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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 808
LANDSCAPE CONTRACTORS BOARD

FILED

09/27/2018 1:30 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Creates a modified phase of license

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/14/2018 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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Filed By:
Kim Gladwill-Rowley
Rules Coordinator

HEARING(S)

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

DATE: 12/06/2018

TIME: 9:00 AM

OFFICER: Elizabeth Boxall

ADDRESS: Keizer Community Center
930 Chemawa Road NE
Keizer, OR 97303

NEED FOR THE RULE(S):

Allows those interested in performing landscaping work greater accessibility to obtain that license and provides the consumer with a broader license base to choose from.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

ORS 671 and OAR 808; available on the LCB website at www.oregon.gov/lcb

FISCAL AND ECONOMIC IMPACT:

There is no negative fiscal or economic impact.

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).

No other agencies will be affected by this rule, but members of the public who wish to become licensed and start a landscape business will have an opportunity to do so and members of the public will have a greater number of licensed businesses to contract with for landscaping work; small businesses will have a better opportunity to expand their

business into landscape installation with some restrictions to that installation; the number of small businesses affected is unknown; There are no activities or costs required to comply with these rules; It is unknown if a lot of people will apply for this license, but if that happens, the Board may need to hire temporary administrative help.

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

Several Board members are small business owners and the landscape association in Portland and Medford were involved in the drafting of these rules and are made up of small business owners.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The Board acts as its own Administrative Rule Advisory Committee

RULES PROPOSED:

808-003-0035, 808-003-0040, 808-003-0125, 808-003-0500, 808-003-0501, 808-003-0502, 808-003-0503, 808-003-0720, 808-003-0800

AMEND: 808-003-0035

RULE SUMMARY: Adds Modified license as a phase of license to be issued

CHANGES TO RULE:

808-003-0035

License Categories ¶¶

(1) Licenses may be issued only for the following:¶¶

(a) All Phase;¶¶

(b) Planting;¶¶

(c) Standard;~~or~~¶¶

(d) Irrigation and Backflow Prevention;¶¶

(e) Probationary All Phase Plus Backflow;~~or~~¶¶

(f) Modified.¶¶

(2) Except as set forth in section (3) of this rule, the following previously-issued limited licenses shall remain valid so long as the licensee continues to renew the license:¶¶

(a) Irrigation;¶¶

~~(b) Irrigation and Backflow Prevention;¶¶~~

~~(c) Sod & Seed; and¶¶~~

~~(d) Trees.~~¶¶

(3) The "All Phase" license shall include standard (which includes planting), irrigation, and Backflow Prevention, unless, in lieu of Backflow Prevention, the landscape construction professional has signed an agreement with the Board prior to April 30, 1996 stating that the contractor will not perform Backflow Prevention work, with the penalty for violation of the agreement being \$1,000 and suspension of the landscaping contracting business license and the landscape construction professional contractor license who is the phase basis of the landscaping contracting business.

Statutory/Other Authority: ORS 670.310, 671.670

Statutes/Other Implemented: ORS 671.560

AMEND: 808-003-0040

RULE SUMMARY: Defines what landscaping work a modified license holder can perform

CHANGES TO RULE:

808-003-0040

Scope of License and Subcontracting ¶¶

(1) Scope of License.-A licensed landscape contracting business may only advertise for or perform those phases of landscaping work for which its owners or employees hold a valid landscape construction professional license.¶¶

(2) The landscaping work a licensed landscape contracting business advertises for or performs shall be limited to the following:¶¶

(a) For an all phase license holder, all areas of landscaping work, plus the installation of backflow prevention assemblies unless, in lieu of Backflow Prevention, the landscape construction professional contractor has signed an agreement with the Board prior to April 30, 1996 stating that the landscape construction professional will not perform Backflow Prevention work;¶¶

(b) For an irrigation, no backflow, limited license holder, irrigation functions, including, but not limited to, the preparation of plans and drawings for landscape irrigation systems and the maintenance of irrigation systems with the use of compressed air;¶¶

(c) For a sod and seed limited license holder, grass seed planting or sod laying;¶¶

(d) For a tree limited license holder, install new or transplant trees;¶¶

(e) For a planting limited license holder, plan or install lawns, shrubs, vines, trees or nursery stock and perform grading and drainage services for the installation of lawns, shrubs, vines, trees or nursery stock. This also includes the preparation of the property on which the vegetation is to be installed as defined in OAR 808-002-0500. A planting limited licensinge holder cannot perform low voltage work.¶¶

(f) For a standard limited license holder, all areas of landscaping work except irrigation functions and the installation of backflow assemblies;¶¶

(g) For an irrigation plus backflow license holder, irrigation functions, including, but not limited to, the preparation of plans and drawings for landscape irrigation systems, the maintenance of irrigation systems with the use of compressed air and the installation of backflow assemblies.¶¶

(h) For a probationary All Phase Plus Backflow license holder, all areas of landscaping work, ~~provided a~~ plus the installation of backflow prevention assemblies. All landscaping work on any given landscape job as defined in OAR 808-002-0495 must not exceed a total contract amount of \$15,000;¶¶

(i) For a modified limited license holder, work as stated in OAR 808-003-0501.¶¶

(3) Landscaping Work Exceeding Licensee's Scope. A landscape contracting business may bid on a job or enter into a contract that includes one or more phases of landscaping work for which it is not licensed if that landscape contracting business:¶¶

(a) Upgrades the landscape contracting business license phase by employing a landscape construction professional licensed for that phase of landscaping work and notifies the board of this change in license prior to performing this landscaping work. A modified license holder must comply with OAR 808-003-0503 in lieu of this provision; or¶¶

(b) Subcontracts the landscaping work that is outside the phase of the license to another licensed landscape contracting business licensed for that phase of landscaping work.¶¶

(4) Landscaping Job Exceeding Licensee's Scope or Including Construction Contracting.-A landscape contracting business may bid on a job or enter into a contract that, as part of the landscaping project, includes:¶¶

(a) Landscaping work for which the landscape contracting business is not licensed, and which is also within the scope of a construction contractors license under ORS Chapter 701, if the landscape business subcontracts with a construction contractor licensed under ORS Chapter 701 to perform that work within the scope of the construction contractor's license; or¶¶

(b) Construction contracting work that is not included within the lawful scope of work of a landscape contracting business, including work of residential specialty contractors and commercial specialty contractors, and for which

the landscape contracting business does not fall under a statutory exemption from appropriate licensure. This construction contracting work may be subcontracted only if the landscape contracting business subcontracts with a construction contractor licensed under ORS chapter 701 to perform work within the scope of the construction contractor's license, and if the construction contractor and its employees are properly licensed by the Department of Consumer and Business Services, Building Codes Division when required by law.¶¶

(5) Subcontracting.¶¶

(a) A landscape contracting business may subcontract, verbally or in writing as is appropriate for the value of the subcontract, with another licensed landscape contracting business to perform landscaping work, pursuant to subsection (3) of this rule. A landscape contracting business may not subcontract with the owner of the property, for the owner to provide services on or for the property, even if the owner of the property is a licensed landscape contracting business or licensed landscape contracting professional.¶¶

(b) A landscape contracting business may subcontract, verbally or in writing as is appropriate for the value of the subcontract, with a construction contractor licensed under ORS chapter 701 to perform construction contracting work pursuant to subsection (4) of this rule. A landscape contracting business may not subcontract with the owner of the property, for the owner to provide services on or for the property, even if the owner of the property is a licensed construction contractor.¶¶

(6) Subsection 3 through 5 of this rule do not allow a landscape contracting business to advertise or represent that the business is licensed to provide construction contractor services or specialty trade services regulated by the Department of Consumer and Business Services, Building Codes Division.

Statutory/Other Authority: ORS 670.310, 671.670

Statutes/Other Implemented: ORS 447.060, 671.560

AMEND: 808-003-0125

RULE SUMMARY: Clarifies a modified license holder must cannot change their phase of license and remain "modified"

CHANGES TO RULE:

808-003-0125

Notification of Change of Address, Employment, Partners or Owners or Ownership Interest ¶¶

- (1) Within thirty (30) calendar days following a change of address, the landscape construction professional shall submit written or online notification to the agency as provided in ORS 671.603.¶¶
- (2) Within thirty (30) calendar days following a change of address, the landscape contracting business shall submit written or online notification to the agency as provided in ORS 671.603.¶¶
- (3) A landscape contracting business shall notify the agency in writing within ten (10) days after the date a landscape contracting business' phase of license changes due to:¶¶
 - (a) The license phase of an owner or employee who is the licensed landscape construction professional and phase basis of the business changes. A modified license holder must comply with OAR 808-003-0503 for a change of license phase in lieu of this provision; or¶¶
 - (b) The landscape construction professional who holds part or wholly the phase basis of the landscape contracting business license ceases to own or be employed by the landscape contracting business.¶¶
- (4) A landscape construction professional shall notify the agency in writing within ten (10) days of the date of termination of employment or ownership from an actively licensed landscape contracting business.¶¶
- (5) A landscape contracting business subject to ORS 671.595 must:¶¶
 - (a) Within ten (10) calendar days of the date a managing owner or managing employee ceases to act in the roles as defined in OAR 808-002-0625 or 808-002-0734(2) notify the agency in writing and provide:¶¶
 - (A) The effective date of the change; and¶¶
 - (B) The name of the managing owner or managing employee ceasing to act in this role.¶¶
 - (b) Within thirty (30) calendar days of a change of managing owner or managing employee, designate a new managing owner or managing employee and must have notified the agency in writing and provide:¶¶
 - (A) The effective date of the change; and¶¶
 - (B) The name of the new managing owner or managing employee performing this role.¶¶
- (6) Within ten (10) calendar days following a change in partners or owners or a change in percentage of an ownership interest, the landscape contracting business shall submit written notification of the change to the agency as required by ORS 671.605.

Statutory/Other Authority: ORS 183, 671

Statutes/Other Implemented: ORS 671.595, 671.600, 671.603, 671.605

ADOPT: 808-003-0500

RULE SUMMARY: Application process for modified phase of license.

CHANGES TO RULE:

808-003-0500

Application for Modified License

(1) An application for a modified phase of landscape construction professional license must be on forms provided by the agency and must be accompanied by:

(a) A non-refundable application fee as required in OAR 808-003-0710;

(b) Verification of one (1) year of landscape related experience or alternative experience as required in OAR 808-003-0025;

(c) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and ORS 671.563, "applicant" means the person applying for the individual landscape construction professional license;

(d) Complete questions to Licensing and Litigation History and Criminal Background sections;

(e) Social security number of the applicant;

(f) Mailing and physical address of the applicant; and

(g) Signature of applicant.

(2) An applicant for a modified landscape construction professional license must pass the Laws, Rules and Business Practice section of the written examination and comply with all requirements of OAR 808-003-0700 to OAR 808-003-0850.

(3) An applicant for a modified landscape contracting business license must comply with the requirements of OAR 808-003-0015(1) and (2).

Statutory/Other Authority: ORS 670.310 & ORS 671.670

Statutes/Other Implemented: ORS 671.560

ADOPT: 808-003-0501

RULE SUMMARY: Scope of work for a modified phase of license.

CHANGES TO RULE:

808-003-0501

Scope of Work for a Modified License

(1) Scope of work for a modified license holder. A landscape contracting business with a modified license phase may advertise for or perform the following work:¶

(a) plan or install lawns, shrubs, vines, trees or nursery stock. This also includes the preparation of the property on which the vegetation is to be installed as defined in OAR 808-002-0500;¶

(b) plan, install, maintain and repair fences, arbors, patios, landscape edging, driveways, and walkways;¶

(c) plan, install, maintain and repair decks, if no permit is required; and¶

(d) grading, when performed in conjunction with the work defined in subsection (1) of this rule. For purposes of the modified license, grading means incidental to the construction of a landscape feature not to exceed five cubic yards.¶

(2) A landscape contracting business with a modified license phase may only perform the landscaping work as defined in subsection (1) of this rule without piercing the dwelling.¶

(3) Landscaping work as a modified license holder does not include. Landscaping work a landscape contracting business with a modified license phase may not advertise for or perform includes, but is not limited to installation, maintenance or repair of:¶

(a) grading, unless done in conjunction with the landscaping work as defined in subsection (1) of this rule;¶

(b) landscape drainage systems¶

(c) ornamental water features;¶

(d) landscape irrigation and irrigation design;¶

(e) backflow installation;¶

(f) low voltage wiring; and¶

(g) retaining walls.

Statutory/Other Authority: ORS 670.310 & ORS 671.670

Statutes/Other Implemented: ORS 671.560

ADOPT: 808-003-0502

RULE SUMMARY: License requirement for a modified phase of license.

CHANGES TO RULE:

808-003-0502

Modified License Requirements

(1) Job Charges. A landscape contracting business with a modified license phase may only arrange, submit a bid, offer or contract for a landscape job that does not exceed \$5,000. For purposes of this rule "landscape job" has the same meaning as in OAR 808-002-0495.

(2) Subcontracting. A landscape contracting business with a modified license phase may subcontract work as stated in OAR 808-003-0040(3)(b)(4) & (5).

(3) A landscape contracting business with a modified license phase must comply with all other license requirements of ORS 671.520 to 671.760 and OAR Chapter 808, including, but not limited to liability insurance, bonding, workers compensation, written contract requirements and address change notification.

(4) A modified landscape construction professional license holder:

(a) must be the owner of the landscape contracting business;

(b) cannot be the supervisory landscape construction professional for another landscape contracting business license; and

(c) comply with all other license requirements of ORS 671.520 to 671.760 and OAR Chapter 808, including, but not limited to direct supervision of unlicensed employees and continuing education.

Statutory/Other Authority: ORS 670.310 & ORS 671.670

Statutes/Other Implemented: ORS 671.560

ADOPT: 808-003-0503

RULE SUMMARY: Change of license for a modified phase of license

CHANGES TO RULE:

808-003-0503

Change of License Category for Modified License

(1) Change of license phase, individual. A modified landscape construction professional license cannot be changed to or include any other phase of license. To change to a different phase of license, the landscape construction professional must obtain a new phase of license by meeting all of the requirements of ORS 671.570 and the modified license phase will be removed.

(2) Change of license phase, business. A modified landscape contracting business license cannot include any other phase of license, but may change to another phase of license if the landscape construction professional holding that modified license:

(a) changes to a different phase of license as required in subsection (1) of this rule; or

(b) changes the license status to inactive, resigns the license, or that license has expired and a different landscape construction professional that holds a different phase of license is employed by that landscape contracting business.

Statutory/Other Authority: ORS 670.310 & ORS 671.670

Statutes/Other Implemented: ORS 671.560

AMEND: 808-003-0720

RULE SUMMARY: Clarifies a modified license phase may only be changed to another phase of license and cannot also be modified

CHANGES TO RULE:

808-003-0720

Change to Limited Licenses, Generally ¶¶

(1) Landscape construction professionals holding limited licenses may change that phase of license by passing additional sections of the exam. Licensees shall submit a registration form to take the additional sections of the practical skills test as required in OAR 808-003-0910 or obtain their candidate identification number from the agency to take the written exam.¶¶

(2) To change a license to a Standard license:¶¶

(a) Holders of a Sod & Seed License or Tree license must pass:¶¶

(A) The following written exam sections: Plants and Turf, Design, Grading and Drainage, and Hardscaping sections, or¶¶

(B) The written Hardscaping exam section and the following practical skills modules:-Plant ID, Tree Planting and Staking, Sod Installation, Plant Layout, Grading & Drainage, and Instruments and the practical skills written modules for Plants and Turf and for Design, Grading and Drainage; or¶¶

(C) A combination of written exam sections and practical skills modules and written modules as stated in OAR 808-003-0750.¶¶

(b) Holders of a Planting license must pass the written Hardscaping exam section.¶¶

(3) To change to a Planting License holders of a Sod & Seed license or a Tree license must pass:¶¶

(a) The following written exam sections: Plants and Turf and Design, Grading and Drainage, or¶¶

(b) The following practical skills modules: Plant ID, Tree Planting and Staking, Sod Installation, Plant Layout, Grading & Drainage, and Instruments and the practical skills written modules for Plants and Turf and for Design, Grading and Drainage; or¶¶

(c) A combination of written exam sections and practical skills modules and written modules as stated in OAR 808-003-0750.¶¶

(4) To change a license to an All Phase Plus Backflow license:¶¶

(a) Holders of a Sod & Seed license or Tree license must pass:¶¶

(A) The following written exam sections:-Plants and Turf, Design, Grading and Drainage, Hardscaping, Irrigation, and Backflow; or¶¶

(B) The following practical skills test modules: Plant ID, Tree Planting and Staking, Sod Installation, Plant Layout, Grading & Drainage, and Instruments and the practical skills written modules for Plants and Turf and for Design, Grading and Drainage, and Irrigation; or¶¶

(C) A combination of written exam sections and practical skills modules and written modules as stated in OAR 808-003-0750.¶¶

(b) Holders of a Planting license must pass¶¶

(A) The following written exam sections: Hardscaping, Irrigation and Backflow exam sections; or¶¶

(B) The following written exam sections: Hardscaping and Backflow sections and the following practical skills test modules: Lateral Repair & Head Adjustment, Lateral Installation, Mainline Installation, Valve Repair, and Valve Wiring and the practical skills written modules for Irrigation; or¶¶

(c) A combination of written exam sections and practical skills modules as stated in OAR 808-003-0750.¶¶

(5) To add Planting to holders of an Irrigation plus Backflow license the landscape construction professional must pass:¶¶

(a) The following written exam sections: Plants and Turf and Design, Grading and Drainage sections, or¶¶

(b) The following practical skills modules: Plant ID, Tree Planting and Staking, Sod Installation, Plant Layout, Grading & Drainage, and Instruments and the practical skills written modules for Plants and Turf and for Design,

Grading and Drainage; or¶¶

(c) A combination of written exam sections and practical skills modules and written modules as stated in OAR 808-003-0750.¶¶

(6) To add Irrigation plus Backflow to holders of a Planting license the landscape construction professional must pass:¶¶

(a) The following written exam sections:-Irrigation and Backflow; or¶¶

(b) The written Backflow section and the following practical skills modules: Lateral Repair & Head Adjustment, Lateral Installation, Mainline Installation, Valve Repair, and Valve Wiring and the practical skills written modules for Irrigation; or¶¶

(c) A combination of written exam sections and practical skills modules as stated in OAR 808-003-0750.¶¶

(7) A modified license phase, may be only changed to another phase of license as stated in OAR 808-003-0503.¶¶

(8) Any limited license phase may be changed to a modified license phase by submitting a request on a form provided by the Board. A change to a modified license requires the landscape construction professional and landscape contracting business to follow all rules of a modified license phase.

Statutory/Other Authority: ORS 671

Statutes/Other Implemented: ORS 671.560, 671.561, 671.570

AMEND: 808-003-0800

RULE SUMMARY: Specifies which exam section an applicant must pass to obtain a Modified license.

CHANGES TO RULE:

808-003-0800

Written Examination Sections ¶¶

(1) The exam will consist of the following sections:¶¶

(a) Laws, Rules and Business Practice¶¶

(b) Plants and Turf;¶¶

(c) Design, Grading and Drainage;¶¶

(d) Hardscaping;¶¶

(e) Irrigation Systems; and¶¶

(f) Backflow installation of irrigation and ornamental water feature backflow assemblies.¶¶

(2) To obtain an All Phase plus Backflow License, the applicant must successfully pass the Laws, Rules and Business Practice, Plants and Turf, Design, Grading and Drainage, Hardscaping, Irrigation and Backflow sections.¶¶

(3) To obtain a Standard license, the applicant must successfully pass the Laws, Rules and Business Practice, Plants and Turf, Design, Grading and Drainage, and Hardscaping sections.¶¶

(4) To obtain an Irrigation license, the applicant must successfully pass the Laws, Rules and Business Practice, Irrigation and Backflow sections.¶¶

(5) To obtain a Planting license the applicant must successfully pass the Laws, Rules and Business Practice, Plants and Turf, and Design, Grading and Drainage sections.¶¶

(6) To obtain a Probationary All Phase plus Backflow License, the applicant must successfully pass the Laws, Rules and Business Practice, Plants and Turf, Design, Grading and Drainage, Hardscaping, Irrigation and Backflow Prevention sections within 12 months after the first sitting of any section of the examination.¶¶

(7) to obtain a Modified license the applicant must successfully pass the Laws, Rules and Business Practices section.

Statutory/Other Authority: ORS 671

Statutes/Other Implemented: ORS 671.570