:

(A) What is listed in section (1) of this rule; and

(B) Such matters as the zone boundary, public outreach, available industrial land within the zone, and local training and education resources.

Stat. Auth.: ORS 285A.075(5), 285A.110 & 285C.660(1)

Stats. Implemented: ORS 285C.065, 285C.070, 285C.105 & 285C.110

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0220

Authorization Filing Fee

For purposes of ORS 285C.140(1)(c):

(1) When applying for authorization under ORS 285C.140, 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 an authorization filing fee shall be consistently and uniformly applied by the sponsor of the enterprise zone, including but not necessarily through written guidelines, such that the sponsor may vary the fee consistent with section (1) of this rule according to certain criteria or situational factors such as the size or nature of the eligible business firm or its proposed investment.

(3) The factors under which the requirement, waiver or amount of an authorization filing fee may deviate from the usual practice 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 authorization

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 an authorization filing fee shall collect payment by check in U.S. funds with the application for authorization.

(6) If either the zone sponsor or the county assessor deny the application of an eligible business firm for authorization under ORS 285C.140, any payment of an authorization filing fee shall be refunded in full to the eligible business firm.

(7) If both the zone sponsor and the county assessor have approved an eligible business firm's application for authorization under ORS 285C.140, neither the zone sponsor nor the county assessor may later deny the eligible business firm's authorization, qualification or exemption because of failure to receive or collect payment of an authorization filing fee.

(8) If a business firm is denied an exemption under ORS 285C.170 or 285C.175, the zone sponsor shall be under no obligation to refund any amount of an authorization filing fee that was paid by the business firm, unless the business firm is ineligible under ORS 285C.135 or was otherwise authorized improperly or by mistake.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.140(1)(c)

Stats. Implemented: ORS 285C.140

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0230

Additional Conditions in an Urban Enterprise Zone

For purposes of additional conditions imposed on eligible business firms by the sponsor of an urban enterprise zone under ORS 285C.150:

(1) The sponsor of the enterprise zone shall abide by OAR 123-065-2500 to 123-065-2599.

(2) "Groups of persons" as used in ORS 285C.150(2) may comprise the general populace or labor force or any lesser number of persons that is not explicitly defined in terms of geography/residency.

(3) In order to effect and enforce compliance, the sponsor of an urban zone must include with its approval of an application for authorization 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 as described in section (3) of this rule shall appear in a standardized format that conforms to the policy that the zone sponsor has adopted for imposition of such additional conditions, and that is used for all eligible business firms authorized in that urban enterprise zone.

(5) Failure by a firm to satisfy such additional local conditions of an urban zone may affect the exemption in the following ways:

(a) Denial of the authorization under ORS 285C.140(2)(e), but only if the firm does not formally "commit" to meet the conditions;

(b) Refusal of initial qualification for exemption under ORS 285C.175; or

(c) Disqualification of an ongoing exemption in accordance with ORS 285C.240(1)(d), except as provided under ORS 285C.240(6).

(6) The county assessor has an obligation to effect actions described in subsection (5)(b) or (c) of this rule only insofar as the zone sponsor has provided timely and written notification of such failure.

(7) An eligible business firm shall have the same rights of appeal as provided elsewhere in ORS 285C.050 to 285C.250 for authorization and receipt of the enterprise zone exemption.

(8) The policy and standards adopted by the sponsor affect only proposed investments for which the eligible business firm applies for authorization after the date of adoption.

(9) The additional conditions may be imposed only pursuant to a policy and standards, such that:

(a) The policy entails the adoption by the zone sponsor of formal documentation outlining the sponsor's purposes, process, factors of consideration and so forth; and

(b) The policy contains standards consisting of established and transparent measures, methods or criteria to implement the policy and define the conditions, as well as specific consequences for the firm's failure to satisfy those conditions.

(10) Any imposed additional condition must relate in some way to employment opportunities for one or more groups of persons, through:

- (a) Actions by the eligible business firm;
- (b) Use of funds or resources from the firm;
- (c) Other efforts supported by the firm; or
- (d) Other means, for which the result is employment-related benefits for groups of persons, consistent with 47 OTR 557 (TC 4167, 1999).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.660(1)

Stats. Implemented: ORS 285C.150

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0240

Enhanced Public Services and Other Local Incentives

For purposes of local incentives inside an enterprise zone within an applicable city or county jurisdiction under ORS 285C.105(1)(b):

(1) Such local incentives include but are not limited to:

(a) Enhanced availability or efficiency of local public services, such as utilities, transportation access and public safety protection;

(b) Waivers, discounts or credits for local fees, charges, business/license taxes and so forth; or

(c) Regulatory flexibility, expedited/simplified permitting, special zoning designations, exceptions from ordinances, or the like that do not significantly undermine regulations pertaining to health & safety.

(2) Unless described as discretionary, any such incentive is binding on the city or county sponsoring the zone and must be implemented and made available no later than six months after the effective date of the designation or boundary change, as proposed in the resolution by which the city or county:

(a) Applies for designation of the zone, as described in OAR 123-065-1520(5); or

(b) Requests to be added as a cosponsor of the zone in conjunction with a request to change the boundary of the zone under ORS 285C.115(7).

(3) Within six months of the relevant effective date in section (2) 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 previously proposed incentives.

(4) Except as provided in section (5) of this rule, any such incentive shall be available or provided to no fewer than all authorized business firms that qualify under ORS 285C.200 on an equal basis within that portion of the enterprise zone exclusive to the relevant jurisdiction.

(5) A Sponsoring Government or cosponsor may formally differentiate the incentives available to business firms operated as a hotel, motel or destination resort (if eligible in that part of the zone).

(6) For purposes of ORS 285C.245(5), in the case where the zone sponsor proposes one or more new incentives to replace an incentive or incentives that are binding according to this rule:

(a) "Comparable value" means that the new incentives or incentives, as a whole, shall be measured relative to what they would collectively replace, in terms of not only direct financial benefits to business firms, but also non-dollar factors such as convenience.

(b) In determining whether "reasonable corrections of shortcomings in existing local incentives" are being made, the Department may consider and take into account the extent to which an existing incentive 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 authorized or qualified firms; or

(B) Strains local budgetary resources or utility capacity.

(7) 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.

(8) A local incentive offered or binding in one cosponsor's jurisdiction has no bearing on the incentives of any other sponsoring jurisdiction.

(9) In accordance with applicable state or local laws, charters, ordinances or conventions, a city or county that sponsors an enterprise zone may offer to authorized 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 the enterprise zone for purposes of marketing and related efforts to retain, expand, start or recruit such firms; and

(b) Awarding points for competitive criteria that may influence designation of the proposed zone (OAR 123-065-1570).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.660(1)
 Stats. Implemented: ORS 285C.065, 285C.105, 285C.115 & 285C.245
 Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0255

Locally Available, Public Real Estate

For purposes of ORS 285C.105(1)(g) and 285C.110, the zone sponsor shall:

(1) Prepare and maintain a list and map of land, buildings and structures within the zone that are:

- (a) Owned by any agency on behalf of the state government or by 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.

(2) Undertake reasonable efforts to make the real estate identified in section (1) of this rule available for lease or purchase by authorized or qualified business firms.

(3) Except as otherwise precluded under Oregon or federal law/constitutional provisions, such firms are entitled to acquire the real estate identified in section (1) of this rule at a fair market rate/price, subject to the leasing or purchasing firm's prompt development or redevelopment of the property pursuant to the application of authorization.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.065(3)
 Stats. Implemented: ORS 285C.105 & 285C.110
 Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

Changes to Enterprise Zone Boundaries

123-065-0300

Definitions

"Original enterprise zone" as used in ORS 285C.115(2) means the area within the boundary of the zone at the time when it was most recently designated.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
 Stats. Implemented: ORS 285C.115
 Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 1-2005, f. & cert. ef. 2-25-05

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 285C.115 must provide a summary (memo) and documents that include or address each of the following:

(1) Resolutions lately adopted by the governing body of each of the sponsor's existing and proposed jurisdictions.

(2) Change or retention of the zone's official name.

(3) Definition of enterprise zone boundary in accordance with OAR 123-065-1000.

(4) Consideration of economic hardship conditions in or near any area to be added to the zone, relative to economic hardship for the original enterprise zone and local areas associated with it, consistent with OAR 123-065-0365.

(5) Adherence to OAR 123-065-0320 and 123-065-0330, including but not limited to commentary about the following:

- (a) Usability of land to be added or removed;
- (b) Location of new areas to be added relative to urban growth boundaries; and
- (c) Actions and documentation of appropriate or necessary public involvement.

(6) Conformity with:

(a) Mandatory city/county sponsorship as described in 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 285C.115(2)(b) and (d) for retaining:

- (A) Sites of all current, actively authorized business firms; and
- (B) At least half of the land originally in the zone.

(7) For any proposed new cosponsor, as desired:

(a) Binding proposals in its resolution to provide local incentives under ORS 285C.115(7)(a) (consistent with OAR 123-065-0240) to authorized or qualified business firms locating or expanding in parts of the proposed zone exclusive to that jurisdiction; or

(b) Restriction under ORS 285C.115(7)(b) from hotel, motel or destination resort businesses being eligible in the enterprise zone exclusive to that jurisdiction (but only if such businesses are eligible elsewhere in the existing zone under ORS 285C.070 or section 56(1), chapter 662, Oregon Laws 2003), as confirmed in all adopted resolutions.

(8) Request for a needed waiver of maximum rural distances per OAR 123-065-0090(4).

(9) Explain, 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.

(10) Describe 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 authorize 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) Notable worker compensation levels;

(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 285C.050 to 285C.250;

(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), 285A.110(1), 285C.060(1) & 285C.115(6)

Stats. Implemented: ORS 285C.060 & 285C.115

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; EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

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 land as described in section (2) of this rule is represented by:

(a) Not less than 20 percent of the land to be added (except as specially allowed by the Department); and

(b) None of what is to be removed.

(2) Useable land for purposes of section (1) of this rule (which does not include residential or agricultural property) is as follows:

(a) Zoned outright for uses as would apply generally to eligible business firms consistent with an acknowledged comprehensive land use plan;

(b) Free of serious impediments to development and use by eligible business firms, due to cultural or environmental concerns/regulations;

(c) Provided with or can be effectively 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.

(3) In order for the boundary of a nonurban enterprise zone to be modified, such that it contains new or expanded areas outside of any urban growth boundary, the request for the boundary change must indicate and explain as described in OAR 123-065-0310(10) to the satisfaction of the Department that there is significant justification for the change.

(4) A boundary change shall not be approved if:

(a) It adds any area that is:

(A) Outside a regional or metropolitan urban growth boundary, to an urban enterprise zone; or

(B) Inside such a boundary, to a nonurban zone;

(b) It adds area within another current enterprise zone; or

(c) A new cosponsor to be added under ORS 285C.115(7) is a city that had sponsored an enterprise zone that terminated under ORS 285C.245(4) or (5).

(5) Neither a boundary change nor any comparable procedure allows a city or county jurisdiction:

(a) To make hotel/resort businesses eligible unless such firms are otherwise eligible in the zone already; or

(b) To renounce, rescind or terminate its existing sponsorship and inclusion in the zone, which is possible only by termination of the entire zone or by disincorporation of the jurisdiction.

Stat. Auth.: ORS 285A.075(5), 285A.110, 285B.668(1) & 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; EDD 1-2005, f. & cert. ef. 2-25-05

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 resolutions as described in OAR 123-065-0310(1) or prior to the submission of a revised request for the boundary change under ORS 285C.115(8);

(2) Is commensurate with the scale and potential impact of the requested boundary change on members of the public, subject to the sponsor's judgment 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;

(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; and

(4) Conforms with and includes documentation stipulated in OAR 123-065-1050, if the boundary change will add area to the enterprise zone within a property tax code area currently outside the zone.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.115(6)

Stats. Implemented: ORS 285C.115

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; EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

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 285C.065(1):

(a) The tax exemptions of authorized 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 authorized contingent on an amendment to the zone's sponsorship as provided in subsection (c) of this section; and

(c) An eligible business firm authorized consistent with 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 under ORS 285C.115(7); or

(B) The city consents consistent with ORS 285C.065(1) that the zone may contain any area within the city's jurisdiction.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.115

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-0365

Economic Conditions

Under ORS 285C.115(2)(c), an area may not be added to an enterprise zone if it contains or adjoins residential areas that are significantly better-off, economically, compared to the original area of the enterprise zone, such that:

(1) Economic statistics for the original enterprise zone may be based on data:

(a) From the time of the application for designation of the zone; or

(b) As are most recently available.

(2) For purposes of the boundary change request and OAR 123-065-0310(4), this issue may be dealt with though general commentary if it is readily apparent that areas to be added to the zone:

(a) Are virtually devoid of and geographically removed from residential areas; or

(b) Have/border only residential areas with more severe economic hardship conditions.

(3) If the case for subsection (2) cannot be so plainly made, then the request shall contain a suitable comparison of the original zone's economics to Census Statistical Units that contain, overlap and/or are adjacent to areas to be added to the zone.

(4) The comparison in section (3) of this rule must show that such Census Statistical Units, based on the most recently available data, are:

(a) Less than 25 percent zoned for residential use; or

(b) Have 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.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.115

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

Common Matters for Designations and Boundary Changes

123-065-1000

Defining the Zone Boundary

Any proposed enterprise zone designation or boundary change, as described in this division of administrative rules, shall demonstrate adherence with OAR 123-065-0080 or 123-065-0090 by including all of the following with the application or request that is submitted to the Department:

(1) Estimate to the nearest 0.1 square miles of the entire proposed enterprise zone area (pursuant to boundary change).

(2) Map or set of maps drawn to scale with a clear representation of the entire enterprise zone's proposed boundary, such that:

(a) Maps must contain north directional arrow, legend/scale and title with the name of the zone;

(b) An overview map showing the entire proposed zone boundary is always required;

(c) As necessary, inset or sub-maps are used to adequately show detail for portions of the zone, as referenced or linked to the overview map; and

(d) In the case of a boundary change, separate mapping of areas to be specifically added or removed is mandatory.

(3) Narrative legal description of the enterprise zone's boundary in a continuous fashion corresponding to the overview map in section (2) of this rule (with separate descriptions for areas being added or removed by a boundary change). Although it is principally based on metes & bounds surveying, for the sake of simplification, one or more of the following may substitute for some or all of the metes & bounds, where it exactly corresponds or coincides to the enterprise zone boundary:

(a) Permanent landmarks or natural margins such as a waterway, road, track or transmission line;

(b) Official borders or demarcations such as city limit, urban growth boundary, county line or right of way, provided that dated documentary references are made (zone boundary will not automatically change with later changes to these demarcations);

(c) Census Statistical Units larger than a census block (with official, dated documentation);

(d) Whole cadastral sections, quarter sections and so forth (with official, dated documentation); or

(e) Tax lots as dated and documented through the county assessor's office in association with maps used for section (2) of this rule.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3) & 285C.250(4)

Stats. Implemented: ORS 285C.060, 285C.065, 285C.075, 285C.085, 285C.090, 285C.115, 285C.120 & 285C.250

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1050

Notice to Local Taxing Districts

To implement OAR 123-065-0330(4), 123-065-1530(5), 123-065-1720(1) and 123-065-8200(1), a proposed designation or change in an enterprise zone boundary shall entail prior notice to local taxing districts, as follows:

(1) The Applicant or zone sponsor must send the notice to each taxing district (including but not limited to municipal corporations or service districts listed under ORS 198.010 and 198.180) that would be newly affected, because the proposed zone designation or boundary change contains a tax code area, from which the taxing district receives operating revenue through *ad valorem* taxes levied on real and personal property therein, with the following exceptions:

(a) A city or county government applying for or sponsoring the zone; or

(b) A service district, urban renewal district, or the like entirely within or commensurate to such a city or county jurisdiction and with a governing body equivalent to that of the city or county.

(2) The Applicant or zone sponsor must furnish the Department with the following as part of the application or boundary change request:

(a) A list of contact names and mailing addresses for all applicable taxing districts;

(b) A copy of the notification directed at such taxing districts; and

(c) A statement signed by the authorized preparer of the application or request attesting that the notification was sent by regular mail to each listed district on a specified date, at least 21 calendar days before:

(A) The adoption of the requisite resolution by the governing body of the applicant/sponsoring county; or

(B) In the absence of a county applicant/sponsor, then before the adoption of a requisite resolution by an applicant/sponsoring city.

(3) The notice shall do all of the following:

(a) Describe the probable schedule for consideration of city/county resolutions to apply for designation or to request the boundary change;

(b) Explain the limited-duration exemption(s) from property taxes available on certain property newly invested by particular, job-creating businesses;

(c) Invite comments on the proposed zone or boundary change, to be directed at some or all of the sponsoring city/county governments; and

(d) Give contact details for submitting such comments or for receiving further information.

(4) The Applicant or zone sponsor shall submit copies of all written comments in response to the notice, from any relevant taxing district, to the Department no later than 30 calendar days following receipt of the comments (or any specified application deadline), and if possible, before the Director orders the designation or boundary change.

(5) The zone sponsor shall give due consideration to any comment received in relationship to this rule.

(6) A taxing district's objection or lack of support for the proposed zone designation or boundary change does not constitute or allow any effective exclusion or alteration of relevant exemptions on taxable property, as is provided by law for other types of programs involving comparable exemptions.

(7) Failure to materially perform any task stipulated by this rule may result in the Department rescinding and reversing a relevant order of designation or boundary change, including termination of the enterprise (or rural renewable energy development) zone, consistent with ORS 285C.245(5).

(8) The tasks stipulated in this rule are in no way intended to discourage or replace other local efforts and actions to provide/elicite public information, commentary or involvement, as circumstantially appropriate, or as required by local law, policy, custom or practice.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3), 285C.250(4), 285C.353(2) & 285C.370

Stats. Implemented: ORS 285C.060, 285C.065, 285C.075, 285C.085, 285C.090, 285C.115, 285C.120, 285C.250 & 285C.353

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

Local Applications and Designation

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 (OAR 123-065-1500 to 123-065-1599):

(1) "Basis Point" equals one one-hundredth of a unit of a percentage rate or 1 percent of a Percentage Point.

(2) "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) "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)

(4) "Round of Designation" is defined as the period of time, not less than 90 days, beginning when one set of enterprise zones is designated, and ending when the next set of zones is designated.

(5) "Strategic Plan" or "Strategic Planning" means any documentation or descriptions, as submitted with an application for designation of an enterprise zone, as described in OAR 123-065-1650.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3) & 285C.250(4)

Stats. Implemented: ORS 285C.065, 285C.075 & 285C.250

Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1510

Mandatory Economic Need and Land

For purposes of designation, a proposed enterprise zone must demonstrate that the local economy is lagging, and that it contains land ready for development, such that:

(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 (see OAR 123-065-1600 to 123-065-1620):

(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 in section (1) of this rule and ORS 285C.090(1);

(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, as described in division 024 of this chapter of administrative rules; or

(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.

(3) The proposed enterprise zone boundary must encompass significant land that is vacant, improvable and suitable for use and rapid development by eligible business firms, including but not limited to sites as described in OAR 123-065-1670 that consist of at least:

(a) A certain amount of total acres or two sites of certain minimum size, as specified by the application form in OAR 123-065-1530, for the proposed type of zone; or

(b) Such total/contiguous acreage as the Director or designee may determine to be equivalent to subsection (a) of this section in a particular case.

(4) No part of this rule shall be construed to exclude enterprise zones so designated or amended under federal law or under ORS 285C.085, 285C.115 or 285C.306.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3) & 285C.250(4)
Stats. Implemented: ORS 285A.095, 285B.283, 285C.075, 285C.090 & 285C.250
Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1520

Enterprise Zone Application

The application for designation of an enterprise zone:

(1) Shall be accepted by the Department only if submitted pursuant to an announced Round of Designation, and if on or before the date of the application deadline specified by OAR 123-065-1550(1):

(a) It is sent, as indicated by a postmark or the receipt of a commercial deliverer; or

(b) It is received at the Department's Salem office by 5 p.m. that day if directly delivered by the Applicant.

(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 285C.245(4) or (5).

(4) Shall specify a name for the proposed zone corresponding to common geographic or jurisdictional terms. (For entirely official purposes, a Preexisting Enterprise Zone using the same name would use the suffix "II")

(5) May contain binding proposals by each Sponsoring Government (as indicated in its resolution) to provide local incentives under ORS 285C.065(4) to (6) (consistent with OAR 123-065-0240) to authorized or qualified business firms locating or expanding in parts of the proposed zone exclusive to that jurisdiction.

(6) Serves as an opportunity for a Preexisting Enterprise Zone to revise any existing policy.

(7) Is the only chance to establish whether a business operating a hotel, motel or destination resort will be eligible under ORS 285C.135(5)(c) in the newly designated enterprise zone, and whether this eligibility pertains only to some parts of the zone exclusive to the jurisdiction of one or more Sponsoring Governments, under ORS 285C.070, such that:

(a) Any such election or restriction may be made only by resolution(s) (jointly) adopted by the Sponsoring Government(s).

(b) An election, restriction or lack thereof may be revised, regardless of what is indicated with the application, by resolution(s) (jointly) adopted up to but not more than six months after the date of designation.

(c) For a Preexisting Enterprise Zone with an existing election under ORS 285C.070 or section 56(1), chapter 662, Oregon Laws 2003, hotel/resort eligibility will NOT automatically carry over (causing future hotel/resorts to be ineligible throughout the new zone, unless a positive election is made with or after the application as described in this section).

(d) Any restriction of hotel/resort eligibility must be consistently provided for by resolution of all Sponsoring Governments.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3), 285C.250(4)
Stats. Implemented: ORS 285C.065, 285C.070, 285C.075 & 285C.250
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; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1530

Required Elements of Application

An application proposing designation of an enterprise zone **must** contain:

(1) A form as prescribed by and available from the Department that the Applicant fills out and includes with the information described in this rule, notwithstanding 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 as described in 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 boundary and surface area of the proposed zone as described in OAR 123-065-1000.

(4) Information sufficient to verify satisfaction of the mandatory qualifications described in OAR 123-065-1510 by including:

(a) Data for social and economic conditions as described in OAR 123-065-1600 to 123-065-1630, which also serve the competitive criteria in OAR 123-065-1560; and

(b) Evidence about the readiness of land for development, including but not limited to an enterprise zone map highlighting critical sites and other materials consistent with OAR 123-065-1670.

(5) The documentation as stipulated in OAR 123-065-1050.

(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 285C.245(5).

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3) & 285C.250(4)
Stats. Implemented: ORS 285C.065, 285C.075, 285C.090 & 285C.250
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; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1540

Local Resolutions Requesting Designation

The resolutions of Sponsoring Governments for purposes of OAR 123-065-1530(2), as a required 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 other participants in a joint application, if any.

(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 285C.050 to 285C.250 and comply with ORS 285C.105, as described in this division of administrative rules, if the proposed zone is designated, including but not limited to a commitment to:

(a) Appoint a local zone manager within 90 days of designation, if one is not already appointed through the application; and

(b) Fully implement within six months of designation:

(A) Any proposal in the application for local incentives under ORS 285C.065(4) to (6) (consistent with OAR 123-065-0240); and

(B) Duties of the sponsor as described in OAR 123-065-0210 and 123-065-0255.

(5) Attest to actions taken for purposes of public involvement and OAR 123-065-1530(5).

(6) Highlight other characteristics of the application or the proposed zone as deemed appropriate by the Sponsoring Government.

(7) Address applicable elections or restrictions for hotel/resort eligibility (see OAR 123-065-1520), electronic commerce designations, or similar matters.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3), 285C.095(1) & 285C.250(4)
Stats. Implemented: ORS 285C.065, 285C.070, 285C.095, 285C.105 & 285C.110
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; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1550

Application Receipt and Review

(1) The Department shall issue notice specifying the deadline for applications and the minimum and maximum number of enterprise zones to be designated in a Round of Designation. Such notice shall be announced, communicated or published as the Department determines, including but not limited to being posted at the Department's internet web site, 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 after the deadline specified in section (1) of this rule and determine which Applicants meet the requirements and mandatory qualifications under ORS 285C.090 and other applicable provisions of ORS 285C.050 to 285C.250, as described in OAR 123-065-1510 through 123-065-1540.

(3) When the number of qualified Applicants exceeds the maximum number of zones to be designated, or if requested by the Director, the Department shall evaluate the applications using the competitive criteria described in OAR 123-065-1560, 123-065-1570, 123-065-1580 and 123-065-1590, which 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.

(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 the tie may be broken by a method determined by the Director.

(f) The evaluation may include input/scoring by external reviewers (that are reasonably expected to be impartial) if justified by the number of qualified Applicants relative to available zones.

(4) In order to be accepted by the Department, all responses to such competitive criteria must be submitted at the time of the application as described in OAR 123-065-1520(1), except for those in OAR 123-065-1570, 123-065-1580 and 123-065-1590 if:

(a) So stipulated in those administrative rules for the particular criterion; or

(b) In the public notice in section (1) of this rule, the Department allows such responses to be submitted within 30 calendar days following the specified deadline. In this case, the Department shall give preliminary indication to all Applicants of the potential importance of such responses, as soon as possible after the deadline.

(5) Except as precluded by section (6) of this rule, the Department shall prepare a staff report to the Director that:

(a) Identifies and delineates basic features of each qualified Applicant;

(b) Summarizes the evaluations and rankings based on the competitive criteria described in this rule;

(c) Discusses other significant analyses and considerations about the proposed enterprise zones, as available; and

(d) Highlights key issues and parameters affecting the current Round of Designation.

(6) When the number of qualified Applicants is less than the minimum number of zones to be designated, as specified in the public notice in section (1) of this rule, the Round of Designation is canceled, and a new Round of Designation may begin immediately.

(7) The Department shall contact all unsuccessful Applicants within 30 days of the Director's determination in OAR 123-065-1553, notifying them in writing of why their applications was unqualified or denied.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3) 285C.250(4)
Stats. Implemented: ORS 285C.065, 285C.075, 285C.090 & 285C.250
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; EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1553

Director's Determination

For purposes of designating enterprise zones:

(1) After receiving the staff report indicated in OAR 123-065-1550, the Director shall initiate appropriate deliberations and steps to make one or more designation.

(2) The Director shall take the results of the Department's review as contained in the staff report under advisement, but in reaching a final decision the Director may also:

(a) Give special weight to particular matters addressed in the applications;

(b) Assess data or input from other sources;

(c) Consult with any party, inside or outside state government, with potentially useful information; or

(d) Engage in similar forms of consideration.

(3) For a given Round of Designation:

(a) All zones available for designation under ORS 285C.250(1) to replace zones that are Terminated by Statute shall be designated insofar as there are qualified Applicants;

(b) The Director may determine not to designate a zone available under another provision, despite qualified Applicants (beyond any minimum number of designations if so specified in the public notice); and

(c) Any zone remaining undesignated shall be made available in a future Round of Designation to be determined by the Director.

(4) No enterprise zone shall be designated if any such designation would cause the total number of enterprise zones in existence to exceed the maximum number as described in OAR 123-065-0049.

(5) The decision of the Director as to which qualified Applicant(s) to designate (or deny):

(a) May not be appealed; and

(b) Depends ultimately (subject to sections (1) to (4) of this rule) on the Director's determination of which Applicant/proposed enterprise zone represents the best chance to fulfill the public purposes of the **Enterprise Zone Act** if designated.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.250(4)
Stats. Implemented: ORS 285C.055, 285C.060, 285C.075, 285C.080, 285C.250 & 285C.260
Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1557

Orders of Designation

Pursuant to OAR 123-065-1553:

(1) The Director shall issue an order designating the enterprise zone or zones.

(2) 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 Government(s) 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 Pre-existing Enterprise Zone; and

(e) That the new enterprise zone shall exempt qualified property of hotels, motels and destination resorts, as allowed under ORS 285C.070, and any other similarly special status.

(3) An order of designation shall typically set the effective date of designation on the date when the order is actually done, but it may be made effective at a reasonable time later or earlier, including but not limited to the following cases:

(a) Designation of any zone available under ORS 285C.250(1) to replace a zone Terminated by Statute shall take effect on July 1.

(b) For a zone available under another provision, the effective designation date may be made earlier to accommodate qualification of an investment in qualified property by an eligible business firm in the newly designated zone, with the following provisos:

(A) The effective date may not be earlier than when the formal application for designation was first received from the Applicant;

(B) Nothing by the Department in such regards shall be construed as ensuring any benefit for the firm, including but not limited to exemption on taxable property under ORS 285C.175;

(C) The investment must be clearly indicated in the application for designation, as a consideration for designation of the proposed enterprise zone;

(D) The merit of this investment shall be given consideration by the Department and Director only as commensurate with that given to any other prospective investment contained in competing applications; and

(E) The firm still needs to have applied for authorization under ORS 285C.140 before beginning physical work on the investment, but approval of the authorization application shall wait until the zone is designated, if that actually happens.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.055, 285C.060, 285C.070, 285C.075, 285C.250
Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

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 by OAR 123-065-1510(1) or (2), but additional responses may be made at the Applicant's discretion by the deadline in OAR 123-065-1550(1):

(1) Ten points shall be awarded for every percent that the average/median per capita or per household income of the zone is below the equivalent statewide income.

(2) One point for every Basis Point by which the zone's unemployment rate exceeds the statewide rate.

(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) Sixty points shall be awarded for each distressed area (as described in division 024 of this chapter of administrative rules) that either is a Sponsoring Government, or is entirely contained within the boundary of the proposed zone.

(6) Points may be awarded at the discretion of the Department for:

(a) 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

(b) 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.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3), 285C.250(4)
Stats. Implemented: ORS 285A.095, 285C.055, 285C.075, 285C.090, 285C.250
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; EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1570

Competitive Criteria: Successful and Sound Development

The following criteria evaluate the proposed enterprise zone's potential to induce additional investment by eligible business firms 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 and 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 would 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 285C.130, 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) Recent or planned improvements in the availability, capacity or efficiency of public infrastructure that generally facilitate business development in the proposed zone.

(4) Proposed package of local incentives as described in OAR 123-065-0240, such that:

(a) Elements of local incentives 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 or other 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 similar efforts applicable to the proposed enterprise zone, in terms of local analyses, objectives, actions and anticipated results consistent with OAR 123-065-1650.

(7) General supply of land that is useable for eligible business firms in general, including but not limited to sites ready for rapid development or redevelopment inside the proposed enterprise zone consistent with OAR 123-065-1670.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3) 285C.250(4)
Stats. Implemented: ORS 285B.283, 285C.055, 285C.060, 285C.065, 285C.075 & 285C.250
Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 1-2005, f. & cert. ef. 2-25-05

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. 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 285C.135, 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 authorization application;
(b) A list of authorized 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 285C.180.

(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 for section (2) of this rule must be received by the Department within 30 calendar days of the application deadline specified in OAR 123-065-1550(1).

(6) An eligible business firm may submit only one letter as described in 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 as described in section (3) and (4) of this rule for an immediate investment prospect that plans to locate on a site inside 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 285C.245(1) or any other provision of ORS 285C.050 to 285C.250, 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 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), 285A.110(1), 285C.060(1), 285C.065(3), 285C.250(4)
 Stats. Implemented: ORS 285C.055, 285C.060, 285C.065 & 285C.250
 Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 1-2005, f. & cert. ef. 2-25-05

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. Responses may be made at the Applicant's discretion and 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 resolutions/agreement among the Sponsoring Governments.

(3) Evidence of broad-based public awareness or 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 in 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 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 designated (2.5 points for every mile of the shortest distance over paved roadways, up to a maximum of 250 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 (60 points for each Sponsoring Government in excess of two).

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3) & 285C.250(4)
 Stats. Implemented: ORS 285C.055, 285C.075, 285C.105 & 285C.250
 Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

Economic and Strategic 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 OAR 123-065-1600 to 123-065-1699:

(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 or greater than 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 285C.090 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 285C.090 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 285C.090 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:

(a) Is 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 vital.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3) & 285C.250(4)
 Stats. Implemented: ORS 285C.065, 285C.075, 285C.090 & 285C.250
 Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 1-2005, f. & cert. ef. 2-25-05

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, unless otherwise stipulated by the Department in its application form:

(1) 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 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. (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), 285A.110(1), 285C.060(1), 285C.065(3) & 285C.250(4)
 Stats. Implemented: ORS 285C.065, 285C.075, 285C.090 & 285C.250
 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; EDD 1-2005, f. & cert. ef. 2-25-05

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 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 the zone boundary also reside within all ignored Census Statistical Units;

(c) The Applicant must utilize the available data for Census Statistical Units that are divided by the proposed enterprise zone boundary, if 75 percent or more of the inhabitants in each utilized Census Statistical Unit also reside within the zone boundary;

(d) The requisite percentages in subsections (b) and (c) of this section must be verified in writing; and

(e) 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), 285A.110(1), 285C.060(1), 285C.065(3) 285C.250(4)

Stats. Implemented: ORS 285C.065, 285C.075, 285C.090 & 285C.250

Hist.: EDD 1-1997, f. & cert. ef. 1-7-97; EDD 1-1999, f. & cert. ef. 1-26-99; EDD 1-2005, f. & cert. ef. 2-25-05

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, including but not limited to:

(a) 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, environmental protection 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 for 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 will be innovatively and effectively integrated with other public or private investments, to support development in the proposed zone.

(5) Linkages to other elements of the application for designation of the proposed zone as described in 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 enterprise 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, and to strengthen the local economy by improving environmental conditions, 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 not limited to favorable changes in the social or economic data used for 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), 285A.110(1), 285C.060(1), 285C.065(3) 285C.250(4)

Stats. Implemented: ORS 285C.065, 285C.075, 285C.105 & 285C.250

Hist.: EDD 1-1999, f. & cert. ef. 1-26-99; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1670

Project-Ready Land

OAR 123-065-1510(3), 123-065-1530(4)(b) and 123-065-1570(7) relate to sites for manufacturing and other activities inside the enterprise zone that are essentially ready for development or redevelopment, or that would be, not more than generally six months after an eligible business firm determines to undertake operations at that location, such that:

(1) Any development delay of up to 180 days is:

(a) Subject to rather low probability of further complications or barriers; and

(b) Quantifiable in terms total cost, schedule and other factors affecting final resolution.

(2) Relevant sites shall largely conform to what is necessary for certification according to the process established by the Department under ORS 284.565, but they do not need to be actually certified or to completely satisfy all such criteria.

(3) Consistent with section (2) of this rule, these sites or land parcels shall be:

(a) Available for acquisition at a reasonable price without any significant encumbrance, such as liens, easements or any large, unusable existing structure;

(b) At least 5 acres in size or larger depending on expected uses/development types;

(c) Flat, regularly shaped and geologically stable;

(d) Completely outside the 100-year floodplain;

(e) Zoned outright for expressively permitted uses corresponding to eligible enterprise zone operations, under clear zoning ordinances, consistent with an acknowledged comprehensive plan, and preferably inside an urban growth or unincorporated community boundary;

(f) Suitably surveyed or assessed for protected environmental and cultural resources (contaminants, wetland, species, archaeological sites and historic structures), and documented as free of major impediments arising from such protections; and

(g) Relative to permitted uses and expected business development/operations, effectively:

(A) Accessible in terms of site egress/ingress, as well as local infrastructure, traffic capacity and routes to and onto nearby, major highways; and

(B) Served by on-site connections to systems with sufficient excess capacity for drinking water, sanitary sewage and electric power.

(4) In addition to the enterprise zone map identifying relevant sites, proper evidence or materials about these sites may include but are not limited to:

(a) Copy of a letter of industrial site certification from the Director;

(b) Filled-out application for industrial site certification, with attached copies of key/sample portions from associated documentation;

(c) Letters or testimonials from the property owner, qualified engineering, scientific or archaeological professionals, utility providers, or local/state government officials;

(d) Real estate listing or advertisement;

(e) Copy of recent report by a certified appraiser and title company;

(f) Copy of cover page/executive summary from timely environmental/cultural assessment report by a qualified professional/consulting firm; and

(g) Intelligent and authoritative aerial photography and maps that:

(A) Highlight the site(s) in question and offer local context and orientation for the reader; and

(B) Relate authoritative data about/from the following: Flood plain, topography, geology, ALTA survey, wetlands delineation, existing on-site improvements, land-use zoning, site access, local transportation routes/patterns, and so forth.

(5) The Department may relax its treatment of any stipulation described in this rule for a site that exhibits other offsetting attributes that significantly contribute to the readiness or attractiveness of the site for development by traded-sector industries.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.065(3) 285C.250(4)
Stats. Implemented: ORS 284.565, 285B.283, 285B.286, 285C.055, 285C.060, 285C.065, 285C.075, 285C.105 & 285C.250
Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

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 285C.050 to 285C.250 relate to Federal Enterprise Zones for purposes of ORS 285C.085.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.085
Hist.: EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1710

Definitions

For purposes of this division of administrative rules:

(1) As used in ORS 285C.085(4)(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 as described in 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(4) against overlapping zones must be maintained, irrespective of OAR 123-065-0080(5).

(2) **Federal Enterprise Zone** under ORS 285C.050(9) 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 285C.090; and

(g) Subject to a significant degree of national selectivity and uniqueness, 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 285C.085(1), “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.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050 & 285C.085

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; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1720

Designation Based on Federal Enterprise Zone Status

For purposes of a local request for designation of an enterprise zone under ORS 285C.085(2):

(1) City or county governments may apply (in a manner generally consistent with the provisions of OAR 123-065-1520 to 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 fully aware 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 described in OAR 123-065-1050;

(e) Any cosponsor of a zone terminated by order of the Director under ORS 285C.245(4) or (5) is not excluded from applying;

(f) Application may include a request for hotels, motels or destination resorts to be eligible business firms in the zone in accordance with ORS 285C.070;

(g) Proposals by a cosponsor for local incentives shall not be binding; and

(h) The designation may not serve as the re-designation of a Pre-existing 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 as described in OAR 123-065-0080 and 123-065-0090.

(3) The zone must still conform to the requirements for:

(a) Sponsorship, in accordance with OAR 123-065-0010;

(b) Being either urban or nonurban as described in 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 inside the Federal Enterprise Zone as described in OAR 123-065-1710(1).

(4) The Director's order of designation shall essentially follow OAR 123-065-1557.

(5) A cosponsor of an existing enterprise zone may not seek designation of another zone as described in this rule, whenever:

(a) The Federal Enterprise Zone overlaps with a portion of the existing enterprise zone; or

(b) The cosponsor is a city with less than 100,000 in population.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050, 285C.080, 285C.085 & 285C.090

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; EDD 1-2005, f. & cert. ef. 2-25-05

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 285C.085(3):

(1) The request for the boundary change shall be treated like any such request under ORS 285C.115 consistent with OAR 123-065-0300 to 123-065-0399, except for equivalent allowances and exceptions as 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, the existing zone shall be Terminated by Statute or may be terminated by order of the Director, as normal under ORS 285C.245, irrespective of the boundary change.

(4) If the Federal Enterprise Zone 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, 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), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.085

Hist.: EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1740

Further Changes to Enterprise Zones under this Subdivision

Once an enterprise zone has been designated or its boundary changed as described in OAR 123-065-1720 or 123-065-1730, a change in the boundary of the zone may be requested and done under ORS 285C.115, as otherwise allowed by 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 applicable to the zone, additional areas may be included in one of the following ways:

(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 consistent with ORS 285C.120(1)(b) and (c); or

(c) By virtue of a waiver under ORS 285C.120(2) (see OAR 123-065-0095).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.085 & 285C.115

Hist.: EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1750

Termination of Enterprise Zones Designated under this Subdivision

For an enterprise zone designated as described in OAR 123-065-1720:

(1) The zone is Terminated by Statute as normal under ORS 285C.245(2), subsequent to the effective date of designation by order of the Director, regardless of any intervening termination of the Federal Enterprise Zone due to programmed operation under federal statutes or repeal of the operative federal law.

(2) The zone may terminate prematurely for the reasons indicated under ORS 285C.245(3).

(3) With respect to termination as described in either section (1) or (2) of this rule, an enterprise zone shall or may, respectively, be designated under ORS 285C.250 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 under ORS 285C.085(5), if the federal government prematurely terminates the Federal Enterprise Zone for nonperformance, violation of federal guidelines or similarly unusual circumstances. In this case, there is no provision for a replacement designation under ORS 285C.250, 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), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.085 & 285C.245

Hist.: EDD 14-1999, f. 10-22-99, cert. ef. 10-23-99; EDD 1-2005, f. & cert. ef. 2-25-05

Terminations of Enterprise Zones

123-065-1900

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 285C.250(1) shall be terminated or designated effective at 12 midnight of July 1.

(3) Any zone that is designated under ORS 285C.250(1) to replace an enterprise zone that was concurrently Terminated by Statute shall not itself terminate under ORS 285C.245(2) until in effect eleven tax years after its designation.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.245 & 285C.250

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; Renumbered to 123-065-1900, EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1910

After Termination of the Zone

Following the termination of an enterprise zone:

(1) The local policies adopted by the zone sponsor under ORS 285C.105 or other statutory provisions shall remain in force as they were at the time of termination.

(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) 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 authorized 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 authorization application was submitted and finally approved;

(c) The anticipated initial first year of each exemption; and

(d) The status of each investment or exemption of the authorized or qualified business firm (for example, "under construction").

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.105, 285C.130, 285C.140 & 285C.245

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00; Renumbered to 123-065-1910, EDD 1-2005, f. & cert. ef. 2-25-05

123-065-1920

Early Termination of an Unused Zone

Under ORS 285C.245(6), an enterprise zone terminates (in a manner comparable to one Terminated by Statute) if no eligible business firm has effectively used the zone after at least six full years, such that:

(1) The Director shall order the termination effective on December 31 that occurs six years after the December 31 that was or that immediately followed the effective date of the zone's designation.

(2) This rule does not apply if the Department determines that on or before the relevant December-31 date, a business firm qualified in that zone for an exemption under ORS 285C.175.

(3) If the Department finds that during the sixth calendar year of the zone's existence, an actively authorized business firm has placed qualified property in service, termination per this rule shall be treated as provisional and shall be rescinded and reversed when the firm successfully claims the exemption.

(4) Termination of an enterprise zone as described in this rule does not preclude the sponsor or any cosponsor of the zone from applying for designation of another enterprise zone, though not as a Preexisting Enterprise Zone.

(5) This rule has no bearing on:

(a) A reservation enterprise zone; or

(b) Any enterprise zone for which the date of designation preceded January 1, 2004.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.245 & 285C.250

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

Additional and Reasonable Requirements of Local Sponsor

123-065-2500

Purpose and Scope

OAR 123-065-2500 to 123-065-2599 are intended to provide guidance and parameters applicable to any situation provided by law, under which the local government or governments that sponsor an enterprise zone may (jointly) impose additional requirements on a business firm that is receiving tax benefits associated with an investment in the enterprise zone.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.105, 285C.150, 285C.155, 285C.160 & 285C.403

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-2510

Applicable Situations

OAR 123-065-2500 to 123-065-2599 shall govern the following situations of locally imposed requirements in an enterprise zone:

(1) The written agreement with the zone sponsor for the long-term rural tax incentives, under ORS 285C.403(3)(c).

(2) Whenever the three- to five-year property tax exemption entails any of the following:

(a) A written agreement for the extended abatement for an exemption period of four or five consecutive years in total under ORS 285C.160;

(b) Adoption of a resolution or resolutions by the zone sponsor waiving the usual requirement of an increase in employment in the zone, under ORS 285C.155 and 285C.200(2); or

(c) Policy and standards adopted by the sponsor of an urban enterprise zone under ORS 285C.150, for which further specification is found in OAR 123-065-0230 for such local conditions.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.105, 285C.150, 285C.155, 285C.160 & 285C.403

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-2520

Basic Parameters

For the additional requirements of an enterprise zone sponsor:

(1) They shall apply to actions and achievements of the business firm only:

(a) With respect to operations inside (or nearby and affected by operations in) the enterprise zone; and

(b) Between:

(A) The time of authorization (certification in the case of the long-term rural tax incentives); and

(B) The end of the last tax year of the overall enterprise zone exemption period.

(2) Notwithstanding section (1) of this rule, the zone sponsor and the business firm may mutually agree, subject to possibly certain contingencies, to automatically apply current requirements or provisions of an agreement to identified future situations as described in OAR 123-065-2510.

(3) They shall not require that the eligible business firm's hiring, recruitment, promotion, training, compensation or treatment of its actual or potential employees, suppliers, contractors or customers be based on:

(a) Those persons' or businesses' residency or geographic location, consistent with OP-8236, Oregon Attorney General (April 20, 1995); or

(b) Other legally impermissible criteria.

(4) They may be offered by the zone sponsor as multiple options from which the eligible business firm freely selects, so long as:

(a) Each optional requirement conforms with OAR 123-065-2500 to 123-065-2599; and

(b) The firm's selection, and thus what the firm is required to satisfy or not satisfy among the options, is specified in the agreement between the firm and the zone sponsor, the resolutions and other applicable documentation.

(5) Failure by a qualified business firm to satisfy an additional requirement need not result in disqualification or loss of the tax benefits or the exemption on property, if as specifically allowed:

(a) The firm's continuing qualification does not depend on compliance with that requirement; or

(b) The firm may fulfill an alternative requirement to avoid disqualification. (An alternative requirement shall not preclude the firm's disqualification, if the firm later fails to adequately fulfill the alternative requirement or any other requirement)

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.105, 285C.150, 285C.155, 285C.160 & 285C.403

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-2530

Additional to Statutory Provisions

Requirements imposed on a business firm by an enterprise zone sponsor are in addition to what is provided under applicable statutes or state laws, and shall neither alter nor undermine their effect or intent, such that:

(1) With respect to the following, as established by relevant state provisions, the requirements may in no way:

(a) Affect the basic eligibility or ineligibility of certain business activities or uses of relevant property;

(b) Modify any specified minimum level of investment by the firm; or

(c) Alter the coverage, extent, period or any other aspect of the tax benefit itself, although:

(A) Other forms of financial remuneration by the firm are possible; and

(B) The sponsor shall set the total period of tax benefit as provided by the relevant law or statute.

(2) The requirements may neither modify nor in any way effectively decrease or increase the stringency of state requirements for hiring, general employment levels or average pay/compensation associated with jobs or persons employed by the firm, and they shall not even address such issues, except for local requirements that:

(a) Govern employees that are not affected or covered by the relevant state requirement (for example, construction or temporary workers);

(b) Set an alternative employment level under ORS 285C.155;

(c) Specify extra demands within the context of a first-source hiring agreement that the firm is otherwise required to enter into; or

(d) Obligate the firm in a reasonable manner with respect to the following: workforce development, hiring/retention from certain sources or groups, the general nature of benefits, or other employment-related matters categorically different from actual requirements under ORS 285C.050 to 285B.250 or 285C.412.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.105, 285C.150, 285C.155, 285C.160 & 285C.403

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-2540**Reasonableness**

This rule offers the following guidance and general criteria, which are not exhaustive, for evaluating whether local additional enterprise zone requirements are reasonable:

(1) The requirements may not vary dramatically or erratically over time for business firms interested in investing in the zone and seeking special benefits or waivers.

(2) The requirements may not be arbitrarily applied, implemented or enforced, in that the sponsor shall be consistent not only in setting conditions, but also in how any compliance issue is handled.

(3) The requirements may be differentiated among relevant business firms, for a given situation as described in OAR 123-065-2510, in terms of investment size, the firm's industry and so forth, but such differentiation must be:

- (a) Based on definable characteristics;
- (b) Consistently used; and
- (c) Explicated in terms of a public purpose.

(4) The requirements may entail economic costs to the firm as a result of payments to the sponsor or other entities, or of actions undertaken by the firm, but these costs (less any other consequent benefit to the firm) shall not effectively undermine the tax benefit for the eligible business firm, in that:

(a) Based on equivalent present-value estimations, these costs shall not exceed one-third of the tax savings associated with the property tax abatement.

(b) With a written agreement in the case of OAR 123-065-2510(1) or (2)(a) the firm may accept higher costs based on its own considerations.

(5) The requirements may not demand procedures, practices or investments in excess of anything undertaken in the firm's industry or related industries throughout the world, such that the sponsor shall be prepared to show that such a demand has been accomplished in the normal course of business elsewhere without apparent, extenuating circumstances.

(6) No requirement may cause or compel actions by the firm that have the potential to pose a significant other legal, financial or business threat to the firm, such as:

(a) Surrendering significant rights, privileges or immunities under state or federal law;

(b) Labor relations that may compromise practices by the firm in other locations where it operates in the United States; or

(c) The release of information that is proprietary, confidential or otherwise threatening to the firm's market competitiveness or contractual obligations or that of any third party.

(7) The criteria in this rule relate to a zone sponsor's underlying policy, hence the recommendations in OAR 123-065-2550 for deliberate and explicit policy-making to cover certain potentialities.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.105, 285C.150, 285C.155, 285C.160 & 285C.403

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-2550**Zone Sponsor Policies & Approval of Agreements**

(1) In imposing or setting additional requirements on business firms, an enterprise zone sponsor shall consider a policy-making approach to maintain consistency and rationality, especially in view of the following:

(a) Constitutional and other legal protections for business firms; and

(b) General principles of fairness and clarity regarding public purposes and intent.

(2) Such a policy may apply uniformly to the situations as described in OAR 123-065-2510, or it may pertain to only certain situations

(3) Such a policy is relevant to the sponsor's basic elections in granting or refusing special benefits or waivers, as well as the additional requirements imposed or sought when granting the benefit or waiver to a business firm.

(4) Except for conditions imposed by an urban zone under ORS 285C.150, such a policy for purposes of OAR 123-065-2500 to 123-065-2599 does not need to be adopted before initial application or based on formal documentation, and may reflect the cumulative effect of the sponsor's relevant past actions. However, the Department rec-

ommends a formal, explicit and prospective policy as circumstances, such as the following, arise:

(a) The instances of relevant requests by business firms are common or expected to become increasingly frequent;

(b) Sponsor's basic decision to grant or refuse a special benefit or waiver, or to impose additional requirements, is differentiated in terms of business or investment size or comparable factors;

(c) The requirements imposed are numerous, complicated or otherwise entail various contingencies or matters of judgment suggest the need for definite standards; or

(d) The sponsor departs from a general pattern in terms of granting a special benefit or waiver or imposing certain corresponding requirements.

(5) In an urban enterprise zone that has adopted a policy under ORS 285C.150, any additional requirements imposed for other situations as described in OAR 123-065-2510(2) must:

(a) Formally relate to the policy and standards adopted by the sponsor; and

(b) Be in addition to and not replace any condition normally imposed by the sponsor.

(6) A city or county government that sponsors two or more enterprise zones is free to have different policies or seek different local additional requirements among those zones.

(7) In an enterprise zone sponsored by more than one city or county jurisdiction, the cosponsors must all jointly:

(a) Adopt the same policy, standards, established local conditions and so forth under equivalent authority/method for purposes of this rule and the enterprise zone; and

(b) Approve the same requisite written agreement (respective to each jurisdiction and situation, as described in section (8) of this rule).

(8) The sponsoring city or county jurisdiction or jurisdictions of an enterprise zone may authorize the written agreement in the case of OAR 123-065-2510(1) or (2)(a) 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 empowers a particular agent to negotiate such an agreement with all or some eligible business firms on behalf of the jurisdiction (for example, the local zone manager).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.105, 285C.150, 285C.155, 285C.160 & 285C.403

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

Local Sponsor Funds Derived through Enterprise Zone**123-065-2700****Purpose and Scope**

OAR 123-065-2700 to 123-065-2799 are intended (and are reserved) to provide special guidance as necessary for the appropriate accounting, collection and use of moneys received by the sponsor of an enterprise zone from business firms, such that:

(1) These moneys represent a special resource for an enterprise zone, but they are likely to be significant in only unusual cases.

(2) The sponsor may receive moneys for the following reasons as specified in statute or law:

(a) The authorization filing fee under ORS 285C.140(1)(c);

(b) The payback of one year's tax savings in lieu of disqualification under ORS 285C.240(6); or

(c) The distribution to the sponsor and other taxing districts of 30 percent of the corporate income or excise taxes paid by a corporation under ORS 317.131.

(3) Moneys or funds arising from local additional requirements imposed by the sponsor on a business firm, in accordance with OAR

123-065-2500 to 123-065-2599, may also be subject to these administrative rules.

(4) These administrative rules are in addition to specific guidance governing particular sources of such moneys in this division of administrative rules, including but not limited to OAR 123-065-0220, 123-065-3850 or 123-065-4950 to 123-065-4990.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
 Stats. Implemented: ORS 285C.105, 285C.140, 285C.150, 285C.155, 285C.160, 285C.240, 285C.403 & 317.131
 Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

Long-Term Rural Tax Incentive

123-065-3000

Purpose and Scope

OAR 123-065-3000 to 123-065-3999 clarify and establish provisions of ORS 285C.400 to 285C.420 and 317.124 to 317.131 (2003) for determinations, procedures and requirements of the “up-to” 15 years of exemption from property taxes and corporate excise tax credits on a qualifying investment inside a nonurban enterprise zone (including but not limited to a reservation enterprise zone under ORS 285C.300 to 285C.320) in a county experiencing particular economic hardship. These administrative rules do not control fiscal parameters of actual implementation by the county assessor or the Department of Revenue, and they are not intended to supersede administrative rules in OAR chapter 150 for any such purpose.

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
 Stats. Implemented: ORS 285C.400 - 285C.420, 317.124 - 317.131
 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; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

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 285C.050 to 285C.250, 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 overall enterprise zone system.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1)
 Stats. Implemented: ORS 285B.781 - 285B.796 & 317.124 - 317.131
 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; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3110

Definition of Economic Terms

As used in ORS 285C.400(3) (also, see OAR 123-065-3200):

(1) “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 previous calendar year and other relevant prior years, as benchmarked and published by the Employment Department in cooperation with the United States Bureau of Labor Statistics, as well as subsequent revisions to those percentages.

(2) “Most recently revised ... annual per capita income levels available” means the average annual per capita personal income level as published and revised by the Bureau of Economic Analysis of the United States Department of Commerce for the most recent calendar years available, as well as subsequent revisions to those levels.

(3) “Median ratio ... of the county to the equivalent ... of the entire United States for each year” means that for each year the annual average unemployment rate or average annual per capita personal income for the county is divided by the same year’s national figure, and then from among the resulting quotients (ratios) equal numbers of highest and lowest values are ignored, so that the ‘median ratio’ is the one remaining value or the two remaining quotients added together and divided by two.

(4) “Equal to or less than 0.75 over the last 10 years” means that the relevant median derived per section (3) of this rule is computed for the most recent 10 consecutive years, for which figures as described in section (2) of this rule are available, and that the resulting median is equal to or less than 0.75 rounded to the nearest hundredth.

(5) Using the latest available figures as described in section (1) of this rule, “at least 1.3 over the last 20 years or over the last 10 years”

means that the relevant median derived per section (3) 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 medians is equal to or greater than 1.3 rounded to the nearest tenth.

(6) “Negative net migration” means the county’s change in total population minus natural population change (births - deaths) is equal to or less than negative one (-1), based on the most recent county population estimates available from the Portland State University Center for Population Research and Census, in comparison to the latest official decennial population count by the U.S. Census Bureau at least three entire years before this most recent estimate.

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
 Stats. Implemented: ORS 285C.400
 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; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3130

Definition of Facility

As used in ORS 285C.400 to 285C.420 and 317.124 to 317.131, “facility” or “facility site” has the meaning given in ORS 285C.400(4) and includes all of the following:

(1) A building or structure or group of two or more associated buildings and/or structures, located at a common site or proximately adjacent sites entirely inside the boundary of a single nonurban enterprise zone, such that each building or structure is newly constructed beginning after the application for certification

(2) New additions or modifications occurring entirely after the application for certification to any previously constructed or occupied building or structure as otherwise described in section (1) of this rule.

(3) All of the real or personal property located at the site, whether or not it is inside or on a building or structure, as described in section (1) or (2) of this rule:

(a) If newly installed after the application for certification.

(b) Except for any vehicle, as well as device pulled, pushed or carried by a vehicle, that is designed to hold and transport people, goods or property on highways, waterways or railways beyond the zone boundary, including but not limited to aircraft, barges, carriages, railroad cars, trailers, trucks or ships.

(4) Any property leased by the business firm certified to receive the exemption under ORS 285C.409 and otherwise described in this rule, but only:

(a) For the exemption, and not for the corporate excise or income tax credit under ORS 317.124, in which case only personal property may be leased; and

(b) 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.

(5) In claiming the exemption under ORS 285C.409 with the county assessor, the certified business firm may formally and irreversibly exclude all property as described and categorized in section (1), (2) or (3) of this rule, so that that entire category of property is subject to normal taxation for the remainder of the exemption, if the exclusion is indicated in the agreement under ORS 285C.403(3)(c).

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
 Stats. Implemented: ORS 285C.400 - 285C.420 & 317.124 - 317.131
 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; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3140

Definition of “In Service”

As used in ORS 285C.400 to 285C.420 and 317.124 to 317.131, “in service” has the meaning described in OAR 150-285C.409 (notwithstanding the definition under ORS 285C.050 as used for the exemption under ORS 285C.170 and 285C.175).

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
 Stats. Implemented: ORS 285C.400 - 285C.420, 317.124 - 317.131
 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; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3170

Definition of Sponsor

As used in ORS 285C.400 to 285C.420 and 317.124 to 317.131, “sponsor” or “zone sponsor” has the same meaning as described in

OAR 123-065-0140, in that all cosponsors of the zone shall jointly approve or exercise any and all actions under ORS 285C.400 to 285C.420 and 317.124 to 317.131, except for the particular adoption of a resolution as required under ORS 285C.403(3)(a).

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
 Stats. Implemented: ORS 285C.400 - 285C.420, 317.124 - 317.131
 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; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3200

Determining Eligible Nonurban Enterprise Zones

In determining if a county conforms to the definition of ORS 285C.400(3) of a 'county with chronically low income or chronic unemployment':

(1) Typically in the spring, with the formal release, publication and availability of benchmarked annual unemployment rates for the previous year and other relevant data, the Department shall analyze these data, along with the most recently revised data available for other relevant prior years, and ascertain which counties in the state satisfy the definition.

(2) The Department shall identify any existing nonurban enterprise zone in those counties, preparing maps or other such information as feasible and appropriate for use by the general public and business firms, as well as respective local zone managers and county assessors.

(3) The official determination as described in this rule shall first take effect on July 1 next following formal availability of the latest relevant annual data and shall apply until and including June 30 of the next calendar year, pending:

(a) Revisions, if any, as described in OAR 123-065-3230; or

(b) The next annual determination.

(4) Conformance with the definition shall be achieved if OAR 123-065-3110(4), (5) or (6) is true.

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
 Stats. Implemented: ORS 285C.400 & 285C.403
 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; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3230

Revisions to Currently Eligible Nonurban Enterprise Zones

To ensure that the counties currently deemed as conforming with ORS 285C.400(3) accurately reflect the most recently revised annual data available for the nation and county, following a determination as described in OAR 123-065-3200:

(1) During the course of the year from July 1 to June 30, the Department may obtain an officially and publicly made revision or correction to relevant annual data.

(2) The Department shall review such revised data to determine whether it would alter the status of any county.

(3) Pursuant to section (2) of this rule, if any county is to be thus removed or added to the counties currently identified by OAR 123-065-3200:

(a) The effective date of any such change shall be the first day of the second month following the month in which the revised or corrected data was formally released or published; and

(b) The Department shall notify the county assessor and local zone manager of any nonurban enterprise zone in such a county and revise and reissue relevant lists, maps and other materials, as appropriate.

(4) A correct, prior determination in accordance with OAR 123-065-3200 or this rule may not be retroactively altered.

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
 Stats. Implemented: ORS 285C.400 & 285C.403
 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; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3300

Written Agreement

For purposes of the written agreement between a business firm and the sponsor of the nonurban enterprise zone under ORS 285C.403(3)(c) and (d):

(1) The agreement shall consist at a minimum of the following:

(a) Acknowledgment of the planned or pending application for certification under ORS 285C.403(1) and (2);

(b) Concise description of the firm's proposed investments, facility and workforce;

(c) Specification of the obligations that the proposed investments, facility and workforce must satisfy under ORS 285C.412, which are in no way superseded by the agreement;

(d) Identification of all the parties to the agreement and their representatives;

(e) Zone sponsor's explicit approval for the firm to receive the exemption under ORS 285C.409 on its qualifying facility;

(f) The sponsor's statement as to the number of consecutive tax years that will comprise the period of exemption beginning after the facility is placed in service, such that this period is only seven such years, if nothing to the contrary is stated about it being eight or more years (up to the maximum of 15 years); and

(g) With respect to additional conditions or requirements by the zone sponsor under ORS 285C.403(2)(e) and (3)(c):

(A) Indication that no such condition or requirement is imposed or requested; or

(B) Specification of any such condition or requirement, in accordance with OAR 123-065-2500 to 123-065-2599, including, at a minimum:

(i) Methods for demonstrating satisfaction of the condition or requirement; and

(ii) 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 in section (1) of this rule.

(b) Preauthorized, directly sanctioned by resolution or approved by other means of the zone sponsor or of each cosponsor as described in OAR 123-065-2550.

Stat. Auth.: ORS 285A.075(5) & 285A.110
 Stats. Implemented: ORS 285C.403 & 285C.409
 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; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3330

Timing of Written Agreement

For purposes of the requisite written agreement under ORS 285C.403(3)(c) and (d) between a business firm and the sponsor of a nonurban enterprise zone:

(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 date 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 containing the facility site is officially determined to conform with the definition of ORS 285C.400(3), pursuant to OAR 123-065-3200 or 123-065-3230; and

(b) Before the corresponding effective date on which:

(A) The zone is terminated; and

(B) The county is not subject to a positive official determination as described in paragraph (a)(B) of this section.

(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's execution, the county containing the facility site is officially determined to conform with the definition of ORS 285C.400(3), as described in OAR 123-065-3200 or 123-065-3230, and one party to the agreement is the sponsor of the nonurban enterprise zone; and

(b) The agreement satisfies applicable provisions of OAR 123-065-3300.

(3) Following the certification of the business firm as described in OAR 123-065-3430 or an effective date in subsection (1)(b) of this rule, the agreement may not be substantially modified, replaced, amended, supplemented or terminated, except as:

(a) Explicitly provided 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), 285A.110(1)
 Stats. Implemented: ORS 285C.403 & 285C.406
 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; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3360

County/City Resolutions

For purposes of resolutions adopted by the governing body of a county or city under ORS 285C.403(3)(a):

(1) A criterion for certification is adoption of a resolution approving the exemption for the facility by the county and any city in which the facility is located, such that:

(a) Both the county and the city must adopt the 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 as described in section (1) of this rule or to approve a written agreement consistent with OAR 123-065-3300 may be adopted at any time with respect to conclusion of the agreement or the effective dates as described in OAR 123-065-3330(1). However, if the resolution substantially implements or provides for all or part of the agreement by the zone sponsor, as opposed to merely authorizing an otherwise operable agreement, the resolution must be adopted after 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) & 285A.110(1)
 Stats. Implemented: ORS 285C.403
 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; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3400

Applying for Certification

For purposes of the application for certification under ORS 285C.403(1) and (2):

(1) In order for a business firm to receive the exemption on its facility under ORS 285C.409:

(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 or improvements:

(A) Fill out the latest revision of the Department of Revenue form 150-310-073, **Certification Application: Long-Term Rural Oregon Tax Incentive**, as completely as the firm is capable of doing;

(B) Have the form signed and dated by the owner or authorized representative of the firm;

(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 an executed copy of the form to either the local zone manager or the county assessor, whichever one does not receive the signed original.

(b) Submission of the application form as described in subsection (a) of this section must occur, with respect to the nonurban enterprise zone:

(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 may occur before or after any relevant resolution, commitment, written agreement or effective date of official determination of nonurban enterprise zone eligibility in the county.

(3) Estimated numbers, anticipated dates or other expectations indicated in the application form 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) The commitments made by the business firm (as required in the application form or otherwise during the certification process) shall be accepted at face value for purposes of certifying the firm, but such a commitment shall not relieve the firm of actually needing to meet an applicable requirement under ORS 285C.400 to 285C.420 and 307.124 to 307.131.

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

Stats. Implemented: ORS 285C.403

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; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3430

Certification

For purposes of ORS 285C.403(3) to (6), following submission of the application for certification as described in 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 is placed in service;

(b) After the operational date specified under ORS 285C.406(2);

or

(c) Before any of the following (unless formally reaffirmed afterwards):

(A) The commitments by the firm in the application to meet requirements under ORS 285C.412;

(B) The relevant written agreement and the corresponding letter of confirmation by the Department as described in OAR 123-065-3330;

(C) Any resolution by the sponsor or a cosponsor of the zone that authorizes or effects the written agreement in paragraph (B) of this subsection; or

(D) The relevant resolution or resolutions by the county/city in which the facility is located under ORS 285C.403(3)(a).

(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.

(3) Upon satisfaction of the criteria under ORS 285C.403(3), except as qualified in this rule and OAR 123-065-3460(2), the local zone manager and the county assessor shall approve the certification application, at which point:

(a) The business firm is "certified," such that it is eligible for the exemption under ORS 285C.409; 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) & 285A.110(1)

Stats. Implemented: ORS 285C.403, 285C.406, 285C.409 & 285C.412

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; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3445

Other Enterprise Zone or Construction Exemptions

For purposes of the exemption under ORS 285C.409:

(1) An eligible business firm may seek and receive approval for authorization under ORS 285C.140 or 285C.160, while applying for and being certified under ORS 285C.403, although the zone sponsor and business firm shall clarify and resolve the situation as soon as possible.

(2) However, any property exempted under ORS 285C.170 or 285C.175, whether in the same or another enterprise zone, may not concurrently or subsequently be exempt under any paragraph of ORS 285C.409(1).

(3) Property that is exempt under ORS 285C.409(1)(a) or (b) may not receive an exemption under ORS 285C.175, unless it is qualified property for which exemption would otherwise be allowed under ORS 285C.170, as described in OAR 123-065-4800.

(4) Property may be subject to exemption as otherwise allowed under ORS 307.330, without necessarily jeopardizing the exemption under ORS 285C.409(1)(c).

(5) This rule does not relieve a taxpayer of any requirement to timely file forms, evidence or notice with the county assessor for purposes of (or to reserve the taxpayer's right to) an exemption on property under ORS 285C.170 or 307.330 and 307.340, as well as ORS 285C.409.

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
Stats. Implemented: ORS 285C.403, 285C.409 & 285C.420
Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3460

Post-Certification

With certification as described in OAR 123-065-3430:

(1) In order for a certified business firm's facility to qualify for the exemption under ORS 285C.409, the firm shall submit written notification and information to the county assessor (and 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 any applicable requirement under ORS 285C.412 is satisfied; and

(d) When and by what measure the facility has been placed in service.

(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 to verify compliance with section (1) of this rule and the applicable requirements under ORS 285C.412, 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 ORS 285C.403(3)(c).

(3) Failure by the county assessor to seek or obtain the arrangements described in section (2) of this rule does 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) & 285A.110(1)
Stats. Implemented: ORS 285C.409, 285C.412, 285C.415 & 285C.420
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; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3480

Subsequent Investments

For purposes of real or personal property as described in OAR 123-065-3130 but newly located, completed and placed in service at the facility site on or after the January 1 "assessment date" cited in ORS 285C.409(1)(c):

(1) Any such property is subject to exemption from property taxes under ORS 285C.409 for the remainder of the 7 to 15 tax years available.

(2) Neither additional operations nor the introduction of such property at the facility shall lengthen or add to the exemption period on that or any property.

(3) A certified business firm may receive another (potentially overlapping) period of exemption affecting additional property at the same facility only if the firm, in accordance with ORS 285C.403, again:

(a) Applies for certification;

(b) Meets the relevant criteria for certification;

(c) Satisfies the applicable requirements to qualify for the exemption under ORS 285C.412; and

(d) Undertakes additional operations at the facility.

(4) The firm or the applicable facility must accomplish the items in section (3) of this rule entirely independent of and in addition to the respective actions and investments pertaining to the certification or qualification for any previously granted exemption under ORS 285C.409.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.403, 285C.409 & 285C.412

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; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3500

Minimum Size of Investment

For purposes of the minimum investment in the facility under ORS 285C.412(1)(a), (2)(a), (3)(a), (4)(b) or (5)(a) to be made by a certified business firm:

(1) Relevant investment costs for meeting the minimum shall include only expenses that can be documented through existing records or retrospective compilation of evidence, and that are incurred in association with property owned or leased by the firm that is part of the facility, for the following:

(a) Construction, reconstruction, modification or installation of such property, including but not limited to materials, supplies, labor, building contractors, engineering, physical connections to utilities, on-site development, and so forth; or

(b) Purchase of any such property. (Alternatively, the current real market value shall be used for property that is newly moved or transferred to the facility site but that was already owned or leased by the firm/owner of leased property)

(2) Regardless of association with the facility or property, relevant investment costs do not include:

(a) Cost of financing, public permit or service charges, legal fees, the value of the firm's own management, expenses to maintain finished property and so forth;

(b) Cost or value of property that at the time of certification is already owned or leased by the firm and located at the facility site; or

(c) Expenses associated with purchases or with construction, reconstruction, modifications or installations of property that is not completed until on or after January 1 immediately following the year when the facility is placed in service.

(3) The firm shall provide evidence to the assessor in writing when this requirement is satisfied as soon as possible after such satisfaction is verifiable.

(4) Property excluded by this rule does not necessarily affect what property may be exempt under ORS 285C.409, which depends on being part of the qualifying facility as described in OAR 123-065-3130.

(5) In determining 'real market value of all nonexempt taxable property in the county,' the figure for the most recently available fiscal year shall be used, as printed in the latest edition of "Oregon Property Tax Statistics" (150-303-045), Oregon Department of Revenue, at the time of certification.

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
Stats. Implemented: ORS 285C.412 & 285C.415
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; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3530

Minimum Hiring

For purposes of the minimum hiring and employment to be met and maintained at an exempt facility under ORS 285C.412(1)(b), (2)(c), (3)(d), (4)(d) or (5)(c) by a certified business firm:

(1) Employees are persons each working directly or indirectly for the firm in excess of 32 hours per week (consistent with OAR 123-065-4060) in an established, permanent position.

(2) Twelve months prior to when the facility is placed in service, the firm shall establish and make available information showing the total number of employees, each of whose job is located and performed:

(a) At the facility site; and

(b) Within the state as a whole other than at the facility site.

(3) The minimum requirements are met if:

(a) The number of employees located and performing their jobs at the facility site, less the corresponding number of employees per subsection (2)(a), equals or exceeds the respective minimum; and

(b) The number of employees of the firm in the state as a whole other than at the facility site is the same or greater than the corresponding number of employees per subsection (2)(b) of this rule.

(4) The firm shall provide evidence to the assessor in writing when each subsection of section (3) of this rule is satisfied, as soon as possible after such satisfaction is achieved, such that:

(a) For subsection (3)(a) of this rule, this must occur on or before December 31 not more than the following number of years after December 31 of the year in which the facility is placed in service:

- (A) Five years for ORS 285C.412(1) or (4); or
- (B) Three years for ORS 285C.412(2), (3) or (5).

(b) For subsection (3)(b) of this rule, this must occur at the same time when the assessor is notified that the applicable requirement in subsection (a) is met and for 12 months afterwards.

Stat. Auth.: ORS 285A.075(5) & 285A.110
 Stats. Implemented: ORS 285C.412 & 285C.415
 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; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3545

Minimum Distance from I-5

For purposes of the minimum distance from the facility of a certified business firm to Interstate Highway 5 under ORS 285C.412(3)(b) or (5)(b):

- (1) The distance is measured as:

- (a) A straight line; and

(b) The shortest possible gap between the nearest part of the facility site relative to any point along the median of the highway, regardless if that point is in this state or offers access on/off the highway.

- (2) Spurs or bypasses such as I-105 or I-205 are excluded.

(3) Distance is rounded to the nearest whole number, such that an eligible location must be effectively farther than 10.4 miles from I-5.

Stat. Auth.: ORS 285A.075(5) & 285A.110
 Stats. Implemented: ORS 285C.412 & 285C.415
 Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3560

Minimum Average Annual Compensation

For purposes of the minimum average annual compensation to be met and maintained at an exempt facility under ORS 285C.412(1)(c), (2)(b), (3)(c), (4)(c) or (5)(d) by a certified business firm:

(1) The total remuneration during a calendar year shall be considered if it is:

(a) In the form of wages, salary, bonuses, shift differential, overtime pay, profit-sharing, paid vacation, or financial benefits such as life insurance, medical coverage or retirement plans, but excluding sales commissions, free meals, club membership, workplace amenities, benefits mandated by federal, state or local law, and so forth; and

(b) Paid to any employee located and performing work directly or indirectly for the firm at the facility site, 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 annual compensation described in section (1) of this rule shall be multiplied by the appropriate inverse time factor in order to approximate the equivalent level of annual compensation, as if the job is worked full-time for the entire year.

(3) Each employee's total annual compensation 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, this computed average 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 site is located, as then currently available and reported by the Employment Department.

(5) The firm shall provide evidence to the assessor in writing when section (4) of this rule is satisfied as soon as possible after such satisfaction is achieved.

Stat. Auth.: ORS 285A.075(5) & 285A.110
 Stats. Implemented: ORS 285C.412 & 285C.415
 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; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3600

Maintaining Employment and Compensation

(1) Following initial satisfaction of the minimum requirement for total employment or average annual compensation, as described in OAR 123-065-3530 and 123-065-3560 at a facility exempt under ORS

285C.409, the facility's applicable employment or compensation may never be less than the mandatory minimum level, until after December 31 during the final tax year of the exemption period; otherwise, the exemption is disqualified consistent with OAR 150-285C.420.

(2) The mandatory minimum level for average annual compensation at the facility remains fixed, regardless of how much:

(a) The facility's annual average compensation initially exceeded the county's then current average annual wage level; or

(b) The county's average annual wage subsequently rises during the exemption period.

(3) Notwithstanding section (1) of this rule, the facility's applicable employment or compensation 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) Six or more months of severe economic troubles 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 response to mechanical breakdowns that are unusual and unexpected within normal engineering parameters and maintenance programming.

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
 Stats. Implemented: ORS 285C.412, 285C.415 & 285C.420
 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; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3800

Request for Tax Credit

For purposes of being approved for the tax credit under ORS 317.124(3), unless otherwise directed by the Governor or by the Director:

(1) A request for the credit shall be formally submitted to the Director from an authorized executive of the corporation, preferably pursuant to relevant local approval and certification under ORS 285C.403.

(2) Official consideration of the request by the Governor shall not be expected prior to such local approval.

(3) The request must explicitly indicate:

(a) That the corporation is seeking gubernatorial approval;

(b) When it would expect to begin claiming such credits; and

(c) Any preferred length of time during which credits may be claimed.

(4) The request shall contain the best possible information about the corporation's future income and plans to use the credit, as necessary to estimate the value and applicability of the tax credit.

(5) The Director will forward the request to the Governor, which may be accompanied by a recommendation or (as warranted) by the following:

(a) Background information and analysis about the corporation, the proposed facility, tax impacts, the local community and so forth; and

(b) Summary of consultations with other state agencies including but not limited to the Department of Revenue.

(6) Approval of the request may be conditioned on additional commitments by the corporation as contained in any form of agreement or arrangement with the State.

(7) The following is considered exempt from public release under ORS 192.502 and other laws:

(a) Any information received through the corporation as described in section (4) of this rule; and

(b) The request and any other information associated with it, whether drafted by the Department or otherwise generated, unless and until such time as the Governor has approved the request, thereby deeming such information to be final.

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
 Stats. Implemented: ORS 317.124
 Hist.: EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3830**Tax Credit**

(1) To be effective, the Governor's approval of a corporate excise or income tax credit under ORS 317.124 may take the form of a letter, memo or similarly official document that:

- (a) Names the corporation and refers to its qualifying facility;
- (b) Simply grants the tax credit, approves the corporation's request or directs necessary action by State officials;
- (c) Defines the length of the period during which the tax credits may be claimed; and
- (d) Is done and effective by the ultimate due date (including as a consequence of normal extensions) to file a tax return for the corporation's fourth income/excise tax year, in which the facility is first placed in service.

(2) To claim the tax credit, as approved by the Governor, the certified business firm shall fill out the latest revision of the Department of Revenue form 150-102-043, **Long-Term Enterprise Zone Facilities Credit**, and submit it with the tax return for each applicable income/excise tax year of the corporation.

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

Stats. Implemented: ORS 317.124

Hist.: EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-3850**Revenue Distribution to Local Zone Sponsor**

(1) Consistent with OAR 123-065-2700(2)(c), the sponsor of an enterprise zone containing the facility of a corporation that claims the tax credit under ORS 317.124 may receive funds through the Department of Revenue from the Long Term Enterprise Zone Fund established under ORS 317.127.

(2) The sponsor shall annually receive such funds, unless the amount to be distributed under ORS 317.131 is less than or equal to the property taxes otherwise due to the relevant (special service) taxing districts — but for the exemption on the facility under ORS 285C.409 — respective to the property tax year corresponding to the state government fiscal year in which the funds are distributed.

(3)(a) If the amount to be distributed exceeds these foregone property taxes, then the remaining amount is distributed to the zone sponsor; or

(b) If there is no relevant exemption under ORS 285C.409 for the property tax year, then the entire amount is distributed to the zone sponsor.

(4) For purposes of section (3) of this rule, the zone sponsor is responsible for making timely arrangements, so that:

(a) The sponsor can receive distributed funds in a way that effectively ensures the Department of Revenue of having made payment to the zone sponsor (including but not limited to a joint mechanism for all cosponsors, or through a deposit account administered by a single cosponsor on behalf of the entire zone sponsorship); and

(b) The applicable provisions of ORS Chapter 294 and other state or local laws are satisfied with regard to collecting, holding and using such funds.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 317.131

Hist.: EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

Three- to Five-Year Exemption on Taxable Property**123-065-4000****Purpose and Scope**

OAR 123-065-4000 to 123-065-4999 clarify, specify and establish elements of ORS 285C.050 to 285C.250 (**Oregon Enterprise Zone Act**) for the determinations, procedures and requirements relevant to the three- to five-year exemption from property taxes that is available for qualified property of eligible business firms in any enterprise zone. These administrative rule are not meant to interfere with the fiscal parameters or the direct administration of property taxes by county assessors, and they do not supersede administrative rules of the Department of Revenue in OAR chapter 150, as adopted or amended in the future, for purposes necessary under the statutory sections listed in ORS 285C.125(1).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050 - 285C.250 & 285C.260

Hist.: EDD 9-2000, f. & cert.. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4010**Relationship to Rest of Division**

OAR 123-065-4000 to 123-065-4999 do not affect the administrative rules elsewhere in this division that interpret ORS 285C.400 to 285C.420 and 307.124 to 307.131, and unless the context or specific references demand otherwise, such other parts of this division likewise do not apply to OAR 123-065-4000 to 123-065-4999. However, OAR 123-065-0000 to 123-065-2999 (including but not limited to statutory terms, boundary changes, termination or designation of enterprise zones, and the duties and additional requirements of a zone sponsor) do affect and interrelate with these administrative rules.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050 - 285C.250

Hist.: EDD 9-2000, f. & cert.. ef. 5-2-00; EDD 15-2002(Temp), f. & cert. ef. 7-8-02 thru 1-3-03; EDD 3-2003, f. 3-20-03, cert. ef. 3-21-03; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4020**Organization of Subsequent Rules and the Process for Businesses Seeking Exemption**

The **Oregon Enterprise Zone Act** (ORS 285C.125 *et seq.*) provides for an exemption from taxation on property that lasts at least three years, starting when a business firm and the property first qualify, and based on the following elements of OAR 123-065-4000 to 123-065-4999:

(1) The usual three-year exemption period may be extended to four or five consecutive years of tax abatement in total, subject to particular processes, requirements and local approval before authorization (OAR 123-065-4100 to 123-065-4199).

(2) The firm must be an eligible business firm engaged in eligible activities, as determined with authorization (OAR 123-065-4200 to 123-065-4299).

(3) The eligible business firm must be authorized (OAR 123-065-4300 to 123-065-4399) by:

(a) Submitting an application form generally prior to beginning any work on the proposed investment; and

(b) Being ministerially approved by the local zone manager and the county assessor after special consultation.

(4) The business firm must satisfy certain basic employment and hiring requirements to initially qualify and must maintain related requirements during the exemption period to remain qualified (OAR 123-065-4400 to 123-065-4499, and see division 070 of this chapter of administrative rules).

(5) The exemption is available (OAR 123-065-4500 to 123-065-4599) only for:

(a) An authorized business firm that timely files with the county assessor to claim the exemption; and

(b) Certain kinds of property based on a number of attributes, one of the most fundamental of which is the property's newness for use and occupancy in the zone, as well as the definition of "qualified property" under ORS 285C.050(17).

(6) OAR 123-065-4600 to 123-065-4999 address other special matters.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050 - 285C.250 & 285C.260

Hist.: EDD 9-2000, f. & cert.. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4050**Being and Operating a Business**

For defining "business firm":

(1) As used in ORS 285C.050(3), "operating or conducting one or more trades or businesses" means to manage or direct commercial affairs, as evidenced by 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 property 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) As used in ORS 285C.050(3) and 285C.110, "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 but not limited to a municipal utility or dock commission, operated by a separate board or commission, or a people's utility district.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050 & 285C.110

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 13-1997, f. & cert. ef. 11-10-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0110; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4060

Employment and Employees

As used in ORS 285C.050(7):

(1) "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.

(2) "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) "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), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050, 285C.200 & 285C.210

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 13-1997, f. & cert. ef. 11-10-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0120; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4070

Modification of Existing Property

As defined under ORS 285C.050(12) and used in 285C.050 to 285C.250 and in this division of administrative rules, unless the context indicates otherwise, "modification" includes but is not limited to:

(1) Reconditioning, refurbishment, retrofitting or upgrade of real property machinery or equipment for purposes of ORS 285C.190; and

(2) The alteration or reconstruction of all or part of an existing building or structure, irrespective of any addition to the building or structure, consistent with one of the following terms, as used in ORS 285C.050(12) consistent with OAR 150-285C.180:

(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), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050, 285C.175, 285C.180 & 285C.190

Hist.: EDD 13-1997, f. & cert. ef. 11-10-97; EDD 5-1998, f. & cert. ef. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0130; EDD 1-2005, f. & cert. ef. 2-25-05

Standard Exemption: Extended Abatement

123-065-4100

Definitions

For purposes of OAR 123-065-4100 to 123-065-4199:

(1) **County Average Annual Wage** as defined under ORS 285C.050(4) and used in 285C.160 and 285C.165 means the average annual covered payroll per employee for all industries in the county, as estimated by the Employment Department, that is:

(a) Higher than that of any other county, in which any area of the enterprise zone is located, and thus not necessarily the county where the firm's investment in qualified property is located; and

(b) Most recently available at the time when one of the following effectively occurs (whichever is latest):

(A) Application for authorization is approved under ORS 285C.140(6), pursuant to annual transition date determined by the Department;

(B) Statement of authorization renewal is submitted under ORS 285C.165(1) for purposes of 285C.160(4); or

(C) Exemption claim is initially filed under ORS 285C.220 and 285C.225 by an inactively authorized business firm under ORS 285C.165(4).

(2) **Compensation** as used in ORS 285C.160 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) **Affected Employees** means persons, positions or jobs under ORS 285C.050(13), which align with the following criteria:

(a) Included as "employment of the firm" in accordance with OAR 123-065-4400; and

(b) New jobs that are filled for the first time:

(A) After the date of application for authorization under ORS 285C.140(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; and

(B) On or before December 31 during the first tax year of the exemption.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050, 285C.160 & 285C.165

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. & cert. ef. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0500; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4110

Compensation Standard

For purposes of ORS 285C.160:

(1) To qualify for the additional one or two years of exemption on qualified property in an enterprise zone outside the Metro/Portland area regional urban growth boundary:

(a) All of an eligible business firm's Affected Employees must on average receive Compensation of not less than 150 percent of the County Average Annual Wage; and

(b) This requirement must be satisfied for and during each year throughout the exemption's first three years and the additional one or two years.

(2) Under ORS 285C.160(3)(a)(A) or 285C.165, as described in OAR 123-065-4100(1)(b), the County Average Annual Wage is fixed during the entire enterprise zone exemption period.

(3) For purposes of section (1) of this rule, the regular yearlong Compensation (excluding bonuses and so forth) associated with any applicable position that is temporarily vacant due to unforeseen circumstances at any time during the year may be used in computing the annual average Compensation for all such Affected Employees.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.160, 285C.165 & 285C.240

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. & cert. ef. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0510; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4120

Written Agreement Between Sponsor and Eligible Business Firm

For purposes of the written agreement that is required between the sponsor of an enterprise zone and an eligible business firm under ORS 285C.160 and 285C.175(2)(b):

(1) 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 authorization is fulfilled according to OAR 123-065-4345.

(2) Both the eligible business firm seeking an extended enterprise zone exemption and the sponsor of the zone (see OAR 123-065-2550) must formally authorize the written agreement.

(3) The written agreement shall specify whether the total period of abatement is four or five consecutive years.

(4) Notwithstanding section (1) of this rule, if the zone sponsor rejected a firm's request for an extended tax abatement, and the authorization application is subsequently approved, but the commencement of construction, modification or installation of qualified property has not yet occurred, then the sponsor may reverse its decision and enter into a written agreement, based on a resubmitted application under ORS 285C.140.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.160 & 285C.175

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0520; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4130

Additional Reasonable Requirements

For the sponsor of an enterprise zone that approves an extended abatement and requests additional requirements of an eligible business firm under ORS 285C.160:

(1) All such additional requirements must be specified in the required written agreement between the eligible business firm and the zone sponsor as described in OAR 123-065-4120.

(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 285C.175.

(3) Such additional requirements shall conform to OAR 123-065-2500 to 123-065-2599.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.160 & 285C.240

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0530; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4140

Appeal Rights

In regard to an extended abatement under ORS 285C.160 and the requirements therein, an eligible business firm shall have the same rights of appeal as provided elsewhere in ORS 285C.050 to 285C.250 for the authorization 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), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.160 & 285C.175

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0540; EDD 1-2005, f. & cert. ef. 2-25-05

Standard Exemption: Business Eligibility

123-065-4200

Definitions

(1) "Destination resort" as used in ORS 285C.070 and 285C.135(5)(c) (consistent with OAR 150-285C.180) 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.

(2) "Hotel" or "motel" as used in ORS 285C.070 and 285C.135(5)(c), consistent with ORS 699.005 (and OAR 150-285C.180), 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) "Separate" as used in ORS 285C.135(3) 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), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.070 & 285C.135

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; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0600; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4220

Basic Eligibility for Business Firms and Operations

For purposes of determining the eligibility of a business under ORS 285C.135(1) to be authorized or to qualify for an enterprise zone exemption under ORS 285C.175:

(1) The firm must (when qualified) 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 285C.135) but are not limited to:

(a) Industrial processes or services such as cleaning, coating, curing, kiting, labeling, laminating, packaging, refining, smelting, sorting or treating;

(b) Generation or co-generation of electricity, steam or heat;

(c) Recycling of post-consumer or post-production materials or wastes;

(d) Nonretail, in-shop refurbishment or restoration of equipment or machinery;

(e) Maintenance service or repair work on vehicles, products, parts or devices, performed on a nonretail 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;

(l) Wholesaling, which may include complex transactions for single-item purchases by other businesses of large equipment involving contracts, factory-ordered specifications or other attributes distinguishing the sale from retail; or

(m) Production of agricultural, mineral, timber or other primary goods or commodities.

(4) As a matter of principle, eligibility and ineligibility are mutually exclusive for purposes of ORS 285C.135, such that if a firm or an activity of the firm is eligible, it is 'not' ineligible, and to be not eligible, it must be ineligible.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.135

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; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0620; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4230

Ineligible Activities

For purposes of ORS 285C.135(2):

(1) The following activities are ineligible, and property used in these activities may not qualify for an enterprise zone exemption, regardless of the activity 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 to the patron or user;

(e) Child care or similar services;

(f) Provision of health care, medical services or similar services to patients;

(g) Professional services, such as accounting, communications, design, engineering, legal advice or management;

(h) Actuary, appraisal, banking, brokerage, extension of credit, insurance, investment, money lending or similar financial services;

(i) Leasing or management of real estate;

(j) Provision of residential housing for purchase or lease;

(k) Construction or modification of real property 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 OAR 123-065-4220, an activity is eligible in the following cases, despite being listed in:

(a) Subsection (1)(d) through (i) or (n) of this rule, in the case of a facility described and allowed by OAR 123-065-4280 (Headquarter Facilities);

(b) Subsection (1)(a), (d), (g), (h) or (n) of this rule, in the case of operations described and allowed by OAR 123-065-4270 (Call Centers);

(c) Subsection (1)(a) through (h) or (n) of this rule, in the case of Electronic Commerce operations, as described in OAR 123-065-7100, and located in an area designated as described in OAR 123-065-7200 to 123-065-7500; or

(d) Subsection (1)(a) through (e) or (n) of this rule, in the case of a hotel, motel or destination resort in an enterprise zone identified or described in OAR 123-065-4260, if the activity is:

(A) Located at the same general location as the hotel, motel or destination resort;

(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 is eligible, regardless of the presence within the enterprise zone of one or more activities listed in section (1) of this rule, if the requirements of OAR 123-065-4240 or 123-065-4250 are satisfied.

(4) Activities described in subsections (1)(b) through (i) or (n) of this rule (and the associated employees and property) are eligible, if performed:

(a) In direct support of an eligible business firm's operations, or as amenities for eligible employees/personnel;

(b) Within the same enterprise zone; and

(c) To support or benefit operations/personnel located mostly inside the zone, such that if more than 25 percent of the activity supports or benefits the firm's operations *outside* the zone in terms of person-time or costs, then the requirements of OAR 123-065-4280 for headquarter-type facilities must be fulfilled.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.135 & 285C.185

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; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0630; EDD 16-2002, f. 9-12-02 cert. ef. 9-15-02; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4240

Eligible Business Firm with Ineligible Activities

For purposes of ORS 285C.135(3):

(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 at a separate operation of the firm; and

(c) Regardless of the degree to which an ineligible activity represents the firm's main commercial pursuit.

(2) An eligible business firm's "employees of the firm [who] work a majority of their time in eligible operations," as used in ORS 285C.200(3)(b):

(a) Includes any employee who performs any of the firm's eligible activities as described in OAR 123-065-4220 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, consistent with OAR 123-065-4230(4); and

(c) Excludes positions and persons dedicated primarily to ineligible activities such as those listed in OAR 123-065-4230(1).

(3) Any requirement of an eligible business firm to hire, maintain or compensate employees under ORS 285C.050 to 285C.250 applies only to employees "included" in section (2) of this rule that work at locations inside the enterprise zone (or within 30 miles as applicable).

(4) An eligible business firm or the local zone manager shall see that the authorization application indicates distinctions relevant to this rule, and the local zone manager shall be prepared to assist the firm and the county assessor in determining the property or portions of such

property that qualify according to OAR 123-065-4325(3)(e)(A) and 123-065-4510(1).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.135, 285C.200 & 285C.210

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; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0640; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4250

Gross Receipts Test

(1) A gross receipts test may be used in determining the eligibility of a business firm or business operation that partially involves an ineligible activity, but only if:

(a) There are Applicable Gross Receipts;

(b) The firm is not eligible as described in OAR 123-065-4230(2); and

(c) For lack of definitive or physical separation, the ineligible activity cannot be effectively isolated from eligible activities.

(2) The business firm or operation passes the gross receipts test and may otherwise be eligible for authorization or qualification in the enterprise zone, if the ratio of Applicable Gross Receipts to Ineligible Receipts equals or exceeds 4.0.

(3) In order for this gross receipts test to be effective, the local zone manager shall see that the application for authorization includes:

(a) An explanation of the eligibility of the firm or operation consistent with this rule; and

(b) Arrangements to substantiate this for the firm's future qualification, as appropriate.

(4) **Applicable Gross Receipts** as used in this rule are based on:

(a) Sales revenue derived directly from a party external to the firm in exchange for goods, products, commodities, merchandise, work or services;

(b) Operations located entirely inside the enterprise zone;

(c) All activities of the firm within the enterprise zone;

(d) An annual total for the most recent fiscal year or calendar year; and

(e) The 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 authorization.

(5) **Ineligible Receipts** as used in this rule are that subset of the same Applicable Gross Receipts that arise from an ineligible activity described in OAR 123-065-4230(1), including but not limited to 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), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.135 & 285C.140

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; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0650; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4260

Local Option for Hotels, Motels and Destination Resorts

(1) For purposes of eligibility under ORS 285C.135(5)(c) for an exemption under ORS 285C.175 (but not ORS 285C.170) on qualified property owned or leased and operated by a business firm as a hotel, motel or destination resort, the firm and the property must:

(a) Satisfy all applicable requirements of the enterprise zone; and

(b) Be located in a zone where such firms are eligible under ORS 285C.070 or section 56(1), chapter 662, Oregon Laws 2003, as described in section (2) or (3) of this rule.

(2) For subsection (1)(b) of this rule, allowable zones include at the time of the last amendment of this rule (subject to later revocation):

(a) The entire area of any one of the following 30 Enterprise Zones: Baker City/County, Bay Area, Cascade Locks/Hood River, CTUIR Tribal, Coquille Valley, Cottage Grove/Southern Lane County, Dallas/Independence, Grant County, Grants Pass Area, Grande Ronde, Harney County/Burns/Hines, Harrisburg, Huntington, Josephine Champion, Klamath Falls/Klamath County, Lakeview, Lower Columbia Maritime, Lower Umpqua, Malheur County, Prineville/Crook County, Roberts Creek, St. Helens/Columbia City, Sherman County, South Douglas County, South Santiam,

Sutherlin/Oakland, Sweet Home, The Dalles/Wasco County, Tillamook or Willow Creek Valley; and

(b) The Lincoln County Enterprise Zone, except for areas in the incorporated territory of the cities of Depoe Bay and Lincoln City.

(3) For subsection (1)(b) of this rule, an allowable zone includes but is not limited to a future enterprise zone that is acknowledged by Director in the order of designation as having opted to exempt such qualified property under ORS 285C.070 as described in OAR 123-065-1520(7).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.070, 285C.135 & 285C.185

Hist.: EDD 9-2000, f. & cert., ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4270

Call Centers

For purposes of ORS 285C.135(5)(a):

(1) A business firm and its operations are eligible, regardless of retail or financial services, if:

(a) They serve the firm's clients through computer, electronic, telephony or other telecommunication methods;

(b) Such customers of the firm's client are not contacted without some sort of prior elicitation, but rather the firm responds to an unsolicited order or other prior instruction, including but not limited to:

(A) Follow-up to pledge or expression of interest, which need not have been made to the firm itself;

(B) Checking with users of client-supplied goods or services, for example, to continue or renew recently expired membership, contract, etc.;

(C) Collection of voluntarily incurred dues, fees or other charges payable to the client; or

(D) Other comparable activities distinct from telemarketing; and

(c) No more than 10 percent of the customers or business transactions come from inside the local calling area, in which telephone calls are normally made to and from the firm's location in the enterprise zone without long distance telephone charges.

(2) The percentage in subsection (1)(c) of this rule is:

(a) First substantiated by a written explanation of the proposed operations by the firm or local zone manager in the application for authorization;

(b) Not predicated on the actual transaction or customer communication being conducted through a paid telephone call, but only on relative location, as if it were;

(c) Calculated by dividing the number of customers or transactions in the local calling area by the firm's total, arising from the operations in the zone; and

(d) Not dependent on precise calculation or verification, if the generally regional or national extent of the firm's activities allow for reasonable assumption of compliance, otherwise the firm shall provide specific evidence thereof.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.135

Hist.: EDD 9-2000, f. & cert., ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4280

Headquarter Facilities

For purposes of ORS 285C.135(5)(b):

(1) A business firm and its operations are eligible, regardless of retail, financial, professional or other such ineligible activities, if:

(a) The business firm is operating at two or more sites or in significant ways outside of the enterprise zone;

(b) The operations in the zone support or serve the firm's other operations throughout this state or throughout a multiple-state or larger region; and

(c) In approving the application for authorization, the local zone manager includes a formal finding of the sponsor under ORS 285C.140(7), consistent with section (2) of this rule.

(2) The formal finding for subsection (1)(c) of this rule shall:

(a) Describe how the proposed investment and the business firm will satisfy subsections (1)(a) and (b) of this rule, including indications of applicable services, relevant region and the relationship among intra-firm operations;

(b) State that the proposed investment is significant for the enterprise zone and the local economy; and

(c) Succinctly explain the reasons for this significance, such as the following:

(A) Size of the firm's anticipated operations relative to local measures of commerce or economic size;

(B) Relative quantity or type of new employees or job opportunities associated with the investment;

(C) Critical use of special sites, diversification of local economy or benefits for other business firms;

(D) Enhancement or fulfillment of strategic, marketing or visibility objectives of the zone; or

(E) Immediate impacts of investment.

(3) As required under ORS 285C.180(2)(g), the business firm may not qualify for the exemption under ORS 285C.175, if the proposed investment as described in section (2) of this rule does not essentially conform to the actual investment in qualified property.

(4) The local zone manager may modify the formal finding prior to an authorized business firm qualifying for the exemption.

(5) For purposes of requirements described in OAR 123-065-4400 to 123-065-4499, as provided under ORS 285C.200(7)(b)(B), the employees working at a facility that is eligible only as described in this rule shall be counted apart from all other eligible employees of the firm.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.135, 285C.140, 285C.180 & 285C.200

Hist.: EDD 9-2000, f. & cert., ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

Standard Exemption: Authorization

123-065-4300

Definitions

(1) For purposes of OAR 123-065-4300 to 123-065-4399:

(a) **Application** means the latest revision of the Department of Revenue form 150-303-029, Oregon Enterprise Zone Authorization Application, inclusive of attachments.

(b) **Approval Form** means the latest revision of the Department of Revenue form 150-303-082, **Oregon Enterprise Zone Authorization Approval**.

(c) **Firm/applicant** means a business firm that is seeking to have an Application approved in order to be authorized in an enterprise zone as defined in ORS 285C.050(2).

(2) As used in ORS 285C.140(1), "eligible employees" means employees engaged in eligible activities or operations as described in OAR 123-065-4200 to 123-065-4299, who will be associated with the proposed investment or investments, for which the eligible business firm is applying for authorization.

(3) As used in ORS 285C.140(2), "estimate" and "estimated" mean current expectations of the owners, managers and executives of an eligible business firm, based on the best information available at the time, and shall not be construed as binding in and of themselves.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140

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; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0700; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4310

Applying for Authorization

For purposes of ORS 285C.140(1):

(1) In applying for authorization with the sponsor of an enterprise zone and the county assessor, the Firm/applicant shall:

(a) Fill out the Application as completely as the Firm/applicant is capable of doing;

(b) Have the Application signed and dated by an owner, executive officer or legally authorized representative of such an owner or officer of the Firm/applicant; and

(c) Submit the Application by mail or otherwise to the local zone manager.

(2) In order for the Application of the Firm/applicant to be accepted for approval, all of the actions described in section (1) of this rule must be accomplished before:

(a) The Firm/applicant's hiring of any eligible employee to qualify under ORS 285C.200; and

(b) Any physical work, such as construction or reconstruction of a building or structure, construction of an addition or modifications to an existing building or structure, or installation of machinery or equipment, comprising all or part of the qualified property, for which the Firm/applicant proposes to claim the exemption under ORS 285C.175.

(3) Physical work for purposes of subsection (2)(b) of this rule includes site preparation that leads directly to construction, modification or installation of qualified property, such as fill, grading or leveling on raw land or the installation of underground utilities and utility connections, except for offsite development.

(4) A faxed, e-mailed or similarly furnished copy of the Application may be used in lieu of subsection (1)(c) of this rule, if the copy is:

(a) Received by the zone sponsor prior to the time described in section (2) of this rule;

(b) Promptly followed up by a hard-copy, signed original to the local zone manager; and

(c) Executed, or accompanied by evidence that the Firm/applicant stands behind it.

(5) Conformity with 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/affidavit 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 an authorization filing fee, if directed to do so by the local zone manager, as described in OAR 123-065-0220.

(7) If an Application is not timely received by the local zone manager as described in 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.

(8) In the event that an Application is appropriately replaced under ORS 285C.140(3) or otherwise, the original submission date of the previously completed Application may be used to satisfy sections (1) and (2) of this rule if the originally proposed investment would have served comparable business purposes.

(9) Exceptions to section (2) of this rule are listed in OAR 123-065-4313.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.140(1)(c) & (12)(a)
Stats. Implemented: ORS 285C.140 & 285C.145
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; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0710; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4313

Late Application Submission

For purposes of applying for authorization in an enterprise zone:

(1) An Application may be accepted after certain physical work, in accordance with OAR 150-285C.180(3)(b), and/or if the physical work consists only of:

(a) Demolition, cleanup and so forth;

(b) On-site delivery, storage or upkeep of qualified property prior to construction/installation; or

(c) Construction or the like that occurred and completely ceased six months or longer beforehand (insofar as any such unfinished property was not assessed before the effective date of the enterprise zone's designation or relevant boundary change).

(2) The Application may be accepted after the commencement of hiring or physical work (but not later than December 31 immediately before the first year in which the exemption under ORS 285C.175 is initially claimed) if it:

(a) Is approved in accordance with OAR 123-065-4315 for a building/structure that is bought or leased by the Firm/applicant; or

(b) Replaces a previously submitted Application, consistent with OAR 123-065-4310(8), for any of the following reasons:

(A) To account for a change in the Firm/applicant's name, nature and so forth;

(B) To recognize a change in ownership of property as described in OAR 123-065-4380; or

(C) To effect extensive amendment or corrections to information in the original Application, including but not limited to a change in the location of qualified property within the same zone.

(3) Under ORS 285C.140(11) and (12), an Application may be accepted after the commencement of hiring or physical work, if it is approved before the qualified property is subject to property taxes:

(a) As specifically allowed in an administrative rule in this division or in chapter 150; or

(b) Pursuant to a waiver issued by the Department of Revenue consistent with OAR 150-285C.140(12).

(4) Physical work or hiring may even be completed when the Application is submitted as described in section (2) or (3) of this rule.

(5) This rule does not:

(a) Necessarily allow property previously assessed for taxation inside the zone to be exempt under ORS 285C.170 or 285C.175 (even if that is possible for other reasons, see OAR 123-065-4540).

(b) Relieve the Firm/applicant of any requirement, procedure, deadline or the like related to:

(A) Being authorized under ORS 285C.140;

(B) Renewing the authorization under ORS 285C.165; or

(C) Claiming an exemption under ORS 285C.220.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.140(12)(a)

Stats. Implemented: ORS 285C.140 & 285C.145

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4315

Authorization with Newly Acquired Buildings

A qualified 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 under ORS 285C.145(2):

(1) The submission and **approval** of the Application must occur before the Firm/applicant begins to actually 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 or purchase agreement for the qualified building or structure with the Application, in order for the Application to be approved.

(3) This rule does not apply to the following:

(a) Any machinery or equipment, in that installation of machinery or equipment must commence after submission of the Application, except for newly installed real property machinery or equipment that is included in the same lease or sales contract as the building or structure;

(b) Buildings or structures that are or were actually owned or leased by the Firm/applicant at any time before the commencement of construction, reconstruction or modifications; or

(c) A Firm/applicant that has any familial, employment, corporate or other such entity relationship with the (prior) owner of the building or structure.

(4) A building or structure that is authorized as described in this rule may be granted the exemption under ORS 285C.175, even though it had been previously assessed for taxation, if:

(a) Assessment did not precede the effective date of the enterprise zone's designation or relevant boundary change;

(b) The building, structure or applicable portion thereof has not previously been used or occupied; and

(c) All other requirements under ORS 285C.175 and 285C.180 are met.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140 & 285C.145

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; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0750; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4318

Amending the Application

Whether before or after approval under ORS 285C.140(6), an Application may be amended:

(1) Such amendment by the Firm/applicant through written explanation to the local zone manager and county assessor is strongly encouraged, whenever information in the submitted Application is significantly inaccurate because of:

(a) An inadvertent error or omission;

(b) A change in plans; or

(c) Similar reason.

(2) An amendment is not usually necessary to secure an exemption under ORS 285C.170 or 285C.175 on qualified property, as information in the Application about property and timing does not serve a regulatory function, but it does need to be revised if it:

(a) Materially misstates the existing employment of the firm in the zone (or at sites within 30 miles from which jobs will be transferred) such that a revised, lower figure must be clearly substantiated;

(b) Gives the wrong location for the property;
(c) Describes or estimates the value of qualified property in a way that will be substantially inconsistent with the actual investment, but only in relation to OAR 123-065-4280(3) or 123-065-8400(2); or

(d) Does not in any way identify a general type of otherwise qualified property that will be part of the actual investment, per 123-065-4355(2) and (3).

(3) Notwithstanding the fact that failure to amend the Application may prevent an exemption under ORS 285C.175 on all or only certain otherwise qualified property, no amendment may occur after December 31 immediately before the first year, in which the exemption is initially claimed.

(4) An authorization renewal statement under ORS 285C.165 shall include appropriate revisions to information in the Application, especially with respect to anticipated timing for the investment.

(5) Once the Application is approved, and the Firm/applicant is authorized, such an amendment may not be used to make or alter a determination, waiver, extension or the like under ORS 285C.150, 285C.155, 285C.160, 285C.200(2) and 285C.205.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.145, 285C.165, 285C.180 & 285C.220

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4320

Processing of Application by Local Zone Manager

Following submission of an Application:

(1) The local zone manager may collect an authorization filing fee as described in OAR 123-065-0220.

(2) The local zone manager shall deny the Application if finding that:

(a) The Firm/applicant does not fulfill any basis for eligibility under ORS 285C.135;

(b) The Firm/applicant is unwilling or unable to unambiguously commit to an action/obligation as required under ORS 285C.140(2);

(c) The Application was submitted too late as described in OAR 123-065-4310 and 123-065-4313;

(d) Location of proposed qualified property is outside the enterprise zone boundary and no relevant boundary change is pending (or possible); or

(e) Other reason that precludes authorization.

(3) When authorization is denied per section (2) of this rule, the local zone manager shall within 15 business days of the denial:

(a) Refund any authorization filing fee that was paid;

(b) Write a letter to the Firm/applicant that justifies the denial;

(c) Send copies of the letter to the county assessor, Department of Revenue and the Department; and

(d) Ensure that the letter:

(A) Is sent to the Firm/applicant through certified mail or in such a way that the date of receipt can be verified; and

(B) Contains information on the Firm/applicant's rights of appeal under ORS 305.404 to 305.560 to the Magistrate Division of the Oregon Tax Court.

(4) If there is no apparent reason to deny authorization, per section (2) of this rule, then the local zone manager shall conduct a preauthorization consultation and prepare a summary about it, as described in OAR 123-065-4323 and 123-065-4325.

(5) With respect to a sponsor's failing to authorize under ORS 285C.140(9), a Firm/applicant may proceed with an appeal after 30 days following the submission of the Application, if no formal action is yet to be taken as described in this rule or in response to special circumstances, such as those indicated in OAR 123-065-4340(4) and (5).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140

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; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0720; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4323

Pre-Approval Consultations

The preauthorization consultation under ORS 285C.140(4) is a trouble-shooting exercise to increase the certainty of a Firm/applicant's compliance with enterprise zone requirements through anticipatory issue-identification and preparations for verification:

(1) The consultation must occur after:

(a) A substantially complete Application is available for review; and

(b) Providing notice and reasonable opportunity for the county assessor's office to participate, according to local practices and understandings.

(2) The consultation may be:

(a) Conducted informally, by conference call and so forth for purposes of convenience and expediency;

(b) Handled by an assistant or designee of the local zone manager;

(c) Accomplished without actual representation by the county assessor; or

(d) Undertaken (and summarized) in the same context and more or less simultaneously with the completion and submission of the Application and subsequent processing of the Approval Form.

(3) Besides concerns about the Firm/applicant's eligibility or ability to be authorized, the consultation shall address matters affecting future qualification, including but not limited to the following:

(a) Request for extended abatement or other special cases as described in OAR 123-065-4328(2) or (3) or 123-065-4340(4) or (5), if germane;

(b) Confirmation of the computed annual average employment prior to the Application's submission;

(c) Level of confidence that new hiring (and compensation if applicable) will satisfy minimum requirements for employment of the firm in the zone:

(A) To initially qualify; and

(B) Throughout the exemption period;

(d) Arrangements for Firm/applicant to enter into a first-source hiring agreement under ORS 285C.215 as described in division 070 of these administrative rules;

(e) Adequacy of descriptions of proposed qualified property for purposes of OAR 123-065-4355(1) to (3);

(f) Specific, relevant restrictions for what comprises 'qualified property' that may be exempt, such as cost minima or required lease provisions; and

(g) Submissions or filings under ORS 285C.165, 285C.170, 285C.220 and 285C.225 to:

(A) Renew unused authorization after two years;

(B) Exempt qualified property assessed while in the process of construction/installation (see OAR 123-065-4800); and

(C) Claim exemption once the qualified property is placed in service.

(4) The local zone manager/designee shall also contact and consult with the Department, if any of the following (potential) problems surface:

(a) The investment in the zone could relate to employment being reduced at or transferred from another place in this state outside that zone;

(b) Firm/applicant might wish/need to delay or avoid entering into a first-source hiring agreement;

(c) Exemption is jeopardized by untimely designation or termination of the zone;

(d) Site is outside current zone boundary, whether or not a boundary change is possible or pending; or

(e) Any especially unusual situation.

(5) If the Firm/applicant's proposed qualified property would be subject to central assessment as 'utility property,' the local zone manager or assessor shall contact the Department of Revenue and advise the Firm/applicant that no exemption applies while construction is underway.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.150, 285C.155, 285C.160, 285C.180, 285C.185, 285C.200, 285C.210, 285C.215, 285C.220, 285C.225 & 285C.230

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4325

Written Summation

For the summary under ORS 285C.140(5), pursuant to the preauthorization consultation:

(1) The local zone manager or designee shall prepare a brief record of the consultation and see that it attached to or included with the Application.

(2) For most proposed enterprise zone investments that are technically unremarkable and are fully expected to generate ample new employment, the summary will need to do little more than indicate the

apparent absence of significant issues, as well as when and with whom the consultation occurred.

(3) It is recommended that the summary always mention the checking of certain critical issues, including but not limited to the following:

- (a) The accuracy, contiguity and in-zone location of the site identified in the Application;
- (b) Firm/applicant's awareness and (non-) interest in an extended tax abatement under ORS 285C.160;
- (c) Degree to which the sufficiency of employment will be problematic or really rather obvious;
- (d) Expected timing and process for obtaining a first source hiring agreement (and that county assessor will be notified otherwise); and
- (e) Whether or not only a portion of a building or structure will be subject to exemption under ORS 285C.180(5), because parts/units of the property will:

- (A) House ineligible activities;
- (B) Have separate lease or ownership; or
- (C) Be used/occupied in different times or ways.

(4) For any unusual circumstance, concern about compliance or the like, as identified in the consultation, the summary shall note relevant follow-up, duties and contingencies, including but not limited to:

- (a) Reason for special attention;
- (b) Next steps, subsequent process and so forth;
- (c) Necessary data, documentation or events;
- (d) Who does what; and
- (e) When steps, corroboration or communications (to the county assessor's office) are expected to occur, such as before or at the time:
 - (A) Approval Form is finalized;
 - (B) Construction, modification or installation of property is either commenced or completed; or
 - (C) Filing under ORS 285C.220/285C.225.

(5) For example, if there is some doubt about the future increase in employment of the Firm/applicant, the summary might run through the following:

- (a) How the expected increase could be close to or difficult to discern relative to required minimum;
- (b) The records or reports that the Firm/applicant will assemble or produce to demonstrate its eligible employment in the zone:
 - (A) After authorization but on or before April 1 of the first exemption year; and
 - (B) As an annual average during exemption period;
- (c) When and how the Firm/applicant shall share such information with the local zone manager; and
- (d) Further communication or confirmation by the local zone manager or Firm/applicant, as the county assessor could/would request or need with the filing of exemption claims.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
 Stats. Implemented: ORS 285C.140, 285C.150, 285C.155, 285C.160, 285C.180, 285C.185, 285C.200, 285C.210, 285C.215, 285C.220, 285C.225 & 285C.230
 Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4328

Approval by Local Zone Manager

After the preauthorization consultation and the attachment of the written summary:

- (1) The local zone manager shall approve the Application in order to authorize the Firm/applicant under ORS 285C.140(6), unless determining to deny it as described in OAR 123-065-4320(2) and (3).
- (2) For any special case of eligibility, the local zone manager shall address relevant matters as described in OAR 123-065-4240 or shall attach to the Application any finding or explanation needed for OAR 123-065-4250, 123-065-4270 or 123-065-4280.

(3) If the Firm/applicant's proposed investment in qualified property will be located in an *urban* enterprise zone that imposes additional conditions under ORS 285C.150 in effect at the time of authorization, the local zone manager shall:

- (a) Approve the Firm/applicant for authorization, only if the Firm/applicant has made acceptable commitments to satisfy such conditions; and
- (b) Include a standardized attachment to the Application documenting the commitments of the Firm/applicant as described in OAR 123-065-0230.

(4) Within five business days of approval (subject to any relevant step in section (2) or (3) of this rule), the local zone manager shall:

- (a) Fill out and sign the Approval Form except for the section pertaining to the county assessor;
- (b) See that the county assessor is furnished with the Approval Form and a copy of the Application (with all current attachments);
- (c) Notify the Firm/applicant of the status of the Application, as appropriate; and
- (d) Inform the local contact agency for the first-source hiring agreement as described in division 070 of this chapter of administrative rules.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
 Stats. Implemented: ORS 285C.135, 285C.140, 285C.150 & 285C.215
 Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4330

Processing by County Assessor

For purposes of completing the Approval Form:

- (1) The county assessor shall approve or deny the Application in accordance with ORS 285C.140(6) within a reasonable period after receiving the Approval Form from the local zone manager.
- (2) Within five business days of taking action as described in 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 required for the eligible business Firm/applicant to qualify;
 - (c) Remove the appropriate colored copy from the Approval Form for the assessor's records; and
 - (d) Return the remainder of the Approval Form to the local zone manager.
- (3) In the event that authorization is denied for any reason as described in OAR 123-065-4320(2), the county assessor shall include a written explanation with the materials returned to the local zone manager.

(4) For purposes of this rule, authorized county assessment staff may act on behalf of the county assessor.

(5) The county assessor may refuse to approve the Application on condition of:

- (a) Seeing a finalized version of any applicable item as described in OAR 123-065-4340(5); or
- (b) Receiving other reasonably critical information from the Firm/applicant or zone sponsor, including but not limited to the resolution of a question or concern that arose in the preauthorization consultation.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
 Stats. Implemented: ORS 285C.140
 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; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0730; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4340

Final Processing of Application

With the completion of an Approval Form by both the local zone manager and county assessor:

- (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 relative to OAR 123-065-4330(1).
- (3) If the county assessor denied the Firm/applicant's authorization, the local zone manager or county assessor shall within 15 business days of the denial:
 - (a) Refund any authorization filing fee that was paid.
 - (b) Have the respective top and colored copies of the Approval Form and the county assessor's written explanation distributed to the:
 - (A) Firm/applicant;
 - (B) Department of Revenue;
 - (C) Department; and
 - (D) Local contact agency for the first-source hiring agreement.
 - (c) Ensure that the information for paragraph (b)(A) of this section is sent to the Firm/applicant through certified mail or in such a way that the date of receipt can be verified.

(4) If the Firm/applicant requested an extended period of tax abatement from the sponsor of the enterprise zone under ORS 285C.160, the local zone manager shall:

(a) Delay final processing or distribution of the Application and Approval Form until either the written agreement has been approved as described in OAR 123-065-4120 or the zone sponsor has rejected the request;

(b) Fill in the relevant space in the Application if the request is accepted; and

(c) Provide a copy of the Application as revised per subsection (b) of this section to the Firm/applicant and (as necessary) to the county assessor.

(5) 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 285C.160 and 285C.175(2)(b);

(b) Resolution or resolutions of the governing body or bodies of the zone sponsor under ORS 285C.155 for a local waiver of the employment increase requirement (see OAR 123-065-4450); or

(c) Executed lease or purchase agreement if necessary for OAR 123-065-4315.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.145, 285C.155 & 285C.160

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; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0740; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4345

Authorization

Subject to both the local zone manager and county assessor approving the application, and to any special issue related to OAR 123-065-4325 or 123-065-4340(4) and (5) being wrapped up:

(1) 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) Department; and

(d) Local contact agency for the first-source hiring agreement.

(2) Distributions for subsection (1)(a), (b) or (c) shall include copies of the Application and attachments as appropriate or requested.

(3) For purposes of ORS 285C.050 to 285C.250 and this division of administrative rules, the Firm/applicant is not officially authorized until fulfillment of section (1) of this rule.

(4) To receive an exemption under ORS 285C.170 while work is in progress, such authorization must have occurred, although the Firm/applicant may apply as described in OAR 123-065-4800 and receive exemption under ORS 307.330.

(5) In order for the eligible business firm to be granted the exemption under ORS 285C.175:

(a) The zone sponsor/county assessor shall authorize the firm before it files its initial claim for exemption with property schedule under ORS 285C.220 and 285C.225.

(b) Such an exemption claim may be provisionally filed pending authorization that has been delayed for extenuating circumstances that are no fault of the Firm/applicant, but authorization must occur before the firm may qualify for the exemption.

Stat. Auth.: ORS 285A.075(5), ORS 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.170, 285C.175, 285C.220, 285C.225

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4355

Authorization's Effect on Exemption

Authorization is primarily intended to establish and address critical issues related to a Firm/applicant's knowledge of the enterprise zone, the eligibility of its business activity, existing employment level and so forth, and as such, property is **not** being 'authorized' for exemption under ORS 285C.170 or 285C.175. However:

(1) Under ORS 285C.180(2)(e), otherwise qualified property may be exempt only if located as indicated in the Application, such that this location:

(a) Must represent a single area of operation;

(b) May encompass a complex of contiguous lots or parcels of land or a comparably proximate set of multiple sites; and

(c) Must be accurately and inclusively identified.

(2) An authorized business firm's exemption is not normally restricted by what is or is not contained in the Application's description or estimated value of qualified property to be constructed, added, modified or installed, but there are two exceptions where the description really matters:

(a) Special cases in relation to OAR 123-065-4280(3) or 123-065-8400(2), in which substantial consistency is required; and

(b) As described in section (3) of this rule (except for qualified property of a firm engaged in electronic commerce in a so-designated area).

(3) Under ORS 285C.180(2)(f) and consistent with section (2) of this rule, the following property may not be exempt, if not at least generically identified in the Application's description:

(a) A distinct building or structure for which the cost of construction, reconstruction or modifications is \$50,000 or more.

(b) A basic category of property, regardless of cost, in that something must be included in terms of:

(A) Newly constructed buildings/structures;

(B) Additions to or modifications to existing buildings, structures or portions thereof;

(C) Newly installed real property machinery or equipment;

(D) Modifications to real property machinery or equipment under ORS 285C.190; or

(E) Newly installed personal property.

(4) For purposes of this rule, information in the Application shall be used either as originally submitted or as amended consistent with OAR 123-065-4318.

(5) The Application provides for the exemption of qualified property, as otherwise allowed by this rule, over not more than three successive years under ORS 285C.225(2)(b), such that:

(a) Once an exemption is claimed and granted pursuant to the Application, subsequent exemptions may be claimed pursuant to the same Application only in one or both of the next two years;

(b) Such exempt additional qualified property must be placed in service during the first or second year of the initial exemption;

(c) Additional qualified property covered by each such subsequent exemption must be included in a property schedule filed with the exemption claim for that and the prior property; and

(d) Each exemption as described in this section shall enjoy its own exemption period of equal length, and they shall overlap.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.170, 285C.175, 285C.180, 285C.185, 285C.190, 285C.220 & 285C.225

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4365

Further Applications

Although amendment of a single existing Application as described in OAR 123-065-4218 is encouraged to minimize the number of Applications that an authorized business firm has outstanding, a firm may be concurrently approved for two or more Applications. Moreover:

(1) Authorization under another Application is necessary for situations that may not be dealt with by a single Application, as described in OAR 123-065-4355, such as investments in qualified property:

(a) At more than one distinct location in the enterprise zone;

(b) Beyond the three-year time frame; or

(c) That are not adequately described in terms of representation by a basic class of property (or where substantial consistency is demanded) and the first assessment date for the initial exemption has occurred.

(2) For any subsequent Application even if for proposed property at the same site:

(a) It must be timely submitted, as described in OAR 123-065-4310 and 123-065-4313; and

(b) It establishes unique employment criteria under ORS 285C.200 and 285C.210 for exempting qualified property, with which it is specifically associated (see OAR 123-065-4480).

(3) Neither OAR 123-065-4318, 123-065-4355 nor this rule shall be construed in any way as prohibiting an exemption on qualified property of a properly authorized business firm as otherwise allowed under ORS 285C.050 to 285C.250.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.170, 285C.175, 285C.180, 285C.185, 285C.190, 285C.220 & 285C.225

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4375

Renewal of Active Status

Under ORS 285C.165 an eligible business firm's authorization in an enterprise zone becomes 'inactive' after more than two years, such that:

(1) The authorization remains active for:

(a) The remainder of the year after the Application is fully approved as described in OAR 123-065-4345;

(b) The two-year period that immediately follows; and

(c) Each two-year period directly thereafter, subject to a statement of renewal as described in subsection (2)(b) of this rule.

(2) Authorization remains 'active' if immediately after the timeframe, as described in section (1) of this rule, the actively authorized business firm:

(a) Files under ORS 285C.220 and 285C.225 to claim the exemption on qualified property that was placed in service during such timeframe, pursuant to the Application; or

(b) Submits a written statement between January 1 and April 1 (as promptly received by both the local zone manager and the county assessor's office) that:

(A) Comes from and is endorsed by the firm consistent with authority required for Application;

(B) Says/affirms that the firm still intends to complete its proposed investment in qualified property inside the zone and to claim the exemption;

(C) Revises or amends information in the Application with respect to at least the expected timing of investment activities; and

(D) Formally accepts a resetting of the county average annual wage applicable to any compensation standard as described in OAR 123-065-4100(1)(b)(B).

(3) An inactively authorized business firm retains its right to claim the exemption after the timeframe described in section (1) of this rule, but letting active status lapse has the following consequences:

(a) The claim must be accompanied by the filing fee under ORS 285C.165(3); and

(b) The county average annual wage applicable to any compensation standard is reset as described in OAR 123-065-4100(1)(b)(C).

(4) Moreover, an inactively authorized business firm may not receive exemption under ORS 285C.170, while qualified property is in the process of construction, modification or installation, but it may still seek exemption under applicably comparable provisions of ORS 307.330 and 307.340.

(5) This rule no longer applies once:

(a) Exemption is granted under ORS 285C.175; or

(b) The zone terminates under ORS 285C.245 (see OAR 123-065-4600 to 123-065-4649).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.170, 285C.175, 285C.180, 285C.185, 285C.190, 285C.220 & 285C.225

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4380

Selling or Leasing of Property by Precertified Firms

(1) If ownership of an authorized business firm changes hands, the relevant rights and requirements of authorization may be automatically transferred along with ownership of the firm, regardless of a change in the name or mailing address of the firm.

(2) Subject to amendment of the Application, an eligible business firm that purchases or leases qualified property that was owned or leased by an actively authorized business firm may claim the exemption under ORS 285C.220 and 285C.225.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.175, 285C.220 & 285C.225

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; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0780; EDD 1-2005, f. & cert. ef. 2-25-05

Standard Exemption: Employment of Firms

123-065-4400

Definitions

(1) As used in ORS 285C.050 to 285C.250, "employee" means a position or person under ORS 285C.050(7), as explicated in OAR 123-065-4060 (and not otherwise excluded by section (2) of this rule), who:

(a) Is employed directly by the eligible business firm as defined in ORS 285C.050(6); or

(b) Works for and was individually selected by the firm, but whose services are retained through a lease or contract with the person or third-party employer.

(2) As used in ORS 285C.200 and 285C.210, "employees of the firm" or "employment of the firm" includes employees except for those who are:

(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) Regularly performing their work for the firm at a site located outside the boundary of the enterprise zone (For purposes of OAR 123-065-4420(5) or 123-065-4430(5), though, all employees at relevant sites within 30 miles of the zone boundary are considered); or

(f) Spending the majority of their time working in ineligible operations that:

(A) Are not associated with permitted activities described in OAR 123-065-4230(2); or

(B) Do not directly support eligible operations of the firm consistent with OAR 123-065-4230(4).

(3) Consistent with subsection (2) of this rule, only persons indefinitely hired for a permanent position that exists year-around at an eligible business firm's operations in the enterprise zone are normally counted. However, for purposes of OAR 123-065-4420 or 123-065-4430, temporary workers filling permanent positions may be counted, if the county assessor and the local zone manager conclude that:

(a) The firm is making every reasonable effort to fill such positions with permanent, regular hires; and

(b) The temporary workers and other potentially available job applicants are not hired permanently by the firm, because they do not meet reasonable minimum hiring standards of the firm, such as a high school diploma or equivalency.

(4) For purposes of OAR 123-065-4400 to 123-065-4499 (see OAR 123-065-4410):

(a) **Annual Employment** means the employment of the firm as averaged over the course of an assessment (calendar) year of exemption under ORS 285C.175.

(b) **Claim Employment** means the actual employment of the firm on the date when an exemption claim is filed under ORS 285C.220 or the corresponding April 1, whichever is earlier.

(c) **Existing Employment** means the employment of the firm as averaged over the 12 months preceding the date on which the authorization application is submitted under ORS 285C.140.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050, 285C.200 & 285C.210

Hist.: EDD 14-1997, f. & cert. ef. 12-4-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0800; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4410

Computation of Average Employment

(1) Annual Employment or Existing Employment is calculated such that:

(a) The actual employment of the firm at the end of each period (such as pay periods, calendar months or quarters of a year) that concludes during either the assessment year or the 12-month interval before the application for authorization shall be summed and then divided by the total number of periods.

(b) Periods longer than a quarter of a year may not be used in averaging employment, and such quarters of a year that may be used shall begin on the first of January, April, July and October.

(c) Results are rounded to a whole number equal to one or more.

(2) For purposes of determining Existing Employment relative to the submission of the application for authorization:

(a) The time when applicable physical work began shall be used instead of the submission date, whenever appropriate or necessary for special situations arising with OAR 123-065-4310 and 123-065-4313 other than OAR 123-065-4315.

(b) If such physical work has not yet begun, an authorized business firm may submit a replacement authorization application to

establish a lower level of Existing Employment; otherwise, the number from the original submission date must be used.

(c) The computed level may be revised to correct for a miscalculation as described in OAR 123-065-4318, including but not limited to erroneous counting of part-time, temporary, seasonal or ineligible employees.

(d) After the first (January-1) assessment date for exemption under ORS 285C.175, Existing Employment may be altered only to correct for a gross error, subject to a formal finding of good cause by the Department.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.140, 285C.200 & 285C.210
Hist.: EDD 14-1997, f. & cert. ef. 12-4-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0810; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4420

Employment Requirements to Qualify

In order to receive and begin an exemption from taxation on qualified property in an enterprise zone under ORS 285C.175, an authorized business firm must qualify by filing under ORS 285C.220 and 285C.225 (as described in OAR 123-065-4560), such that:

(1) The initial Claim Employment must equal or exceed the greater of one plus or 1.1 times the Existing Employment. (If the actual Claim Employment is insufficient, the requirement under ORS 285C.200(1)(c) is still met if a sufficiently high level of employment was achieved prior to January 1 but after the application of authorization, as explained in an attachment to the claim form)

(2) For a subsequent exemption on additional qualified property pursuant to the same authorization application, as described in OAR 123-065-4355(5), the requirement of section (1) of this rule is already satisfied and does not need 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 were vacant for more than 60 days at the time of the purchase or merger and were otherwise not reasonably expected to be reinstated.

(4) If section (1) of this rule is not satisfied, then the county assessor shall deny the exemption claim and not grant any exemption under ORS 285C.175 on qualified property of the authorized business firm, unless the requirement was waived by the sponsor of the enterprise zone under ORS 285C.155 and 285C.200(2) as described in OAR 123-065-4450.

(5) Under ORS 285C.200(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 section (1) of this rule, such that the respective definitions for Claim Employment and Existing Employment are also broadened to include employees located at any such site, as well as those inside the zone, unless the transfer occurred entirely:

- (a) Before the application for authorization; or
- (b) After April 1 of the first filing to claim the exemption on qualified property.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.050, 285C.175, 285C.200, 285C.220, 285C.225
Hist.: EDD 14-1997, f. & cert. ef. 12-4-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0820; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4430

Maintaining Sufficient Employment

For purposes ORS 285C.200(1)(e) and 285C.210, a qualified business firm shall report to the county assessor and the local zone manager under ORS 285C.220 (as described in OAR 123-065-4570, directly after each calendar year while the enterprise zone exemption is received), such that:

(1) Failure occurs if any of the following is not true (unless waived under ORS 285C.155 and 285C.200):

(a) The latest Annual Employment equals or exceeds the greater of one plus or 1.1 times the Existing Employment;

(b) The current Claim Employment is not less than 15 percent of any previous Claim Employment; or

(c) The current Claim Employment and the one from the prior year's claim form are both not less than 50 percent or more of any previous Claim Employment.

(2) If failure occurs relative to section (1) of this rule, then the qualified business firm shall notify both the local zone manager and

the county assessor in writing at the latest by July 1 of the year after the year in which the failure occurred, which may be:

(a) Satisfied through the filing of the exemption claim under ORS 285C.230(5).

(b) Accomplished by the owner of any qualified property that is leased by the qualified business firm.

(3) Notification of failure as described in section (2) of this rule shall result in the loss of the tax abatement covered by the same requirement pursuant to the same authorization 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 ORS 285C.240(6), as described in OAR 123-065-4950 to 123-065-4999; or

(B) The assessor disqualifies the firm under ORS 285C.240, including:

(A) Loss of future years of the exemption; and

(B) Retroactive payment with the next tax bill of applicable back taxes.

(4) If failure is discovered by the assessor or zone sponsor, but there is not timely notification as described in section (2) of this rule, then disqualification as described in subsection (3)(b) of this rule shall include the 20-percent penalty under ORS 285C.240(4) on back taxes.

(5) Consistent with the conditions in OAR 123-065-4420(5), an additional requirement must be met with respect to section (1) of this rule but only for the first year of exemption, such that the respective definitions for Annual Employment, Claim Employment and Existing Employment are also broadened to include employees located at any such site outside but within 30 miles of the zone's boundary, as well as jobs inside the zone.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.200, 285C.210, 285C.220, 285C.230, 285C.240
Hist.: EDD 14-1997, f. & cert. ef. 12-4-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0830; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4440

Diminishing Employment Zone

Under ORS 285C.200(1)(d), (4) and (5), an authorized business firm seeking an exemption in any enterprise zone may not qualify or remain qualified if the firm transferred operations into the enterprise zone in association with closures, curtailment of operations, downsizing, employment reductions, layoffs or job losses anywhere else in this state, unless:

(1) Any such originating location is 30 miles or less from the boundary of the zone in which the business firm is seeking the exemption, and the requirements of ORS 285C.200(5) and 285C.210(2)(c) are met, as described in OAR 123-065-4420(5) and 123-065-4430(5).

(2) It is demonstrated by the firm, with or without the assistance of the zone sponsor, to the satisfaction of the county assessor or the Department that any closure/job losses more than 30 miles from the zone:

(a) Occurred entirely prior to the time of application for authorization;

(b) Occur entirely after the first assessment year of exemption on qualified property;

(c) Will not be permanent, such that the jobs are reasonably anticipated to be restored, and this does in fact happen on or before December 31 of the first initial year of exemption;

(d) Pertain to business operations that are in no way controlled by the firm through common ownership, corporate affiliation or contracts governing relevant operations or through other comparable intra/inter-firm relationships;

(e) Are completely unrelated to investments in the zone, such that the curtailed operations or jobs are not being transferred into the zone and would have occurred anyway; or

(f) Have only *de minimis* impact on the local economy, in that the job losses are less than one-tenth of 1 percent (0.1%) of the most recently available figure from this state's Employment Department for annual average covered employment of the county containing the lost employment.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.200, 285C.210 & 285C.240
Hist.: EDD 14-1997, f. & cert. ef. 12-4-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0840; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4450

Local Waiver of Ten-percent Employment Increase

For purposes of ORS 285C.155, 285C.200(2) and 285C.205, in which the local enterprise zone sponsor waives the required increase in the employment of the firm, in order for an eligible business firm to qualify:

(1) The requirements as described in OAR 123-065-4420(1) or 123-065-4430(1) do not apply, but those related to not decreasing employment outside the zone still do, consistent with OAR 123-065-4420(5), 123-065-4430(5) and 123-065-4440, if relevant.

(2) To use the provisions of either ORS 285C.200(2)(b)(A) or (B), a majority of each governing body of the sponsor, as stipulated in the respective city or county charter, must each approve a resolution, such that the resolution or resolutions:

(a) Are adopted before the eligible business firm is authorized;

(b) Stipulate the minimum employment level to be maintained during the exemption as described in section (4) of this rule; and

(c) Identify any other reasonable condition that are:

(A) Jointly agreed to among the cosponsors;

(B) Implemented according to the same, commonly adopted language for standards, verification and so forth; and

(C) Subject to the applicable provisions of OAR 123-065-2500 to 123-065-2599.

(3) The resolution(s) described in section (2) of this rule shall incorporate:

(a) The statutory minimum investment amount under ORS 285C.200(2)(b)(A), which may be satisfied by the cost of qualified property that is placed in service and contained in property schedules over as many as three successive years, as otherwise allowed pursuant to a single authorization application; or

(b) For purposes of ORS 285C.200(2)(b)(B), the zone sponsor's specifications and methods for managing, measuring and enforcing the requirements under ORS 285C.205, to increase productivity by 10 percent, and to dedicate 25 percent of the property tax savings to employee training.

(4) The minimum employment as stipulated in the resolution(s):

(a) Is a single, stated number of employees;

(b) May be determined, as indicated in the resolution(s), by way of either Annual Employment or Claim Employment; and

(c) Relative to Existing Employment:

(A) May be lower for purposes of ORS 285C.200(2)(b)(A); or

(B) Shall be at least the same under ORS 285C.200(2)(b)(B).

(5) Final processing and distribution of the authorization application shall be delayed until final approval of the resolution or resolutions in section (2) of this rule, copies of which shall be included with materials distributed, as described in OAR 123-065-4340(5)(b).

(6) Prior to July 1 of the first tax year of the exemption, pursuant to the initial exemption claim and property schedule filed by the business firm under ORS 285C.220 and 285C.225, the resolution or resolutions adopted by the sponsor may be jointly modified in accordance with sections (2) to (4) of this rule, but only if so requested by the firm.

(7) Failure to satisfy the minimums, requirements or conditions, as described in this rule, shall result in the exemption's denial or disqualification consistent with OAR 123-065-4430(2) to (4), although the county assessor is in no way obligated to consider compliance with any requirement arising under ORS 285C.155 or 285C.205 without formal communication from the zone sponsor.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.155, 285C.200, 285C.205, 285C.230, 285C.240

Hist.: EDD 14-1997, f. & cert. ef. 12-4-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0850; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4460

Commonly Owned Corporate Entities

Under ORS 285C.135(4):

(1) Employment of the firm as defined in OAR 123-065-4400 does not include jobs located at and employed by any company operating inside the enterprise zone other than the eligible business firm, regardless of the extent to which the firm and the other company have common ownership.

(2) Section (1) of this rule is not applicable if the following criteria are met:

(a) The common ownership is total, such that:

(A) The firm owns 100 percent of the other company;

(B) The other company owns 100 percent of the firm; or

(C) The firm and the other company have exactly the same owner, owners or shareholders; and

(b) Before the first, initial exemption claim under ORS 285C.220, the firm notifies the local zone manager and the county assessor in writing that employees of the firm and employees of the other company are to be combined for purposes of applicable requirements of the enterprise zone exemption.

(3) If total common ownership is achieved according to paragraph (2)(a)(B) or (2)(a)(C) of this rule, the written notice as described in 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 company or corporation with 100-percent ownership of the firm or any such jointly owned company or companies.

(4) If the firm exercises the exception in section (2)(b) of this rule, then all relevant definitions and requirements of ORS 285C.050 to 285C.250 and this division of administrative rules apply to the combined hiring, compensation, employment levels and so forth of the qualified business firm and any such jointly owned company or companies in the zone.

(5) An eligible business firm is not bound by the definitions and requirements as indicated in section (4) of this rule for any other exemption received in the same or another enterprise zone and may retract the election made for subsection (2)(b) of this rule prior to the first filing of an exemption claim.

(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 285C.245(1) in the terminated zone.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.135, 285C.200, 285C.220 & 285C.245

Hist.: EDD 14-1997, f. & cert. ef. 12-4-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0860; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4470

Sale or Leasing of Exempted Property

For purposes of ORS 285C.175(2)(c):

(1) A qualified business firm as defined in ORS 285C.050(16) may sell or lease qualified property without triggering disqualification on such property under 285C.240, such that the exemption continues for the remainder of its normal period.

(2) Section (2) of this rule depends on all of the following:

(a) The qualified property continues to be located and eligibly used inside the enterprise zone.

(b) The purchaser or lessee is an eligible business firm under ORS 285C.050(6).

(c) The requirements under ORS 285C.210 as described in OAR 123-065-4430 are met, such that:

(A) The combined Annual Employment of the purchaser/lessee and the originally qualified business firm equals or exceeds what it otherwise would need to be, plus 100 percent of the annual average employment of the purchaser/lessee in the zone (as computed consistent with OAR 123-065-4410) immediately prior to the change in ownership/lease; and

(B) The combined Claim Employment shall be compared to previous Claim Employment, to which is added the total employment of the purchaser/lessee in the zone at the time of the change in ownership/lease.

(d) That the purchaser/lessee and the qualified property comply with all other applicable requirements of ORS 285C.050 to 285C.250.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050, 285C.175, 285C.210 & 285C.240

Hist.: EDD 14-1997, f. & cert. ef. 12-4-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0870; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4480

Property, Jobs and Multiple Authorizations

For purposes of concurrent exemptions under ORS 285C.175 on qualified property constructed, modified or installed pursuant to two or more applications for authorization by the same eligible business firm, consistent with OAR 123-065-4365:

(1) Separate exemption claims and property schedules shall be filed, as described in OAR 123-065-4560 and 123-065-4570, to correspond to each application and the qualified property best associated with it.

(2) Qualification shall depend on the satisfaction of employment requirements arising from the application, with which the particular property is most clearly associated.

(3) For qualified property that cannot be definitively associated with any outstanding application, qualification shall depend on satisfaction of the most effectively stringent requirement from among the outstanding applications.

(4) If qualified property is specifically identified in two or more outstanding applications, then qualification may depend on satisfaction of the least effectively stringent requirement from among the outstanding applications.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050, 285C.175, 285C.210 & 285C.240

Hist.: EDD 14-1997, f. & cert. ef. 12-4-97; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0880; EDD 1-2005, f. & cert. ef. 2-25-05

Standard Exemption: Property

123-065-4500

Definitions

For purposes of OAR 123-065-4000 to 123-065-4999, as used in 285C.050 to 285C.250, consistent with the definitions in ORS Chapter 307 and OAR 150-285C.180:

(1) "Addition" means one or both of the following as indicated by the statutory context:

(a) The re-construction of an existing building or structure to expand or enlarge its area, volume, dimensions or structural capacity; or

(b) The newly erected or created space, enclosure or annex of the building or structure, per the re/construction described in subsection (a) of this section.

(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) "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) The "completion of the construction, addition, modification or installation" of property has the same meaning as placing property 'in service' under ORS 285C.050(11) and means that qualified property is legally operable and practically ready for use or occupancy by an authorized 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) "Cost" means expenses that can be documented through existing records or retrospective compilation of evidence, and that are incurred for:

(a) Construction, reconstruction modification or installation of qualified property, including but not limited to materials, supplies, labor, paint, contractor charges, equipment usage, engineering, architectural fees and physical connections to utilities and other property, but excluding the costs associated with maintenance, financing, legal fees, off-site improvements, the authorized business firm's own management and so forth; or

(b) 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) "Installation" means the actual placement, affixing, connection or integration of machinery or equipment or personal property 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 such property.

(7) Subject to further definition in OAR chapter 150 under ORS 285C.185(6)(b), "item" means any personal property that may be effectively appraised or assessed as a unit, including but not limited to an entire conveyance, information or other system, the various components of which are mechanically, electrically or similarly integrated.

(8) "Land" means raw undeveloped land and any improvements to the land for site development.

(9) "Located in/inside 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 from it during the exemption period, except for incidental reasons or for purposes of the property's repair, maintenance and so forth.

(10) "Modification" has the meaning explicated in OAR 123-065-4070.

(11) "Personal property" means any tangible 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 123-065-4520).

(12) "Production of tangible goods" means any physical process or manipulation of materials, commodities or products including but not limited to manufacturing, assembly, sorting, cooking, heating, freezing, mixing, sorting, wrapping, onsite conveyance, packaging or bulk printing.

(13) "Real property machinery 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 assembled apparatus.

(14) "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.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050 - 285C.250

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0900; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4510

Authorization & Eligible Utilization of Property

For purposes of property to be exempt in an enterprise zone under ORS 285C.170 or 285C.175:

(1) It must be exclusively for use in one or more eligible activities as described in OAR 123-065-4220, and it must not be used for any ineligible activity listed in OAR 123-065-4230(1).

(2) Consistent with section (1) of this rule, some property will typically not qualify for the exemption, including but not limited to the following examples:

(a) Commercial fixtures and space in a retail setting;

(b) A commercially operated kitchen and associated fixtures and appliances;

(c) Entertainment, recreational and exercise facilities or equipment;

(d) Medical devices; or

(e) Construction machinery.

(3) Sections (1) and (2) of this rule are excepted in the case of otherwise qualified property that is used for operations and at facilities as described in OAR 123-065-4230(2) or (4), including but not limited to being used in association with electronic commerce operations in a so-designated area, as described in OAR 123-065-7200 to 123-065-7500.

(4) Any such property must also:

(a) Belong to the authorized business firm by virtue of ownership or formal lease agreement;

(b) Adequately relate to the authorization application in accordance with OAR 123-065-4355; and

(c) Be constructed, added to, modified or installed in the zone to serve commercial/non-personal purposes, for which it is all but exclusively utilized.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.135, 285C.180, 285C.185 & 285C.240

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0910; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4520

Mechanical, Personal and Unqualified Property

For purposes of the property to be exempt in an enterprise zone under ORS 285C.170 or 285C.175:

(1) Real property machinery or equipment or personal property may qualify for the exemption, despite prior usage *outside* the zone (or as allowed under ORS 285C.190), taking account of the usual factors of appraisal, such as age, deterioration and obsolescence, as well as any reconditioning, refurbishment or restoration.

(2) Neither real property machinery or equipment (except as allowed under ORS 285C.190) nor personal property may qualify for the exemption, if more than three months before submission of the authorization application it was already both:

(a) Owned or leased by the business firm; and

(b) Located in the county containing the site of the property inside the zone.

(3) An *item* of personal property machinery or equipment with a cost of less than \$50,000 may qualify for the exemption only if used:

(a) Exclusively in the production of tangible goods, which by itself will usually preclude furniture and most simple, ordinary communication, design, information, office or video machines/systems; or

(b) In Electronic Commerce as described in OAR 123-065-7100 and at a location in a so-designated area as described in OAR 123-065-7200 to 123-065-7500. (No other special eligibility exception replaces subsection (a) of this section)

(4) For purposes of subsection (3)(a) of this rule, the exemption shall apply to any personal property *item* of machinery or equipment that does the following:

(a) Serves the business firm's commercial activity, consistent with OAR 123-065-4500(12), even if the tangible good in question is not actually created or manufactured from raw inputs, but is instead modified, processed, restored, repaired, measured, sized, imprinted, packaged, conveyed, shipped or comparably affected in a physical manner.

(b) Maintains, calibrates, adjusts, monitors, tests or fixes 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 research and development equipment incorporated into production activities.

(5) Regardless of any other provision of this division of administrative rules, the following property may not qualify for the exemption:

(a) Land and improvements "to" raw 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 other 'noninventory' supplies.

(d) Any machinery, equipment or device that moves by its own motive power under the control of its operator/driver, including but not limited to forklifts.

(e) Any self-propelled motorized vehicle.

(f) Any device or item that is pulled, pushed or carried by a vehicle and designed to hold and transport people, goods or property on highways, waterways or railways beyond the zone boundaries, including but not limited to trailers, rolling stock, barges, carriages or railroad cars.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.180, 285C.185 & 285C.190

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00,

Renumbered from 123-065-0920; EDD 16-2002, f. 9-12-02 cert. ef. 9-15-02; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4530

Buildings, Structures & Other Real Property

For purposes of property to be exempted in an enterprise zone under ORS 285C.170 or 285C.175:

(1) No building, structure or newly installed real property machinery or equipment may qualify, unless the total cost of all such property in a single property schedule (as attached to an exemption claim under ORS 285C.225) equals at least \$50,000.

(2) Qualified property, including but not limited to a building or structure, is severable under ORS 285C.180(5), such that:

(a) A part of the building or structure may be exempt, even if another part of the same building or structure is owned or leased by a different business firm, used for ineligible activities, or otherwise not subject to the same exemption, including but not necessarily as anticipated per OAR 123-065-4325(3)(e); and

(b) The amount of property value that is exempt shall be determined through *pro rata* calculation based on floor area or other reasonable method.

(3) As determined by the county assessor, a golf course or elements thereof may be classified as a structure or structures in the case of a hotel, motel or destination resort under ORS 285C.185(4).

(4) The exemption on qualified additions or modifications to an existing building or structure under ORS 285C.175(3)(b) (or to existing real property machinery or equipment under ORS 285C.190) is measured in each year of the period of exemption by:

(a) Identifying the new improvements to property attributable to those same qualified additions or 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 for purposes of 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 that would have been subject to taxation during the period of exemption).

(d) Taking the difference between the values described in paragraphs (c)(A) and (c)(B) of this section, such that any negative difference is equated to zero.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.175, 285C.180, 285C.185 & 285C.190

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00,

Renumbered from 123-065-0930; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4540

Property Already Entered on Rolls

Qualified property is not necessarily prohibited from receiving an enterprise zone exemption under ORS 285C.170 and 285C.175, even if it is already entered on the assessment roll of the county (after the effective date of the zone's designation or the area's amendment into the zone), including but not limited to the following examples, for when assessment might occur before property may be exempt:

(1) Property while in the process of construction, modification or installation is ineligible under ORS 285C.170 or 307.330, because of failure to make timely application, fulfill applicable criteria or the like.

(2) Machinery or equipment located elsewhere in the county is subsequently acquired by the authorized business firm and installed in the enterprise zone.

(3) While an administrative or judicial appeal is pending.

(4) The authorized business firm missed the first-year filing deadline but receives the remaining years of the exemption as described in OAR 123-065-4565.

(5) Other circumstances that do not necessarily nullify the exemption under ORS 285C.175.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.170, 285C.175, 285C.180 & 285C.220

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00,

Renumbered from 123-065-0940; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4550

Obligations for All Leases, Lessors and Lessees

Any qualified property that is not owned by the authorized business firm may be exempt in an enterprise zone under ORS 285C.185(3), if used, occupied or operated by the firm under a lease agreement, such that:

(1) The lease agreement is not required with the authorization application, except as described in OAR 123-065-4315, but it must:

(a) Be executed no later than July 1 of the first tax year of exemption under ORS 285C.175; and

(b) Not expire before the end of the final tax year.

(2) The owner of leased qualified property may be any person or corporation, including but not limited to a governmental body or an owner of the firm.

(3) The lease agreement must effectively operate as a net lease, inasmuch as:

(a) All *ad valorem* taxes assessed against any property covered by the lease agreement are directly paid by or collected from the firm/lessee; or

(b) The owner of the property is or will be compensated in full for such property taxes in addition to rent or other costs throughout the period of the lease.

(4) The stipulation of a net lease is irrelevant if the owner and lessee are commonly owned and treated as a single eligible business firm according to OAR 123-065-4460.

(5) The owner of any such qualified property (even machinery or equipment) must join the firm in filing the property schedule as an attachment to the exemption claim form under ORS 285C.225(4)(d) for the first exemption year, such that the owner or the owner's authorized legal agent signs one of the following:

(a) The same property schedule that has the original signature of the firm's representative; or

(b) An attachment to the schedule that provides for equivalent acknowledgment by the owner.

(6) For purposes of this rule, the "owner" may be substituted by a lessee that sub-leases property to the firm.

(7) The owner has the same right as the firm to timely notify the county assessor and the zone sponsor under ORS 285C.240(1) if a requirement is not met, in order to avoid penalties under ORS 285C.240(4).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
 Stats. Implemented: ORS 285C.170, 285C.175, 285C.180 & 285C.220
 Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0950; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4560

Mandatory First-Year Claim with Property Schedule

For purposes of being granted an enterprise zone exemption on qualified property under ORS 285C.175:

(1) The authorized business firm:

(a) Must file the latest revision of the following Department of Revenue forms with the county assessor under ORS 285C.220 and 285C.225 to begin the exemption period:

(A) 150-310-075, **Oregon Enterprise Zone Exemption Claim**; and

(B) 150-310-076, **Oregon Enterprise Zone Property Schedule** (as an attachment that lists and identifies all of the property to be exempt);

(b) May do so only after December 31 of the year, in which the re-construction, modification or installation of qualified property is completed;

(c) Shall send copies of the forms to the zone sponsor; and

(d) Is in no way bound by dates for such completion or filing as anticipated in or with the authorization application.

(2) The property may not have been placed in service at a location inside the zone before January 1 of the year directly prior to filing the exemption claim as described in section (1) of this rule.

(3) Subsection (1)(b) of this rule is synonymous with qualified property being 'placed in service' during that year, which:

(a) May be only a portion of the entire investment proposed with authorization; and

(b) Does not include property (even if physically operable or finished) that pending completion of further work on the overall facility or investment is:

(A) Incapable of effective use or occupancy for commercial purposes; or

(B) Not yet intended to be so used or operated, subject to testing, shakedown or other general startup steps.

(4) Sections (1) to (3) of this rule dovetail and are mutually exclusive with criteria for exemption under ORS 285C.170, as described in OAR 123-065-4800.

(5) The filing as described in section (1) of this rule shall be due no later than the corresponding April 1, but may be submitted/revised later:

(a) By June 1 with a late fee under ORS 285C.220(7);

(b) By June 1 to amend a timely filed schedule form under ORS 285C.225(5); or

(c) By the following April 1 with loss of the first exemption year as described in OAR 123-065-4565.

(6) The county assessor may deny the exemption under ORS 285C.175(6) if unable to obtain critical and reasonably requested clarification, confirmation or substantiation of information missing from or supplemental to the filed forms from the:

(a) Firm under ORS 285C.220(3); or

(b) Zone sponsor under ORS 285C.230(1)(b).

(7) The county assessor shall deny the exemption to any authorized business firm with inactive status, as described in OAR 123-065-4375, if the filing does not include the fee under ORS 285C.165(3) (in addition to subsection (4)(a) of this rule if applicable).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
 Stats. Implemented: ORS 285C.165, 285C.170, 285C.175, 285C.220, 285C.225, 285C.230
 Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0960; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4565

Very Late Filing for Exemption Net First Year

Under ORS 285C.220(10), for purposes of receiving the remainder of an exemption less the first year for the late submission of an exemption claim and property schedule to the county assessor under ORS 285C.220 and 285C.225:

(1) Any authorized business firm missing the April 1 due date (as well as the June 1 late filing deadline) must submit the claim form and schedule on or before April 1 of the next year; and

(2) The firm must have complied with all applicable requirements as if the exemption were in effect during that first year.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
 Stats. Implemented: ORS 285C.220 & 285C.225
 Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-1090; Renumbered from 123-065-4690, EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4570

Filing Latter-year Claims

In order for qualified property to be exempt in an enterprise zone throughout the entire period under ORS 285C.175:

(1) The qualified business firm shall file annually under ORS 285C.220:

(a) Using the latest revision of Department of Revenue form 150-310-075, **Oregon Enterprise Zone Exemption Claim**;

(b) With the county assessor and a copy to the zone sponsor;

(c) On or before April 1 directly after every assessment year of exemption; and

(d) In addition to the first-year filing described in OAR 123-065-4560.

(2) The claim form shall also serve the exemption of other property pursuant to the same authorization, consistent with OAR 123-065-4355(5), including but not limited to the attachment of another property schedule for any new, additional qualified property.

(3) Despite section (2), this rule addresses the claim form that is filed simply for purposes of compliance in maintaining an ongoing exemption.

(4) If such a filing is not timely received by either the assessor's office or the zone sponsor, it may be accepted until August 31 under ORS 285C.220(8), but only if:

(a) Furnished to both entities; and

(b) Accompanied with the progressively larger late filing fee to the assessor.

(5) The local zone manager shall promptly alert the county assessor in the event that the zone sponsor's copy was not received or timely sent.

(6) The assessor may henceforth deny the exemption for the remainder of the period, subject to notice under ORS 285C.175(6):

(a) Pursuant to an unrequited request as described in OAR 123-065-4560(6); or

(b) Without further reason or formal procedure if:

(A) The claim form is not received (at the latest on August 31); or

(B) It is filed after April 1 but without a sufficient amount for the late filing fee.

(7) The zone sponsor or the county assessor may exercise the procedure under ORS 285C.235 to demand corroborating evidence of the firm by time/receipt-verified mail, such that:

(a) This would be the logical recourse if a claim form were not filed after the final year of exemption;

(b) This procedure is always available if the submitted information and the compliance of the firm with employment/other requirements is suspect; and

(c) Disqualification of the *entire* exemption ensues:

(A) Automatically, if the firm does not satisfactorily respond within 60 days; or

(B) Most likely with the penalty under ORS 285C.240(4), in the event that provided evidence shows that the qualified business is required to have given notice under ORS 285C.240(1)(b), (c) or (d).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
 Stats. Implemented: ORS 285C.175, 285C.220, 285C.225, 285C.230, 285C.235, 285C.240
 Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0970; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4580

Disqualification of Particular Property

An ongoing enterprise zone exemption under ORS 285C.175 is not forfeit for all qualified property of a qualified business firm, if only certain property fails to satisfy a relevant requirement, such that:

(1) Disqualification (including back taxes) shall ensue under ORS 285C.240 for any such property. (The one-year payback of tax savings under ORS 285C.240(6) does not apply)

(2) Such disqualification pertains when the exempt property no longer satisfies a relevant criterion under ORS 285C.175, 285C.180, 285C.185 or 285C.190.

(3) Section (2) of this rule includes but is not limited to the following events that occur during a calendar year while the exemption is being received, in that the particular property is:

(a) Removed from the enterprise zone;

(b) Sold, exchanged or leased to another business firm, except as described in OAR 123-065-4470; or

(c) Used ineligibly or by an ineligible business firm in violation of OAR 123-065-4510.

(4) Property is also disqualified if it is not *actually* used or occupied (notwithstanding its being placed in service):

(a) On or before June 30 of the first assessment year of exemption; or

(b) For at least 180 consecutive days concluding in any subsequent exemption year.

(5) In order for the qualified business firm to avoid the 20-percent penalty on the back taxes associated with such property-specific disqualification, notice under ORS 285C.240(1)(a), (e) or (f) is due by July 1 after the year in which failure occurred.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
 Stats. Implemented: ORS 285C.175, 285C.220, 285C.225, 285C.230, 285C.235, 285C.240
 Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0980; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4590

Designation/Amendment of an Enterprise Zone

Irrespective of 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 does not apply if the property:

(a) Would have been allowed to qualify in a terminated zone under ORS 285C.245(1), as described in OAR 123-065-4600 to 123-065-4649, and the business firm is/remains actively authorized; or

(b) Is in the process of being constructed, added to, modified or installed, and such physical work is specifically excluded by OAR 123-065-4313(1) for purposes of authorizing an eligible business firm.

(3) Only as described in subsection (2)(a) (not OAR 123-065-4540 or subsection (2)(b)) of this rule may qualified property receive an enterprise zone exemption if actually listed on the assessment rolls of the county, at any site in the county on or before an effective date as described in section (1) of this rule.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
 Stats. Implemented: ORS 285C.175
 Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0990; EDD 1-2005, f. & cert. ef. 2-25-05

Standard Exemption in Terminated Zone

123-065-4600

Purpose and Scope

OAR 123-065-4600 to 123-065-4649 address operation of the three- to five-year exemption under ORS 285C.175 on taxable

property in situations where the enterprise zone is terminated. Only as provided under ORS 285C.245(1) may an exemption be granted on qualified property within the former boundary of such an enterprise zone, subject to the usual requirements of ORS 285C.050 to 285C.250.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
 Stats. Implemented: ORS 285C.175 & 285C.245
 Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4610

Authorization

For purposes of claiming and being granted the enterprise zone exemption under ORS 285C.175:

(1) An eligible business firm is authorized if before the effective date of the zone's termination, the local zone manager receives the application for authorization, and it is approved by the zone sponsor and the county assessor under ORS 285C.140.

(2) Similarly, termination of the zone does not affect an eligible business firm's authorization that is active when the zone terminates, except as specified in this rule and OAR 123-065-4640.

(3) For an authorized business firm as described in section (1) or (2) of this rule, following termination:

(a) ORS 285C.165 (active status of authorization) is irrelevant for qualified property remaining outside of a current enterprise zone;

(b) The firm may not effectively reapply for authorization for a proposed investment under ORS 285C.245(1)(b) at the same site, unless it is also qualified in the terminated zone, and the requirements listed in OAR 123-065-4620 are met; and

(c) The authorization expires on January 1 in or directly after the 30th month of the zone's termination, such that the firm:

(A) No longer remains authorized under ORS 285C.245(1)(a) (B)(ii); and

(B) May receive exemption only on qualified property placed in service before that date.

(4) An authorized business firm described in section (1) of this rule may not apply for authorization at any site in the terminated zone under ORS 285C.245(1)(b), with the same exception as described in subsection (3)(b) of this rule.

(5) Consistent with OAR 123-065-4590(2)(a), an authorization is automatically assigned to a newly designated zone, if:

(a) The zone encompasses the site of the authorized business firm's proposed investment; and

(b) The authorization is:

(A) Active under ORS 285C.165; and

(B) Not expired as described in subsection (3)(c) of this rule.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.175 & 285C.245

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; EDD 9-2000, f. & cert. ef. 5-2-00, Renumbered from 123-065-0790; Renumbered from 123-065-4390, EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4620

Grandfathering in a Terminated Zone

(1) After the termination of an enterprise zone, an enterprise zone exemption shall be granted under ORS 285C.245(1)(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 authorization pursuant to the applicable provisions of ORS 285C.140;

(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) On the effective date of termination, the eligible business firm was actively authorized or qualified in that same zone, except as restricted by OAR 123-065-4610(3)(b) or 123-065-4630;

(d) The eligible business firm has not been disqualified under ORS 285C.245(1)(c) in the terminated zone;

(e) Construction, modification or installation of the qualified property commences on or before June 30 of the tax year in which the firm's last outstanding exemption in the zone concludes;

(f) The eligible business firm's application for authorization 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 OAR 123-065-4640;

(h) Timely exemption claim is made to the county assessor under ORS 285C.220 and 285C.225; and

(i) The authorized business firm complies with all applicable requirements of ORS 285C.050 to 285C.250 in effect when the zone terminated, including but not limited to any requirement arising from or associated with authorization.

(2) Disqualification for purposes of ORS 285C.245(1)(c) does not include either:

(a) Loss of an extended abatement under ORS 285C.240(3)(b); or

(b) Payment to the zone sponsor of the equivalent of one year's tax savings under ORS 285C.240(6).

(3) The sponsor of a terminated enterprise zone may consider, approve and enter into a written agreement with an eligible business firm for an extended abatement under ORS 285C.160, prior to final action for subsection (1)(f) of this rule.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.175 & 285C.245

Hist.: EDD 3-1996, f. & cert. ef. 4-2-96; EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; EDD 9-2000, f. & cert. ef. 5-2-00; Renumbered from 423-065-0420, EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4630

Purchase of Grandfathered Firm

An authorized or qualified business firm may not apply for authorization under ORS 285C.245(1)(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 essentially intact as a corporate entity, such as becoming a subsidiary to the purchasing corporation operating much as it did before the merger or acquisition.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.140, 285C.175 & 285C.245

Hist.: EDD 5-1998, f. 3-12-98, cert. ef. 3-15-98; Renumbered from 423-065-0430, EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4640

Timely Completion of Construction

For purposes of a proposed investment in qualified property by a business firm that is authorized in a terminated enterprise zone under ORS 285C.245(1)(a)(B)(iii) and (b):

(1) Completion of "construction, addition modification or installation within a reasonable time" means the property is placed in service no later than 18 months after the date on which any relevant construction, reconstruction, modification or installation activity commenced.

(2) "Without interruption" means for any such activity that qualified property does not remain in an unfinished state for more than six months without significant progress toward the completion of activities as described in section (1) of this rule.

(3) The property may not qualify and receive the exemption under ORS 285C.175, if section (1) or (2) of this rule is violated, except as allowed in section (4) of this rule.

(4) Section (3) of this rule is waived, and the exemption is allowed, if the Department issues a written finding to the county assessor that the violation of section (1) or (2) is reasonable and not excessive, given the nature and extent of the authorized business firm's investment or of inadvertent circumstances.

(5) The prohibitions and allowances of this rule are irrelevant if the application for authorization is:

(a) Denied or not approved, subject to appeal;

(b) Invalid in terms of its submission and so forth;

(c) Formally withdrawn by the firm; or

(d) Expired as described in OAR 123-065-4610(3)(c).

(6) Nothing in this rule shall be construed as influencing or restricting the qualification of an exemption in an enterprise zone that still exists and is not terminated.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.175 & 285C.245

Hist.: EDD 9-2000, f. & cert. ef. 5-2-00; Renumbered from 423-065-0440, EDD 1-2005, f. & cert. ef. 2-25-05

Standard Exemption: General Lawfulness

123-065-4700

Purpose and Scope

OAR 123-065-4700 to 123-065-4760 implement ORS 285C.200(1)(f), pertaining to a business firm's compliance with other laws in order to receive an exemption on property in an enterprise zone. They have been adopted pursuant to specific Legislative direction for such rules under ORS 285C.200(6).

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.200(6)

Stats. Implemented: ORS 285C.200

Hist.: EDD 13-2000, f. & cert. ef. 8-15-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4710

Definitions

For purposes of OAR 123-065-4700 to 123-065-4760, with respect to an eligible business firm:

(1) **Determination** means either of the following:

(a) A rightfully available written admission by the firm of a Non-compliance; or

(b) The issuance of an order, ruling or similar action by a duly empowered court, regulatory authority or similar entity that is:

(A) An official finding of Noncompliance that has the force of law under the jurisdiction of the court, regulatory authority or similar entity; and

(B) The final action by the particular regulatory or judicial process, even if prior to potential appeals.

(2) **Event of Noncompliance** means a Determination corresponding to an Illegal Act for which the underlying Noncompliance is both:

(a) Material, as described in OAR 123-065-4740; and

(b) Not cured in accordance with OAR 123-065-4750.

(3) **Illegal Act** means an action, omission, chain of occurrences or similar failing or failings by the firm or by its officer or agent in the conduct of the firm's operations and activities that effectively takes place after the firm's application for authorization and on or before December 31 of the last year of exemption, and that causes the Non-compliance corresponding to the relevant Determination. (An Illegal Act may also result from Noncompliance with a Determination related to an earlier act)

(4) **Noncompliance** means a violation of a law, as enacted by one of the following, or the violation of any of the rules or regulations duly promulgated thereunder:

(a) The United States Congress;

(b) The Oregon Legislative Assembly; or

(c) The governing body of a city or county that sponsors the enterprise zone.

(5) **Substantial Falsification** means that information in a form, filing or associated documentation by the firm, subject to declaration under penalties of false swearing, does one or both of the following:

(a) Misreports or omits required information, such that the enterprise zone exemption would have been denied or disqualified had the information been correctly or completely reported, which by itself shall be considered an Illegal Act in addition to any penalties resulting from the false swearing under ORS 305.990(5); or

(b) Contradicts OAR 123-065-4720(1), in that at the time of the relevant declaration, the firm failed to disclose an Illegal Act, of which it is reasonably expected to have been aware, including but not limited to one that is ongoing at the time of authorization, subject to a Determination.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.200(6)

Stats. Implemented: ORS 285C.200

Hist.: EDD 13-2000, f. & cert. ef. 8-15-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4720

Declarations and Responsibilities

(1) For any form or document issued by the Department of Revenue for submission or filing by a business firm in association with an enterprise zone exemption, the written declaration that is made under penalties of false swearing (as to the truth and correctness of the form or document under ORS 305.810 and 305.815) shall also include a statement to the effect that the firm is in compliance with all applicable laws described in OAR 123-065-4710(4).

(2) Without evidence of a Determination:

- (a) The county assessor is under no obligation to undertake any effort for purposes of ORS 285C.200(1)(f); and
- (b) The exemption on qualified property of an otherwise qualified business firm is unaffected.
- (3) Regardless of expertise or jurisdiction, any entity or person may present evidence of a Determination to the county assessor.
Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.200(6)
Stats. Implemented: ORS 285C.125 & 285C.200
Hist.: EDD 13-2000, f. & cert. ef. 8-15-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4730

Effect of Event of Noncompliance

Upon an Event of Noncompliance:

- (1) In the case where an authorized business firm is not yet qualified, the county assessor shall deny exemption under ORS 285C.170 or 285C.175.
- (2) In the case where the firm is receiving or has received the exemption, the Event of Noncompliance shall cause disqualification of the exemption under ORS 285C.240 (including back taxes).
- (3) In response to or in anticipation of such denial or disqualification, the assessor shall give notice that:
 - (a) Is sent to the firm and is copied to the zone sponsor, the Department of Revenue and the Department;
 - (b) Provides the firm with an explanation of the action and includes copies or descriptions of the evidence for the Determination; and
 - (c) Explains how the firm may appeal the action or anticipated action to the Tax Court in accordance with ORS 305.275(1)(c).
- (4) The county assessor may reverse a decision or action in section (1) or (2) of this rule, for the following reasons:
 - (a) Reconsideration of an issue listed in OAR 123-065-4760(1); or
 - (b) A successful appeal that negates the Determination.
 - (5) As necessary to effect a reversal for section (4) of this rule, the assessor may reinstate the exemption and refund taxes paid on qualified property to the firm consistent with provisions of ORS 311.806 and 311.812.
 - (6) If the Determination is appealed by the business firm through administrative or judicial channels under the law in question, then the assessor may indefinitely suspend the action as described in section (2) of this rule, such that:
 - (a) If the business firm prevails in the appeal, then the exemption is unaffected; or
 - (b) If the business exhausts, withdraws or effectively fails in its pursuit of such appeal, then the action takes effect, and the assessor may add interest to any back taxes to have been collected during the intervening time period until the next general property tax roll, but for the appeals process, consistent with provisions for the imposition of interest on uncollected taxes under ORS 311.206.
 - (7) The business firm's right to appeal actions or tax collections directly to the Oregon Tax Court is in no way infringed by this or any administrative rule, nor is it prevented by ORS 285C.200(6).
Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.200(6)
Stats. Implemented: ORS 285C.125 & 285C.200
Hist.: EDD 13-2000, f. & cert. ef. 8-15-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4740

Materiality

An eligible business firm's Noncompliance is material for purposes of ORS 285C.200(1)(f), only if **all** of the following are true:

- (1) *Zone-Applicable*. It is related to or part of actual operations of and by the business firm within the enterprise zone boundary, including firm-wide activities that actually influence affairs in the zone as well as elsewhere that the firm operates, such that:
 - (a) The Illegal Act(s) might still occur outside the zone and be material if derivable from or directly beneficial to operations of the firm in the zone; and
 - (b) Illicit intent associated with firm personnel or decisions inside the zone may be circumstantially indicated in the Determination, but still be immaterial, if having no evident effect on tangible activities or behavior at zone locations.
- (2) *Significant*. It has or could conceivably harm, threaten, disrupt or undermine any of the following: An individual person, fair and honest commerce, government revenue collection, others' property rights, environmental protection, public health and safety, the general welfare

and so forth, in contrast to a Noncompliance that results only in inconveniences (e.g., parking violations), aesthetical problems (e.g., poor landscape maintenance), etc.

(3) *Substantive*. It relates to the actual behavior or effects that the law in question is intended to control or prevent, as opposed to failings or missteps in terms of procedural matters, data reporting or similar technicalities, unless such failings or missteps exhibit willfulness, perniciousness or a history of repetition.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.200(6)

Stats. Implemented: ORS 285C.200

Hist.: EDD 13-2000, f. & cert. ef. 8-15-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4750

Cure

As a consequence of actions taken by an eligible business firm in response to a Determination, it may still comply with the law and, in effect, cure the Noncompliance for purposes of ORS 285C.200(1)(f), such that:

- (1) A Noncompliance is not curable if, in the presence of clear and convincing evidence, the Illegal Act in question is:
 - (a) Heinous, reckless or knowingly perpetrated or allowed to happen as a matter of firm policy; or
 - (b) Committed within five years of a previous determination relating to the same or similar violation of the law, regardless if the *prior* violation occurred:
 - (A) Before authorization;
 - (B) At a location outside the enterprise zone; or
 - (C) Under another U.S. state's or locality's laws or regulations.
- (2) A Noncompliance is also incurable if the total monetary penalty as described in subsection (3)(a) of this rule exceeds a level publicly declared for purposes of this rule and established by the zone sponsor, prior to when the Illegal Act occurred. According to stipulations in the sponsor's declaration, this level or levels shall be equal to or greater than:
 - (a) Twenty-five thousand dollars, for a fine or fines levied by a regulatory agency under a single citation or for closely related violations; and
 - (b) One hundred thousand dollars, overall, including but not limited to court-imposed damages.
- (3) A Noncompliance, except as precluded by section (1) or (2) of this rule, may be cured insofar as the firm fully and clearly documents or demonstrates for the county assessor that:
 - (a) All fines, damages and so forth arising from the Determination in OAR 123-065-4710(1) have been paid in full, according to the final regulatory or judicial assessment imposed;
 - (b) The firm promptly submitted to and fulfilled all other applicable penalties and has taken or has demonstrable plans to take all other actions, as required by the court, regulatory authority or similar entity;
 - (c) The circumstances that led to the Noncompliance have been completely eliminated and resolved, such that further Noncompliance by the firm of a comparable or more serious nature is not expected to occur; and
 - (d) Reasonable efforts have been made to compensate other substantially harmed parties uninvolved with any court action.
- (4) The decision to consider a Noncompliance cured is made on a one-time basis and shall be subject to neither ongoing action by the firm nor continual verification.
Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.200(6)
Stats. Implemented: ORS 285C.200
Hist.: EDD 13-2000, f. & cert. ef. 8-15-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4760

Interpretation

With respect to the interpretation and application of OAR 123-065-4700 to 123-065-4760 for purposes of ORS 285C.200(1)(f):

- (1) There are five primary issues related to the conclusion that there is an Event of Noncompliance:
 - (a) Is there a Determination as defined?
 - (b) Did the Illegal Act occur as defined? ...for example, after the authorization application?
 - (c) Is the Noncompliance material?
 - (d) Is the Noncompliance curable? ...and if so, has it been cured;

or

(e) Has there been Substantial Falsification, and what are the implications thereof?

(2) In deciding whether there is an Event of Noncompliance, the county assessor may do as follows at the assessor's initiative or in response to issues raised by a business firm's response to the notice provided in OAR 123-065-4730(3):

(a) The assessor may submit the question at issue to the sponsor of the enterprise zone whether through the local zone manager or otherwise, such that:

(A) The submission is made in writing with a summary of the matter, and the affected business firm, the Department of Revenue and the Department are sent copies; and

(B) The assessor may consider a written decision from the zone sponsor only within a prescribed period of time not exceeding 60 days after the submission.

(b) Either in lieu of or subsequent to the request and a decision by the zone sponsor, the assessor may submit the question or questions to the Director, such that:

(A) The submission is made in writing with a summary of the matter, and the affected business firm, the Department of Revenue and the zone sponsor are sent copies;

(B) The assessor certifies whether a conclusive response by the Director shall bind the assessor's action in OAR 123-065-4730;

(C) The Director may request additional information from the assessor, the firm, the sponsor, the Department of Revenue or the Department of Justice; and

(D) The Director shall respond in writing to the question or questions submitted by the assessor, which shall be treated as official state interpretation of this division of administrative rules.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.200(6)

Stats. Implemented: ORS 285C.200

Hist.: EDD 13-2000, f. & cert. ef. 8-15-00; EDD 1-2005, f. & cert. ef. 2-25-05

Work-in-Progress before Standard Exemption

123-065-4800

Exemption Prior to Being 'In Service'

Under ORS 285C.170 qualified property of an actively authorized business firm in the enterprise zone is exempt from *ad valorem* taxation for up to two years, such that:

(1) Consistent with OAR 123-065-4560(4), this exemption precedes and complements the one under ORS 285C.175, in that

(a) It applies only to property that is not yet placed in service before the (January-1) assessment date; and

(b) It may not be used for property that may/must start the three-to-five-year exemption period in the present assessment year.

(2) This exemption is largely interchangeable with the one under ORS 307.330 and 307.340 (Commercial Facilities Under Construction); common elements are:

(a) The firm must file with the county assessor:

(A) Not later than April 1 of *each* assessment year when the property exists in the zone/county; and

(B) Using the latest revision of the Department of Revenue form 150-310-020, **Application for Cancellation Of Assessment On Commercial Facilities Under Construction**, as described in OAR 150-285C.170;

(b) Any (utility) property that is or will be centrally assessed by the Department of Revenue under ORS 308.505 to 308.665 is completely inapplicable;

(c) The exemption is good for not more than two *successive* years; and

(d) The relationship to ORS 285C.175 as described in section (1) of this rule is the same on relevant property (including but not limited to section (4) of this rule).

(3) The following may be exempt in the zone, but would not be under ORS 307.330:

(a) Property at a project site where there is no construction of or additions to a building or structure;

(b) Mere modifications to a building or structure;

(c) The case of a nonmanufacturing facility, even with less than a one-year re/construction period;

(d) Additional property that is not yet placed in service, even though a portion or element of the project, facility or structure has been completed, consistent with ORS 285C.180(5); or

(e) Machinery or equipment, even if it will:

(A) Not be installed in or affixed to a building, structure or addition thereto; or

(B) Remain personal property after installation.

(4) Irrespective that property might qualify under ORS 285C.175, the following situations are excluded from this exemption, although property may be exempt under ORS 307.330 to some extent:

(a) Property had been exempt already at the same site in the zone under ORS 307.330 (for one year);

(b) The business firm is a hotel, motel or destination resort, regardless if the zone is listed in OAR 123-065-4260;

(c) The authorized business firm does not or will not necessarily own or lease the property;

(d) An eligible business firm that has applied but not been approved for authorization consistent with OAR 123-065-4345 by the April-1 filing due date; or

(e) As of the January 1 assessment date:

(A) Authorization is inactive under ORS 285C.165;

(B) Property is not yet located inside the boundary of the designated zone; or

(C) The zone is terminated.

(5) Pending approval for authorization as noted in subsection (4)(d) of this rule, the firm may file per subsection (2)(a) of this rule, and have property exempted as allowed under ORS 307.330, such that:

(a) After approval, exemption under ORS 285C.170 may be extended to other qualified property subject to criteria described in this rule; and

(b) The ongoing exemption of property shall continue to be ascribed to ORS 307.330 if allowed.

(6) The county assessor shall not exempt property specifically under ORS 285C.170, if the assessor has a reasonable and definitive reason to believe that:

(a) The property is or will not be qualified property, consistent with OAR 123-065-4500 to 123-065-4550 or 123-065-4590, when placed in service;

(b) The authorized business firm will not qualify under ORS 285C.200; or

(c) Other applicable requirements under ORS 285C.175 will not be met.

(7) In the face of significant doubts about conformance with the requirements of ORS 285C.170, the assessor may depend on reasonably requested information or confirmation from the firm or zone sponsor, before determining to the grant the exemption.

(8) Consistent with subsection (2)(c) of this rule, property exempted under ORS 285C.170 may not receive further exemption under ORS 307.330 beyond the cumulative two-year period, in cases where it may not (yet) qualify under ORS 285C.175.

(9) The exemption as described in this rule is not necessarily jeopardized in any way, even for such property that would not normally be exempt under ORS 307.330, in the event that the anticipated exemption under ORS 285C.175 is:

(a) Unclaimed under ORS 285C.220;

(b) Denied — that is, not granted; or

(c) Disqualified under ORS 285C.240.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.165, 285C.170 & 307.330

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

Payback in Lieu of Disqualifying Standard Exemption

123-065-4950

Purpose and Scope

OAR 123-065-4950 to 123-065-4990 implement how a qualified business firm receiving a three to five-year enterprise zone exemption from property taxes may avoid disqualification by paying the zone sponsor one year's worth of the exemption, in the event that the firm fails to meet a requirement under ORS 285C.240(1) that determines the firm's general qualification for receiving all of the exemption.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.240

Hist.: EDD 9-2000, f. & cert.. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4960

Applicability of Payback Provisions

For purposes of ORS 285C.240(6), a qualified business firm's avoidance of disqualification through payment of the firm's enterprise zone tax savings for one year is allowed, only if:

(1) The firm fails to meet an employment, compensation, waiver or locally established requirement affecting an overall exemption on qualified property, pursuant to ORS 285C.240(1)(b), (c) or (d), and not for any requirement pertaining to the status of particular qualified property (see OAR 123-065-4580) or to the firm's eligibility under ORS 285C.135;

(2) The firm provides written notice under ORS 285C.240 to the zone sponsor or the county assessor by not later than July 1 of the year following the year in which failure as described in section (1) of this rule occurred;

(3) The firm maintains the business operations, for which the qualified property was being used or occupied, unless the firm can demonstrate that any discontinuation (shutdown) is only temporary;

(4) The firm has not previously used ORS 285C.240(6) to avoid disqualification of the exemption for any failure covered by section (1) of this rule; and

(5) The firm provides written proof to the county assessor that it has paid the full amount of the year's tax savings to the zone sponsor, not later than August 31 of the year following:

(a) The year in which the failure occurred; or

(b) The fourth year of exemption, in the case of failure to meet a requirement for an additional two years of exemption under ORS 285C.160, during (only) one of the first four exemption years.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.240

Hist.: EDD 9-2000, f. & cert.. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4970

Payment of Tax Savings

For purposes of the payment by a qualified business firm as described in OAR 123-065-4960(5):

(1) The firm shall pay to the sponsor of the enterprise zone an amount equal to the additional taxes due, as the county assessor computed under ORS 285C.175(7), on all of the qualified property receiving the exemption in:

(a) The year in which the failure occurred; or

(b) The fourth year of exemption, consistent with OAR 123-065-4960(5)(b).

(2) The sponsor of the enterprise zone is responsible for enabling the firm to make the payment, by doing the following in a timely manner:

(a) Issuing an invoice for such payment to the firm (as necessary);

(b) Receiving such moneys; and

(c) Issuing a receipt or equivalent evidence of the amount paid by the firm.

(3) In invoicing, collecting, holding, or disbursing any moneys paid by the firm, the city or county governments of the zone sponsor shall establish the necessary accounts, special funds, procedures or documentation in accordance with ORS chapter 294 and applicable local laws.

(4) If the county assessor is not provided with proof that sufficient and timely payment has been made by the firm, the firm shall be disqualified for the exemption or exemptions covered by the requirement as described in OAR 123-065-4960(1), as normally provided under ORS 285C.240.

(5) If the firm is disqualified for an overall exemption, such that the firm owes taxes on the formerly exempt property, then such back taxes shall be reduced by any amount previously paid to retain the same exemption under ORS 285C.240(6), in accordance with this rule.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.240

Hist.: EDD 9-2000, f. & cert.. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4980

Distribution of Payment Among Cosponsors

In the case of an enterprise zone sponsor comprising two or more city or county governments:

(1) Any cosponsor may act as the initial depository for collecting the qualified business firm's payment as described in OAR 123-065-4970 and providing the firm with the requisite proof of payment, but at least one cosponsor must do so.

(2) The cosponsors may create joint mechanisms and arrangements to receive, hold or use such payments.

(3) The cosponsors may distribute the amount of any such payment among themselves through any mutually agreed method or formula.

(4) Unless pending a joint effort among the cosponsors as described in OAR 123-065-4990, if a distribution as described in section (3) of this rule is not effected within six months of the receipt of such payment, the full amount of the payment shall be distributed in equal portions to each city or county government that sponsor the zone, such that a government or entity holding such funds shall disburse the portions to the other government or governments without assessing any administrative fee.

(5) A zone sponsor is in no way obligated to maintain or repeat for future payments any of the elections and methods utilized in accordance with this rule for a given payment.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.240

Hist.: EDD 9-2000, f. & cert.. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-4990

Utilization of Payments

In accordance with ORS 285C.240(6)(b), the moneys collected through the payment by a qualified business firm shall be used for the benefit of residents of the enterprise zone and its immediate vicinity, such that:

(1) For a nonurban zone, the immediate vicinity will generally encompass (but is not necessarily limited to) the entire incorporated and urban growth area of any city sponsoring the zone, unless the city is relatively large, and only some parts of the zone boundary are in or near the city.

(2) Public, public/private or community-based activities, efforts or expenditures that acceptably benefit residents of the zone and its local area include but are not limited to the following:

(a) Job training, placement, skill development, career counseling and similar programs predominately involving such residents;

(b) Better educational opportunities, facilities and so forth that serve such residents;

(c) Planning, analyses or support for infrastructure, public safety or other public/community services or facilities that have the potential to stimulate commerce and employment growth in association with the zone;

(d) Programs that assist with financing or other matters for businesses largely started by or employing such residents;

(e) Improvements to environmental conditions, recreational resources or other qualities of the community; or

(f) Reasonable contributions to the management, marketing or other needs of the enterprise zone itself.

(3) These moneys may be combined with funds obtained from authorization filing fees or other resources associated with the enterprise zone or the local community.

(4) If the payment per cosponsor is less than \$1,000, the zone sponsor may:

(a) Delay spending the moneys for an indefinite period of time, pending complementary opportunities or resources; and

(b) Spend the moneys on existing programs and projects that are likely to benefit such residents, even if not exclusively.

(5) If the payment per cosponsor is between \$1,000 and \$10,000, the zone sponsor may:

(a) Postpone spending the moneys for up to two years; and

(b) Spend the moneys on existing programs and projects, but the sponsor shall make reasonable efforts to ensure that such residents in particular are beneficiaries of the additional expenditures.

(6) If the payment per cosponsor exceeds \$10,000 the zone sponsor shall see that the moneys are spent on ongoing programs, special projects and so forth, but only insofar as such expenditures can be shown to have a direct and particular impact on such residents.

(7) A zone sponsor is in no way obligated to maintain or repeat for future payments any of the elections and methods utilized in accordance with this rule for a given payment.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.240

Hist.: EDD 9-2000, f. & cert.. ef. 5-2-00; EDD 1-2005, f. & cert. ef. 2-25-05

Electronic Commerce

Stats. Implemented: ORS 285C.050, 285C.135, 285C.180, 285C.185, 315.507
Hist.: EDD 16-2002, f. 9-12-02 cert. ef. 9-15-02; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-7000

Purpose & Scope

OR 123-065-7000 to 123-065-7999 specify matters related to Electronic Commerce areas and the tax incentives therein, including but not limited to enterprise zones authorized for electronic commerce, such that:

- (1) In these areas, businesses engaged in Electronic Commerce are eligible for the standard enterprise zone exemption and may qualify for a State tax credit based on their Electronic Commerce investment.
- (2) These administrative rules:
 - (a) Have no bearing on enterprise zones without electronic commerce status;
 - (b) Do not control the fiscal parameters for the actual implementation of tax abatements by the Department of Revenue; and
 - (c) Are not intended to supersede applicable administrative rules in OR chapter 150.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.050(5), 285C.060(1), 285C.095(2)
Stats. Implemented: ORS 285C.050, 285C.095, 285C.100, 285C.135, 285C.185, 315.507 & 315.508
Hist.: EDD 16-2002, f. 9-12-02 cert. ef. 9-15-02; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-7100

Definition of Electronic Commerce

As used in these administrative rules, for purposes of **Electronic Commerce** under ORS 285C.050(5):

(1) "Predominantly" means that the share of applicable transactional activity represented by Electronic Commerce exceeds 50 percent, as measured by receipts, number of orders or clients served (or an equivalent quantitative determination).

(2) Electronic Commerce means business activity and related investments that:

(a) Involve dealings with customers, suppliers, clients or other transactional entities external to the eligible business firm, predominantly by means of:

- (A) Direct Internet use; or
- (B) A computer network that utilizes the Internet as a platform.

(b) Entail, support or relate to the sale or purchase of goods, property or services, whether conducted on a wholesale, commercial, business-to-business, retail or other basis, in addition to subsection (1) of this rule.

(3) Electronic Commerce may include facilities, equipment, services, networks or software that are produced, operated or supplied by a third party, who facilitates, fosters or makes possible business transactions by means of Electronic Commerce consistent with sections (1) and (2) of this rule. Such a third party may be the qualified business firm for purposes of tax abatement.

(4) Electronic Commerce is not limited to the initiation or consummation of the sale, purchase or arms-length exchange, but rather may include a significant element of the transaction's overall completion or delivery, if that element:

(a) Is conducted predominantly by means of Electronic Commerce, as otherwise described in this rule, such as customer service, technical support, claims processing, client evaluation, performance measurement and so forth, even if the actual sale, purchase or contract was initiated or consummated through non-electronic means; or

(b) Naturally serves, underpins or arises from the sale or purchase of goods, property or services that are predominantly transacted by Electronic Commerce, as otherwise described in this rule, including but not limited to the following: Distribution, made-to-order assemblage, non-electronic customer support, shipping, warehousing, warranty service or any similar operation or order fulfillment-type activity.

(5) Section (4) of this rule may be understood in terms of a flowchart representing the totality of operations within the zone related to Electronic Commerce, such that if a critical node in that flowchart is handled more than 50 percent through Internet-based transactions, then:

(a) Substantially related activities both upstream and downstream of the node are also included in the definition of Electronic Commerce; and

(b) Qualified property or investment in capital assets are covered by the respective tax benefits, as much as they are otherwise allowed to be.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.050(5) & 285C.060(1)

123-065-7200

Enterprise Zones and Electronic Commerce

For purposes of an enterprise zone authorized or designated for Electronic Commerce under ORS 285C.095:

(1) It may be any enterprise zone designated by the Director and defined under ORS 285C.050(8), regardless of how or when, or whether it is urban or nonurban, but the effective date of designation of the enterprise zone must precede or coincide with authorization of Electronic Commerce status.

(2) If for whatever reason the underlying enterprise zone terminates, Electronic Commerce status ends too, without harm to any exemption from property taxes due to an authorized business firm consistent with ORS 285C.245(1).

(3) Electronic Commerce status applies fully to the entire area of an enterprise zone including areas added by a subsequent change to the zone's boundary.

(4) The sponsor of an enterprise zone with Electronic Commerce status may revoke that status by resolution(s), such that:

(a) The Director shall order the revocation of Electronic Commerce status in that zone, setting the effective date thereof;

(b) Any business firm eligible only on that basis shall, again, be treated as if the zone had terminated on the date specified by the Director; and

(c) That enterprise zone may never again be authorized for Electronic Commerce status.

(5) Respective to section (2) or (4) of this rule, the Department shall seek applications from zone sponsors, either subsequently, or in anticipation under ORS 285C.250 for a zone to be Terminated by Statute, which has no special claim on re-designation for Electronic Commerce.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.095

Hist.: EDD 16-2002, f. 9-12-02 cert. ef. 9-15-02; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-7300

Application and Designation

(1) An application in accordance with ORS 285C.095 must consist of at least two sets of items:

(a) Resolutions adopted by each governing body of the sponsor, consistent with its charter, by-laws and practices, and requesting designation for Electronic Commerce; and

(b) A completed form as prescribed by and available from the Department and any supporting materials.

(2) For the Department to evaluate the merit of authorizing the applicant zone for Electronic Commerce status (including but not limited to competitive ranking of concurrent applications) an applicant zone sponsor may respond as stipulated in the application form to the following criteria:

(a) Significance associated with the location and attributes of the cities, business sites and so forth that are in the current zone boundary, as well as future boundary change requests (to be considered, any such boundary change must be acknowledged in the resolution of the sponsoring jurisdiction containing the area to be added);

(b) Strategic or marketing plans, resources and readiness of the enterprise zone for local development relating to Electronic Commerce, especially as a result of major public investments;

(c) Past success in using the statutory and local incentives of the enterprise zone for inducing business development, and other comparable programs or tools;

(d) Interest and support among local businesses, community organizations and the general public for having the enterprise zone obtain Electronic Commerce status;

(e) Other local assets that support and complement Electronic Commerce activity or investments (e.g., training institutions, telecommunication infrastructure, environmental initiatives);

(f) Prospective, qualifying Electronic Commerce investments that could depend on the tax incentives; or

(g) One other factor of the applicant's choosing.

(3) In determining if an applicant enterprise zone is to be designated for Electronic Commerce, the Director shall consider the results of analysis by staff/external parties of criteria in section (2) of this rule, but may also rely on other information from any source.

(4) The Director shall make a final determination, which may not be appealed, regarding which, if any, applicant zones to order for Electronic Commerce designation, and may choose not to use all such designations even in the face of sufficient applications.

(5) The Department shall promptly give written notification to any applicant zone sponsor rejected for Electronic Commerce designation.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.095(2)
 Stats. Implemented: ORS 285C.095
 Hist.: EDD 16-2002, f. 9-12-02 cert. ef. 9-15-02; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-7400

Enterprise Zone Designations

(1) If additional Electronic Commerce designations are allowed under ORS 285C.095 by the Legislature, the Department shall schedule and conduct a round of applications in accordance with OAR 123-065-7300, pursuant to the distribution of information about the round to the local zone managers of all existing enterprise zones.

(2) January 1, 2002, is the effective date of designation for the first four Electronic Commerce enterprise zones.

(3) At the time of the adoption of this rule, the enterprise zones designated for Electronic Commerce are Harney County/Burns/Hines, Medford Urban, N/NE Portland and Roberts Creek.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.050(2), 285C.060(1) 285C.095(2)
 Stats. Implemented: ORS 285C.095, 285C.135, 285C.180, 285C.185, 315.507
 Hist.: EDD 16-2002, f. 9-12-02 cert. ef. 9-15-02; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-7500

Other Electronic Commerce Areas

(1) The City of North Plains in Washington County is a city designated for Electronic Commerce under ORS 285C.100, effective on March 4, 2002.

(2) On and after this effective date of declaration in the city's resolution, all area then or later inside the city limits or urban growth boundary of the City of North Plains shall be considered and treated equivalent to an enterprise zone, but only for purposes of Electronic Commerce and business firms that are eligible on that basis, under ORS 285C.050 to 285C.250 and 315.507.

(3) The city shall act as the effective zone sponsor and take responsibility for all duties of a zone sponsor as they apply to any business firm seeking to utilize areas of the city for special Electronic Commerce benefits.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
 Stats. Implemented: ORS 285B.650, 285B.675, 285B.707, 285B.713 & 315.507
 Hist.: EDD 16-2002, f. 9-12-02 cert. ef. 9-15-02; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-7600

Enterprise Zone Eligibility

(1) A business firm engaged in Electronic Commerce and located in an Electronic Commerce enterprise zone may be eligible in other ways under ORS 285C.135, but it shall not be subject to the requirements or restrictions that these other ways entail.

(2) If an eligible business firm that originally sought eligibility based on Electronic Commerce is found to not satisfy the definition thereof, it may still be authorized or its qualified property exempt subject to another way of eligibility and the applicable requirements of the law.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
 Stats. Implemented: ORS 285C.135
 Hist.: EDD 16-2002, f. 9-12-02 cert. ef. 9-15-02; EDD 1-2005, f. & cert. ef. 2-25-05

123-065-7700

Enterprise Zone and Electronic Commerce Tax Credit

For purposes of the tax credit under ORS 315.507:

(1) The capital assets comprising the Electronic Commerce investment under ORS 315.507(2) do not necessarily correspond to qualified property exempted under ORS 285C.175, although there will likely be some overlap, and such assets must:

(a) Be located in the enterprise zone (or other such designated area); and

(b) Concurrently relate to the investment in qualified property as described in section (2) of this rule.

(2) The investment in Electronic Commerce capital assets by the business firm engaged or preparing to engage in Electronic Commerce must be effectively made:

(a) During the remainder of the income/excise tax year after the firm is authorized;

(b) In an income/excise tax year that begins while the firm remains actively authorized but ends before July 1 of the first property tax year of exemption; or

(c) In an income/excise tax year that ends on or after July 1 of a property tax year, in which the qualified property is exempt under ORS 285C.175, as subject to satisfaction of applicable requirements under ORS 285C.050 to 285C.250.

(3) The third year after a credit is claimed as described in subsection (2)(a) or (b) of this rule must be a year described in subsection (2)(c) of this rule, in order to receive and keep the tax credit.

(4) This tax credit is not available in conjunction with the exemption under ORS 285C.409 (Long-Term Rural Tax Incentives).

(5) The tax credit is allowed only:

(a) For an eligible Electronic Commerce business firm that applies for authorization on or after the effective date of the Electronic Commerce designation but prior to a revocation of that designation.

(b) On applicable investments in capital assets that are made on or after the effective date of the Electronic Commerce designation but before the effective date of termination of the enterprise zone under ORS 285C.245, irrespective of any prior revocation of the Electronic Commerce designation.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.050(5) & 285C.060(1)
 Stats. Implemented: ORS 285C.050, 285C.095, 285C.100, 285C.135, 285C.140, 285C.175, 285C.180, 285C.185, 315.507 & 317.508
 Hist.: EDD 16-2002, f. 9-12-02 cert. ef. 9-15-02; EDD 1-2005, f. & cert. ef. 2-25-05

Rural Renewable Energy Development Zones

123-065-8000

Purpose and Scope

OAR 123-065-8000 to 123-065-8499 specify matters related to the creation and operation of an "RREDZ," which as used in these administrative rules means a rural renewable energy development zone under ORS 285C.350 to 285C.370, such that:

(1) For an eligible business firm in an RREDZ, the standard enterprise zone exemption and associated requirements under ORS 285C.050 to 285C.250 apply essentially as they do inside an enterprise zone, except:

(a) That the firm and the firm's property qualify only insofar as they relate to facilities and activities that generate electricity from a "renewable energy resource" under ORS 469.185, including but not limited to the support or maintenance of relevant facilities; and

(b) As described in OAR 123-065-8300 and 123-065-8400.

(2) The primary purpose of RREDZs is the extension of this enterprise zone incentive to renewable energy projects, which may be far-flung or widely dispersed, in lieu of what might often involve an infeasible or physically complex amendment to the boundary of an existing enterprise zone.

(3) These administrative rules:

(a) Have no bearing on true enterprise zones, including but not limited to an enterprise zone or an eligible business firm or qualified property in an enterprise zone encompassed by an RREDZ;

(b) Do not necessarily control the fiscal parameters for the actual implementation of tax abatements by the county assessor or Department of Revenue; and

(c) Are not intended to supersede any applicable administrative rule in OAR chapter 150.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.370
 Stats. Implemented: ORS 285C.350 - 285C.370
 Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-8100

Basic Points about RREDZs

(1) An RREDZ does not terminate by operation of law after any maximum length of time

(2) An RREDZ covers the entire territory of the designated:

(a) City including subsequent annexations; or

(b) County or counties whether outside corporate limits or not.

(3) An RREDZ is permitted anywhere in this state, except in one of the counties listed in OAR 123-065-0090(5).

(4) RREDZs come in one of only the following three types:

(a) City RREDZ, in that a single city's governing body applied to the Department for designation, and the city is the sponsor of the RREDZ;

(b) County RREDZ, in that a single county's governing body applied to the Department for designation, and the county is the sponsor of the RREDZ; or

(c) Multi-county RREDZ, in that each governing body of two or more counties jointly applied to the Department for designation, such that:

(A) The counties are contiguous one to another, but do not necessarily all share a single common border in the case of three or more counties; and

(B) Only one of the counties serves as the zone sponsor.

(5) In appointing the local RREDZ manager, the sponsor is encouraged to select someone, who also serves as local zone manager for an enterprise zone, whenever possible.

(6) There is no particular limit on the number of RREDZs statewide, although a city or county may not have two or more concurrent designations, with the following distinctions:

(a) A city may have a designation, even if inside a county designated as an RREDZ; or

(b) A county may itself be designated an RREDZ and be part of an RREDZ with one or more other counties, but it may not belong to two or more different, multi-county RREDZs.

(7) The RREDZ exemption under ORS 285C.362 on the qualified property of a qualified business firm may not be derived from more than one overlapping RREDZ designation, except if there are two or more authorizations covering property in different tax lots.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.370

Stats. Implemented: ORS 285C.350 - 285C.370

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-8200

Designation of an RREDZ

(1) To apply for designation of an RREDZ under ORS 285C.353, the city, county or multiple counties shall furnish the Department with the following:

(a) Copy of the resolution(s) requesting designation, as duly adopted by each jurisdiction within the past 90 days;

(b) The documentation as stipulated in OAR 123-065-1050; and

(c) A formal statement that specifies the following:

(A) The jurisdiction(s) to be so designated, and in the case of a multi-county RREDZ, the county that would act as the sponsor; and

(B) Current status of any previous RREDZ designation in the jurisdiction(s), including but not limited to the unused portion of the \$100-million exemption limitation under ORS 285C.353(4).

(2) Subject to the accuracy and completeness of the materials provided consistent with this rule and any other information as the Department may request, as well as adherence to applicable laws and these administrative rules:

(a) The designation shall be approved by the Director; and

(b) The date of designation may be made effective as early as when the Department received a complete application, if so requested by the applicant.

(3) Termination of an RREDZ may occur in accordance with ORS 285C.245(4) or (5) (with equivalent protection and allowances under ORS 285C.245(1) for any authorized or qualified business firm in the RREDZ at that time, as would be the case for an enterprise zone), such that:

(a) For a multi-county RREDZ all counties must adopt a resolution seeking termination under ORS 285C.245(4), not only the sponsor; and

(b) An RREDZ may not later be redesignated if it corresponds to the one so terminated.

(4) If the application is for a subsequent additional designation corresponding to an existing RREDZ, then upon designation the existing RREDZ automatically terminates, such that effective on January 1 at the beginning of the next assessment year:

(a) Any authorized business firm in the previous RREDZ is assigned to the newly designated RREDZ for purposes of future qualification; and

(b) Any unused portion of the previous RREDZ's \$100-million exemption limitation under ORS 285C.353(4) ceases to exist.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.370

Stats. Implemented: ORS 285C.350 - 285C.370

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-8300

Limitation of \$100-million in Real Market Value

Under ORS 285C.353(4), each RREDZ designation allows for cumulative exemptions on qualified property of not more than \$100 million of value over the life of the RREDZ, such that:

(1) Value is measured by the property's real market value (RMV) as assessed on January 1 of the first year, for which the exemption is claimed by an authorized business firm in that RREDZ.

(2) The sponsor shall coordinate with the county assessor to track the amount of this limitation that has been used by former/ongoing exemptions and the unused portion thereof. (If affected property is later disqualified and property taxes paid back, then the associated RMV is added back to the unused portion for future use in the same RREDZ)

(3) If the \$100 million will be exhausted in a single year by new qualified property first subject to exemption in that year, then the exemption or exemptions shall be granted only up to the point, at which the property's RMV equals the unused portion; in the case of two or more qualified firms the unused portion shall be pro-rated among them commensurate with the total value of each one's property.

(4) In view of such exhaustion, the sponsor of the RREDZ may seek a subsequent additional designation, such that the new \$100-million allocation may be added to and used in combination with the unused portion of the previous RREDZ, but only if:

(a) Some of the previous allocation was used in exempting prior qualified property;

(b) The real market value of the new qualified property exceeds \$100 million; and

(c) The new designation takes effect:

(A) On or after the January 1 assessment date; and

(B) Before the beginning of the corresponding property tax year.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.370

Stats. Implemented: ORS 285C.350 - 285C.370

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

123-065-8400

Further Distinctions from an Enterprise Zone Exemption

Other differences for an RREDZ exemption in contrast to the provisions of ORS 285C.050 to 285C.250 include (but are not necessarily limited to) the following:

(1) The application for authorization must give special attention to characterizing the proposed investment in qualified property, clarifying how it relates to renewable energy, and estimating its real market value by January 1 of the first full calendar year of operations.

(2) To be exempt, the qualified property must essentially correspond to what is described in the application (comparable to a head-quarter-type facility under ORS 285C.180(2)(g)).

(3) For purposes of an additional one or two years of exemption on qualified property (following the standard three-year period) inside a county that is a contiguous part of the RREDZ, but that is not the sponsor of the RREDZ:

(a) At least 21 calendar days before execution of the requisite written agreement between the sponsor and the eligible business firm (prior to authorization), the sponsor shall give the county's governing body formal notice of the potential extension to the tax abatement period; and

(b) If on or before the date, on which the written agreement is executed, the county's governing body adopts a resolution electing not to participate, then the extended abatement is disallowed for the proposed investment in qualified property in that county.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.370

Stats. Implemented: ORS 285C.350 - 285C.370

Hist.: EDD 1-2005, f. & cert. ef. 2-25-05

DIVISION 70

FIRST-SOURCE HIRING AGREEMENTS

General

123-070-1000

Purpose and Scope

(1) The purpose of this division of administrative rules is to implement ORS 461.740, under which business firms are required to enter into a First Source Agreement if benefiting from funds derived

from the Oregon State Lottery through certain economic or community development programs, as determined by the Oregon Economic and Community Development Department.

(2) Provisions of this division of administrative rules also apply to businesses benefiting under the following tax incentive programs, as provided by the relevant statutes:

(a) The "Strategic Investment Program" under ORS 285C.600 to 285C.620 and 307.110(4) and 307.123, as specified in division 023 of this chapter of administrative rules; and

(b) The "enterprise zones" under ORS 285C.050 to 285C.250, as specified in division 065 of this chapter of administrative rules and OAR chapter 150.

(3) Requiring Benefited Businesses to enter into a First Source Agreement is intended to help individuals, who are already receiving job training and assistance supported by public funds, by linking these individuals with private sector employment opportunities of businesses that:

(a) Will be hiring in association with the receipt of public benefits; and

(b) Should make a good faith effort to hire and retain such individuals, who are presumed to have low incomes or otherwise face disadvantages in finding employment.

(4) First Source Agreements and this division of administrative rules are not intended to do the following:

(a) Guarantee employment for any such individual;

(b) Dictate the actual hiring by a Benefited Business; or

(c) Necessarily accomplish other public or social objectives associated with employment opportunities.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.215(3)

Stats. Implemented: ORS 285C.060, 285C.175, 285C.215, 285C.606, 461.740

Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-

14-90; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00,

Renumbered from 123-070-0300; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-1100

Definitions

For purposes of this division of administrative rules, unless the context demands otherwise:

(1) **Contact Agency** is defined as the entity designated to represent publicly funded job training providers as specified in OAR 123-070-1200(3)(a), and it shall designate a Contact Person, which means an accessible and appropriate staff person at the Contact Agency, who is charged with interacting with Benefited Businesses and other entities and with representing the Contact Agency on matters related to First Source Agreements.

(2) **Department** means the State of Oregon's Economic and Community Development Department as (re) organized under ORS 285A.070.

(3) **Director** means the Director of the Department appointed under ORS 285A.070, for whom the Department's Deputy or Assistant Director, or any other designee may substitute.

(4) **First Source Agreement** means the contract between a Benefited Business and Providers, as executed by a Contact Agency, under this division of administrative rules, and it has the same meaning as "first-source hiring agreement" as used in ORS 285C.050(10), 285C.606(4) and 461.740(4)(b), which covers and is applicable to all of the Benefited Business's hiring or job openings, except for those persons or positions that are:

(a) Hired solely to construct, renovate or install property;

(b) Excluded by a waiver in accordance with OAR 123-070-1500; or

(c) Specified in OAR 123-070-2100 as inapplicable for enterprise zone purposes.

(5) As used in ORS 461.740(1), "good faith effort to hire and retain as employees low-income individuals who have received job training assistance from publicly funded job training providers" means the Benefited Business will do whatever is reasonably feasible to honor the terms of the First Source Agreement entered into with the Contact Agency for local Providers as specified in OAR 123-070-1700.

(6) **Interagency Agreement** is the agreement entered into among Providers as specified in OAR 123-070-1200.

(7) **Provider** has the same meaning as "publicly funded job training provider," as used in ORS 285C.050(15), 285C.606(4) and 461.740(4)(c) and means one of the following:

(a) A local office of the Oregon Department of Human Services that delivers the JOBS Program or other training or employment services for low-income parents, seniors, persons with disabilities and so forth;

(b) An administrative agent for programs under the federal **Workforce Investment Act of 1998** (Public Law 105-220) or amendments thereto;

(c) A community college of this state;

(d) A government or government-supported entity, similar to those in subsections (a) to (c) of this section, that is directly or indirectly engaged in training or assisting people to perform or succeed in the workplace or in a particular occupation; or

(e) Any other entity that is a party to the Interagency Agreement as described in OAR 123-070-1200, but such inclusion is effective only insofar as the entity, including but not limited to a local office of this state's Employment Department, remains such a party.

(8) **Qualified Applicants** means individuals who have received job training assistance and who meet the Benefited Business's minimum requirements for education, experience, reliability and skills, or who are able to meet these requirements within a reasonable time period (as negotiated with the Benefited Business) with training provided either by the Benefited Business or by a Provider.

(9) As used in sections (5) and (8) of this rule, "received job training assistance" means the individual has received intake or other services from a Provider.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.215(3)

Stats. Implemented: ORS 285C.050, 285C.060, 285C.215, 285C.606 & 461.740

Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-

14-90; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00,

Renumbered from 123-070-0310; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-1150

Affected Businesses

For purposes of this division of administrative rules:

(1) A **Benefited Business** means any for-profit business firm (regardless of its form of ownership or organization) that benefits directly or substantially from a state lottery-funded program, as indicated below in this section:

(a) Any of the following programs, throughout this state, except as set forth in section (3) of this rule:

(A) Oregon Business Development Fund (ORS 285B.050 to 285B.098);

(B) Strategic Reserve Fund (ORS 285B.266); or

(C) Special Public Works Fund (ORS 285B.410 to 285B.482).

(b) The Regional Investment Fund (ORS 285B.260 and 285B.263) and the Rural Investment Fund (ORS 285B.254 and 285B.257), except as set forth in section (3) of this rule, but only in a region as described in OAR 123-070-1300(3).

(c) Any program financed by state lottery funds and administered by the Department, as so determined by the Director, including but not limited to industry development activities under ORS 285B.280 to 285B.286.

(2) A **Benefited Business** also means either of the following, regardless if section (1) of this rule applies too:

(a) An "authorized business firm" as defined under ORS 285C.050(2) for an enterprise zone exemption on qualified property from ad valorem taxation under ORS 285C.175; or

(b) A business firm approved to receive or receiving the partial exemption of property from ad valorem taxation as an eligible project of the Strategic Investment Program under ORS 285C.600 to 285C.620.

(3) Regardless of association with a program in subsection (1)(a) or (b) of this rule, a business firm is **not** a "Benefited Business" solely because it receives any of the following from the Department, a grantee or any other entity:

(a) A purchase order or contract to provide services;

(b) Funds strictly for marketing or research activities; or

(c) Any grant or loan of \$50,000 or less.

(4) "Benefits directly ..." from any program financed by state lottery funds" as used in ORS 461.740(4)(a) and section (1) of this rule means the business firm is receiving money by way of a loan or grant directly from the Department or a grantee as described in OAR 123-070-1300(2).

(5) “Benefits ... substantially from any program financed by state lottery funds” as used in ORS 461.740(4)(a) and section (1) of this rule means that the business firm:

(a) Receives benefits through infrastructure or facility improvements financed by an entity that is receiving state lottery-funded loan or grant assistance to immediately make such improvements; and

(b) Was given prior notice from the Department or the entity that the First Source Agreement was a condition for the facility or infrastructure improvements or modifications arising from lottery funds.

(6) “Local zone manager” means a person appointed by the sponsor of the enterprise zone under ORS 285C.105(1)(a).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.050, 285C.060, 285C.175, 285C.215, 285C.606 & 461.740

Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-1200

Local Interagency Agreement

(1) The Providers as defined in OAR 123-070-1100(7) 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 Applicants are directed to Benefited Businesses in the geographic area covered by the Interagency Agreement through a mutually agreed source of job referral. The use of this referral source shall not preclude the Providers from developing joint processes for intake, screening or selecting Qualified Applicants to be referred to a Benefited Business.

(3) The written Interagency Agreement among the local Providers shall contain the following elements:

(a) Which Provider shall be the Contact Agency in negotiating and signing First Source Agreements and in coordinating job referrals with Benefited Businesses;

(b) The geographic area to be covered by the Providers entering into the Interagency Agreement;

(c) What services will be offered to the Benefited Businesses and the entities responsible for providing these services;

(d) A description of the process by which Qualified Applicants will be selected and referred to Benefited Businesses with a First Source Agreement;

(e) The process for collecting and transmitting data to the Contact Agency, state agencies or other entities as appropriate or necessary;

(f) Any necessary conditions to assure the confidentiality of information collected or used through the Interagency Agreement;

(g) Any conditions pursuant to OAR 123-070-1800(2) as agreed to by all parties to the Interagency Agreement; and

(h) A sample First Source Agreement to be entered into by the Contact Agency and Benefited Businesses, which shall be updated and revised in accordance with this division of administrative rules and applicable state laws, and a copy submitted to the Department.

(4) The approved Interagency Agreement may be modified or amended, but proposed modifications or amendments shall be submitted in writing to the Department for review and may be disallowed for cause by action of the Director.

(5) The Providers in the relevant geographic area shall modify or amend the Interagency Agreement to keep it current in terms of its parties, applicable laws, this division of administrative rules and so forth.

(6) The Contact Agency shall notify the Department and any affected local zone manager or county assessor for an enterprise zone within the geographic area of the Interagency Agreement, within 10 business days, whenever there is change in the Contact Person or Contact Agency.

(7) All submissions to the Director or the Department under this rule shall be addressed “**Attention: Finance & Incentives.**”

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.060 & 461.740

Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00,

Renumbered from 123-070-0340; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-1300

Administration for Lottery-Funded Projects

(1) For the lottery-funded programs listed in OAR 123-070-1150(1)(a), the Department shall take anticipatory actions that are necessary and appropriate to implement the requirement of the First

Source Agreement in accordance with ORS 461.740, which may include but are not limited to requiring a Benefited Business to submit a copy of the First Source Agreement, or otherwise ensuring that one has been entered into, before the grant or loan is ultimately awarded.

(2) The responsibilities consistent with section (1) of this rule may be delegated by the Department to a grantee that is the direct recipient of lottery-derived funds and that provides the grant, loan or substantial benefits to the Benefited Business.

(3) A business firm benefiting from the Regional Investment Fund or the Rural Investment Fund is a Benefited Business, if and only if the respective regional investment strategy under ORS 285B.230 to 285B.269:

(a) Expressively requires such firms to enter into a First Source Agreement; and

(b) Effectively provides that the regional board or its designee (fiscal entity) assumes all responsibility for the following:

(A) Advising Benefited Businesses of the requirement in a timely manner;

(B) Necessary communications and coordination with affected Contact Agencies; and

(C) Ensuring the requirement is met before awarding the relevant grant or loan.

(4) For purposes of the regional choice described in section (3) of this rule:

(a) The respective regional investment strategy is the same one that provides for and implements the funding for the Benefited Business;

(b) The regional board’s fiscal entity is a “grantee” as described in section (2) of this rule; and

(c) The requirement of entering into a First Source Agreement:

(A) Shall apply equally to all such funded projects or activities unless excluded by OAR 123-070-1150(3) or 123-070-1500;

(B) May be prospectively retracted or exercised pursuant only to the biennial update and an approved implementation strategy under ORS 285B.242(7); and

(C) Is enforceable under state law only if all of section (3) of this rule is accordingly and substantially satisfied.

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

Stats. Implemented: ORS 461.740

Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0320; EDD 1-2005, f. & cert. ef. 2-25-05

Effect of First Source Agreement for Businesses

123-070-1500

Waivers and Geographic Coverage of First Source Agreements

(1) Except in the case of the Strategic Investment Program, the Director may issue a waiver that does the following:

(a) Relieves a Benefited Business of the requirement of entering into the First Source Agreement, entirely; or

(b) Excludes professional, managerial, technical, highly skilled or seasonal positions of a Benefited Business from the First Source Agreement.

(2) The waiver under section (1) of this rule may be granted by the Director, who shall make the final decision, upon written recommendation by Department staff that explains why:

(a) The Benefited Business’s small size or the technical, professional or unusual nature of its needs with respect to employees means that it will generally be unable to fill positions with persons referred by the Providers for much of its anticipated jobs openings or for the excluded positions, as defined in the waiver, and will thus receive little or no meaningful service through the First Source Agreement; or

(b) The waiver will further the goals or purposes of applicable and specified state policies, whether or not such policies are directly associated with the program.

(3) A Benefited Business may submit a written request to Department staff for a waiver under this rule at the time of application for the grant or loan assistance, or before the contract for such assistance is signed, in the case of lottery-funded programs, or at any time prior to qualifying for an enterprise zone exemption.

(4) Department staff will notify the Benefited Business and the Contact Agency for the geographic area in which the Benefited Business is located of the Director’s decision and send a copy of any approved waiver. Such notice and distribution shall also include other

entities as described in OAR 123-070-2400(5), as applicable for an enterprise zone exemption.

(5) Except as specified in OAR 123-070-2100 for an enterprise zone exemption, the First Source Agreement entered into by a Benefited Business shall apply only to the Benefited Business's operations at the site receiving the benefit, unless other locations are designated by the Department or specifically agreed to by the Benefited Business and the Contact Agency.

(6) For purposes of this rule, "Department staff" means any professional personnel of the Department responsible for relevant administration of the tax incentive program or of the lottery-funded project involving the Benefited Business.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1), 285C.215(3)

Stats. Implemented: ORS 285C.060, 285C.215 & 461.740

Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 9-1991, f. 9-6-91, cert. ef. 9-9-91; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0330; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-1600

Duration of First Source Agreements

For purposes of a First Source Agreement:

(1) The term of agreement shall **begin** on or before the first date of any new hiring activity associated with employees for the benefited investment of the Benefited Business.

(2) The term of agreement shall **end**, as follows:

(a) Under state lottery-funded programs listed in OAR 123-070-1150(1), no less than 18 months from the date that the Benefited Business begins to request referrals under the First Source Agreement, unless a longer period is specified in the body of the First Source Agreement.

(b) Under tax incentive programs listed in OAR 123-070-1150(2), when the property tax exemption period concludes, which shall occur:

(A) On December 31 of the final year of exemption; or

(B) Sooner, in cases where an enterprise zone authorization application or exemption claim is formally withdrawn, or the exemption is disqualified or terminated by the county assessor, and the Benefited Business either does not exercise or has exhausted its right to appeal the refusal, denial, disqualification or termination.

(3) If a Benefited Business is to qualify for an enterprise zone exemption on additional property under an ongoing investment/authorization or on another investment pursuant to an additional authorization, then (if not already contemplated and addressed in the outstanding First Source Agreement) either:

(a) The term of the outstanding First Source Agreement must be extended until the Benefited Business's final exemption for that zone ends, per subsection (2)(b) of this rule, through an amendment acknowledged by both the Benefited Business and the respective Contact Agency; or

(b) The Benefited Business must enter into a new First Source Agreement with the respective Contact Agency that terminates and replaces the outstanding one, and that expires when the Benefited Business's final exemption for that zone ends, per subsection (2)(b) of this rule.

(4) Nothing shall hinder or prevent a Benefited Business and a Contact Agency from mutually continuing to function under the arrangements of a First Source Agreement, even though the agreement is no longer in force, as stipulated by this rule.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.060, 285C.215, 285C.606 & 461.740

Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-1700

Provisions of the First Source Agreement

(1) The First Source Agreement shall contain at least the following provisions in substantially the form presented here:

(a) "This First Source Agreement for referral of qualified job applicants is entered into between:

(A) "The following entity, _____ (hereinafter referred to as the 'CONTACT AGENCY'), which coordinates job referrals for, and represents, the following other publicly funded job training providers for the geographic area covered in the Interagency Agreement as described in OAR 123-070-1200, _____ (hereinafter referred to as the 'PROVIDERS'); and

(B) "The following business firm, located in this geographic area, _____ (hereinafter referred to as the 'EMPLOYER').

(b) "The EMPLOYER is or will be receiving benefits from the following program or programs (check those that apply):

(A) "___ State lottery-funded program, specify: _____;

(B) "___ Enterprise zone program, specify 'yes' or 'no': _____ if seeking an extended exemption period (up to five years);

(C) "___ Other, specify: _____.

(c) "Under this First Source Agreement, the EMPLOYER will use the CONTACT AGENCY as its first source for external referral of Qualified Applicants for all job openings of the EMPLOYER at the following location(s): _____, such that the EMPLOYER agrees to the following:

(A) "To effectively notify the CONTACT AGENCY of all job openings, no later than notification is received by any other job referral source external to the EMPLOYER or any public announcement for the job opening, throughout the term of this agreement;

(B) "That each such notice to the Contact Agency shall include job qualifications and a deadline for referrals;

(C) "To ensure that the CONTACT AGENCY and the PROVIDERS will have sufficient:

(i) "Lead time (minimum lead time is ___ business days before the job application close date, except in temporary or emergency situations); and

(ii) "Information to make meaningful referrals for jobs that will be filled by the EMPLOYER.

(D) "That all job information may be shared with all PROVIDERS for which referrals are coordinated by the CONTACT AGENCY; and

(E) "That all job openings shall be listed in the 'public labor exchange system' of the state Employment Department, insofar as a local office of that state agency is a PROVIDER.

(d) "The CONTACT AGENCY agrees to the following:

(A) "That to the extent that Qualified Applicants are available among the relevant PROVIDERS, to refer those individuals to the EMPLOYER for job openings; and

(B) "To facilitate and implement the listing of all job openings in the 'public labor exchange system,' in cooperation with other PROVIDERS (though, not necessarily to the exclusion of other referral methods).

(e) "The EMPLOYER agrees to:

(A) "Fully consider for employment any Qualified Applicant referred by the CONTACT AGENCY by the referral deadline;

(B) "Notify the CONTACT AGENCY when a Qualified Applicant is hired by the EMPLOYER; and

(C) "Provide after-the-fact information to the CONTACT AGENCY about applicable overall hiring and job vacancies in the following manner: _____, or as requested by the Contact Agency, in accordance with OAR 123-070-1900(1) to (3).

(f) "The EMPLOYER agrees to comply with all relevant laws regarding employment of Qualified Applicants of this state or the federal government, including but not limited to not discriminating on the basis of race, color, religion, ancestry, national origin, political affiliation, sex, age, marital status, sexual orientation, physical or mental disability, or any other inappropriate reason prohibited by such laws.

(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 provisions of a collective bargaining agreement to which the EMPLOYER is a party, the bargaining agreement shall prevail.

(j) "Both the 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 either the CONTACT AGENCY or all of the PROVIDERS; or

(B) "Request assistance from the Oregon Economic and Community Development Department.

(k) "This agreement shall take effect on the date of the last signature by the contracting parties below, and shall be in full force and

effect until _____, 20____ (or, until the end of the term, period or periods as described in OAR 123-070-1600).

(1) "APPROVED:

(A) "CONTACT AGENCY: By _____

Name _____ Title _____ Date _____
Address _____

Phone _____.

(B) "EMPLOYER: By _____

Name _____ Title _____

Unemployment Insurance Account Number _____
Address _____

Phone _____."

(2) The First Source Agreement under this rule may be substantively modified or amended only as described in OAR 123-070-1800.

(3) A Benefited Business's performance under the First Source Agreement is not, in and of itself, a condition for the Benefited Business to receive the benefit of a program listed in OAR 123-070-1150(1) or (2), except for the following:

(a) Compliance with provisions added consistent with OAR 123-070-1800(3); or

(b) Adherence to requirements for data reporting as specified through OAR 123-070-1900(4) and (5).

(4) The failure of a First Source Agreement, as entered into by a Benefited Business, to conform with the stipulations of this division of administrative rules shall in no way jeopardize the Benefited Business's status as having entered into a First Source Agreement, so long as the Benefited Business takes reasonable efforts to rectify any significant error or omission in the First Source Agreement, as requested by the Contact Agency, enterprise zone sponsor or Department, none of which shall be liable in any way for such an error or omission.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.060, 285C.105, 285C.215, 285C.606 & 461.740

Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0350; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-1800

Local/Case-Specific Modifications to the First Source Agreement

For purposes of OAR 123-070-1700, the First Source Agreement may be modified or amended as follows, but only insofar as such modification or amendment neither alters nor nullifies the clear expression or the intent of any provision in OAR 123-070-1700(1):

(1) The Contact Agency or the Providers under the Interagency Agreement covering the geographic area in which the Benefited Business is located may add other substantive provisions or components to the First Source Agreement, but only through and pursuant to mutual consent by the Benefited Business, unless otherwise allowed in sections (2) or (3) of this rule or for data reporting as described in OAR 123-070-1900(4) and (5).

(2) As initiated or agreed to by the Contact Agency and Providers, a locally developed model First Source Agreement may include provisions that are conditions for receiving local administered incentives that are in addition to state lottery or property tax benefits. Such conditions do not, however, affect the benefits of programs listed in OAR 123-070-1150(1) or (2).

(3) With the consent and approval of the sponsor of an urban enterprise zone, the Contact Agency may add local conditions that are derived directly from the policy adopted by the sponsor under ORS 285C.150 to the regular format of the First Source Agreement that is used for the Benefited Businesses in that zone, and such additional provisions of the First Source Agreement shall be conditions for the enterprise zone property tax exemption consistent with the standards in the zone sponsor's policy

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.060, 285C.105, 285C.215, 285C.606 & 461.740

Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-1900

Potential Data Collection

(1) For purposes of OAR 123-070-1200(3)(e) and 123-070-1700(1)(e), the Contact Agency may collect and compile data by Benefited Business and by referring agency (Provider), and may specify in the First Source Agreement a schedule and method by which a Benefited Business submits or confirms data, for the following items:

(a) The Benefited Business's name, address and State Business Identification Number (BIN/unemployment insurance account number);

(b) The number and names of all persons referred to each Benefited Business through a First Source Agreement with the Contact Agency;

(c) The number of such referrals and the names of referred persons who were hired by the Benefited Business;

(d) The total number of individuals hired by each Benefited Business; or

(e) A consolidated list of applicable job openings, whether filled or unfilled, even if vacated or refilled.

(2) Any data collection under this rule shall be performed no more frequently than as follows, and then only for data specific to the intervening period in question and not previously collected:

(a) For Benefited Businesses as described in OAR 123-070-1150(1) (lottery-funded programs), the data may be collected for the following quarters: January 1 through March 31, April 1 through June 30, July 1 through September 30 and October 1 through December 31.

(b) For Benefited Businesses as described in OAR 123-070-1150(2) (tax incentive programs), the data may be collected on an annual basis, subject to modification under section (3) of this rule, for each calendar year until the end of the property tax exemption period.

(3) If a Benefited Business is receiving benefits under a program pursuant to both subsections (2)(a) and (b) of this rule, the data for the Benefited Business may be collected in the manner specified in subsection (2)(a) of this rule during the period in which the First Source Agreement is in effect for the lottery-funded benefits, with an annual compilation for every December 31. After such period, data collection may take place only as indicated in subsection (2)(b) of this rule.

(4) For Benefited Businesses as described in OAR 123-070-1150(2), the county under ORS 285C.609 or the enterprise zone sponsor may seek the Contact Agency's assistance as described in subsection (5) of this rule for the following:

(a) A Strategic Investment Program agreement under ORS 285C.609;

(b) An urban enterprise zone in which the sponsor has adopted a policy under ORS 285C.150 (irrespective of a regularly formatted First Source Agreement as provided in OAR 123-070-1800);

(c) Resolution adopted under ORS 285C.155 to waive employment increase requirement; or

(d) A written agreement for an extended period of enterprise zone abatement up to five years under ORS 285C.160.

(5) For the purposes of section (4) of this rule and this section, the zone sponsor or the county:

(a) Shall take appropriate and necessary actions to compensate the Contact Agency or Providers for any expenses that arise, and to safeguard the confidentiality of data submitted or compiled with respect to legal constraints affecting the Contact Agency or any Provider;

(b) May make the Benefited Business's submission of data specified in paragraph (c)(A) of this section a condition for the tax incentive benefit, if so provided in the policy or agreements under section (4) of this rule; and

(c) May in cooperation with the Contact Agency request the following:

(A) That the First Source Agreement specify particular types and formats of data that the Benefited Business must provide, either to demonstrate compliance with requirements under ORS 285C.150, 285C.155, 285C.160, 285C.205 or 285C.609(5) or to satisfy other information needs of the sponsor or the county related to the Benefited Business's hiring, employment, training, compensation and so forth, insofar as it is practical, and as such data or information reasonably relates to the First Source Agreement; and

(B) To have such data transmitted through the Contact Agency. (No such data is to come from any other information source to which a Provider has access, including but not limited to unemployment insurance data)

(6) For Benefited Businesses under the state lottery-funded programs listed in OAR 123-070-1150(1), the Contact Agency may provide appropriate compilations of data collected under this rule to the Department, as requested by the Director.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)

Stats. Implemented: ORS 285C.060, 285C.105, 285C.150, 285C.155, 285C.160, 285C.606, 285C.609 & 461.740
Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 3-1992(Temp), f. 3-12-92, cert. ef. 3-13-92; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 9-1996, f. 10-8-96, cert. ef. 10-11-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0360; EDD 1-2005, f. & cert. ef. 2-25-05

Enterprise Zones

123-070-2000

Enterprise Zone — Specific Rules

OAR 123-070-2000 to 123-070-2999 relate to matters of First Source Agreements only for Benefited Businesses that will be or are receiving a three- to five-year exemption from ad valorem taxes on qualified property in an enterprise zone under ORS 285C.050 to 285C.250, such that OAR 123-070-2000 to 123-070-2999 do not pertain to a Benefited Business that is benefiting only from a lottery-funded program or the Strategic Investment Program. Nevertheless, provisions that relate exclusively to Benefited Businesses qualifying for an enterprise zone exemption are found elsewhere in this division of administrative rules.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.060(1)
Stats. Implemented: ORS 285C.060, 285C.175 & 285C.215
Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-2100

Enterprise Zone: First Source Coverage of Employees

For purpose of a Benefited Business that is authorized or qualified for an enterprise zone exemption on qualified property:

(1) The First Source Agreement shall apply to all of the Benefited Business's sites of operation within the enterprise zone but only for that zone.

(2) Unless the Contact Agency and the Benefited Business agree otherwise, "job openings," for purposes of OAR 123-070-1100(4) and 123-070-1700(1), exclude positions and persons that are not recognized under ORS 285C.050 and 285C.200, namely, employees who are temporary, seasonal, part-time (32 hours or less per week) or working at ineligible operations.

(3) Whenever the Benefited 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 30 days prior to the closure date of the job opening, the Benefited Business must indicate this situation and include the name of the prospective hire in its notification to the Contact Agency as described in OAR 123-070-1700(1)(c). On receiving such notification from a Benefited Business, the Contact Agency is in no way obligated to still perform any duty as described in OAR 123-070-1700(1)(d), but the Benefited Business is not excused from OAR 123-070-1700(1)(e) or any other requirement.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.215(3)
Stats. Implemented: ORS 285C.050, 285C.060, 285C.200 & 285C.215
Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-2200

Enterprise Zone: Initial First Source Procedures

For purposes of qualifying for an enterprise zone tax exemption:

(1) An "eligible business firm" as defined in ORS 285C.050(6) shall enter into a First Source Agreement as described in OAR 123-070-1700 either:

(a) After the local zone manager approves the application for authorization of the eligible business firm;

(b) Before hiring new employees to qualify under ORS 285C.200; or

(c) Both as possible.

(2) Consistent with OAR 123-065-4328(4)(d) and 123-065-4345(1)(d), the local zone manager shall:

(a) Advise the eligible business firm/Benefited Business under section (1) of this rule to immediately seek a First Source Agreement;

(b) Notify the relevant Contact Person about the Benefited Business's application for authorization and about how to contact the Benefited Business; and

(c) Send the Contact Person the appropriate colored copy from the completed authorization approval form.

(3) After being informed by a local zone manager of an authorization/application pursuant to section (2) of this rule, the Contact Agency shall contact the Benefited Business and arrange an opportunity to enter into a First Source Agreement. A Benefited Business shall

not be deterred from initiating such contact or from pursuing a prompt First Source Agreement.

(4) The Contact Agency shall provide a copy of the First Source Agreement to the respective local zone manager within ten business days of entering into a First Source Agreement with the authorized Benefited Business, or shall notify the local zone manager of any problems that arise in association with such a Benefited Business's entering into a First Source Agreement.

(5) The local zone manager shall use the information under section (4) of this rule to do the following:

(a) See that each authorized business firm enters into a timely, valid and accurate First Source Agreement, in accordance with this division of administrative rules;

(b) Inform the county assessor of a business firm that may have failed to enter into First Source Agreement under ORS 285C.215(2)(a); and

(c) Check that a proper and up-to-date First Source Agreement conforming to OAR 123-070-1700 is being used for Benefited Businesses in the zone, such that the local zone manager shall inform the Contact Agency and the Department of any needed corrections or revisions to a locally developed First Source Agreement.

(6) The local zone manager shall assist in advising and explaining to Benefited Businesses about their obligations under the First Source Agreement, including but not limited to requests by the Contact Agency or a Provider.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.215(3)
Stats. Implemented: ORS 285C.050, 285C.060, 285C.200 & 285C.215

Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 22-1990(Temp), f. & cert. ef. 8-9-90; EDD 3-1992(Temp), f. 3-12-92, cert. ef. 3-13-92; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0370; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-2300

Enterprise Zone: Handling Exemption Claims

For purposes of the county assessor's processing of a Benefited Business's enterprise zone exemption claim with property schedule under ORS 285C.220 and 285C.225, except in the case of an existing waiver as described in OAR 123-070-1500(1)(a):

(1) The Benefited Business may attach a copy of the First Source Agreement to the claim form.

(2) For purposes of ORS 285C.175(1)(c), the assessor shall primarily rely on the zone sponsor, Contact Agency or other Provider informing the assessor's office under ORS 285C.215(2) that a requisite First Source Agreement is lacking, for purposes of checking that the Benefited Business has entered into a current First Source Agreement consistent with this division of administrative rules.

(3) If wishing, for whatever reason, to independently verify the requisite existence, effectiveness or general suitability of the First Source Agreement, the assessor may do the following:

(a) Request and receive a copy of the First Source Agreement and related input directly from the local zone manager, the Contact Agency, the Benefited Business or any other entity, regardless of what is said elsewhere in this division or division 065 of these administrative rules; or

(b) Seek and rely on assistance under ORS 285C.230(1)(b) from the local zone manager before approving the exemption claim, for which inability or unwillingness on the part of the zone sponsor to provide such assistance may result in termination of the zone.

(4) If learning of a problem with the Benefited Business's execution of a suitable First Source Agreement by whatever means, then pending a corrective waiver as described in OAR 123-070-1500(1) or 123-070-2400, the county assessor:

(a) May deny the exemption claim, if the First Source Agreement was not executed as described in OAR 123-070-2200(1).

(b) Shall deny the exemption claim, if the First Source Agreement:

(A) Was not executed on or before December 31 directly preceding the first exemption year under ORS 285C.175;

(B) Does not cover at least all years of exemption; or

(C) Is not signed, violates this division of administrative rule or is contractually deficient.

(5) The assessor shall deny the exemption under ORS 285C.175(6), if by August 31 of the first tax year of exemption, a problem as described in subsection (4)(b) of this rule is not resolved through copies/documentation of the following:

- (a) A (revised/replacement) First Source Agreement;
 - (b) Applicable waiver as described in OAR 123-065-1500 or 123-065-2400; or
 - (c) Both, as necessary.
 - (6) Once a Benefited Business is qualified and approved to receive the exemption, the exemption may not later be revoked or disqualified for lack of compliance with this division of administrative rules, except for the case of fraudulent representations by the Benefited Business or an agent thereof.
 - (7) Subject to requisite resolution of the outstanding problem, a denial as described in section (5) of this rule may be reversed and the exemption granted, as otherwise allowed under the laws and rules governing the procedures and authority of the assessor.
- Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.215(3)
 Stats. Implemented: ORS 285C.060, 285C.105, 285C.175, 285C.215, 285C.220, 285C.240
 Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05

123-070-2400

Enterprise Zone: Allowing Late Execution of Agreement

(1) The Director may issue a waiver that excuses the requirement of entering into a First Source Agreement up until the time when it is actually executed or takes effect, such that it is not required to have been entered into:

- (a) At the time of applicable hiring regardless of OAR 123-070-1600(1) or 123-070-2200(1)(b); or
- (b) On or before December 31 of the year when qualified property is placed in service, directly before the first exemption year, as otherwise required under ORS 285C.215(1).
- (2) A waiver as described in section (1) of this rule may be issued for the following reasons:
 - (a) The Benefited Business began or was using the first-source services of the Contact Agency or other Providers in a timely fashion, without having a formal First Source Agreement;
 - (b) Mistaken communications, an absence of local contacts or other similar situations hampered the ability or understanding of the Benefited Business regarding the First Source Agreement or the need to enter into it;
 - (c) The Benefited Business made a good faith effort to obtain a First Source Agreement, but it was misled or otherwise unable to readily obtain a First Source Agreement through no fault of its own; or
 - (d) Other comparable circumstances, including but not limited to what is described in OAR 123-065-1500(2).

(3) A Benefited Business, or the local zone manager, county assessor or Contact Agency on behalf of the Benefited Business, may seek a waiver under this rule by contacting Department staff at any time following approval of the application for authorization, whether before or after an action by the county assessor as described in OAR 123-070-2300.

(4) A waiver under this rule shall take the form of a written recommendation from Department staff to the Director that is approved by signature of the Director. The written recommendation shall describe:

- (a) The justification for the waiver pursuant to this rule;
- (b) The basis or source of evidence for such justification or determinations, including but not limited to verbal communications with the Contact Agency, the county assessor or other local parties;
- (c) The status of the Benefiting Business's entering into a First Source Agreement; and
- (d) The date by which the First Source Agreement must be in effect.

(5) The Department shall provide notice of the Director's decision and distribute copies of any approved waiver, as well as any waiver as described in OAR 123-070-1500 affecting an enterprise zone exemption, to the:

- (a) Benefited Business;
- (b) County assessor;
- (c) Contact Agency;
- (d) Local zone manager; and
- (e) Department of Revenue (Attention: Exemptions Specialist, Property Tax Division).

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.060(1) & 285C.215(3)
 Stats. Implemented: ORS 285C.050, 285C.060, 285C.200 & 285C.215
 Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05

DIVISION 75

COMMUNITY FACILITIES

123-075-0000

Purpose and Scope

This division of administrative rules is reserved for the delineation of general policies, procedures and criteria for financial assistance from various programs of the Oregon Economic and Community Development Department that is associated with construction, reconstruction, acquisitions, renovation, modification, furnishing and so forth of buildings and structures for public purposes or for the benefit of a community's general public. Any such rules would not override the requirements, criteria and parameters, as determined by state statutes or federal laws and regulations, for the particular programs.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285A.305(5), 285B.419(1) & 285B.467(1)
 Stats. Implemented: ORS 285A & 285B
 Hist.: EDD 7-1990, f. 4-5-90, cert. ef. 4-6-90; EDD 4-2003, f. & cert. ef. 3-26-03

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 (OCDBG) are funded by annual allocations to the state from the U.S. Department of Housing and Urban Development (HUD) and program income generated by the grants. The primary objective of the federal community development block grant program is "...the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income..." (Title I, Sec. 101(c), Housing and Community Development Act of 1974, as amended (42 United States Code 5301 et seq.)). The primary objective of Oregon's Community Development Block Grant program is to enhance the quality of life in Oregon communities.

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

Stat. Auth.: ORS 285A.075 & 285A.110

Stats. Implemented: ORS 285A.075

Hist.: IRD 2-1986(Temp), f. & ef. 1-14-86; IRD 8-1986, f. 6-30-86, ef. 7-1-86; Renumbered from 120-021-0000; EDD 5-1991, f. & cert. ef. 5-24-91; EDD 2-1994, f. & cert. ef. 2-3-94; EDD 12-1999, f. & cert. ef. 10-11-99; EDD 3-2001, f. & cert. ef. 4-10-01

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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 285A.075 & 285A.110

Stats. Implemented: ORS 285A.075

Hist.: IRD 2-1986(Temp), f. & ef. 1-14-86; IRD 8-1986, f. 6-30-86, ef. 7-1-86; Renumbered from 120-021-0002; 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 non-performance 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 285A.075 & 285A.110

Stats. Implemented: ORS 285A.075

Hist.: IRD 2-1986(Temp), f. & cf. 1-14-86; IRD 8-1986, f. 6-30-86, cf. 7-1-86; Renumbered from 120-021-0005; EDD 5-1991, f. & cert. ef. 5-24-91; EDD 12-1999, f. & cert. ef. 10-11-99; EDD 3-2001, f. & cert. ef. 4-10-01

123-080-0030

Program Information

(1) The 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 adopted method of distribution section of the Annual Update to the State of Oregon Consolidated Plan for Housing and Community Development on file with the Department is incorporated as part of these rules by reference.

(4) The Department shall prepare and provide to Community Development Block Grant recipients a Grant Management Handbook which specifies requirements for local grant management, reporting, and record keeping, and the Department's monitoring and grant close-out 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 Chapters 244 and 279 of the Oregon Revised Statutes, as applicable.

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

Stat. Auth.: ORS 285A.075 & 285A.110

Stats. Implemented: ORS 285A.075

Hist.: IRD 2-1986(Temp), f. & cf. 1-14-86; IRD 8-1986, f. 6-30-86, cf. 7-1-86; Renumbered from 120-021-0010; EDD 5-1991, f. & cert. ef. 5-24-91; EDD 8-1992, f. & cert. ef. 4-24-92; EDD 3-1993, f. & cert. ef. 3-30-93; EDD 8-1993, f. & cert. ef. 9-21-93; EDD 2-1994, f. & cert. ef. 2-3-94; EDD 12-1994, f. & cert. ef. 9-8-94; EDD 1-1995, f. 1-31-95, cert. ef. 2-1-95; EDD 4-1996, f. & cert. ef. 5-28-96; EDD 3-1997, f. & cert. ef. 3-17-97; EDD 13-1998, f. & cert. ef. 8-14-98; EDD 12-1999, f. & cert. ef. 10-11-99; EDD 3-2001, f. & cert. ef. 4-10-01; EDD 3-2002, f. & cert. ef. 2-22-02; EDD 7-2006, f. 10-30-06, cert. ef. 10-31-06

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) & 190

Stats. Implemented: ORS 285.680 - 285.690

Hist.: IRD 2-1986(Temp), f. & cf. 1-14-86; IRD 8-1986, f. 6-30-86, cf. 7-1-86; Renumbered from 120-021-0015; EDD 5-1991, f. & cert. ef. 5-24-91

DIVISION 87

PRIVATE SECTOR CONTRIBUTIONS AND INVOLVEMENT

123-087-0000

Purpose

This division of administrative rules sets forth guidelines for soliciting, accepting and reporting contributions to the Department projects, programs and purposes that are received from private, non-governmental sources, as permissible under state law, including but not limited to ORS 285B.200(1). These guidelines are based on the premise that building a stronger economy and vital communities in Oregon may necessitate and may sometimes be best accomplished by close collaboration among the public, nonprofit and private sectors.

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

Stats. Implemented: ORS 285A.200

Hist.: EDD 35-1988, f. 11-30-88, cert. ef. 12-1-88; EDD 4-2003, f. & cert. ef. 3-26-03

123-087-0010

Definitions

For the purpose of this division of administrative rules, unless the context demands otherwise:

(1) **Department** means the State of Oregon Economic and Community Development Department as (re)organized under ORS 285A.070.

(2) **Director** means the director of the Department as appointed under ORS 285A.070.

(3) **Private Sector Support** means financial contributions and/or in-kind goods and services, such as those listed in OAR 123-087-0020(1), that are received by the Department. Such donations may be received from individuals, partnerships, or corporations, or any other private entity, including but not limited to nonprofit organizations.

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

Stats. Implemented: ORS 285A.200

Hist.: EDD 35-1988, f. 11-30-88, cert. ef. 12-1-88; EDD 4-2003, f. & cert. ef. 3-26-03

123-087-0020

Solicitation and Use of Private Support

(1) The Department may solicit, receive and use Private Sector Support in the following contexts:

(a) Special projects for public information, publicity or promotional activities related to economic and community enhancement in this state;

(b) Employees who are hired by the state government but whose compensation is entirely or partially attributable to donations received by the Department or by the state government on the Department's behalf from one or more private entities;

(c) Personnel employed by the contributing entity who are loaned to the Department for performing certain purposes, and who receive no compensation from the Department except for reimbursement of expenses;

(d) Activities related to the expansion, retention or recruitment of businesses, employment or commerce in and for this state;

(e) Efforts to organize, educate or increase institutional or human capacity for and among persons engaged in local economic and community development;

(f) Free or discounted provision of or access to public speakers, expertise, printing, advertisement, transportation, accommodations and so forth; or

(g) Similar reasons and circumstances.

(2) Solicitation of Private Sector Support by the Department shall be approved by the Director.

(3) Contributors to the Department shall not receive any special benefit, service, consideration, publicity or information as a result of their contribution to the Department, other than, for example, satisfaction with the mutual outcomes accomplished as a result of collaboration with the Department.

(4) Any Private Sector Support received in the form of money shall be paid into and disbursed from an appropriate account or fund and its origins recorded.

(5) Private Sector Support shall be used only for the purposes for which it was contributed or returned to the contributor when appropriate.

(6) Private Sector Support involving loaned personnel, privately supported compensation of state employees or similar arrangements shall be:

(a) Used only for temporary, limited duration or specially dedicated roles or for unusual circumstances, and not to fill a regular, permanent position of the state government or to displace or replace any existing employee;

(b) Approved directly by the Director;

(c) Reported to appropriate state agencies, in addition to OAR 123-087-0040, within 30 days of the commencement of such a person's work or service for the state, if the period of that work or service is expected to be at least that long;

(d) For no more than an overall period of two years and not repeated;

(e) Preceded by any affected person's orientation with the Department, including but not limited to facilitation and instruction by the Department for the person to read and understand the laws and guidelines described in subsection (f) of this section; and

(f) Done in accordance with all applicable laws and guidelines of the State of Oregon and of the Department relating to personnel, compensation, volunteers, state liability, ethics, and the identification and prevention of conflicts of interest, including but not limited to ORS 171.725 to 171.785, ORS Chapters 179 and 244, and OAR 123-087-0030.

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

Stats. Implemented: ORS 285A.200

Hist.: EDD 35-1988, f. 11-30-88, cert. ef. 12-1-88; EDD 4-2003, f. & cert. ef. 3-26-03

123-087-0030

Avoiding Conflicts of Interest

(1) The Department shall solicit and receive Private Sector Support only for the purpose of assisting the Department to undertake or implement the programs, functions or laws that it is charged with administering.

(2) Private Sector Support may not be received or used in any way that:

(a) Provides for the personal benefit of any state employee;

(b) Directly benefits any entity responsible for the support; or

(c) Pertains significantly to Department actions, decisions or resources with the potential to have a pecuniary advantage or detriment to such an entity.

(3) If, in the judgment of the Director, an entity is offering or providing support in order to potentially receive special consideration, services or information from the state, or the support is otherwise improper, the Director shall refuse or return the support offered. The Director may consult with the Governor's Office, Department of Administrative Services, Secretary of State, Attorney General, Government Standards and Practices Commission or other state agencies in order to determine whether receipt of such support is appropriate.

(4) The Department shall, as needed, develop special operational guidelines for purposes of this division of administrative rules (including but not limited to the treatment of confidential or privileged information), signed statements acknowledging such guidelines, and so forth.

(5) The elements and intent of this rule may be applied in situations that might arise with respect to contributions, in-kind goods or services or other forms of support offered to or received by the Department from local governments or municipal corporations that are eligible to receive funding from the Department.

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

Stats. Implemented: ORS 285A.200

Hist.: EDD 35-1988, f. 11-30-88, cert. ef. 12-1-88; EDD 4-2003, f. & cert. ef. 3-26-03

123-087-0040

Reporting Private Sector Support

The Department shall report any financial contribution or instance of an in-kind good or (non-personnel) service that is received by the Department from a private business or individual or from a non-profit organization comprising or representing private businesses or individuals, and that has a market value of \$1,000 or more, such that the report shall:

(1) Be issued biannually to the Governor's Office, the Department of Administrative Services, the Government Standards and Practices Commission, the Secretary of State or any other state agencies, as appropriate, including but not limited to any agency that regulates

a business firm connected with the contribution or Private Sector Support; and

(2) 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 285A.075(5) & 285A.110(1)

Stats. Implemented: ORS 285A.200

Hist.: EDD 35-1988, f. 11-30-88, cert. ef. 12-1-88; EDD 4-2003, f. & cert. ef. 3-26-03

DIVISION 90

STRATEGIC RESERVE FUND

123-090-0000

Purpose

The Strategic Reserve Fund was established by the Oregon Legislative Assembly to support economic and community development in Oregon. Particular emphasis shall be placed on investments that assist communities, businesses or industries with cost effective projects that assist the creation, expansion, and preservation of the principal traded sector industries of Oregon, and that encourage diversification and preservation of regional economies.

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

Stats. Implemented: ORS 285B.266

Hist.: EDD 26-1988(Temp), f. & cert. ef. 7-13-88; EDD 29-1988, f. & cert. ef. 8-30-88; EDD 7-2000, f. & cert. ef. 4-11-00

123-090-0010

Definitions

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

(1) "Administrative Expenses" mean any agency expenditures included under the classifications of expenditures, except categories of debt service and special payments, which are prepared and prescribed for purposes of agency budget-making and accounting.

(2) "Community" means an area or a locality in which the body of inhabitants has common economic or employment interests. The term is not limited to a city, county or other political subdivision and need not, but may be, limited by political boundaries.

(3) "Fund" means the Strategic Reserve Fund established by ORS 285B.266.

(4) "Debt Retirement" means payment in full of the balance owed on the principal of a loan.

(5) "Debt Service" means the interest and charges currently payable on a debt, including principal payments.

(6) "Distressed Area" means a county, city, community or other geographic area as defined in division 24 of this chapter of administrative rules.

(7) "Rural Area" means an area located entirely outside of the acknowledged Portland Metropolitan Area Regional Urban Growth Boundary and the acknowledged urban growth boundaries of the cities of 30,000 or more in population, including Albany, Bend, Corvallis, Eugene, Springfield, Salem, Keizer or Medford.

(8) "State-Wide Strategies" mean the State's overall economic and community development strategy.

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

Stats. Implemented: ORS 285B.266

Hist.: EDD 26-1988(Temp), f. & cert. ef. 7-13-88; EDD 29-1988, f. & cert. ef. 8-30-88; EDD 6-1990(Temp), f. & cert. ef. 3-15-90; EDD 20-1990(Temp), f. & cert. ef. 6-28-90; EDD 23-1990, f. & cert. ef. 8-17-90; EDD 7-2000, f. & cert. ef. 4-11-00

123-090-0020

Funding Eligibility

The Strategic Reserve Fund may be used to finance economic and community development projects that:

(1) Are reasonably expected to result in new jobs, job retention, or higher incomes for Oregonians;

(2) Provide assistance to businesses that are considering starting in, expanding in, or relocating to Oregon. Assistance will be reserved for projects that result in a significant long-term economic benefit for residents of the county in which the project will be located; or

(3) Serve as a catalyst for additional economic and community development benefits, or that will result in improved utilization of existing Oregon resources.

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

Stats. Implemented: ORS 285B.266

Hist.: EDD 26-1988(Temp), f. & cert. ef. 7-13-88; EDD 29-1988, f. & cert. ef. 8-30-88; EDD 7-2000, f. & cert. ef. 4-11-00

DIVISION 95

INDUSTRY DEVELOPMENT PROGRAM

123-090-0030

Ineligible Expenditures

Strategic Reserve Funds will not be used to assist:

- (1)(a) Relocation of a business from one part of the state to another, except for businesses that would otherwise relocate outside Oregon;
- (b) This restriction may be waived if the Director finds that the relocation reduces employment by less than 0.1 percent of the civilian labor force in the county from which the company relocates.
- (2) The retirement or service of debt for any public or private entity; or
- (3) The Department with any administrative expenses without legislative authorization.

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

Stats. Implemented: ORS 285B.266

Hist.: EDD 26-1988(Temp), f. & cert. ef. 7-13-88; EDD 29-1988, f. & cert. ef. 8-30-88; EDD 6-1990(Temp), f. & cert. ef. 3-15-90; EDD 20-1990(Temp), f. & cert. ef. 6-28-90; EDD 23-1990, f. & cert. ef. 8-17-90; EDD 7-2000, f. & cert. ef. 4-11-00

123-090-0040

Director's Review

- (1) Projects shall not be funded by the Fund unless the Director finds that:
 - (a) The Project is or will be supported by the maximum feasible amount of local and private financial participation;
 - (b) The Project will produce significant long-term, regional or statewide economic impacts;
 - (c) The Project will not require continuing state subsidies;
 - (d) The Project does not supplant private investment or duplicate or undermine similar efforts; and
 - (e) The Project meets, or can be reasonably expected to meet, at least one of the following criteria:
 - (A) The Project uses existing human and natural resources to harness Oregon's economic comparative advantage;
 - (B) The Project promotes economic and community recovery in Rural or Distressed areas, or among populations suffering economic hardship;
 - (C) The Project creates, or leads to the creation or retention of jobs or higher incomes for Oregonians;
 - (D) The Project promotes the development of new national and international markets for goods and services produced in Oregon; or
 - (E) The Project advances State-Wide Strategies.
- (2) If the Project affects land use, it must satisfy the applicable requirements of OAR chapter 123, division 8 of this Department.
- (3) Funding decisions shall be made by either the Governor or the Director.

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

Stats. Implemented: ORS 285B.266

Hist.: EDD 26-1988(Temp), f. & cert. ef. 7-13-88; EDD 29-1988, f. & cert. ef. 8-30-88; EDD 20-1990(Temp), f. & cert. ef. 6-28-90; EDD 23-1990, f. & cert. ef. 8-17-90; EDD 7-2000, f. & cert. ef. 4-11-00

123-090-0050

First Source Hiring

Any firm receiving an award of \$50,000 or more through the Strategic Reserve Fund shall enter into a first source agreement in accordance with division 70 of this chapter of administrative rules.

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

Stats. Implemented: ORS 285B.266

Hist.: EDD 7-2000, f. & cert. ef. 4-11-00

123-090-0060

Waivers

The Director may waive non-statutory requirements of this division of administrative rules if the project demonstrates significant contribution to State-Wide Strategies consistent with the purpose of the Strategic Reserve Fund. Projects that improve the economic condition of a Rural or Distressed Area, or further global competitiveness of Oregon firms may receive special consideration by the Director.

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

Stats. Implemented: ORS 285B.266

Hist.: EDD 7-2000, f. & cert. ef. 4-11-00

123-095-0000

Purpose and Objectives

The purpose of this division of administrative rules is to govern the award of grants under the Industry Development Program, in accordance with ORS 285B.286 and relevant amendments stated in Chapter 509, Oregon Laws 1999.

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

Stats. Implemented: ORS 285B.280, 285B.283 & 285B.286

Hist.: EDD 4-1992(Temp), f. & cert. ef. 3-18-92; EDD 1-1993, f. & cert. ef. 1-15-93; EDD 1-2000, f. & cert. ef. 1-13-00

123-095-0010

Definitions

As used in this division of administrative rules:

- (1) "Oregon's Benchmarks" mean the measurable societal indicators set by the Oregon Progress Board.
- (2) "Project" means an activity that contributes to the stability, growth, development, or competitiveness of a Traded Sector Industry, or group of Traded Sector Industries.
- (3) "Recipient" means an entity (or entities), to include a group of three or more firms, that has been awarded Industry Development Program funding.
- (4) "Small Businesses" mean firms that have 49 or fewer employees.
- (5) "Traded Sector" means industries in which the member firms sell their goods or services into markets for which national or international competition exists (ORS 285B.280(5)).

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

Stats. Implemented: ORS 285B.280, 285B.283 & 285B.286

Hist.: EDD 4-1992(Temp), f. & cert. ef. 3-18-92; EDD 1-1993, f. & cert. ef. 1-15-93; EDD 1-2000, f. & cert. ef. 1-13-00

123-095-0020

Eligible Applicants

Industry associations and groups of three or more Traded Sector Industry firms are eligible for grants under the Industry Development Program. At the discretion of the Director, the Department may award grants to other public or private entities.

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

Stats. Implemented: ORS 285B.280, 285B.283 & 285B.286

Hist.: EDD 4-1992(Temp), f. & cert. ef. 3-18-92; EDD 1-1993, f. & cert. ef. 1-15-93; EDD 1-2000, f. & cert. ef. 1-13-00

123-095-0030

Eligible Activities

- (1) Industry Development Program funds may be used for eligible Projects, which include but are not limited to the following activities:
 - (a) Assisting Oregon industries with establishing research and development consortia;
 - (b) Marketing development activities that introduce new products or penetrate new markets;
 - (c) Promoting the commercialization of new technologies;
 - (d) Increasing the skills of Oregon workers to meet the needs of Traded Sector Industries;
 - (e) Enhancing the capacity of Oregon industries to take advantage of electronic communications and information technologies; and
 - (f) Any activity determined by the Department to increase the global competitiveness of Oregon Traded Sector Industries, and to expand and diversify the state's economic base.
- (2) Projects to be funded by the Industry Development Program must meet both of the following requirements:
 - (a) The Projects must have substantial financial support and sponsorship by individual Traded Sector Industry firms, and project sponsors must involve these firms in planning and implementing activities;
 - (b) Private industry sources must match Industry Development Program funds on a dollar-for-dollar basis with cash or in-kind contributions. The Director has the discretion to modify the 100 percent matching requirement if the Director determines that the amount of the proposed match is reasonable and that the proposal will further the objectives of the program.
- (3) When determining Industry Development Program funding eligibility, the Department will consider Projects that:

(a) Are long-term and have a state-wide scope, or have the potential to directly or indirectly deliver substantial benefits to the economies of Oregon communities;

(b) Support Traded Sector Industry association activities that seek to develop or implement strategic plans that will improve their competitiveness;

(c) Will not be used to pay for ongoing administrative expenses or require continuing state subsidies;

(d) Encourage the retention or creation of long-term, permanent jobs in Oregon;

(e) Emphasize growth and development of existing and emerging in-state businesses, to include expansion of small businesses;

(f) Are easily implemented, and results-oriented;

(g) Include a mechanism for achieving measurable, positive economic impacts;

(h) Advance the state's overall Industry Development objectives; and

(i) Are compatible with achievement of Oregon's Benchmarks.

(4) Compliance with sections (1), (2), and (3) of this division of administrative rules does not necessarily entitle a Project to funding. Funding of any particular Project is at the discretion of the Director. Funding considerations include, but are not limited to, the amount of funds available, the relative merit of competing proposals, and other possible uses of remaining funds.

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

Stats. Implemented: ORS 285B.280, 285B.283 & 285B.286

Hist.: EDD 4-1992(Temp), f. & cert. ef. 3-18-92; EDD 1-1993, f. & cert. ef. 1-15-93; EDD 1-2000, f. & cert. ef. 1-13-00

123-095-0040

Project Administration

(1) Industry Development Program proposals must be sent to the Oregon Economic and Community Development Department. The Department will mail to the applicants a written notice that states 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 by the Industry 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 that describes the responsibilities of each party in the agreement, the Department's role in monitoring the use of funds, the 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) Pursuant to ORS 280.518, Recipients shall conspicuously display on the site, or include as part of the Project description, a statement showing that the Project is financed in part by Oregon Lottery funds.

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

Stats. Implemented: ORS 285B.280, 285B.283 & 285B.286

Hist.: EDD 4-1992(Temp), f. & cert. ef. 3-18-92; EDD 1-1993, f. & cert. ef. 1-15-93; EDD 1-2000, f. & cert. ef. 1-13-00

DIVISION 105

TELECOMMUNICATIONS INFRASTRUCTURE PROJECTS

123-105-0000

Preamble

The Telecommunications Infrastructure Accounts were established to ensure that rural and urban Oregonians have improved access to telecommunications technology and services. The Oregon Economic and Community Development Commission must review and approve plans and plan modifications for telecommunications infrastructure projects funded by the Telecommunications Infrastructure Accounts. In making decisions as to expenditures from a Telecommunications Infrastructure Account, the Oregon Economic and Community Development Commission will be assisted by an advisory board, which will seek advice and comment on plans submitted for Commission consideration and approval. These rules implement the intent of the legislation which established the Telecommunications Infrastructure Accounts and provide

a process whereby projects can be developed, submitted, approved and monitored.

Stat. Auth.: ORS 285A.075, 285A.110 & 759.430

Stats. Implemented: ORS 759.405 & 759.430

Hist.: EDD 10-2000, f. 6-14-00, cert. ef. 6-15-00

123-105-0010

Purpose and Applicability

(1) Govern the processing of Applications for approval of Projects for Telecommunications Infrastructure Account Financing pursuant to the provisions of ORS 759.430;

(2) Establish a process for evaluating and approving Projects for Telecommunications Infrastructure Account Financing; and

(3) Establish a mechanism for oversight of Projects approved for Telecommunications Infrastructure Account Financing.

Stat. Auth.: ORS 285A.075, 285A.110 & 759.430

Stats. Implemented: ORS 759.405 & 759.430

Hist.: EDD 10-2000, f. 6-14-00, cert. ef. 6-15-00

123-105-0020

Policies

These administrative rules implement ORS 759.405 and 759.430, which provide, in part, that:

(1) A Telecommunications Carrier electing alternative regulation under ORS 759.405 shall establish in its accounts a Telecommunications Infrastructure Account.

(2) Any Person may submit an Application describing a Project for Board and Commission consideration.

(3) The Department will conduct a statewide assessment of telecommunications needs and submit a copy of the assessment to the Commission prior to the Commission's approval of any Project for Telecommunications Infrastructure Account Financing.

(4) The Board will review Applications and make recommendations to the Commission on the approval of Projects.

(5) The Board shall seek advice and comment, on Applications submitted by Telecommunications Carriers, from affected local communities including but not limited to local governments, citizens and businesses.

(6) The Board shall seek advice and comment, on all Applications, from local communities, state and federal agencies (such as the Public Utility Commission, the Information Resource Management Division of the Oregon Department of Administrative Services, the Economic Development Administration and the Rural Utility Service) and other interested persons and entities as necessary or appropriate.

(7) The Commission will make the final decision on the approval of Projects for Telecommunications Infrastructure Account Financing.

(8) Priority will be given to Projects that provide increased Bandwidth between communities, Route Diversity and access to Advanced Services in an expedited manner.

(9) Projects approved for funding from an Electing Carrier's Telecommunications Infrastructure Account shall be substantially for the benefit of that Electing Carrier's Customers.

(10) The Electing Carrier will complete Projects approved for funding from its Telecommunications Infrastructure Account.

Stat. Auth.: ORS 285A.075, 285A.110 & 759.430

Stats. Implemented: ORS 759.405 & 759.430

Hist.: EDD 10-2000, f. 6-14-00, cert. ef. 6-15-00

123-105-0030

Definitions

For purposes of this division of administrative rules, the following words and phrases shall have the meanings indicated:

(1) "Advanced Services" means those telecommunications services that are not included in the definition of basic telephone service as defined in ORS 759.400(1).

(2) "Applicant" means a Person submitting an Application to the Department in accordance with these rules.

(3) "Application" means a written plan, in a form designated by the Department, that describes a proposed Project and requests Commission approval of the Project for Telecommunications Infrastructure Account Financing. Copies of the Application form may be obtained from the Department or downloaded from the Department's web site.

(4) "Area" means one or more Oregon counties. An Area may consist of the counties included in a regional partnership, as defined in division 55 of this chapter of administrative rules, or the counties included in a region designated by the Department in connection with

the Department's regional investment program, administered under divisions 55 and 57 of this chapter of administrative rules.

(5) "Bandwidth" means the capacity to move information in the form of voice, data, and video over telecommunications infrastructure.

(6) "Board" means the Connecting Oregon Communities Advisory Board established by ORS 759.430(2).

(7) "Commission" means the Oregon Economic and Community Development Commission established by ORS 285A.040.

(8) "Department" means the Oregon Economic and Community Development Department established by ORS 285A.070 and 285A.075.

(9) "Director" means the director of the Department.

(10) "Distressed Area" means a geographic area within the State of Oregon that meets one or more of the criteria set forth in 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.

(11) "Electing Carrier" means a Telecommunications Carrier that has elected price regulation prescribed in ORS 759.405.

(12) "Economically Self-Supporting Project" means a Project that an Electing Carrier reasonably should be expected to complete without Telecommunications Infrastructure Account Financing (other than a Necessary Project), as determined in accordance with the following factors:

(a) The projected costs of the Project and the Electing Carrier's anticipated return on its investment in the Project;

(b) The statutory and contractual obligations of the Electing Carrier as they relate to the Project; and

(c) The current market conditions and other factors that determine the priority of the Project to the Electing Carrier.

(13) "Electing Carrier's Customer" means, with respect to a particular Electing Carrier, any individual or entity who purchases retail or wholesale telecommunications services from the Electing Carrier in Oregon.

(14) "Implementation Team" means, with respect to a particular Project, those individuals who will have major responsibilities in carrying out the Project to achieve its intended benefits. For purposes of Applications submitted for Board and Commission consideration, the Application does not need to identify the team members from the Electing Carrier.

(15) "Necessary Access" means, with respect to a particular Project, Electing Carrier access to the infrastructure of other Telecommunications Carriers as necessary to complete the Project. If completion of the Project will require access to the infrastructure of another Telecommunications Carrier (such as a Project involving interconnection between the infrastructure of the Electing Carrier and the infrastructure of another Telecommunications Carrier), the Application must include evidence that the other Telecommunications Carrier will provide access to its infrastructure and cooperate with the Electing Carrier as necessary to complete the Project.

(16) "Necessary Project" means a Project that will provide the foundation for or is necessary to permit completion of a Project already approved for Telecommunications Infrastructure Account Financing (or reasonably expected to be approved) and that will not be completed in the necessary timeframe to permit completion of the approved Project, without Telecommunications Infrastructure Account Financing.

(17) "Person" means an individual at least 18 years old or a public or private entity with the legal power to contract.

(18) "Project" means investment in telecommunications infrastructure or deployment of new and advanced telecommunications services, intended to improve rural or urban Oregonians' access to telecommunications technology or services.

(19) "Route Diversity" means having more than one means for the transmission and receipt of telecommunications signals.

(20) "Telecommunications Carrier" means any provider of retail telecommunications service except a call aggregator as defined in ORS 759.690.

(21) "Telecommunications Infrastructure Account" means an account of an Electing Carrier established and funded pursuant to ORS 759.405(2) for the purpose of financing Projects.

(22) "Telecommunications Infrastructure Account Financing" means an Electing Carrier's expenditure of moneys in its Telecommunications Infrastructure Account to complete a Project.

Stat. Auth.: ORS 285A.075, 285A.110 & 759.430

Stats. Implemented: ORS 759.405 & 759.430
Hist.: EDD 10-2000, f. 6-14-00, cert. ef. 6-15-00

123-105-0040

Application Requirements

(1) A Project must be approved by the Commission in accordance with these rules before it can receive Telecommunications Infrastructure Account Financing.

(2) Any Person may submit an Application to the Department for approval of a Project for Telecommunications Infrastructure Account Financing from any Electing Carrier's Telecommunications Infrastructure Account.

(3) In addition to any other information specifically required by the Application form itself, an Application must contain:

(a) A description of the Project in sufficient detail to permit the Board and the Commission to determine whether the Project is economically self-supporting and whether the Electing Carrier will have Necessary Access and, as appropriate, to rate and prioritize the Project as described in OAR 123-105-0060.

(b) A description of the benefit of the Project to the Electing Carrier's Customers.

(c) For a multi-state Project, a delineation of the needs, costs and benefits for the portion of the Project located in Oregon. Only that portion of a multi-state Project located in Oregon is eligible for Telecommunications Infrastructure Account Financing.

(4) For a Project to be considered for Telecommunications Infrastructure Account Financing during a particular application cycle, the Department must receive the fully completed Application on or before the application deadline set by the Department for that cycle.

(5) The Department will operate at least two application cycles each calendar year so long as uncommitted Telecommunications Infrastructure Account funds remain. The Department will publicize the application deadlines for each cycle.

(6) The Commission and the Director, if delegated such authority by the Commission, may waive all required timeframes related to an Application, if the Commission or the Director determines that a waiver is in the best interests of the State of Oregon. Any waiver must be in writing.

Stat. Auth.: ORS 285A.075, 285A.110 & 759.430

Stats. Implemented: ORS 759.405 & 759.430

Hist.: EDD 10-2000, f. 6-14-00, cert. ef. 6-15-00; EDD 4-2001, f. & cert. 5-23-01

123-105-0050

Pre-Application and Application Review Process

(1) No later than 45 days prior to submitting an Application, an Applicant shall:

(a) Notify the County Commissioners or their designees of each affected County of the nature of the proposed Project and request their comment on the proposed Project; and

(b) Notify the Department, in writing on a form designated by the Department, of the Applicant's intent to submit an Application and of the nature of the proposed Project.

(2) After the Applicant notifies the Department of its intent to submit an Application, the Department may inform providers of telephone, cable, and Internet services whose service territories overlap the Area affected by the proposed Project.

(3) The Department may provide staff and consultant resources to potential Applicants for identification and assessment of Projects that address priority needs of an Area or in Distressed Areas. Assistance may include facilitating planning processes to engage service providers, assessing economic benefits, and analyzing technical solutions. Assistance will not include the actual preparation of an Application to the Department for approval of the Project for Telecommunications Infrastructure Account Financing.

(4) Upon receipt of an Application, the Department's staff will determine if it is complete.

(5) Those Applications determined to be incomplete will be returned to the Applicant as soon as reasonably possible with an appropriate explanation.

(6) An incomplete Application may be completed and resubmitted. If the Application is completed and resubmitted before the deadline for receipt of Applications for the current application cycle, the Application will be considered during the current application cycle. Otherwise, the Application will be held and considered during the next application cycle.

(7) After the deadline for receipt of Applications for each application cycle, the Department will place a notice on its web site seeking public comments on all complete Applications and their associated Projects. The Department will, on behalf of the Board, seek specific advice and comment on Applications and their associated Projects from:

(a) Local communities, including but not limited to local governments, citizens and businesses, affected by a Project proposed in an Application submitted by a Telecommunications Carrier;

(b) State and federal agencies as necessary or appropriate; and

(c) Any Electing Carrier whose Telecommunications Infrastructure Account is affected by a proposed Project.

(8) The Department shall review all complete Applications and associated Projects as well as any public commentary and prepare a staff analysis for the Board based on OAR 123-105-0060.

(9) The Board will review all complete Applications and associated Projects, any public commentary and the Department's staff analysis, and recommend to the Commission:

(a) Whether the Project is an Economically Self-Supporting Project and whether the Electing Carrier will have Necessary Access;

(b) If the Project is not an Economically Self-Supporting Project and the Electing Carrier will have Necessary Access:

(A) A numerical rating for the Project based on the criteria set forth in OAR 123-105-0060(2); and

(B) A priority designation for the Project as described in OAR 123-150-0060(5), if the numerical rating for the Project is at least 50%.

(c) Whether a Project should be approved for Telecommunications Infrastructure Account Financing and the terms of the financing;

(d) Based on the Board's recommendations and prior actions of the Commission, whether the Commission can make the findings described in OAR 123-105-0070(2).

(10) The Commission will make the final decision on whether a Project is an Economically Self-Supporting Project and whether the Electing Carrier will have Necessary Access, the numerical rating for the Project and its priority designation and approval of the Project for Telecommunications Infrastructure Account Financing.

Stat. Auth.: ORS 285A.075, 285A.110 & 759.430

Stats. Implemented: ORS 759.405 & 759.430

Hist.: EDD 10-2000, f. 6-14-00, cert. ef. 6-15-00

123-105-0060 Review Criteria

(1) Economically Self-Supporting Projects and Projects for which the Electing Carrier will not have Necessary Access will be denied Telecommunications Infrastructure Account Financing and will not be rated.

(2) All Projects that are not Economically Self-Supporting Projects and for which the Electing Carrier will have Necessary Access will receive a numerical rating based on the following criteria (with each criterion weighted equally):

(a) The extent to which the proposed Project addresses an unmet need in an Area according to the statewide needs assessment conducted by the Department or other objective and statistically valid data that becomes available after the completion of the statewide needs assessment;

(b) The extent of the proposed Project's benefit to targeted audiences, including but not limited to the proposed Project's impact on education, health care, economic development and the delivery of state and local government services;

(c) The extent and quality of the technical assessment and evaluation of technical options;

(d) The extent and quality of the financial analysis of the Project; and

(e) The qualifications of the Project Implementation Team.

(3) All Projects receiving a rating below 50% as a result of the evaluation described in section (2) of this rule will be denied Telecommunications Infrastructure Account Financing and will not be prioritized.

(4) All Projects receiving a rating of at least 50% as a result of the evaluation described in section (2) of this rule will be assigned a three-digit priority designation as described in section (5) of this rule and be rank ordered, within and among all other prioritized Projects seeking financing from the same Telecommunications Infrastructure Account, based on the size of their priority designation. The Project with the highest priority designation will have first priority for

Telecommunications Infrastructure Account Financing. For example, a Project with a three-digit priority designation of 999 will receive first priority for Telecommunications Infrastructure Account Financing and a Project with a three-digit priority designation of 000 will receive last priority for Telecommunications Infrastructure Account Financing. If two Projects receive the same priority designation, the Project receiving the higher numerical rating under section (2) of this rule will have priority for Telecommunications Infrastructure Account Financing.

(5) Projects will be assigned a three digit priority designation as follows:

(a) Projects that will result in all of the following will receive a first digit priority designation of "9" and all other Projects will receive a first digit priority designation of "0":

(A) Increased Bandwidth to Oregon communities;

(B) Route Diversity to Oregon communities; and

(C) Deployment of Advanced Services to Oregon communities in an expedited manner.

(b) Projects that fall into one or more of the following categories will receive a second digit priority designation of "9" and all other projects will receive a second digit priority of "0":

(A) The project was identified as a priority Project for an Area as part of the Department sponsored statewide needs assessment or, for a Project that addresses needs identified after the statewide assessment, is endorsed by the respective County Commissions for the Area; or

(B) The Project benefits a Distressed Area.

(c) Projects that fall into one or more of the following categories will receive a third digit priority designation of "9" and all other Projects will receive a third digit priority designation of "0":

(A) The Project is a Necessary Project;

(B) The Project leverages the investment of service providers in the Area; or

(C) The Project will not otherwise be undertaken in the proposed time frame without additional funds.

Stat. Auth.: ORS 285A.075, 285A.110 & 759.430

Stats. Implemented: ORS 759.405 & 759.430

Hist.: EDD 10-2000, f. 6-14-00, cert. ef. 6-15-00

123-105-0070 Commission Action

(1) The Commission will consider the recommendations of the Board and make final decisions on whether a Project is an Economically Self-Supporting Project and whether the Electing Carrier will have Necessary Access, the Project's numerical rating and priority designation and on approval of the Project for Telecommunications Infrastructure Account Financing. The Commission may:

(a) Condition approval of a Project for Telecommunications Infrastructure Account Financing on changes to the Project;

(b) Approve a Project for Telecommunications Infrastructure Account Financing from anticipated future dollars in an Electing Carrier's Telecommunications Infrastructure Account rather than from dollars currently in the account;

(c) Approve a Project for Telecommunications Infrastructure Account Financing in excess of the amount requested in the Application in order to fund contingency reserves for the Project;

(d) Authorize changes in the Telecommunications Infrastructure Account Financing for an approved Project to address developments not anticipated at the time of initial Project approval;

(e) Authorize changes to an approved Project if:

(A) The changes are requested by the Project Applicant; and

(B) The changes will not materially alter the Project's priority.

(f) Decide not to approve all prioritized Projects for Telecommunications Infrastructure Account Financing even if sufficient funds are available in the Telecommunications Infrastructure Accounts in the current application cycle. A decision not to approve all prioritized Projects for Telecommunications Infrastructure Account Financing will be based on:

(A) The amount of funds available in an Electing Carrier's Telecommunications Infrastructure Account;

(B) The availability of future funds in an Electing Carrier's Telecommunications Infrastructure Account;

(C) The breadth and depth of continuing unmet telecommunications needs in Oregon; and

(D) The likelihood that future Applications will be submitted.

(2) Prior to approving any Projects for Telecommunications Infrastructure Account Financing during a particular application cycle, the Commission must find that all Projects it proposes to approve for Telecommunications Infrastructure Account Financing from an Electing Carrier's Telecommunication's Infrastructure Account during application that cycle, together with all Projects approved for Telecommunications Infrastructure Account Financing from that Electing Carrier's Telecommunications Infrastructure Account during all prior application cycles, when considered collectively:

- (a) Are substantially for the benefit of the Electing Carrier's Customers;
- (b) Improve access to telecommunications technology and services for both rural and urban Oregonians; and
- (c) Improve telecommunications infrastructure in Oregon and deploy new and advanced telecommunications services to achieve three priorities:
 - (A) Increased Bandwidth to Oregon communities;
 - (B) Route Diversity to Oregon communities; and
 - (C) Deployment of Advanced Services to Oregon communities in an expedited manner.

(3) For purposes of section (2)(a) of this rule, Projects are substantially for the benefit of the Electing Carrier's Customers if they significantly improve the Electing Carrier's Customers access to telecommunications technology and services as determined in accordance with the following factors:

- (a) The number of the Electing Carrier's Customers receiving improved access;
 - (b) The percentage of the Electing Carrier's Customers, within the service areas affected by the Projects, that receive improved access;
 - (c) The magnitude of the improved access; and
 - (d) The presence or lack of options for such improved access.
- Stat. Auth.: ORS 285A.075, 285A.110 & 750.430
Stats. Implemented: ORS 759.405 & 759.430
Hist.: EDD 10-2000, f. 6-14-00, cert. ef. 6-15-00; EDD 4-2001, f. & cert. 5-23-01

123-105-0080**Project Approval and Administration**

(1) After final action of the Commission during each application cycle, the Department will notify each Applicant in writing of the Commission's decisions and actions with respect to the Applicant's Project. An Applicant whose Project was not prioritized may revise the Application and resubmit it during the next application cycle.

(2) All prioritized Projects that are not approved for Telecommunications Infrastructure Account Financing during an application cycle will be considered for financing during the next application cycle in accordance with their priority designation.

(3) Decisions on all Projects will be made prior to the beginning of the following application cycle.

(4) The Electing Carrier shall complete, in accordance with the contract referred to in section 5 of this rule, all Projects approved by the Commission for financing from that carrier's Telecommunications Infrastructure Account.

(5) After final Commission approval of a Project for Telecommunications Infrastructure Account Financing and prior to commencement of the Project, the Department, the Electing Carrier who will complete the Project, and the Applicant shall enter into a contract for completion of the Project. The Contract shall include:

- (a) A work program that describes the responsibilities of the Electing Carrier, the Applicant and the Department;
- (b) A Project timeline and budget;
- (c) A method for Project management;
- (d) Provisions for periodic reporting by the Electing Carrier and the Applicant to the Department on the status and impact of the Project;
- (e) Remedies for non-performance. The remedy for the Electing Carrier's failure to perform or fulfill its obligations under the contract shall be limited to the remedy described in ORS 759.405(3)(d);
- (f) Other provisions deemed necessary or appropriate by the Department.

Stat. Auth.: ORS 285A.075, 285A.110 & 759.430
Stats. Implemented: ORS 759.405 & 759.430
Hist.: EDD 10-2000, f. 6-14-00, cert. ef. 6-15-00

123-105-0090**Reconsideration of Decision**

(1) If the Applicant does not agree with a Commission decision or action with respect to its Project, the Applicant may request reconsideration of the decision.

(2) An Applicant desiring reconsideration of a Commission's decision or action must submit a written request for reconsideration to the Department within 30 days of the Commission's original decision. The request must include the Applicant's requested change or modification to the Commission's decision or action and an explanation of why the Commission's decision or action should be changed or modified as requested.

(3) Upon receipt of a request for reconsideration, the Department will submit the request to the Board for review and recommendation to the Commission.

(4) In considering the request for reconsideration, the Board will review the Applicant's requested change and the reasons therefor, the original recommendations of the Board and the rationale for the Commission's decision or action. The Board will recommend to the Commission that the Applicant's request be granted, granted in part and denied in part, or denied.

(5) The Commission will make the final decision on the Applicant's request and the Department will notify the Applicant of the Commission's decision.

(6) Unless the Commission expressly permits otherwise, only the Applicant may request reconsideration.

Stat. Auth.: ORS 285A.075, 285A.110 & 759.430
Stats. Implemented: ORS 759.405 & 759.430
Hist.: EDD 10-2000, f. 6-14-00, cert. ef. 6-15-00

DIVISION 106**CERTIFICATION AS ADVANCED
TELECOMMUNICATIONS FACILITIES****123-106-0000****Preamble**

The tax credits allowed under Oregon Laws 2001, Chapter 957, Section 15, are intended to improve advanced telecommunications capability in underserved areas of the state and to accomplish one or more of the following: enhance individual and business access to advanced telecommunications services at an economically reasonable cost; develop and transition to a fully competitive telecommunications marketplace; provide bi-directional bandwidth capabilities to customers; improve access to competitive local exchange carriers; improve access by public and private educational institutions, rural health clinics and libraries to advanced telecommunications services; improve telecommunications connections between communities in this state; improve last mile connections within this state; and improve access by Oregon health care providers to interactive video and other health care applications requiring advanced telecommunications services.

Stat. Auth.: OL 2001, Ch. 957 § 11
Stats. Implemented: OL 2001, Ch. 957 § 11 & § 13
Hist.: EDD 9-2001, f. & cert. ef. 12-12-01

123-106-0010**Purpose and Applicability**

These administrative rules:

(1) Govern the submission and process of applications for certification of facilities as advanced telecommunications facilities under Oregon Laws 2001, Chapter 957, Section 10, for purposes of the tax credit allowed under Oregon Laws 2001, Chapter 957, Section 15.

(2) Establish the process for evaluating and approving applications and certifying the facilities described therein as advanced telecommunications facilities for purposes of the tax credit; and

(3) Establish the process for tracking and reporting the effectiveness of the tax credit in improving advanced telecommunications capability in underserved areas of the state.

Stat. Auth.: OL 2001, Ch. 957 § 11
Stats. Implemented: OL 2001, Ch. 957 § 11 & § 13
Hist.: EDD 9-2001, f. & cert. ef. 12-12-01

123-106-0020

Policies

These administrative rules implement the certification portion of Oregon Laws 2001, Chapter 957, Section 9 through Section 17, which provide, in part, that:

(1) There shall be allowed a credit against the taxes otherwise due under ORS Chapter 316 (or, if the taxpayer is a corporation, under ORS Chapters 317 and 318) for advanced telecommunications facilities, as defined in Oregon Laws 2001, Chapter 957, Section 10, that have been certified by the Economic and Community Development Department.

(2) The amount of the credit shall equal 20 percent of the certified cost of the facilities that was actually paid or incurred by the taxpayer, except that:

(a) The amount of the credit may not include facility costs that were paid using moneys withdrawn from the taxpayer's Telecommunications Infrastructure Account established pursuant to ORS 759.405; and

(b) Revenues forgone by the taxpayer upon the taxpayer's waiver of installation charges for advanced telecommunications facilities to schools, rural health clinics or libraries may be added to the amount of the credit.

(3) The credit may be claimed by the taxpayer for the tax year in which the advanced telecommunications facilities are placed in service.

(4) The credit allowed under this section may not exceed the tax liability of the taxpayer and may not be carried forward to a succeeding tax year.

(5) The credit will be administered by the Department of Revenue. The credit shall be claimed on a form containing any information as may be required by that department. The taxpayer shall attach a copy of the Advanced Telecommunications Facilities certification to the return for the tax year for which the credit is claimed.

Stat. Auth.: OL 2001, Ch. 957 § 11

Stats. Implemented: OL 2001, Ch. 957 § 15

Hist.: EDD 9-2001, f. & cert. ef. 12-12-01

123-106-0030

Definitions

For the purposes of this division of administrative rules, the following words and phrases shall have the meanings indicated:

(1) "Applicant" means a Telecommunications Carrier submitting an application to the Department for certification of facilities as advanced telecommunications facilities under Oregon Laws 2001, Chapter 957, Section 10, for purposes of the tax credit allowed under Oregon Laws 2001, Chapter 957, Section 15.

(2) "Advanced telecommunications facilities" means facilities meeting the criteria set forth in rule 0050 of this division of the administrative rules.

(3) "Department" means the Oregon Economic and Community Development Department established by ORS 285A.270 and 285A.075.

(4) "Last mile connection" means a communications channel from the feed from a connecting bypassing intercity telecommunications carrier through a telecommunications switching center, or an individual message distribution point, to a user terminal.

(5) "Local exchange carrier" means a person that holds a certificate of authority issued by the Public Utility Commission under ORS 759.020 to provide intrastate telecommunications service or local exchange telecommunications service within this state.

(6) "Telecommunications carrier" means a provider of telecommunications services, but does not include an aggregator, as defined in 47 U.S.C. 226 and ORS 759.690.

Stat. Auth.: OL 2001, Ch. 957 § 11

Stats. Implemented: OL 2001, Ch. 957 § 10

Hist.: EDD 9-2001, f. & cert. ef. 12-12-01

123-106-0040

Application Requirements

(1) A Telecommunications Carrier seeking a tax credit under Oregon Laws 2001, Chapter 957, Section 15, for the installation of advanced telecommunications facilities, prior to incurring any costs associated with the installation, must, under these administrative rules, apply to the Department for, and receive from the Department certification of the facilities as advanced telecommunications facilities.

(2) The Department will accept applications for certification as follows:

(a) 2002 — The Department will accept applications for certification during the 2002 calendar year beginning on the date these rules are effective and ending on December 1, 2002.

(b) 2003 — The Department will accept applications for certification during the 2003 calendar year beginning July 1, 2002 and ending on December 1, 2003.

(c) 2004 — The Department will accept applications for certification during the 2004 calendar year beginning July 2, 2003 and ending on December 1, 2004.

(d) 2005 — The Department will accept applications for certification during the 2005 calendar year beginning July 1, 2004 and ending on December 1, 2005.

(3) The application for certification shall be in substantially the form set forth in rule 0090 of this division of this administrative rule, and shall contain the following information in addition to the other information required in the form:

(a) A complete description of the installation project and the customers to be served by the project;

(b) The expected costs for completing the project;

(c) The expected start date and the expected date on which the advanced telecommunications facilities are to be placed in service;

(d) The geographic area or areas in which the advanced telecommunications facilities are to be installed; and

(e) A description of how the facilities will be integrated into the operations of the intrastate telecommunications services provided by the Applicant.

(4) The application for certification shall be accompanied by technical documentation demonstrating that the facilities will meet or exceed the specified minimum performance standards in at least one of the following areas:

(a) Performance Area: Enhancement of individual and business access to advanced telecommunications services at an economically reasonable cost; Minimum Performance Standard: The facilities will create new, or will improve existing, advanced telecommunications service including voice, video, data or other services in a specified underserved area of Oregon priced within 125% of the average cost for similar services in urban areas of Oregon and available to at least 51% of the lines in that underserved area, or in the case of wireless or other technology, 51% of the residents and businesses within that underserved area.

(b) Performance Area: Development and transition to a fully competitive telecommunications marketplace; Minimum Performance Standard: The facilities will result in the actual co-location or establishment of a new Competitive Local Exchange Carrier in a specified underserved area of Oregon offering local and long distance services, or a new Internet Service Provider in a specified underserved area of Oregon offering broadband at 200 kbs bi-directional or greater bandwidth, with the offerings of the Competitive Local Exchange Carrier and/or Internet Service Provider priced at or below 125% of the average cost for similar services in urban areas of Oregon.

(c) Performance Area: Provision of bi-directional bandwidth capabilities to customers; Minimum Performance Standard: The facilities will provide 200 kbs bi-directional or greater bandwidth to at least 51% of the lines in a specified underserved area in Oregon, where such bandwidth does not currently exist, or in the case of wireless or other technology, 51% of the residents and businesses within a specified underserved area in Oregon, where such bandwidth does not currently exist, priced within 125% of the average cost for similar services in urban areas of Oregon.

(d) Performance Area: Accessibility to competitive local exchange carriers; Minimum Performance Standard: The facilities will result in the actual co-location or establishment of a new Competitive Local Exchange Carrier in a specified underserved area of Oregon offering local and long distance services priced at or below 125% of the average cost for similar services in urban areas of Oregon.

(e) Performance Area: Improvement in access by public and private educational institutions, rural health clinics and libraries to advanced telecommunications services; Minimum Performance Standard: The facilities will create or improve access for a public or private educational institution, a rural health clinic or a library in Oregon to voice, video or data telecommunications services (with a minimum of 384 kbs or other bandwidth requested by the entity based upon tech-

nology and application) or other advanced telecommunications services, priced within 125% of the average cost for similar services in urban areas of Oregon.

(f) Performance Area: Improvement in telecommunications connections between communities in this state; Minimum Performance Standard: The facilities will create at least one diverse telecommunications route, where no such diversity existed before, between two or more Central Offices in Oregon using SONET or similar technologies to ensure the subscribers served by those Central Offices do not experience a loss of telecommunications services available to them from those Central Offices in the event of a fiber cut, digital radio failure or similar single disruption of inter-office facilities.

(g) Performance Area: Improvement in last mile connections within this state; Minimum Performance Standard: The facilities will provide 200 kbs (or greater) bi-directional telecommunications capability over the Last Mile Connection for at least 51% of the residents or businesses within a specified underserved area in Oregon priced within 125% of the average cost for similar services in urban areas of Oregon.

(h) Performance Area: Improvement in access by Oregon health care providers to interactive video and other health care applications requiring advanced telecommunications services. Minimum Performance Standard: The facilities will create or improve access for an Oregon health care provider to telecommunications services with bandwidth that allows voice, video, or data transmission (with a minimum of 384 kbs or other bandwidth requested by the entity based upon technology and application) or other advanced telecommunications services, priced within 125% of the average cost for similar services in urban areas of Oregon.

Stat. Auth.: OL 2001, Ch. 957 § 11

Stats. Implemented: OL 2001, Ch. 957 § 10 & § 11

Hist.: EDD 9-2001, f. & cert. ef. 12-12-01

123-106-0050

Review Criteria

The Department shall approve an application and certify the facilities described herein as advanced telecommunications facilities if the facilities:

(1) Are to be located in an area of Oregon in which current minimum bandwidth service is not available to a majority of customers;

(2) Improve access to advanced telecommunications services for a majority of all customers in unserved or underserved service areas;

(3) Meet the minimum performance standards for one or more of the performance areas set forth in rule 0040 of this division of administrative rules;

(4) Are high-speed, dedicated or switched broadband telecommunications infrastructure or equipment that enables users to send or receive high quality voice, data or video telecommunications using any technology; and

(5) Have a cost, as certified by the Department, that, together with the certified cost of all other facilities previously certified by the Department under this division of administrative rules during the current calendar year, does not exceed \$10 million.

Stat. Auth.: OL 2001, Ch. 957 § 11

Stats. Implemented: OL 2001, Ch. 957 § 10

Hist.: EDD 9-2001, f. & cert. ef. 12-12-01

123-106-0060

Department Action

(1) The Department will consider properly submitted applications for certification in the order in which they are received. Receipt at the Department, electronically or hard copy, as dated and time stamped at the Department will establish the chronological priority for consideration.

(2) The Department may request clarification of or changes to an application for certification before acting upon the application.

(3) The Department will review each application for certification to determine if the facilities described therein satisfy the requirements set forth in rule 0050 of this division of administrative rules.

(4) If the facilities satisfy the requirements, the Department will approve the application and send the Applicant a written certification that describes the facilities, states the date by which the facilities must be placed in service and specifies the cost of the facilities. The Department will send a copy of the certification to the Oregon Department of Revenue.

(5) If the facilities do not satisfy the requirements, the Department will deny the application and send written notification of the denial to the Applicant. The Applicant may appeal denial of its application to the Department in the manner of a contested case under ORS 183.310 to 183.550.

(6) All certifications will require that the facilities be placed in service by the end of the calendar year during which the certification is issued.

Stat. Auth.: OL 2001, Ch. 957 § 11

Stats. Implemented: OL 2001, Ch. 957 § 10

Hist.: EDD 9-2001, f. & cert. ef. 12-12-01

123-106-0070

New Cost and Amended Certification

(1) Applicants who determine, after receiving a certification but prior to December 1 of the year during which the certification was issued, that the actual cost of the facilities will vary from the certified cost by more than 10% of the certified cost, shall promptly notify the Department in writing of the new cost and request an amended certification. The new cost notification and amended certification request must describe the reasons for the change in cost and include a certification that all information in the application (other than the estimated cost) remains true, accurate and complete.

(a) If the Applicant has determined that the actual cost of the facilities will be less than the certified cost, the Department will amend the Applicant's certification to reflect the lower cost. The Department will send a written amended certification to the Applicant and a copy thereof to the Oregon Department of Revenue.

(b) If the Applicant has determined that the actual cost of the facilities will exceed the certified cost, the Department will amend the Applicant's certification to reflect the higher cost to the extent that the Department still has authority (under the \$10 million annual certification limit) to issue certifications after acting on all applications properly submitted, for certification during that year, prior to the date the new cost notification and request for amended certification is received by the Department. If so issued, the Department will send the written amended certification to the Applicant and a copy thereof to the Oregon Department of Revenue.

(2) Regardless of the certified cost of the facilities, the tax credit allowed under Oregon Laws 2001, Chapter 957, Section 15 is, in general, limited to 20 percent of the lesser of the certified cost or the cost of the facilities that was actually paid or incurred by the Applicant.

Stat. Auth.: OL 2001, Ch. 957 § 11

Stats. Implemented: OL 2001, Ch. 957 § 10

Hist.: EDD 9-2001, f. & cert. ef. 12-12-01

123-106-0080

Administration and Reporting

(1) The Department will charge a fee to Applicants seeking certification of facilities as advanced telecommunications facilities under this division of administrative rules. The fee is described in the application form set forth in rule 123-106-0090 of this division of administrative rules.

(2) The Department will collect information from the Applicant for the Oregon Economic and Community Development Commission for purposes of reporting to the Seventy-third Legislative Assembly on the effectiveness of the tax credit allowed under Oregon Laws 2001, Chapter 957, Section 15, in improving advanced telecommunications capability in underserved areas of this state and in achieving the other purposes for which the credit was established.

Stat. Auth.: OL 2001, Ch. 957 § 11

Stats. Implemented: OL 2001, Ch. 957 § 13

Hist.: EDD 9-2001, f. & cert. ef. 12-12-01

123-106-0090

Application Form

The telecommunications carrier applying for a certification of Advanced Telecommunications Facilities for the purpose of obtaining a tax credit under Oregon Laws 2001, Chapter 957, Section 15, shall submit the application in substantially the form of the following: [Form not included. See ED. NOTE.]

[ED. NOTE: Forms referenced in this rule are available from the agency.]

Stat. Auth.: OL 2001, Ch. 957 § 11

Stats. Implemented: OL 2001, Ch. 957 § 10

Hist.: EDD 9-2001, f. & cert. ef. 12-12-01

DIVISION 125

SCREENING AND SELECTION PROCEDURES FOR PUBLIC CONTRACTS OF THE ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT RELATING TO ITS FOREIGN TRADE OFFICES

123-125-0000**Purpose**

These rules specify the source selection methods to be used by the Department for public contracts relating to its Foreign Trade Offices.

Stat. Auth.: ORS 285A.075(5)
 Stats. Implemented: ORS 285A.075, 279A.025(2)(s), 285A.090(13) & OL 1999, Ch. 817
 Hist.: EDD 13-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00; EDD 2-2000, f. & cert. ef. 1-5-00; EDD 12-2005, f. 11-30-05, cert. ef. 12-1-05

123-125-0020**Definitions**

For purposes of this division of administrative rules, the following terms have the following meanings:

- (1) "Department" means the Oregon Economic and Community Development Department.
- (2) "Director" means the Director of the Economic and Community Development Department.
- (3) "Foreign Trade Office" means representation in an office operating outside the state 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; or
 - (c) Promote awareness in foreign countries of Department policy, programs and services and of assistance and economic incentives available from government at all levels.

Stat. Auth.: ORS 285A.075(5)
 Stats. Implemented: ORS 285A.075, 279.070, 285A.090(13) & OL 1999, Ch. 817
 Hist.: EDD 13-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00; EDD 2-2000, f. & cert. ef. 1-5-00; EDD 12-2005, f. 11-30-05, cert. ef. 12-1-05

123-125-0040**Standard Procedures and Exceptions**

The Department will comply with the Oregon Department of Justice Model Public Contract Rules, OAR chapter 137, divisions 046 and 047, as applicable, for all its public contracts under this division, with the following exceptions:

- (1) For Architectural, Engineering, Land Surveying and Related Services contracts, a special class of personal services contracts, the Department will comply with OAR 137, division 048.
- (2) For all specified approvals, the Department Director or delegate shall exercise such authority.
- (3) For all required public notices or advertisements related to source selection methods, the Department will comply with 123-006-0030.
- (4) For personal services contracts that are best implemented as multiple work order contracts under an Agreement-to-Agree, the Department will comply with OAR 123-006-0025.
- (5) The provisions of OAR 137-047-0800, 137-047-0265(2) and 137-047-0270(4) (regarding contract amendments) shall not apply to public contracts under this division. The Department will comply with OAR 123-006-0035 for all amendments to public contracts under this division.
- (6) The Public Notice for Sole-source Procurements in OAR 137-047-0275(2) shall be given at least ten (10) days before Award of the Contract, unless the Department determines that a shorter interval is in the public's interest and documents specific reasons to the procurement file.
- (7) The provisions of OAR 137-047-0670 (regarding cancelled offers) shall not apply to public contracts under this division.
- (8) The provisions of OAR 137-047-0700 through 137-047-0760 (regarding legal remedies) shall not apply to public contracts under this division.

Stat. Auth.: ORS 279.051, 279.712(2)(f) & 285A.075(5)
 Stats. Implemented: ORS 279.051, 285A.090(13) & OL 1999, Ch. 817
 Hist.: EDD 13-1999(Temp), f. & cert. ef. 10-15-99 thru 4-11-00; EDD 2-2000, f. & cert. ef. 1-5-00; EDD 12-2005, f. 11-30-05, cert. ef. 12-1-05

DIVISION 135

BROWNFIELDS REDEVELOPMENT LOAN FUND**123-135-0000****Purpose**

The purpose of these rules is to implement the Brownfields Redevelopment Fund created in 1997 through Chapter 738 Oregon Laws 1997 and amended by Chapter 96 Oregon Laws 2001. The purpose of the Brownfields Redevelopment Fund is to fund environmental actions on properties that are brownfields.

Stat. Auth.: ORS 285A.75(5) & 285A.110
 Stats. Implemented: ORS 285A.185 & 285A.188
 Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02

123-135-0010**Policy**

It is the policy of the Oregon Economic and Community Development Department to promote sustainability and assist rural or distressed communities with local development priorities. Facilitating environmental cleanup consistent with a polluter-pays principle and the redevelopment of brownfields furthers this policy. The benefits of redeveloping brownfields include: promoting economic development; enabling efficient land use; minimizing the construction of new service infrastructure; facilitating the resolution of environmental justice issues; and protecting environmental and human health.

Stat. Auth.: ORS 285A.75(5) & 285A.110
 Stats. Implemented: ORS 285A.185 & 285A.188
 Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02

123-135-0020**Definitions**

As used in this division, the following terms shall have the following meaning unless otherwise indicated:

- (1) "Applicant" means any person, combination of persons, non-profit, or municipality applying for financial assistance from the Brownfields Redevelopment Fund;
- (2) "Bridge Loan" means a loan that will be repaid in full at the end of a short-term, twelve (12) to twenty four (24) months, following loan closing;
- (3) "Brownfield" means real property where expansion or redevelopment is complicated by actual or perceived environmental contamination as defined in ORS 285A.185(1);
- (4) "Capacity Building" means evaluating, cleaning up, or otherwise preparing a site without an identified redevelopment use to meet the buildable lands needs of a municipality;
- (5) "Collateral" means property subject to a security interest or security agreement as defined in ORS 79.1050;
- (6) "Commission" means the Oregon Economic and Community Development Commission;
- (7) "Contribution" means cash, a reduction in land sale price, a donation of real property or personal services of value; or some other like act that offsets the benefit of receiving sums from the Fund that are conveyed on a recipient or site owner who is a potentially responsible party for a release of a hazardous substance or is potentially liable for the cost of cleanup at the site according to ORS 465.255;
- (8) "Department" means the Oregon Economic and Community Development Department;
- (9) "Environmental Action" means activities undertaken to:
 - (a) Determine if a release has occurred, if the release poses a significant threat to human health or the environment, or if additional remedial actions may be required at the site;
 - (b) Conduct a feasibility study;
 - (c) Plan for remedial action or removal; or
 - (d) Conduct a remedial action or removal at a site.
- (10) "Environmental Insurance" means a specific form of casualty insurance based on industry custom standards. Policies such as, but not limited to, cleanup cost caps, secured creditor on impaired property, or pollution legal liability are examples of environmental insurance;
- (11) "Environmental Justice" means community based issues, concerns, or problems resulting from the disparate effects caused by

the placement and/or proximity of facilities that negatively impact minority or low-income populations;

(12) "Environmental Service Professional" means an entity that has the necessary experience, capacity, expertise, or is otherwise certified to conduct environmental actions;

(13) "Facility" means any building, structure, installation, equipment, pipe or pipeline including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, above ground tank, underground storage tank, motor vehicle, rolling stock, aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located and where a release has occurred or where there is a threat of a release, but does not include any consumer product in consumer use or any vessel. Facility has the meaning given in ORS 465.200;

(14) "Financial Institution" means any commercial bank, mutual savings bank, savings and loan association, credit union, insurance company, investment bank, certified development corporation or National Association of Securities Dealers (NASD) securities underwriter licensed or authorized to do business in Oregon;

(15) "Fund" means the Brownfields Redevelopment Fund;

(16) "Grant" means awards from the Fund to a Recipient to reimburse or pay eligible project expenses. When there is otherwise no specific reference to Cash Grant, or Conditional Grant the reference shall include all Grant types.

(a) "Cash Grant" means awards from the Fund that are available to pay eligible project costs;

(b) "Conditional Grant" means awards from the Fund that are repaid only as conditions allow;

(17) "Hazardous Substance" has the meaning given in ORS 465.200;

(18) "Institutional Controls" has the meaning given in ORS 465.315 and OAR 340-122-0115(32);

(19) "Loan" means debt financing offered through the Fund. The Fund has two types of loans, bridge loan and term loan;

(20) "Municipality" means any city, county, municipal corporation or quasi-municipal corporation, special district, port, or federally recognized tribe;

(21) "Non-Profit" means an organization certified under sections 501(c)(2) through (4) and (6) through (8) and (10) of the Internal Revenue Code;

(22) "Person" means any individual, association of individuals, company, joint venture, partnership, or corporation;

(23) "Project" and "Project Description" means the resulting combination of the site, the proposed activities to be performed, the proposed or likely redevelopment use, and any other information stated in the Fund application;

(24) "Prospective Purchaser Program" refers to ORS 465.327 and associated administrative rules;

(25) "Recipient" means the person, non-profit, or municipality receiving a disbursement of sums from the Fund;

(26) "Release" (as in release of a hazardous substance) has the meaning given in ORS 465.200;

(27) "Scope of Work" means a detailed plan to perform in part or in whole an environmental action. Scopes of work shall be drafted by an environmental service professional;

(28) "Site" means the parcel or parcels of real property on which the funded activities will be performed;

(29) "Site Characterization" means determining and delineating the boundaries of the plume(s) of contamination and/or determining the status of the contamination such as whether it is migrating or crossing from one media to another, such as from soil to water, at the site. This review provides a level of detail comparable to a "preliminary assessment" (PA) as described in OAR 340-122-0072 and may be comparable to a "Phase II Environmental Site Assessment" under ASTM Standard E 1903;

(30) "Site Investigation" means a historic use investigation of the site involving, but not limited to, the analysis of aerial photos, public and private records, personal interviews, and other documents and data sources to determine the likelihood of a release of a hazardous substance at the site or facility. This review provides a level of detail comparable to a "Phase I" review under ASTM Standards E1527 and 1528 and is often a desktop review without any sampling;

(31) "Site Sampling" means systematically obtaining and analyzing representative samples from the site of relevant media such as soil

and water to determine the presence of and/or the concentration of the contamination and/or identify the specific substances or compounds comprising the contamination. Sampling is a critical component of the "preliminary assessment" (PA) conducted under OAR 340-122-0072 or the ASTM "Phase II" under E-1903;

(32) "Substantial Public Benefit" includes, but is not limited to:

(a) The generation of substantial funding or other resources facilitating remedial measures at the facility in accordance with OAR chapter 123, division 135;

(b) A commitment to perform substantial remedial measures at the facility in accordance with OAR chapter 123, division 135;

(c) Productive reuse of a vacant or abandoned industrial or commercial facility; or

(d) Development of a facility by a governmental entity or non-profit organization to address an important public purpose. Substantial Public Benefit has the meaning given in ORS 465.327(1)(d);

(e) Other meanings listed in the Fund's Program Guidelines;

(33) "Term Loan" means a loan to be paid over a period of years, usually ten (10) to fifteen (15), with a rate of interest;

(34) "Voluntary Cleanup Program" relates to ORS 465.325 and associated administrative rules.

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

Stat. Auth.: ORS 285A.75(5) & 285A.110

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02

123-135-0030

Applicant Eligibility

(1) Any person, non-profit, or municipality is eligible to make application to the Department for assistance from the Fund as long as they are not subject to any exclusion within OAR 123-135-0030.

(2) A person making application to the Fund is ineligible if the person has knowingly violated applicable laws or regulations or has knowingly violated or failed to comply with an order of the Department of Environmental Quality, if such action or inaction has resulted in one or more of the following:

(a) Contribution to or exacerbation of existing contamination at the facility;

(b) Release of hazardous substance at the facility; or

(c) Interference with necessary investigation or remedial actions at the facility.

(3) Eligibility under OAR 123-135-0030 above shall be determined based on enforcement actions against the person by the Oregon Department of Environmental Quality.

(4) If the applicant is not the land owner and the site is owned by a person that is excluded by OAR 123-135-0030(2), the application will not be accepted unless the applicant provides documentation of the following in the application:

(a) The funded activities will facilitate a transfer in ownership of the site to a person not subject to the exclusion; and

(b) A demonstration of a past, present, or planned contribution by the landowner.

(5) An applicant who is a responsible party for a release of a hazardous substance or is liable for the cost of cleanup at the project site according to ORS 465.255, must provide some form of contribution to the project to be eligible.

(6) An applicant that makes willful misrepresentations regarding applicant eligibility on a Fund application may be subject to the sanctions described in OAR 123-135-0090.

(7) Applicant must have the authority and ability to enter into a contract with the Department.

(8) Other applicant eligibility requirements may be described in the Fund's Program Guidelines.

Stat. Auth.: ORS 285A.75(5) & 285A.110

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02

123-135-0040

Project Eligibility

(1) Projects may contain non-residential underground storage tanks. Superfund sites on the National Priorities List are not eligible. Reimbursable project activities include:

(a) Site investigation;

- (b) Site sampling;
- (c) Site characterization;
- (d) The compilation of study data into a report;
- (e) Feasibility study;
- (f) Plan for remedial action or removal;
- (g) Conduct a remedial action or removal at a site;
- (h) Regulatory oversight fees;
- (i) Any other activity described in the Fund's Program Guidelines.

(2) Projects on sites that contain or are proposed to contain privately owned single family residential dwelling(s) or privately owned multi-family dwelling(s) are not eligible unless the following applies: If only a portion of the site contains or will contain privately owned single family residential dwelling(s) or privately owned multi-family dwelling(s), the portion of the site that contains the eligible project(s) can receive sums from the Fund.

(3) The potential benefit to ineligible sites or project(s) must be minimal. The Department shall determine if any potential benefit to ineligible projects is minimal.

(4) Projects on sites that contain or are proposed to contain mixed use development such as a structure or structures that contain combined commercial and residential uses are eligible if:

- (a) A written endorsement for the project from the local jurisdiction is included with the application;
- (b) The project will provide a substantial public benefit; or
- (c) The project is part of a downtown or mixed use center redevelopment.

(5) The Department's Brownfields Redevelopment Coordinator will determine if a project will have substantial public benefit.

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

Stat. Auth.: ORS 285A.75(5) & 285A.110

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02; EDD 8-2006, f. 10-30-06, cert. ef. 10-31-06

123-135-0050

Application Requirements

(1) Applications that include site sampling and/or site characterization must discuss in their project description how the funded activities will contribute or lead to cleanup and/or redevelopment of the site.

(2) Applications that include a site characterization must discuss in the project description how the funded activities will contribute or lead to a remediation plan or a No Further Action Determination by the Oregon Department of Environmental Quality.

(3) Applications that include a remedial or removal action or plan must identify the proposed redevelopment use in the project description and must discuss how the proposed redevelopment use is attainable. Demonstration of attainability can be established by providing documentation such as, but not limited to:

- (a) The proposed use is consistent with the local land use plan;
- (b) There exists or will exist adequate service infrastructure at the site for the proposed use; or
- (c) Other documentation described in the Fund's Program Guidelines.

(4) Applications that include a remedial or removal action or plan must discuss in the application how the plan or action will contribute to the proposed redevelopment. The Department may ask the applicant to demonstrate progress towards achieving the proposed redevelopment. Demonstration of progress can be established by providing documentation such as, but not limited to:

- (a) Evidence of financing negotiations for the proposed redevelopment;
- (b) Copies of pending permit applications required by the proposed redevelopment;
- (c) Evidence of contracts or negotiations for the transfer in ownership of the site;
- (d) Copies of a business plan or articles of incorporation;
- (e) Site drawings or engineering plans; or
- (f) Other documentation described in the Fund's Program Guidelines.

(5) Applications that include a remedial or removal action but do not identify a redevelopment use as described in OAR 123-135-0050(4) are eligible if the project is for capacity building. Written

endorsement for the capacity building project must be obtained from the local jurisdiction and included in the application if the applicant is not a municipality.

(6) Applications that include any remedial or removal action must include the following:

- (a) A description of how the remedial or removal action will comply with state cleanup law;
- (b) Any other documentation required by the Fund's Program Guidelines.

(7) The sum of funding requested in the Fund application must be consistent with the scope and scale of work in the project description compared with an industry custom standard. If the amount requested is inconsistent with the project description, the application may be rejected.

(8) If OAR 123-135-0030(4) or (5) applies, the necessary information regarding property transfer and/or contribution must also be included in the application.

Stat. Auth.: ORS 285A.75(5) & 285A.110

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02

123-135-0060

Application Processing

(1) Applications may be submitted to the Department at any time. The Department shall not process an incomplete Fund application. Applications are complete when the requirements of this Division and the Fund's Program Guidelines are met.

(2) The Department can waive application requirements in order to make an application completion determination if it is demonstrated that such a waiver would serve to further the goals and objectives of the Fund and would not violate any statutory requirements.

(3) The Department may request additional information not listed in this division or the Fund's Program Guidelines to facilitate application processing.

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

Stat. Auth.: ORS 285A.75(5) & 285A.110

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02

123-135-0070

Application Approval

(1) When evaluating an application, the Department shall consider the following:

- (a) The extent to which real or perceived contamination prevents the property from being fully utilized;
- (b) The need for providing public assistance, after considering the difficulty of obtaining financing from other sources or of obtaining financing at reasonable rates and terms;
- (c) The degree to which redevelopment of the property provides opportunity for achieving protection of human health or the environment by reducing or eliminating the contamination of the property and for contributing to the economic health and diversity of the area;
- (d) The probability of the success of the intended use or the degree to which redevelopment of the property provides a public purpose following remediation of the property;
- (e) Compliance with the land use plan of the local government with jurisdiction over the property;
- (f) Endorsement from the local government with jurisdiction over the property; and
- (g) Other criteria described in the Fund's Program Guidelines.

(2) Applications are received on a first come, first served basis. In the event of a shortage of funds, priority will be given to projects that meet one or more of the following:

- (a) The site is located in a distressed area as defined by OAR chapter 123, division 24;
- (b) The site is located within a state or federal empowerment or enterprise zone or community or otherwise designated under those programs;
- (c) The site is enrolled in the Department of Environmental Quality's Voluntary Cleanup Program, Prospective Purchaser Program, Independent Cleanup Pathway, Site Response Section, or any other

program that demonstrates active involvement or oversight by that agency;

(d) The site is located in or is participating in any Environmental Protection Agency brownfields initiative including, but not limited to: Brownfield Assessment Grants, Supplemental Pilots, Targeted Brownfield Assessments, Cleanup Grants, or Brownfields Cleanup Revolving Loan Fund;

(e) The project will likely create above average income jobs in the manufacturing or traded sectors;

(f) The project will assist in the resolution of environmental justice concerns of the local community;

(g) The project has significant community involvement and participation;

(h) The project will result in a substantial public benefit;

(i) The project includes or is relatively certain to leverage other public or private funding; or

(j) Other criteria described in the Fund's Program Guidelines.

(3) The Department may conditionally approve funding of an application. Possible conditions include, but are not limited to:

(a) Requiring collateral or other security;

(b) Requiring a co-signer or guarantor;

(c) Enrolling in a Department of Environmental Quality oversight program or obtaining scope of work review from that agency;

(d) Obtaining an environmental insurance policy;

(e) Requiring some event to occur such as, but not limited to, a transfer of ownership of the site or approval of other funding; or

(f) Other conditions described in the Fund's Program Guidelines.

(4) If application approval is conditioned, the conditions will become part of the award contract. If appropriate, the Department may require the recipient to demonstrate or document how the conditions have or will be met before funds are disbursed in whole or in part.

(5) Complete applications will be reviewed by the Department for credit worthiness according to prudent lending practices.

(6) When making a grant to a municipality, the Department shall give priority to municipalities that provide matching funds from a loan under OAR chapter 123, division 135, from another source or from both.

(7) When making a grant to an entity that is not a municipality, the department shall require that:

(a) The recipient is not liable for the subject property under ORS 465.255, is a qualified non-profit organization, or has a valid Prospective Purchaser Agreement under ORS 465.327;

(b) The environmental action provides a substantial public benefit; and

(c) The recipient provides matching funds from a loan under OAR chapter 123, division 135, from another source or from both.

(8) The Department may request additional information from the applicant to facilitate a funding decision.

(9) The Department shall make a funding decision on a complete application in a timely manner.

(10) No more than forty percent (40%) of the total amount of the Fund in any biennium shall be awarded to persons who are liable with respect to the site under ORS 465.200. The forty percent (40%) limitation will be calculated at the beginning of each biennium following, if applicable, the funding allocation to the Fund by the Commission. The limitation will be forty percent (40%) of the total, non-obligated, funds available after the Commission allocation. Only awards to recipients that caused or contributed to the contamination at a site shall be included in the forty percent (40%) calculation.

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

Stat. Auth.: ORS 285A.75(5) & 285A.110

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02; EDD 8-2006, f. 10-30-06, cert. ef. 10-31-06

123-135-0080

Loan Contract Conditions

(1) Loans do not require match and are not subject to fees.

(2) The annual interest rate for non-municipal loan recipients shall be based on the equivalent Bond Buyers Index published in The Bond Buyer. For municipal loan recipients, interest rates are based on market conditions for similar debt and are set at the time of the award.

(3) The Department may adjust the interest rate through a waiver for municipal and non-municipal loan recipients at the time of award based on subsidy need, credit risk, and other appropriate considerations.

(4) Interest accrual, repayment and disbursement schedules, and other necessary conditions shall be stated in the loan contract.

(5) Bridge loans shall be repaid within one (1) year from the beginning of loan disbursement.

(6) A bridge loan recipient may request a loan period extension of up to one (1) additional year. If a bridge loan is not repaid within the maximum one (1) or two (2) year period, a rate of interest may be applied from the date of contract closing on the full amount of the loan.

(7) A bridge loan recipient may convert to a term loan. If a loan is converted, a rate of interest shall be applied from the date of closing.

(8) In general, term loans shall be repaid within ten (10) to fifteen (15) years after the date of contract.

(9) A term loan recipient may request a loan period extension. The term loan recipient may make a request for a loan period extension at any time.

(10) A term loan may convert to a bridge loan with the approval of the Department as long as the maximum bridge loan term of two (2) years has not passed from the date of contract closing.

(11) If the project includes other funding in the form of loan(s) obtained from a financial institution, the Department may subordinate the Fund loan to the financial institution loan(s) if appropriate.

(12) The Department has the discretion to establish loan terms that differ from those enumerated in OAR chapter 123, division 135 as long as it furthers the goals and objectives of the program.

(13) Awards cannot exceed the final total project cost. For loan funded projects, the total loan amount shall not exceed the final total project cost.

(14) Other loan contract conditions described in the Fund's Program Guidelines or that are necessary to fulfill the goals and objectives of the Fund may be included in the Fund contract.

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

Stat. Auth.: ORS 285A.75(5) & 285A.110

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 8-2001(Temp), f. & cert. ef. 11-15-01 thru 5-14-02; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02

123-135-0087

Grant Contract Conditions

(1) Both municipal and non-municipal applicants are eligible for grants with some exceptions based on liability considerations.

(2) Non-municipal grant applicants that are potentially liable for the contamination under ORS 465.255 at the site receiving the environmental action are not eligible for grant funding unless they qualify as a non-profit organization or have purchased the site through the Prospective Purchaser Program (ORS 465.327).

(3) Non-municipal grant applicants are eligible for a grant only if the project will result in a substantial public benefit unless the non-municipal grant applicant is a qualified non-profit organization.

(4) Municipal grant applicants that are potentially liable for the contamination under ORS 465.255 at the site receiving the environmental action are eligible for grant funding. However, depending on the manner in which liability attached to the municipal grant applicant, an increase in grant match may be required.

(5) Qualifying non-profit organizations may apply for grants. Non-profit applicants that caused or contributed to the contamination at the site receiving the environmental action are not eligible for grants.

(6) All grant awards require some level of match.

(7) For municipal grant recipients, acceptable grant match includes cash, in-kind services, or other contributions of measurable value. For non-municipal grant applicants, match must be cash from funding sources other than grant awards from the Department unless otherwise indicated.

(8) For municipal grant recipients and projects located in or that benefit a designated economically distressed community, the grant match is ten percent (10%) of the total award. For municipal grant recipients and projects not located in or that do not benefit a designated economically distressed community, the grant match is twenty percent (20%) of the total award.

(9) Municipal applicants that are potentially liable because the municipality's conduct lead or contributed to the release of contami-

nation at the site receiving the environmental action are subject to a one to one (1:1) or 100% of award match requirement.

(10) For qualifying non-profit organization grant recipients and projects located in or that benefit a designated economically distressed community, the grant match is ten percent (10%) of the total award. For qualifying non-profit organization grant recipients and projects not located in or that do not benefit a designated economically distressed community, the grant match is twenty percent (20%) of the total award. In addition to the other provisions of this division and the Fund's Program Guidelines that may apply, non-profit organization grant recipients may provide in-kind match.

(11) With exception to qualifying non-profit organization applicants, the match ratio for non-municipal grant recipients is one to one (1:1) or 100% of the total award. Match must be cash.

(12) Awards cannot exceed the final total project cost. For grant funded projects with a match ratio of one to one (1:1), the final grant award shall not exceed fifty percent (50%) of the total final project cost. For other grant funded projects, the final grant award may be reduced according to the Funds' Program Guidelines.

(13) Conditional grant awards may have conditions not listed in this Division or the Fund's Program Guidelines.

(14) If the environmental action at the site was funded with a grant other than a technical assistance grant as defined in the Fund's Program Guidelines, the grant award must be repaid with any net profits generated from the resale of the site if that sale occurs within five (5) years after the completion of the environmental action. The repayment amount is the lesser of either the net profits or the amount of the grant award. Net profits equal the difference between purchase price and resale price. In the case of properties resold by a county after property tax foreclosure, net profits equal the sale price minus any outstanding property taxes.

(15) Notwithstanding applicant and project eligibility, the amount of a grant award shall be based on the availability of grant funds at the time of the award. The grant capacity of the Fund is determined by the Department based on a percentage of biennial allocations. The Department has the discretion to make grant awards less than the amount requested in the application if it is necessary to ensure grant capacity until the next allocation to the Fund by the Commission.

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

Stat. Auth.: ORS 285A.75(5) & 285A.110

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 18-2002, f. & cert. ef. 12-10-02

123-135-0090

Sanctions

(1) If, at any time, it is discovered that the applicant or the project violates the applicant eligibility exclusions in OAR 123-135-0030 or the project eligibility exclusions in OAR 123-135-0040, the Department may impose sanctions.

(2) One or more of the following sanctions may be imposed by the Department:

- (a) Bar a recipient from applying for future Fund assistance;
- (b) Revoke an existing Fund award;
- (c) Withhold unexpended Fund funds;
- (d) Require return of unexpended funds;
- (e) Demand immediate repayment of expended funds at a market based rate of interest;
- (f) Withhold other state funds;
- (g) Other remedies listed in the Fund contract or described in the Fund's Program Guidelines.

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

Stat. Auth.: ORS 285A.75(5) & 285A.110

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 18-2002, f. & cert. ef. 12-10-02

123-135-0100

Subsidies and Waivers

(1) The Department shall make available subsidies and waivers based on the following considerations which include, but are not limited to:

- (a) The relationship between the project and the needs of the local community;
- (b) The availability and/or the leveraging of other sources of funding;
- (c) The incentive will result in a substantial public benefit;
- (d) The recipient is a municipality;

- (e) Recommendation of Department staff; or
- (f) Other considerations described in the Fund's Program Guidelines.

(2) The Department has the discretion to waive interest charges or provide interest rate subsidies in the form of rate reductions and may grant any other form of waiver or subsidy within its authority.

(3) The department shall waive interest for all bridge loans. The department shall set an interest rate for a bridge loan at the time of application approval in the event the bridge loan becomes a term loan or is not repaid within the allowed time period.

(4) Applicants may request consideration for incentives in the Fund application. The Department shall rule on all incentive requests made in the Fund application at the time of application approval.

(5) Recipients may request consideration for incentives after application approval subject to any requirements described in the Fund's Program Guidelines.

(6) Determination of whether or not a project will result in a substantial public benefit will be made on a case-by-case basis by the Department's Brownfields Redevelopment Coordinator.

(7) The Department shall make available technical assistance grants. Technical assistance grants shall not be subject to financial review and are subject to the grant eligibility requirements of this Division. Any additional eligibility and processing requirements for technical assistance grants shall be described in the Fund's Program Guidelines.

(8) The Department may waive non-statutory requirements of this program if it is demonstrated such a waiver would serve to further the goals and objectives of the program.

Stat. Auth.: ORS 285A.75(5) & 285A.110

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02

123-135-0110

Consultation with Department of Environmental Quality

(1) In accordance with ORS 285A.188(4), the Department shall consult with the Department of Environmental Quality prior to the decision to approve an application.

(2) Once the application is determined complete, the Department shall provide to the Department of Environmental Quality the following information within fourteen (14) days:

- (a) Applicant identification;
- (b) Site location;
- (c) Site owner;
- (d) Project description;
- (e) Environmental service professional identification if applicable;
- (f) Amount requested;
- (g) A request for verification of applicant is not eligibility in accordance with ORS 285A.188(2) and OAR 123-135-0030(2) & (3); and

(h) Any other information described in the Fund's Program Guidelines.

(3) The Department expects the Department of Environmental Quality to return the requested verification within fourteen (14) business days, excluding public holidays. If the Department has not received verification within fourteen (14) days and has good-faith reasons to believe that the applicant is not ineligible, the Department may proceed with the processing of the application as long as it notifies the Department of Environmental Quality of its intent to proceed.

(4) Any recommendations or relevant comments from the Department of Environmental Quality that are submitted to the Department within a reasonable period of time shall be included as part of the application for consideration.

(5) Verification listed in OAR 123-135-0110(2)(g) will not be required if the property was purchased through the Prospective Purchaser Program (ORS 465.327).

Stat. Auth.: ORS 285A.75(5) & 285A.110

Stats. Implemented: ORS 285A.185 & 285A.188

Hist.: EDD 2-2001, f. & cert. ef. 2-1-01; EDD 10-2002(Temp), f. & cert. ef. 5-15-02 thru 11-11-02; Administrative correction 11-29-02; EDD 18-2002, f. & cert. ef. 12-10-02

DIVISION 140

OREGON COALITION BROWNFIELDS CLEANUP FUND

123-140-0010

Purpose, Scope, and Incorporated Documents

(1) As provided in Oregon Revised Statutes (ORS) 285A.190, the Oregon Economic and Community Development Department shall administer the federally funded revolving fund to provide cleanup financing to eligible publicly and privately owned brownfields as authorized by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, by the Small Business Liability Relief and Brownfields Revitalization Act of 2001 (P.L. 107-118).

(2) Oregon Coalition Brownfields Cleanup Fund Program is funded through a cooperative agreement (BF-97080301) between the U.S. Environmental Protection Agency and Department and includes any program income generated as a result of Department loans to Recipients as provided for in ORS 285A.192. The primary objectives of the Program are to:

(a) Remove or abate environmental health risks at sites not yet addressed by the private market;

(b) Provide resource assistance to rural, distressed, or affected communities allowing them to build quality, livable communities and neighborhoods; and

(c) Employ a problem-solving philosophy of coordination through state and local partnerships.

(3) The "Oregon Coalition Brownfields Cleanup Fund Program: Program Guidelines and Applicant Handbook," is:

(a) The principle source of information on this program;

(b) Available by contacting Department staff;

(c) Incorporated into and adopted as part of this division of administrative rule, by reference; and

(d) Subject to the same definitions as used in this division of administrative rule.

Stat. Auth.: ORS 285A.190 & 285A.192, Other 285A.075

Stats. Implemented: ORS 285A.190

Hist.: EDD 9-2006, f. 10-30-06, cert. ef. 10-31-06

123-140-0020

Definitions

As used in this division of administrative rule:

(1) "Applicant" means any public or private entity that is eligible under OAR 123, division 140 to receive an OBCF loan or grant and that has control over or access to a brownfields site, except those entities that may potentially be liable under CERCLA, or are currently suspended or debarred from receiving federal funding, or are otherwise declared ineligible.

(2) "Brownfields" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

(3) "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act (42 United States Code 9601) as amended by the Small Business Liability Relief and Brownfields Revitalization Act (P.L. 107-118), and any subsequent amendments.

(4) "Department" means the Oregon Economic and Community Development Department.

(5) "Fund" means the Oregon Coalition Brownfields Cleanup Fund.

(6) "Non-profit Organization" means as defined at Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999 except those non-profit organizations described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995.

(7) "Program" means the Oregon Coalition Brownfields Cleanup Fund Program

(8) "Program Guidelines and Applicant Handbook" means the Department's Oregon Coalition Brownfields Cleanup Fund: Program Guidelines and Applicant Handbook.

(9) "Project" means under this division those remedial and/or removal action activities identified in the Contract for which the Recipient may expend, obligate or commit funds to address cleanup of a brownfields.

(10) "Recipient" means an Applicant that has been awarded an OBCF grant or loan for a Project.

(11) "Remedial and/or Removal Actions" means those eligible cost activities listed in the Program Guidelines and Application Handbook.

(12) "Site" means the parcel or parcels of real property on which the funded activities will be performed;

(13) "USEPA" means the Environmental Protection Agency of the United States federal government.

Stat. Auth.: ORS 285A.190 & 285A.192, Other 285A.075

Stats. Implemented: ORS 285A.190

Hist.: EDD 9-2006, f. 10-30-06, cert. ef. 10-31-06

123-140-0030

Eligible Applicants and Activities

(1) Eligible loan applicants are public, private, or Non-Profit organization with control over or access to a brownfields site, except those entities which are potentially liable under CERCLA, or which are currently suspended, debarred from receiving federal funding, or are otherwise declared ineligible.

(2) Eligible grant applicants are any public or Non-Profit organization that owns a brownfields at the time the grant is awarded, except those entities which are potentially liable under CERCLA, which are currently suspended, debarred from receiving federal funding, or are otherwise declared ineligible.

(3) Eligible and ineligible activities are defined in CERCLA and in USEPA's Revolving Loan Fund Administrative Manual (October 2004), as well as subsequent revisions or editions of such guidelines.

Stat. Auth.: ORS 285A.190 & 285A.192, Other 285A.075

Stats. Implemented: ORS 285A.190

Hist.: EDD 9-2006, f. 10-30-06, cert. ef. 10-31-06

123-140-0040

Program Information

(1) The Department shall prepare program guidelines, application forms and other supplemental program information to help eligible Applicants seek financing and prepare loan and/or grant applications for the Fund.

(2) Program guidelines as prepared under section (1) of this rule shall include, but not be limited to, an explanation of project eligibility, applicant eligibility, types of financial assistance, loan rates and terms, borrowing guidelines, public notification process, procurement requirements, contract administration, federal crosscutting requirements and environmental review process.

(3) In addition to this division of administrative rules, the Department shall administer the Fund in compliance with the requirements of CERCLA, as amended, and CERCLA's applicable rules, guidelines and requirements from USEPA.

(4) For purposes of land use coordination, any Project activity paid for with Program funds that affects land use shall comply with the applicable requirements of OAR chapter 123, division 8 and OAR chapter 660.

Stat. Auth.: ORS 285A.190 & 285A.192, Other 285A.075

Stats. Implemented: ORS 285A.190

Hist.: EDD 9-2006, f. 10-30-06, cert. ef. 10-31-06

123-140-0050

Program Rights and Remedies

(1) The Department may exercise certain rights and remedies in the event the Recipient fails to comply with Contract provisions and, if allowed under the Contract, the Recipient fails to correct the deficiency within a reasonable time after the Recipient is notified of the deficiency. The circumstances that may warrant the Department's exercise of rights or remedies include, but are not limited to the following:

(a) None of the Project activities have begun within nine months after an OBCF award;

(b) Any third party agreement relating to the Project is not legally binding within six months of the OBCF award;

(c) Federal or State statutory or regulatory requirements have not been met;

(d) There is a significant deviation from the Contract;

(e) The Department finds that significant corrective actions are necessary to protect the integrity of the Project funds and those corrective actions are not, or will not, be made within a reasonable time; or

(f) A Recipient defaults on loan payments, which may otherwise be made from any source of revenue at the Recipient's disposal,

including but not limited to General Fund revenues if the Recipient is a public entity borrower.

(2) The Department may exercise one or more of the following rights and remedies if the Recipient fails to comply with Contract provisions and the Recipient fails to correct the deficiency within a reasonable time after Recipient is notified of the deficiency:

- (a) Bar a Recipient from applying for or receiving future Department assistance;
 - (b) Revoke an existing Department award;
 - (c) Withhold unexpended Department funds;
 - (d) Require immediate return of unexpended Department funds;
 - (e) Require repayment of expended Department funds;
 - (f) Withhold other state funds otherwise due to the Recipient, such as state-shared revenues; or,
 - (g) Other remedies that may be incorporated into the Contract.
- (3) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the Contract.

(4) The Recipient shall be responsible for ensuring that any subcontractor complies with the applicable terms and conditions of the Contract. Nothing in this rule shall restrict the Department's right to enforce independently the terms of any contract or to recover any sums that may become due as a result of a breach of such Contract.

Stat. Auth.: ORS 285A.190 & 285A.192, Other 285A.075

Stats. Implemented: ORS 285A.190

Hist.: EDD 9-2006, f. 10-30-06, cert. ef. 10-31-06

DIVISION 145

VERTICAL HOUSING DEVELOPMENT ZONE

123-145-0100

Purpose and Objectives

(1) For purposes of ORS 285C.450 to 285C.480, this division of administrative rules clarifies and implements processes, criteria and policies for vertical housing development zones (VHDZs), as designated by the Director in particular areas of the state pursuant to a local government application. In a VHDZ, developments of upper-floor housing in conjunction with commercial uses are partially exempt from property taxes under ORS 285C.471, subject to application by the project's developer/owner and certification by the Department.

(2) These administrative rules are not meant to interfere with the fiscal parameters or the direct administration of property taxes by county assessors, and they do not supersede administrative rules of the Department of Revenue in OAR chapter 150, as adopted or amended in the future for such purposes.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.453(5)

Stats. Implemented: ORS 285C.450 - 285C.480

Hist.: EDD 6-2002, f. & cert. ef. 4-1-02; Renumbered from 123-145-0010, EDD 13-2004, f. & cert. ef. 7-27-04

123-145-0200

Definitions

As used in this division of administrative rules, unless the context clearly indicates otherwise:

(1) "Allowed Area" means a contiguous area within the jurisdiction of the City/county Applicant, constituting sites and property that are entirely inside one or more of the following:

(a) "Light rail station area," as defined in a regional or local transportation plan to be within a one-half mile radius of an existing or planned light rail station, as measured by a direct line that is the radius of a circle;

(b) "Transit oriented area," as defined in a regional or local transportation plan to be within one-quarter mile of fixed route transit service, as measured by a direct line or the most directly accessible pedestrian route, consistent with the prevailing local planning standard or applicable municipal development regulation; or

(c) "Core area of an urban center," which is any incorporated area encompassed by one or more of the following:

(A) Existing 'central business district' or 'downtown area' according to the city's zoning ordinances, US Census Bureau or comparable source of definition/designation;

(B) Defined 'central city,' 'regional center,' 'town center,' 'main street' and/or 'station community' in the Portland Metro 2040 Region-

al Growth Concept, or 'nodal development area' in the Eugene-Springfield Metropolitan Area Transportation Plan;

(C) Area satisfying the definition for a 'commercial node,' 'commercial center,' 'community center,' 'special transportation area' or 'urban business area' in the Oregon Highway Plan;

(D) Transit-oriented development or pedestrian/restricted-access district in the acknowledged comprehensive plan of the city; or

(E) Similar type of area under official criteria, designation or standards.

(2) "Certified Project" means a project that the Department has certified, as described in OAR 123-145-1100, based on a proposal and description that conforms to a "vertical housing development project" (as defined under ORS 285C.450), the location of which is in a designated VHDZ.

(3) "City/county Applicant" means a city or county or combination thereof, as provided under ORS 285C.453(1) to (3), that seeks designation of a proposed VHDZ to be located in an Allowed Area.

(4) "Commercial Use" or "Uses" means the nonresidential, ongoing and publicly accessible operations or activities of a business firm or organization, including but not limited to retail, community facilities, education, food service, manufacturing, office space, public services and so forth; alone, parking or storage (even if paid for) does not satisfy this section.

(5) "Department" means the State of Oregon Economic and Community Development Department.

(6) "Director" means the Director of the Oregon Economic and Community Development Department.

(7) "Local Taxing District" means any municipal corporation that levies ad valorem taxes on property in a tax code area to be located within a proposed VHDZ designation, except for the City/county Applicant (or a service or urban renewal district entirely within or commensurate to a City/county Applicant's jurisdiction and with an equivalent governing body).

(8) "Project Applicant" means a person or organization that fills out and files an application with the Department to be approved as a Certified Project, and that is:

(a) The legal owner of the building or buildings comprising the Certified Project or of the land, on which relevant improvements are newly constructed, if title to improvements is not otherwise distinguishable from land ownership;

(b) Under contract to manage the property for the owner;

(c) Under contract with the owner to develop the property and to then lease or purchase it from the owner; or

(d) An authorized representative of the owner for purposes of the development.

(9) "Residential Use" or "Uses" means regular, sustained occupancy as a primary domicile, housing, living quarters or apartment through ownership, condominium, lease or rental agreement and shall not be construed to include hotels, motels, hostels, rooming houses, bed & breakfast operations or other such transient accommodations.

(10) "Special District" means a Local Taxing District that is also of a type listed under ORS 198.010 or 198.180.

(11) "VHDZ" means a vertical housing development zone under ORS 285C.450 to 285C.480, as designated by the Director based on a City/county Applicant's proposal.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.453(5)

Stats. Implemented: ORS 285C.450 - 285C.480

Hist.: EDD 6-2002, f. & cert. ef. 4-1-02; Renumbered from 123-145-0020, EDD 13-2004, f. & cert. ef. 7-27-04

Creation of Zones

123-145-0300

Participation of Special Districts

In accordance with the provisions under ORS 285C.453:

(1) To elect not to participate in a VHDZ, a Special District shall inform the City/county Applicant of its decision to opt out of the designation:

(a) Within 45 days after the date on which proper, written notification was mailed to all Local Taxing Districts; and

(b) By furnishing a copy of a resolution or other official instrument duly adopted and issued by the governing body of the Special District pursuant to notification.

(2)(a) Not later than 30 days after filing the application, the City/county Applicant must submit to the Department a final statement

regarding the Special Districts (if any) that have opted out of the VHDZ and thus consequent exemptions;

(b) If applicable, this statement shall list each such Special District along with a copy of the furnished instrument; and

(c) The City/county Applicant shall also send copies to the Special Districts Association of Oregon (SDAO), Salem (Attn: 'Vertical Housing Development Zone').

(3) The City/county Applicant may deem a Special District that fails to respond, according to section (1) of this rule, to be participatory in the VHDZ designation and excluded from being listed as described in section (2) of this rule.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.453(5)

Stats. Implemented: OL 2001, Ch. 888

Hist.: EDD 6-2002, f. & cert. ef. 4-1-02; Renumbered from 123-145-0030, EDD 13-2004, f. & cert. ef. 7-27-04

123-145-0400

Content and Processing of Zone Applications

For purposes of ORS 285C.453, 285C.456 and 285C.459:

(1) An application proposing designation of a VHDZ may be filed with the Department at any time, 15 or more days after notification to Local Taxing Districts was sent.

(2) The application is made on a form, prescribed and provided by the Department, and submitted to: Business Development, Oregon Economic & Community Development, State Lands Building Suite 200, 775 Summer Street NE, Salem, Oregon 97301-1280.

(3) In addition to the application form completed by the City/county Applicant, the application must contain:

(a) Copy of the requisite resolution(s) adopted by the city's or county's governing body and requesting (or as applicable, consenting to) designation of the proposed VHDZ;

(b) A listing of all Local Taxing Districts, a copy of the written notification mailed to them, and an affidavit of mailing that it was duly sent, in accordance with ORS 285C.453 and OAR 123-145-0300;

(c) A description of the area sought to be designated as the VHDZ, including but not limited to a scale map clearly showing the proposed VHDZ boundary and a complete list of property tax accounts to be encompassed by it; and

(d) Clear, conclusive evidence or documentation that the VHDZ area proposed for designation is inside an Allowed Area.

(4) The Department shall review the application and associated materials submitted by the City/county Applicant.

(5) The Director or the Director's designee shall determine to approve or deny the application within 60 days of the Department's receipt of a complete application, but not before receiving a statement as described in OAR 123-145-0300(2). (If the statement is not submitted within the requisite 30-day period, the Department may consider the application to be incomplete until the statement is received)

(6) If the application is denied, the Department shall send a written explanation to the City/county Applicant, which may reapply.

(7) Approval of the application depends on the proposed VHDZ's location in an Allowed Area, as well as the accuracy and completeness of the information submitted by the City/county Applicant, as required by applicable laws, this division of administrative rules and the application form and instructions.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.453(5)

Stats. Implemented: ORS 285C.453, 285C.456 & 285C.459

Hist.: EDD 6-2002, f. & cert. ef. 4-1-02; Renumbered from 123-145-0040, EDD 13-2004, f. & cert. ef. 7-27-04

123-145-0500

Zone Designations

For purposes of ORS 285C.456 and 285C.459:

(1) The Department shall send a copy of the formal designation action to the City/county Applicant, the Department of Revenue and the affected county assessor(s), and included with the notification to the assessor shall be:

(a) Copies of materials delineating the area of the VHDZ; and

(b) The name of any Special District that opted out of the VHDZ, as described in OAR 123-145-0300.

(2) Once designated, a VHDZ shall continue to exist indefinitely, except as described in OAR 123-145-0700.

(3) The boundary of a VHDZ may not be modified.

(4) A city or county may seek additional designations, provided that any subsequent designation does not include any area inside an existing VHDZ.

(5) ORS 308.225 applies to the boundary of a VHDZ.

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

Stats. Implemented: ORS 285C.456 & 285C.459

Hist.: EDD 6-2002, f. & cert. ef. 4-1-02; Renumbered from 123-145-0050, EDD 13-2004, f. & cert. ef. 7-27-04

123-145-0600

Municipally Sponsored Development Projects

(1) ORS 285C.462 grants special authority for a city and/or county to acquire real property located in an VHDZ for the purpose of developing or furthering the development of the property for Commercial and/or Residential Uses within its jurisdiction. This grant is in addition and without prejudice to such authority that otherwise exists under laws of this state.

(2)(a) If a city/county does acquire real property by ownership or through an equity interest, as described in section (1) of this rule, then the city or county may permit the development to be undertaken, only if the governing body of the city or county has determined that it will encourage high-density (multi-level) housing or the efficient use of transit facilities within the VHDZ.

(b) This section applies regardless if the city or county undertakes the development of the property independently, jointly or in partnership with a private entity, or if the developer(s) of the real property own and operate the property, or they sell or otherwise dispose of the property at any time during or after its development, at or below market value.

(3) Section (2) of this rule does not apply to all developments sponsored by the city/county, such as the following:

(a) Facilities intended primarily for the provision of public services by the city or county or as the location for city/county operations; or

(b) Property, the sale of which generates net proceeds for the city/county in excess of the real market value of its ownership/equity interest.

(4) This rule has no bearing on what constitutes a vertical housing development project for purposes of certification by the Department or the exemption under ORS 285C.471.

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

Stats. Implemented: ORS 285C.462

Hist.: EDD 6-2002, f. & cert. ef. 4-1-02; Renumbered from 123-145-0090, EDD 13-2004, f. & cert. ef. 7-27-04

123-145-0700

Zone Termination

At any time, the City/county Applicant of a designated VHDZ may have it terminated under ORS 285C.480, such that:

(1) The City/county Applicant furnishes to the Department a copy of a resolution or resolutions lately adopted by each governing body that requests termination of the VHDZ by the Director;

(2) In issuing an official action to terminate the VHDZ, the Director may make the termination effective at any time within 90 days from receiving the official request, taking into account pending applications for project certification;

(3) The partial exemption is allowed for any Certified Project, as so approved by the Department before the effective date of the VHDZ's termination;

(4) The Department shall send notice of termination under this section to the City/county Applicant, the Department of Revenue and the county assessor(s), as well as persons using or seeking to use the VHDZ for the partial exemption, of whom the Department is aware; and

(5) A subsequent VHDZ may consist of area from a terminated VHDZ; in particular, this is how a VHDZ may effectively be expanded, such that the newly designated VHDZ:

(a) Is designated concurrent with the termination; and

(b) Encompasses all of the terminated VHDZ's area, as well as additional Allowed Area.

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

Stats. Implemented: ORS 285C.480

Hist.: EDD 13-2004, f. & cert. ef. 7-27-04

Projects and Partial Exemption

123-145-1000

Project Certification Applications

For purposes of ORS 285C.465:

(1) At any time during the year, a Project Applicant may file an application for certification by completing the form, as prescribed by and available from the Department, and by submitting it to: Business Development, Oregon Economic & Community Development, State Lands Building Suite 200, 775 Summer Street NE, Salem, Oregon 97301-1280.

(2) The Department shall accept such an application subject to:

(a) Complete information as required under ORS 285C.465(2), in this division of administrative rules, or by the Department in the application form and instructions;

(b) Application fee by check or money order payable to the Department in the amount of the lesser of \$500, or \$100 times the total number of floors (among one or more buildings), on which is undertaken any of the construction, reconstruction or rehabilitation comprising the proposed Certified Project; and

(c) Filing with the Department before any applicable unit for Residential Use is already occupied or reoccupied, and before any such unit is ready for re/occupancy as evidenced by either of the following:

(A) The relevant permitting authority has not issued a temporary or permanent certificate of occupancy; or

(B) Occupancy is otherwise effectively prevented because the proposed Certified Project has not yet been completed, where no new permit is required.

(3) If an application is rejected as not acceptable under this rule, then:

(a) The Department shall return it to the Project Applicant with notice as described in OAR 123-001-0700 to 123-001-0799.

(b) It may be resubmitted, and the Department, at its sole discretion as appropriate under the circumstances, may accept it based on the original date of filing in the case where occupancy or readiness to occupy has since occurred.

(4) The Department shall evaluate each acceptable application, as provided under ORS 285C.465(4) and (5), including but not limited to materials attached to or accompanying the form, as submitted consistent with this rule.

(5) The application fee shall be returned or refunded to the Project Applicant if the application is rejected or certification denied, pending a final order to that effect.

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

Stats. Implemented: ORS 285C.465 & 285C.468

Hist.: EDD 6-2002, f. & cert. ef. 4-1-02; Renumbered from 123-145-0060, EDD 13-2004, f. & cert. ef. 7-27-04

123-145-1100

Agency Certification of Projects

(1) The Department's processing of each complete application for project certification and the determination to approve or deny it shall be concluded within 60 days from when a complete application is received by the Department.

(2) In order to certify a vertical housing development project, as it is described in the application, the Department must find that:

(a) The location or site of the proposed project is in an existing VHDZ;

(b) The project as proposed meets the requirements in OAR 123-145-1200; and

(c) In the case of reconstruction or rehabilitation of any existing improvement, the described work will substantially alter or enhance the utility, condition, design or nature of the structure, such that the following alone is not sufficient for this purpose, irrespective of cost or implementation throughout a building:

(A) Maintenance and repairs;

(B) Refurbishment or redecoration that merely replaces, updates or restores certain fixtures, surfaces or components; and

(C) Similar such work of a superficial, obligatory or routine nature.

(3) If the application is approved, the Department shall:

(a) Issue a letter to the Project Applicant with an explanation of the partial exemption on the Certified Project's property under ORS 285C.471; and

(b) Send a copy of the letter and of the application and associated materials to the county assessor of the county in which the Certified Project is located.

(4) If the application is denied, the Department:

(a) Shall send notice consistent with OAR 123-001-0700 to 123-001-0799; and

(b) May allow reapplication, consistent with OAR 123-145-1000(3)(b).

(5) Certification of a proposed multi-structure project may be partially approved, such that:

(a) The Department's letter of approval formally circumscribes the Certified Project to exclude one or more improvements, for example, in the case of an existing building that fails the standard in subsection (2)(c) of this rule; and

(b) Notice consistent with OAR 123-001-0700 to 123-001-0799 is also sent with respect to the excluded portion of the project.

(6) Certification does not guarantee that property will be exempt under ORS 285C.471.

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

Stats. Implemented: ORS 285C.465 & 285C.468

Hist.: EDD 13-2004, f. & cert. ef. 7-27-04

123-145-1200

Mandatory Elements of a Project

(1) A vertical housing development project must satisfy the following criteria:

(a) It comprises a building or an associated group of buildings/structures;

(b) Construction, reconstruction or rehabilitation has been undertaken with respect to each building or associated structure, including but not limited to additions that expand or enlarge an existing building, before readiness to re/occupy;

(c) Each building consists of one or more upper-level floors for Residential Use; and

(d) The ground-level floor (at least) of each building is for Commercial Use.

(2) For purpose of section (1) of this rule:

(a) One or more floors below the floor or floors for Residential Use but directly above the ground-level floor may likewise be for Commercial Uses.

(b) To be 'for' Residential Use or 'for' Commercial Use does not mean that a building floor is actually being occupied accordingly, but rather that it is at least intended and ready for such use and is not converted or occupied for a contrary use.

(c) The Commercial Use for a particular floor or floors is satisfied even if such use does not entirely comprise that level, but all building/structural area with ground-level street or pedestrian frontage must be exclusively for Commercial Uses.

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

Stats. Implemented: ORS 285C.450, 285C.468 & 285C.471

Hist.: EDD 6-2002, f. & cert. ef. 4-1-02; Renumbered from 123-145-0070, EDD 13-2004, f. & cert. ef. 7-27-04

123-145-1300

Partial Property Tax Exemptions for Certified Projects

For purposes of the partial exemption from ad valorem taxes under ORS 285C.471:

(1) In order to grant an exemption, the county assessor must be in receipt of relevant certification from the Department, as described in OAR 123-145-1100(3).

(2) Except as modified by sections (3) and (4) of this rule, the exemption applies to the real market value increase directly attributable to the construction, reconstruction or rehabilitation of real property improvements associated with the Certified Project, in each of the tax years for which the exemption is available, including but not limited to on-site development, but the exemption does not include the pre-existing value of land, buildings or structures (prior to the project) or any machinery and equipment.

(3) The property exemption rate equals 20 percent (0.2) multiplied by the number of floors (among all associated buildings exempt in that year), up to but not exceeding four such floors, that are:

(a) Exclusively for Residential Use; and

(b) Constructed, reconstructed or rehabilitated as part of the (overall) vertical housing development project.

(4) The county assessor shall take steps necessary to ensure that the exemption does not affect property taxes otherwise levied by and due to a Special District identified as not participating in the VHDZ pursuant to OAR 123-145-0500(1)(b).

(5) The exemption on a particular building or associated structure is available for 10 consecutive tax years beginning with the tax year immediately following the calendar year during which the building's

Residential Use areas are first occupied or reoccupied or ready for re/occupancy.

(6) If during the period of partial tax exemption, any part of a floor for Residential Use (as described in section (3) of this rule) is converted to or used and occupied for nonresidential use, the county assessor shall terminate the exemption on the entire project containing the floor for the remainder of the period.

(7) Within 30 days of a denial, termination or disqualification of the partial exemption, the county assessor shall notify the Project Applicant (and the owner if different) that the action may be appealed to the Oregon Tax Court under ORS 305.404 to 305.560.

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
 Stats. Implemented: ORS 285C.450 & 285C.471
 Hist.: EDD 6-2002, f. & cert. ef. 4-1-02; Renumbered from 123-145-0080, EDD 13-2004, f. & cert. ef. 7-27-04

DIVISION 155

STATE INCOME/EXCISE TAX EXEMPTION FOR SMALL CITY BUSINESS DEVELOPMENT

123-155-0000

Purpose and Scope

The purpose of these administrative rules is to specify procedures and criteria necessary to guide the Economic and Community Development Department's duties of certification under ORS 285C.500 to 285C.506 for the exemption on qualified facilities from State of Oregon business income or corporate excise taxation, as allowed under ORS 316.778 or 317.391. These exemptions of otherwise taxable income/profits are intended to encourage businesses to invest in new operations with new full-time employees (earning minimum compensation levels) at qualifying facilities in counties exhibiting the worst per capita income and unemployment rates statewide.

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
 Stats. Implemented: ORS 285C.500 - 285C.506, 316.778 & 317.391
 Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05

123-155-0050

Preliminary Certification From 2006 Through 2010 (HB 3350 – 05)

For purposes of a Facility, for which approval of the application for preliminary certification occurs after December 31, 2005, but before January 1, 2011:

(1) The Facility must be located in a county eligible under section 3(1)(b), chapter 595, Oregon Laws 2005, even if the county was not eligible under ORS 285C.500(5)(b) when application was made.

(2) For purposes of an application submitted in the latter part of 2010, for which the Facility is in a county that will not be eligible under ORS 285C.500(5)(b) (2005), issuance of the preliminary certification may be expedited with the cooperation of the Municipal Corporations.

(3) Annual employee compensation at the Facility is not a requirement.

Stat. Auth.: ORS 285A.075(5) & 285A.110(1)
 Stats. Implemented: ORS 285C.500 - 285C.506, 316.778, 317.391 & OL 2005, Ch. 595 1-3
 Hist.: EDD 9-2005, f. & cert. ef. 11-4-05

123-155-0100

Definitions

For purposes of this division of administrative rules, the following definitions apply, unless the context clearly indicates otherwise:

(1) Business firm means a person operating or conducting one or more trades or businesses but does not include any governmental agency, municipal corporation or nonprofit corporation, consistent with OAR 123-065-4050.

(2) Department means the State of Oregon Economic and Community Development Department as organized under ORS Chapter 285A.

(3) Facility has the meaning given under ORS 285C.500(4).

(4) Municipal Corporation means the following with respect to the location of a Facility proposed in an application for preliminary certification:

(a) The county government of the county, the territory of which contains the Facility, regardless of whether the location is incorporated or not;

(b) A city government, if the Facility will be located within the corporate limits or urban growth boundary of the city; and

(c) A port district, as defined under ORS 285A.666, if the Facility will be located within the territorial limits of the district.

(5) Qualified Location means a site for a Facility as described in OAR 123-155-0150.

(6) Unique Operations has the meaning described in OAR 123-155-0175.

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

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

Stats. Implemented: ORS 285C.500 & 285C.503

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05

123-155-0150

Qualified Locations

A proposed Facility must be inside a county as determined according to section (1) of this rule, and located at a site satisfying the requirements of section (2) of this rule, at the time when application for preliminary certification is made; accordingly:

(1) With respect to county eligibility:

(a) Effective July 1 of each year, the Department shall determine the counties fulfilling the criteria under ORS 285C.500 (or chapter 595, Oregon Laws 2005) based on county annual unemployment rates and per capita personal income levels for the three most recent years for which such data is then available.

(b) This determination shall remain in effect until and including June 30 of the next year for purposes of any proposed Facility, for which the application for preliminary certification is submitted on or after the preceding July 1 (including those approved subject to OAR 123-155-0050), except in the event that the determination is modified to reflect official revisions in the data occurring during that annual period at least a month prior to the submission date.

(c) Revisions to data after the annual period described in subsection (b) of this section do not affect the eligibility of a county as determined for a preliminary certification application submitted during that annual period.

(2) The specific site of a proposed Facility must meet at least one of the following two requirements:

(a) The site is completely inside the urban growth boundary (UGB) of a city with a population of 15,000 or less; or

(b) Regardless of being inside or outside of any city's UGB, the site consists entirely of land zoned for industrial use:

(A) Pursuant to effective municipal zoning ordinances that expressly and generally permit permanent facilities and private operations for heavy or light industry, manufacturing, energy production, fabrication, warehousing, distribution, mineral/agricultural processing or similar types of intensive, economic uses;

(B) In accordance with applicable state land-use laws, including but not limited to those for unincorporated communities, exceptions from state planning goals, or chapter 688, Oregon Laws 2003; and

(C) Such that the Facility's business operations must directly benefit a traded sector industry under ORS 285B.280, regardless of other uses permitted under the particular zoning code ordinance.

(3) For purposes of subsection (2)(a) of this rule, relevant city populations are the most recent population estimates available from the Portland State University Center for Population Research and Census at the time of application for preliminary certification.

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

Stats. Implemented: ORS 285C.500 & 285C.503

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05

123-155-0175

Unique Operations

Under ORS 285C.503(5)(e), a business firm's operations that comprise a Facility proposed for preliminary certification must be new business operations respective to the site of the Facility and to any other location in this state, such that:

(1) In the case of the business firm itself, the new business operations must be categorically different from any operations in which that same firm has recently engaged. (As an example, a business firm may be certified for a Facility that will manufacture or distribute certain products here for the first time, even if the firm's products were already being sold in this state)

(2) In the case where the business firm has 100-percent common equity interest or is under common control (by way of corporate, familial or similar affiliations) with one or more other business firms

operating in this state, the new business operations must be significantly dissimilar from any operations in which any other such firm has recently engaged. (As an example, a corporate subsidiary may be certified for a new, first-in-Oregon facility fabricating a laminated wood product, even if another subsidiary of the same parent company already makes essentially the same product in this state, but the new operations utilize an advanced generation of technology with which the product has higher performance standards or weight-bearing specifications)

(3) Irrespective of section (1) or (2) of this rule, the acquisition of a preexisting Facility does not qualify as new business operations, unless both of the following are satisfied:

(a) The business firm also will invest appreciably in real property or extensively in terms of installing personal property at the Facility after applying for preliminary certification; and

(b) The operations to be undertaken pursuant to the new investment are significantly dissimilar from operations recently performed at the Facility.

(4) For purposes of this rule:

(a) "Categorically different" means that the existing, in-state business operations produce, render, deliver or provide another type of good or service for a distinct market segment or customer base.

(b) "Recently" means at any time during the 12 months before the submission date of the application for preliminary certification to the Department.

(c) "Significantly dissimilar" means that the existing, in-state business operations, or the goods or services arising from them, utilize different technology, processes, delivery methods, points in supply chain, marketing, brand names or the like.

(5) This rule is in no way concerned with how much a Facility's proposed operations are like those of any other business existing anywhere else in Oregon, except as provided under ORS 285C.503(4)(b)(A) and (5)(f):

(a) To the extent the operations will compete with local business or businesses; and

(b) As described in OAR 123-155-0270(4) and (5).

Stat. Auth.: ORS 285A.075(5) & 285B.110(1)
Stats. Implemented: ORS 285C.500 & 285C.503
Hist.: EDD 9-2005, f. & cert. ef. 11-4-05

123-155-0200

Preliminary Certification Application

For purposes of ultimately seeking the exemption under ORS 316.778 or 317.391:

(1) A business firm must complete an application for preliminary certification and file it with the Department, as follows:

(a) Using the form prescribed by the Department; and

(b) Before the following:

(A) Commencement of construction, installation or similar activities with respect to any new property or improvements comprising the proposed Facility; and

(B) Hiring of any employees to work at that location, who constitute the five or more employees required under ORS 285C.503.

(2) An application fee of \$500 must be submitted with the application in the form of a check or money order payable to the Department.

(3) Application materials may be obtained from: Business Incentives Staff, Economic & Community Development Department, State Lands Building Suite 200, 775 Summer Street NE, Salem OR 97301-1280.

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

Stats. Implemented: ORS 285B.105

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05

123-155-0250

Determination of Preliminary Certification

Pursuant to a filing as described in OAR 123-155-0200

(1) The Department shall:

(a) Review the application for preliminary certification for completeness; and

(b) Determine whether the business firm and the applicant's proposed Facility:

(A) Is at a Qualified Location;

(B) Represents Unique Operations; and

(C) May be reasonably expected to satisfy the employment and other applicable requirements under ORS 285C.503(5).

(2) Not more than 30 days after receipt of the application for preliminary certification, the Department shall do the following:

(a) Notify the applicant in writing whether the application is complete; and

(b) If it is sufficiently complete for purposes of the Municipal Corporations, send the following items to the Municipal Corporations, in such a way that the date of sending is recorded:

(A) A copy of the application; and

(B) A standardized form for each Municipal Corporation to complete and return in response to the business firm's application.

(3)(a) The Department shall complete the determination described in subsection (1)(b) of this rule, after receiving any:

(A) Additional information requested from the applicant; and

(B) Materials from the Municipal Corporations.

(b) This determination shall not be final sooner than 60 days from the date the copy of the application was sent to the Municipal Corporations, unless an official and conclusive response has already been received from all of them.

(4) Within 10 business days of determining whether the application meets the requirements for preliminary certification, the Department shall notify the applicant in writing of its decision, which shall include but is not limited to the following:

(a) In the event that preliminary certification is denied, Department staff shall send either notice consistent with OAR 123-001-0700 to 123-001-0799, or only a written statement of explanation if the denial results from an objection as described in OAR 123-155-0270(2), (5)(b) or (6).

(b) In the event that preliminary certification is approved, Department staff shall send a letter conferring preliminary certification.

(5) The Department shall send written notification of the final determination on preliminary certification to relevant staff of the Department of Revenue and the Municipal Corporations.

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

Stats. Implemented: ORS 285B.105

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05

123-155-0270

Local Objection and Relevant Preliminary Certification Requirements

(1) A Municipal Corporation may object to preliminary certification and furnish formal evidence of its objection; however:

(a) The Department must receive the objection and evidence within 60 days from the date the Department sent a copy of the application for preliminary certification to the governing body of a Municipal Corporation, as described in OAR 123-155-0250(2)(b).

(b) If the Department does not receive the objection and any necessary evidence or copy of an adopted resolution within that time period, the Municipal Corporation shall be deemed to agree to preliminary certification.

(2) In order for the objection to be automatic and not subject to appeal in a contested case, the objection under section (1) of this rule must take the form of a resolution that is adopted by the governing body during the 60-day period, in accordance with applicable local laws, government charter and practices, and it must contain a statement of the reason(s) for the objection under ORS 285C.503(4)(b).

(3) If local officials believe that the proposed Facility does not satisfy a requirement under ORS 285C.503(5), the Municipal Corporation is encouraged and expected to timely furnish relevant information to the Department even if it does not adopt a resolution.

(4) In addition to information in the application, the Department shall rely primarily on the Municipal Corporations in determining whether:

(a) Health insurance coverage will be at least equal to that of Municipal Corporation employees, if applicable.

(b) Business operations will significantly and detrimentally compete with one or more existing local businesses operating in or employing persons from the city or county, including competition for:

(A) Local customers;

(B) Skilled workers or managers within the local labor pool;

(C) Other resources or input, for which local supplies and accessibility are critical but scarce or problematic; or

(D) Comparable circumstances, which do not include general inter-firm rivalry within the larger marketplace.

(5) If local competition as described in subsection (4)(b) of this section is indicated, then it must also be:

(a) Supported with clear evidence furnished by the Municipal Corporation, pursuant to which the Department can independently make a determination under ORS 285C.503(5)(f); or

(b) Formally stated as an objection in the resolution adopted by the governing body of a Municipal Corporation that at a minimum identifies the type and basic nature of local competition that the proposed facility would be expected to engender.

(6) In order for the Department to deny an application for preliminary certification based on local growth or development standards, the Municipal Corporation's adopted resolution must include information showing that the relevant standards were contained in municipal ordinances effective when the application was submitted to the Department.

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

Stats. Implemented: ORS 285C.105

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05

123-155-0300

Annual Certification

For purposes of annual certification of a Facility for each tax year of the business firm, up to ten times under ORS 285C.506:

(1) A preliminarily certified business firm that owns or leases and operates the Facility and is seeking to be certified must file the application for annual certification with the Department:

(a) On or before the 30th day after the end of the income or corporate excise tax year, for which it is seeking to claim or exercise the exemption under ORS 316.778 or 317.391; and

(b) Using the form prescribed by and available from the Department.

(2) An application fee of \$100 must be submitted with each application in the form of a check or money order payable to the Department.

(3) Not more than 30 days after the date of filing, Department staff shall review the application, consider other fact-finding about the Facility under ORS 285C.506(5) to (7) and determine whether it satisfies the applicable requirements for annual certification.

(4) Within 10 business days of determining whether the Facility satisfies applicable requirements for annual certification, the Department shall notify the applicant in writing of the decision, which shall include but is not limited to the following:

(a) In the event that annual certification is denied, Department staff shall send notice consistent with OAR 123-001-0700 to 123-001-0799.

(b) In the event that annual certification is approved, Department staff shall send a letter conferring certification for the previous tax year.

(5) The Department shall also notify the Oregon Department of Revenue of its decision to approve or disapprove annual certification by copying relevant staff at the Department of Revenue with items as described in section (4) of this rule.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.506(4)

Stats. Implemented: ORS 285C.506

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05

123-155-0350

Issues of Initial and Subsequent Annual Certifications

For purposes of annual certification as described in OAR 123-155-0300:

(1) The first such application for annual certification may not be filed with the Department until after the end of the tax year in which all of the following are true:

(a) Business operations have commenced at the Facility;

(b) Relevant employees have been hired; and

(c) Facility property has been fully acquired or leased by the business firm and completed in terms of the construction, reconstruction, modification and installation of proposed property and improvements.

(2) For purposes of this first filing, the application shall show that after the date on which preliminary certification was approved:

(a) Business operations commenced at the Facility within 18 months, if involving major construction or reconstruction, or 6 months, if only acquiring existing buildings or structures; and

(b) Facility property did not remain in an unfinished state of construction, reconstruction, modification or installation for more than six months without significant progress toward completion of such activities.

(3) The Facility may not be certified, if subsection (2)(a) or (b) of this rule is not satisfied, except as allowed by Department staff through a written finding that the delay or interruption is reasonable and not excessive, given the nature and extent of the business firm's investment in the Facility or of inadvertent circumstances.

(4) Approval of an application for annual certification shall not depend on issues of actual competition with other local businesses, Qualified Location or Unique Operations. However, the application may be denied if Department staff discover that when the application for preliminary certification was submitted, the Facility was not at a Qualified Location or did not represent Unique Operations, including but not limited to the case where the preliminary certification application contained false or incomplete information.

(5) The business firm need not make its first such filing immediately following the tax year described in section (1) of this rule, and the business firm may miss or skip any of the ten opportunities to apply for annual certification; however:

(a) Neither postponement of the first filing nor failure to apply in any subsequent tax year shall modify or extend the 10-year period for which certification is otherwise allowed.

(b) The business firm may not claim or exercise the exemption under ORS 316.778 or 317.391 for any such tax year, after which timely application for annual certification is not made as described in OAR 123-155-0300. The firm may still use the exemption for any remaining, eligible tax year (not more than nine consecutive tax years after the year described in section (1) of this rule) for which it does apply and is certified.

(c) If an application for annual certification is timely filed but denied by the Department, then the exemption is disallowed for not only that year, but also for all other remaining, eligible tax years (but without retroactive effect on any prior exemption).

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 285C.506(6)

Stats. Implemented: ORS 285C.506, 316.778 & 317.391

Hist.: EDD 9-2005, f. & cert. ef. 11-4-05

123-155-0400

Waivers

With respect to application fees as described in this division of administrative rules:

(1) Department staff may eliminate the fee or reduce the required amount:

(a) If a business firm's Facility readily qualifies for certification but is very small in size or has minimal employment, or the firm has modest revenue prospects and little likelihood of effectively realizing much benefit from the exemption on taxable income, as determined based on Department experience and expertise relative to general business activity in the county, region or statewide; or

(b) If it can be demonstrated that such a waiver will further the goals and objectives of the program and other relevant public policies, for example, when partial or non-imposition of the fee might promote business investments in areas of the state where the exemption has not yet been used.

(2) The Department shall return or refund the amount collected to the applicant, if the application is rejected or the preliminary or annual certification is denied, pending a final order to that effect.

(3) The moneys collected are intended to defray administrative costs; in particular, they may be critical for offsetting legal expenses in the event of contested case appeal.

Stat. Auth.: ORS 285A.075(5), 285A.110(1), 285C.503(3), 285C.506(4)

Stats. Implemented: ORS 285C.503 & 285C.506

Hist.: EDD 17-2002, f. 11-27-02, cert. ef. 12-2-02; EDD 9-2005, f. & cert. ef. 11-4-05