

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

State Board of Forestry, Oregon Department of Forestry
Agency and Division

OAR chapter 629
Administrative Rules Chapter Number

In the Matter of: Amending OAR 629-041-0100.

Rule Caption: Procedures for Contracts, Agreements and Renewals.

Statutory Authority: ORS 477.406(2); ORS 526.016(4); ORS 526.041(1).

Other Authority: No other authority.

Stats. Implemented: ORS 477.406; ORS 526.041.

Need for the Temporary Rule(s):

The Oregon State Board of Forestry needs a Temporary Rule to immediately amend OAR 629-041-0100, the Board's rule that governs the formation of contracts and agreements by the State Forester under ORS 477.406. The amendment will establish procedural rules for the competitive solicitation of agreements for the prevention and suppression of fire on forestland and other lands by adopting by reference two divisions of the Attorney General's Model Public Contract Rules, OAR chapter 137, divisions 046 and 047 (2008).

Previously, the State Board of Forestry regarded these agreements as falling under the contracting authority of the Oregon Department of Administrative Services (DAS) under ORS 279A.140(1). In that case, the DAS contracting rules, OAR chapter 125, divisions 246 and 247, applied to competitive solicitations of the agreements. The board recently discovered, however, that the board and the State Forester have independent contracting authority under ORS 477.406 and ORS 279A.050(6)(L). Consequently, the board no longer automatically can use the DAS contracting rules, and now must adopt its own rules to specify procedures for competitive contracting for fire prevention and suppression services.

Documents Relied Upon, and where they are available:

ORS 279A.050(6)(L);

ORS 477.406.

Justification of Temporary Rule(s):

The board's failure to act promptly to amend OAR 629-041-0100 will result in serious prejudice to the public interest because the State Forester currently is soliciting agreements for fire prevention and suppression services under ORS 477.406. These competitive solicitations require the adoption of contracting procedures to assure the application of the correct rules and to provide prospective contractors clarity and to eliminate confusion concerning which rules apply in these solicitations. Due to the time required for formal rulemaking, without the Temporary Rule amendments, the solicitations either must seriously be delayed, or canceled and re-started. Re-starting the solicitations will inflict substantial additional transaction costs on the Department of Forestry. Any significant delay in establishing the contracts will impair the contractors' ability to plan, organize and attain readiness to provide services for the 2009 fire season. To fully embrace the solicitation period, the temporary rule amendment is made applicable to solicitations that were issued on or after February 1, 2009.

Authorized Signer

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 945-2005