

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

**Oregon Department of State Police****257**

Agency and Division

Administrative Rules Chapter Number

**Suspension or revocation of the right to apply or re-apply for a letter of appointment**

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: **Amending OAR 257 division 050**Statutory Authority: **ORS 181.440**

Other Authority:

Stats. Implemented: **ORS 181.440**

Need for the Rule(s):

Prior to July 14, 2010, the department's administrative rules allowed it to suspend or revoke the letter of appointment of either a "qualified tow business" or any owner or employee of a "qualified tow business" that commits a violation of law chargeable as a violation or crime. "Owner" was not defined. Additionally, the department's administrative rules allowed it to suspend or revoke a tow vehicle, tow equipment, or a "qualified tow business" from the non-preference tow program for a violation of law other than a law chargeable as a violation or a crime. The department's administrative rules did not allow it to suspend or revoke either the right of a tow business or its principals to apply for a letter of appointment, or the right of a "qualified tow business" or its principals to re-apply for a letter of appointment once that business' current letter of appointment expired. Under Oregon law, an administrative agency loses jurisdiction over a revocation proceeding once a license expires unless the agency's statutory authority provides otherwise. *Schurman v. Bureau of Labor*, 36 Or App 841, 585 P2d 758 (1978); *see also Pahl v. Board of Chiropractic Examiners*, 164 Or App 378, 993 P2d 149 (1999). On July 14, 2010, the department temporarily adopted these rules because it had administrative proceedings pending that involved the revocation or suspension of qualified tow businesses from its non-preference tow program. These rules gave the department continuing jurisdiction in those cases where the letter of appointment for a tow business, tow truck, "qualified tow business," or principal or employee thereof, will expire prior to the department completing its administrative suspension or revocation action and issuing a final order. Due to inadvertence by the department, the department's temporary rules expired on January 10, 2011 without permanent rules being adopted. In order for the department to have continuing jurisdiction over the administrative cases that were the subject of the expired temporary rule, as well as future administrative cases, the department must amend its administrative rules to delete the undefined term "owner" and insert the word "principal" in its place, and to define "principal" to include an owner. The department also must amend its rules to give it continuing jurisdiction over pending suspension or revocation proceedings by authorizing it to revoke or suspend a right to apply for, as well as the right to re-apply for, a letter of appointment. The department finds that its failure to permanently amend OAR 257 division 050 will result in serious prejudice to the public interest because for those cases where the department has, or will, revoke or suspend the letter of appointment of a "qualified tow business," principal, or employee of such a business, it is possible that those businesses, persons, or principals could circumvent the department's regulatory action by allowing their letter of appointment to expire prior to the completion of the administrative action, the department losing jurisdiction over the action, and the party then re-applying to the department for new letter of appointment.

Documents Relied Upon, and where they are available:

None.

Fiscal and Economic Impact:

The fiscal and economic impact on state agencies, units of local government, the public, and small businesses is unknown at this time because it is difficult to predict how many letters of appointment of qualified tow businesses will be revoked or suspended by the department, and therefore subject to the rule amendments.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The amendments to OAR 257 division 050 are designed to give the department continuing jurisdiction over qualified tow businesses, principals, and employees of qualified tow businesses once the department revokes or suspends a letter of appointment. The amendments will ensure that qualified tow businesses, principals, or employees cannot circumvent the department's regulatory action by allowing their letters of appointment to expire prior to the completion of the administrative action, the department losing jurisdiction over the action, and the party re-applying to the department for new letter of appointment. By operation of the rule amendments, the department and units of local government that use the department's non-preference tow rotation rules and program may be positively impacted by seeing a reduction in violations of federal, state, and administrative rule law by qualified tow businesses, principals, and employees of qualified tow businesses, thus reducing the time and expense of both responding to consumer complaints from the motoring public and conducting further revocation and suspension hearings. The public also may be positively affected by ensuring that the letters of appointment of qualified tow businesses, principals, or employees of qualified tow businesses that are revoked or suspended remain revoked or suspending, thus protecting the motoring public physically and financially from unscrupulous tow businesses and tow business practices.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

Because the rule amendments are based on the department actually revoking or suspending the letter of appointment of a qualified tow business, principal, or employee of a qualified tow business, it is estimated that the rule amendments will not fiscally impact small businesses, qualified tow businesses, principals, or employees of qualified tow businesses who are in compliance with federal and state laws, including OAR 257 division 050, when conducting non-preference motor vehicle tows. Therefore it is estimated that there will not be a fiscal impact for these entities.

However, the rule amendments will have a negative impact on small businesses, qualified tow businesses, principals, or employees of qualified tow businesses who from January 1, 2009 were *not*, or who are currently or in the future are *not*, in compliance with federal and state laws, including OAR 257 division 050, when conducting non-preference motor vehicle tows. This is because the rule amendments ensure that those entities remain revoked or suspended from the department's non-preference tow program, even if they attempt to re-incorporate or re-invent themselves into a new business; and thus preventing those entities from conducting and generating revenue from non-preference motor vehicle tows during the period of their revocation or suspension. Again, it is difficult to precisely estimate the negative fiscal impact on these entities because it is not possible to predict how many letters of appointment of qualified tow businesses, principals, or employees of qualified tow businesses will be revoked or suspended by the department, and will therefore be subject to the rule amendments. However, while past behavior is not necessarily indicative of future behavior, the department has conducted the following number of revocations and suspensions of tow businesses, principals, or employees under OAR 257 division 050 in the last 7 years:

Number of revocations and suspensions by year		
Year	Revocations	Suspensions
2011	2	1
2010	0	0
2009	0	1
2008	3	0
2007	1	1
2006	0	0
2005	1	4

As stated above, the rule change directly affects only the limited number of small businesses whose letter of appointment is revoked or suspended by the department. Because the rule change is projected to have little or no impact on small businesses whose letter of appointment is not suspended or revoked by the department, which are the vast majority of the qualified tow businesses on the department's non-preference tow list, the rule is not anticipated to have a significant adverse effect upon small business. To the extent that the rule does have an impact on small businesses whose letter of appointment was not suspended or revoked by the department, it would likely be a positive one, because those businesses would be eligible for additional towing assignments that otherwise may have gone to the businesses whose letter of appointment was suspended or revoked.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

It is estimated that a possible slight increase may occur in the recordkeeping and other administrative activities by the department in cross-referencing new applicants for letters of appointments with those qualified tow businesses, principals, or employees of qualified tow businesses that have been revoked or suspended to ensure that those entities remain revoked or suspended from the department's non-preference tow program for the period of revocation and suspension, even if they attempt to re-incorporate or re-invent themselves into a new business.

c. Equipment, supplies, labor and increased administration required for compliance:

Except for the possible slight increase in the recordkeeping and other administrative activities by the department in cross-referencing new applicants for letters of appointments with those qualified tow businesses, principals, or employees of qualified tow businesses that have been revoked or suspended, the department does not believe an increase in equipment, supplies, labor or increased administration will be required for compliance.

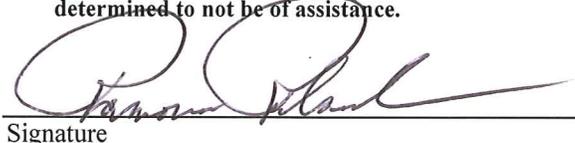
How were small businesses involved in the development of this rule?

Small businesses were not involved in the development of this rule because impact on small businesses is estimated as minimal.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

This rule has a minimal impact on business and has no impact on a specific group of citizens, therefore an advisory committee was determined to not be of assistance.

  
Signature

Ramona Rademaker 7/13/11  
Printed name Date