

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

CHAPTER 836
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE REGULATION

FILED
09/26/2019 11:46 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Relating to the licensing of insurance adjusters and insurance consultants.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/29/2019 5:00 PM

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

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350 Winter St NE
Salem, OR 97301

Filed By:
Karen Winkel
Rules Coordinator

HEARING(S)

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

DATE: 10/22/2019

TIME: 1:30 PM

OFFICER: Van Pounds

ADDRESS: Labor & Industries Building

350 Winter St NE

Basement, Room E

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Conference phone information:

Call 888-808-6929

Access code 4969117

NEED FOR THE RULE(S):

Senate Bill 251 (2019) repealed the insurance adjuster and insurance consultant licensing provisions that were commingled in ORS Chapter 744, and separately re-enacted such statutory provisions. Rulemaking is necessary to implement such re-enacted provisions – which now mandate that the form and manner of application for adjuster and consultant licensing, and for issuance of a temporary adjuster permit, be specified by rule, and that the examinations that are acceptable for purpose of licensing be recognized by rule.

The proposed rulemaking will amend the current rules to specify the form and manner of making application for an adjuster or consultant license, or for a temporary adjuster permit, and recognize certain examinations as adequately testing applicant qualifications, competence and knowledge. The rulemaking will also make technical corrections to the rules, by substituting reference to the 2019 Session Laws for the statutory provisions that have been repealed and re-enacted in such Session Laws.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Draft rules are available from Karen Winkel located at 350 Winter St. NE, Salem, OR 97301 and are available on the division's Web site at:

<https://dfr.oregon.gov/laws-rules/Pages/proposed-rules.aspx>.

A copy of the Enrolled Senate Bill 251 may be accessed on the Oregon Legislative Assembly website at:

<https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/SB251/Enrolled>

FISCAL AND ECONOMIC IMPACT:

While Senate Bill 251 did impose additional licensing requirements upon adjusters and consultants, such as having to report criminal charges or the imposition of administrative sanctions within thirty days, or having to obtain a minimum number of continuing education hours for renewal of license, consistent with the NAIC Independent Adjuster Licensing Guideline, this rulemaking does not. This rulemaking recognizes the current application and examinations and makes technical changes to existing rules. This rulemaking is not anticipated to create any new fiscal or economic impact upon adjusters and consultants.

COST OF COMPLIANCE:

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

(1) This rulemaking should not affect any other state agencies, units of local government or the public.

(2)(a) Both resident and nonresident adjusters and consultants, many of whom are small businesses, have been and will continue to be subject to these rules. Currently, there are 539 resident adjusters, 15,380 nonresident adjusters, 681 resident insurance consultants and 169 nonresident insurance consultants licensed in Oregon.

(2)(b) This rulemaking should not result in additional reporting, recordkeeping or other administrative activities required for compliance.

(2)(c) This rulemaking should not result in additional equipment, supplies, labor or increased administration required for compliance.

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

Adjusters and consultants who work in or for small businesses, and industry and public interest representatives, were invited to participate in the public rulemaking advisory process.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

836-071-0101, 836-071-0113, 836-071-0118, 836-071-0120, 836-071-0127, 836-071-0130, 836-071-0135, 836-071-0140, 836-071-0145

AMEND: 836-071-0101

RULE SUMMARY: Amended to specify the form and manner of license application submissions, to make technical changes and to update references to statutory authority, i.e., to substitute references to the provisions of Oregon Laws

CHANGES TO RULE:

836-071-0101

Adjuster and Insurance Consultant License Application; Required Information ¶¶

(1) ~~In addition to information required under ORS 744.004~~An applicant for an adjuster or insurance consultant license, or for a temporary adjuster permit under ORS 744.555, shall submit an application in the form and manner set forth on the department's Division of Financial Regulation website at dfr.oregon.gov. In addition to information required under Oregon Laws 2019, chapter 151, sections 5 and 12, an applicant for an adjuster or insurance consultant license shall provide the following information relating to the applicant, as applicable on the application form:¶¶

(a) Date and place of birth;¶¶

(b) Duration of employment in insurance. Include the beginning and ending dates and the names and addresses of each employer and prior places of business in the insurance industry;¶¶

(c) All states and provinces of Canada in which the applicant currently holds a license to engage in the transaction of insurance, or has held such a license within ten years prior to the date of the application;¶¶

(d) Any assumed business name or alias ever used;¶¶

(e) Whether any firm or corporation of which the applicant is or has been a member, officer or director has ever filed for bankruptcy or been adjudged a bankrupt;¶¶

(f) The Social Security or other federally-issued identification number of the applicant; and¶¶

(g) If the applicant is a firm or corporation, the name of all current officers, directors and stockholders who own more than ten percent of any class of equity security of the applicant.¶¶

(2) An applicant for a resident adjuster or insurance consultant license who is or has been licensed as a resident producer, adjuster or insurance consultant in another state or a province of Canada within five years prior to the date of application shall include with the application a statement that the resident license is inactive or no longer valid from the insurance department of the state or province in which the applicant is or was last authorized to transact insurance.¶¶

(3) An applicant for a non-resident adjuster or insurance consultant license who is licensed as a resident producer, adjuster or insurance consultant in another state or province of Canada shall include with the application a statement of current licensure from the insurance department of the state or province in which the applicant was authorized to transact insurance as a resident licensee. The statement must indicate that the applicant has a current license for the class or classes of insurance that are being applied for in Oregon. The statement must be dated not earlier than the 90th day prior to the date of application. ~~The exemption to the adjuster licensing examination in ORS 744.535(2) applies only to non-resident adjuster licensing.~~¶¶

(4) ~~The~~ Director may collect Social Security numbers submitted in applications under this rule and may use a Social Security number of an individual when authorized to do so for the purposes specified in this section. In addition to the governmental uses for which a Social Security number is required in an application under federal and state law, when authorized by the holder of a Social Security number, the ~~D~~ Director may use a Social Security number for any of the following purposes:¶¶

(a) As an identification number in maintaining records and reporting grades or examination scores;¶¶

(b) For licensing purposes; and¶¶

(c) For use by other government agencies to carry out their statutory duties.¶¶

(5) An applicant may voluntarily allow the ~~D~~ Director to use the Social Security number of the applicant, as the ~~D~~ Director may request in the application form, for the purposes specified in section (4) of this rule. Refusal to voluntarily allow such use of the Social Security number will not result in the denial of any individual right, benefit or privilege provided by law. The use authorized by an applicant is in addition to uses authorized by state and federal law for which collection of Social Security numbers is mandatory.

Statutory/Other Authority: ORS 731.244, ORS 744.001555, Or Laws 2019, ch 151, sections 5 and 12

Statutes/Other Implemented: ~~ORS 744.001, ORS 744.002, ORS 744.535555~~, Or Laws 2019, ch 151, sections 5 and 12

AMEND: 836-071-0113

RULE SUMMARY: Amended to recognize certain crop adjuster licensing examinations and to update references to statutory authority.

CHANGES TO RULE:

836-071-0113

Crop Insurance ¶

(1) The director designates crop insurance as a class of insurance, for the purpose of licensing crop adjusters, under the director's authority in ORS 744.531(3).¶

(2) ~~Effective Feb. 1, 2011, to~~ qualify as a crop adjuster, an applicant must pass an examination ~~given by the director~~ recognized by the director. The director recognizes crop adjuster examinations under OAR 836-071-0120(1), and examinations administered for certification under the crop adjuster proficiency program approved by the Risk Management Agency, an agency of the United States Department of Agriculture, as adequately testing the qualifications, competence and knowledge of crop adjuster license applicants.

Statutory/Other Authority: ~~ORS 731.24444.531~~, ORS 731.244

Statutes/Other Implemented: ORS 744.531, ORS 744.525, ORS 744.528

AMEND: 836-071-0118

RULE SUMMARY: Amended to make technical changes and to update references to statutory authority.

CHANGES TO RULE:

836-071-0118

Requirements That Must Be Completed Prior to Submitting Licensing Application ¶¶

~~On and after August 1, 2012, a~~All applicants for a license shall submit application materials electronically in accordance with directions provided on the ~~website of the Insurance Division of the Department of Consumer and Business Services~~department's Division of Financial Regulation website at dfr.oregon.gov. Before submitting an application for a license for consideration by the ~~D~~director, the applicant must complete the following steps in the application process:¶¶

- (1) Completion of all pre-examination training and experience requirements under OAR 836-071-0180;¶¶
- (2) Submission of fingerprints in accordance with OAR 836-071-0110;¶¶
- (3) Satisfactory passage of a licensing examination under OAR 836-071-0120 and 836-071-0127; and¶¶
- (4) Completion of a criminal history check as set forth in OAR 836-072-0001.

Statutory/Other Authority: Or Laws 2019, ch 151, sections 5, 6, 12 and 13, ORS 744.525, ORS 744.528, ORS 705.141, ORS 731.244, ORS 731.804, 744.001, 744.003, ORS 744.058, 744.535, ORS 744.619, ORS 744.621

Statutes/Other Implemented: ORS 744.001, 744.003, r Laws 2019, ch 151, sections 5, 6, 12 and 13, ORS 744.525, ORS 744.0528, 744.535, ORS 744.058, ORS 744.619, ORS 744.621

AMEND: 836-071-0120

RULE SUMMARY: Amended to recognize certain licensing examinations and to update references to statutory authority.

CHANGES TO RULE:

836-071-0120

Examination Procedure ¶

~~(1) To take an examination~~ he director recognizes the following examinations as adequately testing an applicant's qualifications, competence and knowledge of the categories of insurance business and classes of insurance that the applicant intends to transact under a license and the applicant's knowledge of duties under the Insurance Code and other laws of this state:¶

(a) Examinations that are administered for such purpose by the director; and¶

(b) Examinations that are administered in a substantially similar manner by other states that license adjusters of this state without examination. A listing of such examinations is set forth on the department's Division of Financial Regulation website at dfr.oregon.gov. ¶

~~(2)~~ To take an examination administered by the director, an applicant must register with the examination administrator in advance of the examination.¶

~~(23)~~ The administrator of the examination may require photographic identification of the applicant at the examination site.¶

~~(34)~~ To be admitted to the examination site, an applicant must submit to the examination administrator either of the following as proof of satisfactory completion of required training:¶

(a) A signed certificate of insurance pre-examination training taken at a school registered under OAR 836-071-0190. The signed certificate must include the applicant's name, the classes of insurance for which training was received, the school name, the date on which the training was completed and the signature of a person authorized by the school to sign such certificates; or¶

(b) Proof of completion of the required pre-examination insurance training at an accredited college or university.

Statutory/Other Authority: ORS 731.244, ORS 731.804, ORS 744.001, 744.003, 58, ORS 744.619, ORS 744.621, ORS 744.0528, ORS 744.5325, 744.619, 744.62 Or Laws 2019, ch 151

Statutes/Other Implemented: ORS 744.001, 744.003, 744.058, 744.535, 744.619, 58, ORS 744.619, ORS 744.621, ORS 744.528, ORS 744.621525

AMEND: 836-071-0127

RULE SUMMARY: Amended to make technical changes and to update references to statutory authority.

CHANGES TO RULE:

836-071-0127

Examination Scores ¶

(1) For the purpose of obtaining authorization to transact a category or class of insurance, an applicant passes an examination for the class or category when the applicant obtains a score of 70 percent or higher, with the exception of a crop insurance adjuster examination, for which the minimum passing score is 80 percent.¶

(2) An applicant for a surplus lines licensee's license must ~~take a written examination approved by the Director and must achieve a~~achieve an examination score of 70 percent or higher.

Statutory/Other Authority: ORS 731.244, ORS 731.804, 744.001, 744.003, 744.066, 744.069, ORS 744.619, ORS 744.621, ORS 744.07525, ORS 744.535, 744.619, 744.6228, Or Laws 2019, ch 151

Statutes/Other Implemented: ORS 744.535619, ORS 744.621, ORS 744.525, ORS 744.528, Or Laws 2019, ch 151

AMEND: 836-071-0130

RULE SUMMARY: Amended to change Insurance Division to Division of Financial Regulation and to update references to statutory authority.

CHANGES TO RULE:

836-071-0130

Adjuster or Insurance Consultant License Renewal ¶

(1) The adjuster or insurance consultant license of an individual expires biennially in the month of the individual's birthday anniversary. The adjuster or insurance consultant license of a person other than an individual expires on the last day of the month in which the second anniversary of the initial issuance date occurs. Thereafter, the license of a person other than an individual shall expire on the second anniversary following each renewal.¶

(2) Not later than the license expiration date, an adjuster or insurance consultant licensee applying for renewal must submit electronically in the form and according to directions set forth on the ~~Insurance Division website of the Department of Consumer and Business Services at www.insurancedepartment.gov~~ Division of Financial Regulation website at dfr.oregon.gov the following, as applicable:¶

(a) A completed renewal application;¶

(b) The renewal fee;¶

(c) A statement of current license status from the insurance department of the state of residence of the licensee, if the licensee is a non-resident licensee; and¶

(d) Evidence of current Federal Crop Insurance Corporation certification, if the applicant is a crop insurance adjuster.¶

(3) The ~~D~~director may allow an adjuster or insurance consultant licensee not more than 30 days to submit missing information on the application form if the fees have been submitted on or before the expiration date.¶

(4) The ~~D~~director may request on the renewal application any information requested on the original application for a license.

Statutory/Other Authority: ORS 731.244, ~~744.007~~Or Laws 2019, ch 151, sections 6 and 13

Statutes/Other Implemented: ~~ORS 744.007~~r Laws 2019, ch 151, sections 6 and 13

AMEND: 836-071-0135

RULE SUMMARY: Amended to clarify license expiration date and to update references to statutory authority.

CHANGES TO RULE:

836-071-0135

Renewal of Expired Adjuster or Insurance Consultant License ¶

(1) When an expired license of an individual is renewed under ~~ORS 744.009~~ regon Laws 2019, chapter 151, section 6 or 13, the renewed license expires biennially in the month of the individual's birthday anniversary. ¶

(2) When an expired license of a person other than an individual is renewed under ~~ORS 744.009~~, the expiration date of regon Laws 2019, chapter 151, section 6 or 13, the renewed license shall be the same as the expiration date of the initial license expires biennially in the month of initial license issuance anniversary.

Statutory/Other Authority: ORS 731.244, Or Laws 2019, ch 151, sections 6 and 13

Statutes/Other Implemented: ORS 744.009, Laws 2019, ch 151, sections 6 and 13

AMEND: 836-071-0140

RULE SUMMARY: Amended to update references to statutory authority.

CHANGES TO RULE:

836-071-0140

License Amendment ¶

An applicant for an amendment to an adjuster or insurance consultant license shall apply electronically in the manner provided for application for the initial license under ~~ORS 744.001~~ regon Laws 2019, chapter 151, sections 5, 6, 12 and 13.

Statutory/Other Authority: ~~ORS 731.244, ORS 731.804, 744.001, 744.003, ORS 744.619, ORS 744.621, ORS 744.5325, 744.619, 744.621~~ ORS 744.528, Or Laws 2019, ch 151, sections 5, 6, 12 and 13

Statutes/Other Implemented: ~~ORS 744.001, 744.003, 619, ORS 744.621, ORS 744.5325, ORS 744.619, 744.621 528, Or Laws 2019, ch 151, sections 5, 6, 12 and 13~~

AMEND: 836-071-0145

RULE SUMMARY: Amended to clarify license expiration date, to make technical changes and to update reference to statutory authority.

CHANGES TO RULE:

836-071-0145

Amended License Issuance ¶

(1) When the ~~D~~director determines that an applicant for an amendment to a license satisfies all applicable requirements, the ~~D~~director shall issue to the applicant a license incorporating the amendment.¶

(2) A license issued under this rule ~~expires on the same date that the preceding license would have expired, unless OAR 836-071-0130(5) applies to the preced~~retains the same expiration date as the license being license amended.

Statutory/Other Authority: ~~ORS 731,744.244, Or Laws 2019, ch 151, sections 6 and 13~~

Statutes/Other Implemented: ~~744.007, 744.009~~Or Laws 2019, ch 151, sections 6 and 13