



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

MEMORANDUM

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DATE: March 11, 2026

TO: Oregon State Apprenticeship and Training Council
Bureau of Labor and Industries

CC: Jody Robbins, Director
Apprenticeship and Training Division
Bureau of Labor and Industries

FROM: Rachel E. Bertoni, Assistant Attorney General
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SUBJECT: *Council Authority to Deny Committee/Program Application*

QUESTIONS PRESENTED & SHORT ANSWERS

1. Independent of the technical review criteria in OAR 839-011-0084(3), what rules and statutes can the Oregon State Apprenticeship and Training Council (OSATC) rely on to deny an application for approval of a new apprenticeship training program?

Independent of the technical review criteria in OAR 839-011-0084(3), OSATC may rely on other rules and statutes to deny an application for approval of a new apprenticeship training program. OSATC may have grounds for a denial in statutes and rules expressly or implicitly referenced in OAR 839-011-0084(3), as set forth below. OSATC also may have grounds to deny an application where the materials provided for purposes of satisfying the technical review demonstrate noncompliance with some other statute or rule related to approval of an apprenticeship program, as set forth below. The following table lists the statutes and rules that may provide alternative grounds for denial:

Possible statutory or regulatory ground for denial	Explanation
Committee composition requirements under ORS 660.135, as incorporated by OAR 839-011-0084(3)(a)	OAR 839-011-0084(3)(a) requires submission of documentation showing committee composition pursuant to ORS 660.135 and 660.145.

Committee composition requirements under ORS 660.145, as incorporated by OAR 839-011-0084(3)(a)	OAR 839-011-0084(3)(a) requires submission of documentation showing committee composition pursuant to ORS 660.135 and 660.145.
OAR 839-011-0074	If materials submitted for the technical review requirement at OAR 839-011-0084(3)(a) demonstrate noncompliance with this rule.
OAR 839-011-0072	If materials submitted for the technical review requirement at OAR 839-011-0084(3)(a) demonstrate noncompliance with this rule.
OAR 839-011-0143	If materials submitted for the technical review requirement at OAR 839-011-0084(3)(e)(C) demonstrate noncompliance with this rule's provisions discussing ratios.
ORS 660.157	If materials related to the course of study submitted for the technical review requirements demonstrate noncompliance with this statute.
ORS 660.158	If materials related to the course of study submitted for the technical review requirements demonstrate noncompliance with this statute.
ORS 660.126	If materials submitted for the technical review requirement at OAR 839-011-0084(3)(b) demonstrate noncompliance with this statute.
OAR 839-011-0140(2)	If materials submitted for the technical review requirement demonstrate noncompliance with ORS 660.126.
OAR 839-011-0142(1), (2)	If materials submitted for the technical review requirement at OAR 839-011-0084(3)(h) demonstrate noncompliance with this rule.
ORS 660.135(1)	<p>"In each locality where apprentices are employed, [the Council] may approve as many local joint committees as are necessary to serve the needs of the various apprenticeable occupations."</p> <p>"Local joint committees in building and construction trades occupations may be approved by the [C]ouncil only as group programs serving multiple employers."</p>
ORS 660.137(6)	If materials submitted for the technical review requirements demonstrate noncompliance with this statute.
OAR 839-011-0084(1)	If materials submitted for the technical review requirements demonstrate noncompliance with this rule.

OAR 839-011-0084(2)	If materials submitted for the technical review are inconsistent with the non-discrimination requirement in this rule.
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2. *May OSATC deny an application for an apprenticeship program under ORS 660.135(1) if it finds that there is not a need for the new program?*

The short answer is that this statute does not grant OSATC unlimited discretion to deny a new apprenticeship program. ORS 660.135(1) authorizes OSATC to approve a new committee if it will provide apprenticeship opportunities to employees in apprenticeable occupations. In order for ORS 660.135(1) to serve as grounds for denial of a new apprenticeship program, we conclude that OSATC must find that no apprentices will be served by the new program, such that it does not provide additional opportunities for apprenticeship in the industry.

DISCUSSION

1. *Independent of the technical review criteria in OAR 839-011-0084(3), the Oregon State Apprenticeship and Training Council (Council) may rely on a number of rules and statutes to deny an application for approval of a new apprenticeship training program.*

A. Background

In September 2025, we provided an advice memorandum (prepared for public release) discussing the circumstances under which OSATC may deny an application for approval of a new apprenticeship training program.¹ In relevant part, the advice memorandum concluded that OAR 839-011-0084(3) prohibits approval of an applicant that does not meet the technical review requirements set forth in the rule, but “may be interpreted to allow for denial of a program application in other instances.”² It then provided a non-exhaustive review of possible grounds for the denial of an application under authority separate from OAR 839-011-0084(3). *Id.*

OSATC has now asked for a comprehensive list of rule and law provisions that it may rely on to deny program registration, independent of whether an applicant satisfies the technical review criteria in OAR 839-011-0084(3). In this memorandum, we aim to provide a more exhaustive list.

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¹ ORS 660.010(9) defines “program” as “the total system of apprenticeship as operated by a particular local joint committee, including the committee’s registered standards and all other terms and conditions for the qualification, recruitment, selection, employment and training of apprentices in that apprenticeable occupation.” A local joint committee “includes local joint apprenticeship committees, local joint training committees and trade committees.” ORS 660.008. The rules define “standards” as “a written agreement submitted by a local committee and approved by the Council, which sets forth a plan containing all terms and conditions for the qualification, employment and training of apprentices or trainees as set forth in ORS chapter 660.126 and 660.137.” OAR 839-011-0070(8).

² Advice Memorandum to OSATC from Assistant Attorney General Riemenschneider (prepared for public release on September 26, 2025) at 3.

B. Legal Framework

The powers and duties of OSATC and the Apprenticeship and Training Division (Division) are set forth in ORS 660.120. ORS 660.120(3) authorizes OSATC and the Division to adopt administrative rules reasonably necessary to the enforcement and administration of ORS 660.002 through ORS 660.210. As relevant to this advice, OSATC and the Division have authority over approval of program standards and the establishment of committees. ORS 660.120(4)(b), (c). To guide the approval of new apprenticeship programs, committees, and standards, the Bureau of Labor and Industries (BOLI) and OSATC adopted OAR 839-011-0084. However, other ORS Chapter 660 sections and OAR Chapter 839, Division 11 rules also appear to provide some parameters on the approval of committees, standards, and programs.

C. OAR 839-011-0084(3) – Technical Review Criteria

OAR 839-011-0084 discusses the approval of applications for new local committees, standards, and programs. OAR 839-011-0084(3) lists the necessary components of an application, which are commonly referred to as the “technical review requirements.” It states:

(3) The Council and the Apprenticeship and Training Division of the Bureau of Labor and Industries will approve the creation of a new local committee or new standards for an existing committee only if the applicant for the new program or new standards can first demonstrate to OSATC and the Division, by a preponderance of evidence, that the application is in conformity with the following requirements [. . .]

Subsections (3)(a) through (3)(h) then address committee composition, standards, the administration plan, methods to track training, training curriculum, operating policies and procedures, and recruiting. An applicant *must* satisfy the technical review requirements in OAR 839-011-0084(3) to receive approval from OSATC and the Division. However, other sources of authority may provide *additional* grounds for denial of an application under certain circumstances.

D. Authority Referenced in OAR 839-011-0084(3)

In addition to outlining the express technical review requirements, OAR 839-011-0084(3) references separate authority, which may provide additional grounds for the denial of an application in some circumstances.

OAR 839-011-0084(3)(a) requires an applicant to “submit documentation showing committee composition pursuant to ORS 660.135 and ORS 660.145.” These statutes discuss the composition of a committee. *See, e.g.*, ORS 660.135(2) (requiring certain numbers of employer and employee representatives on a local joint committee); ORS 660.135(3) (discussing qualifications to serve as a prospective employee representative); ORS 660.145 (discussing

composition requirements of a trade committee for apprenticeship and training). Each referenced statute contains some standards for committee composition, but they also defer to “procedures established by the council.” *See* ORS 660.135(2); ORS 660.145. Rules expanding on the requirements of the composition of an apprenticeship and training committee are at OAR 839-011-0074 and OAR 839-011-0072. An application that includes documentation of committee composition may meet the technical requirements of OAR 839-011-0084(3)(a), but any deficiency in the proposed committee’s compliance with OAR 839-011-0072 and OAR 839-011-0074 may be grounds for denial of an application. *See also* ORS 660.120(4)(c) (providing that OSATC and the Division shall “[e]stablish committees and approve nominations of members and alternates to local joint committees and state joint committees to ensure balanced representation of employer and employee groups”).

OAR 839-011-0084(3) includes statutory citations for the submission of certain information:

- OAR 839-011-0084(3)(e) cites ORS 660.137(5) twice. OAR 839-011-0084(3)(e) states: “The applicant shall submit a plan detailing how the committee will ensure that participating employers will provide work in all areas covered by the program standards (ORS chapter 660.137(5))” The plan must include detail on “training agent qualifications and duties (ORS 660.137(5)).” OAR 839-011-0084(3)(e)(D). ORS 660.137(5)(a) requires every local apprenticeship or training program administered by a committee to “[d]etermine the qualifications, minimum facilities and training conditions required of an employer to serve as an approved training agent, and approve training agents[.]”
- As part of its submission of “a complete related training curriculum,” an applicant must submit “[c]ertification of the curriculum and instructional delivery plan by either a state education certifying authority or nationally recognized industry association (ORS Chapter 660.137(2)(c), .126(1)(j), .157).” OAR 839-011-0084(3)(f)(B). ORS 660.137(2)(c) states that, in the administration of its program, a local joint committee is responsible for apprentices receiving necessary instruction and for the prompt registration of all apprenticeship agreements with OSATC. ORS 660.126(1)(j) requires apprenticeship standards to contain a statement of “[t]he content of related training with training objectives.” *See below* for a discussion of ORS 660.157, which addresses the development of standard courses of study by the state joint committee.
- As part of its submission of a complete related training curriculum, an applicant must provide “[a]ssurances that classroom and related instruction can be delivered throughout the geographic area. The applicant must submit a contract or other documentation demonstrating that actual instructional resources are in place. The committee’s geographic area must be one that can be reasonably served by the committee with respect to employers and the location of the related training services (ORS Chapter 660.126(1)(a)).” OAR 839-011-0084(f)(C). OAR 660.126(1)(a) requires apprenticeship standards to contain statements of the

apprenticeable occupation and “designation of the geographical area or areas” where the standards will apply.

Failure to submit these items as required under OAR 839-011-0084(3) is a basis for denial.

OAR 839-011-0084(3) indirectly references requirements set forth in other statutes and rules in some instances. OAR 839-011-0084(3)(e) requires submission of a “plan detailing how the committee will ensure that participating employers will provide work in all areas covered by the program standards.” This plan must include “[c]ommittee expectations of supervising journey workers and a plan for the supervision of apprentices/trainees in the ratio set forth in the standards (ORS 660.126(1)(c),(f).” OAR 839-011-0084(3)(e)(C). *See below* for a discussion of compliance with ORS 660.126 related to a separate part of OAR 839-011-0084(3). However, the requirement for “supervision of apprentices/trainees in the ratio set forth in the standards” may implicate OAR 839-011-0143 (discussing ratios and supervision as it pertains to apprenticeship and training committees). This rule states that the “apprentice to journey worker ratio for any registered program approved by the Council and the Division shall be clearly set forth in the standards for the given occupation and must be specific as to application in terms of jobsite, workforce, shift, department or plant.” OAR 839-011-00143(3). It also provides apprentice to journey level worker ratios for “occupations where a minimum standard is not in place.” OAR 839-011-0143(5)(a)-(d). Where materials submitted in compliance with the technical review requirement at OAR 839-011-0084(3)(e)(C) demonstrate noncompliance with OAR 839-011-0143’s provisions discussing ratios, those provisions may provide an independent ground to deny an application.³

Similarly, OAR 839-011-0084(3)(f)(B) requires submission of “[c]ertification of the curriculum and instruction delivery plan by either a state education certifying authority or nationally recognized industry association” and cites ORS 660.157. Materials submitted to satisfy this requirement may implicate separate authority. ORS 660.157 describes how standard courses of study are prescribed by a state joint committee, ORS 660.157(1), (2), or otherwise implemented with approvals by the state joint committee, the Higher Education Coordinating Commission for apprenticeship training credit, and the Higher Education Coordinating Commission for community college associate degrees, ORS 660.157(3)-(5). The statute prohibits the implementation of a course of study that has not been prescribed as set forth in ORS 660.157. “Course of study” is defined as “a course of study for the instruction of apprentices or trainees in accordance with ORS 660.157.” ORS 660.010(4). In addition, where there is an interstate agreement regarding apprenticeship courses of study between OSATC and another state, any course of study prescribed under ORS 660.157 is subject to the provisions of the interstate agreement. ORS 660.158. If submission of technical review requirements related to curriculum and instruction reveals that a course of study proposed by the applicant is noncompliant with ORS 660.157 or ORS 660.158, OSATC may have grounds to deny the application.

³ The rule provides some limited exceptions to satisfaction of these ratio requirements.

OAR 839-011-0084(3)(b) requires an applicant:

to submit standards in a format approved by the Council that meet or exceed any existing statewide minimum guideline standards for the occupation. Where no state guideline standards exist, proposed standards shall meet or exceed national guideline standards approved by the federal Office of Apprenticeship. Where no state or national guideline standards exist, standards will be approved at the discretion of the Council and the Division when the proposed occupation is clearly identified and commonly recognized throughout an industry.⁴

OAR 839-011-0084(3)(b) then lists some specific requirements related to the submission of standards. OAR 839-011-0084(3)(b)(A)-(E). Relevant to the discussion of “standards” in OAR 839-011-084(3)(b), OAR 839-011-0070(8) defines “standards” as “a written agreement submitted by a local committee and approved by the Council, which sets forth a plan containing all terms and conditions for the qualification, employment and training of apprentices or trainees as set forth in ORS chapter 660.126 and 660.137.” ORS 660.126 sets forth elements to be included in apprenticeship standards.⁵ Thus, OAR 839-011-0084(3)(b) appears to be referencing apprenticeship standards as discussed OAR 660.126. Subsection (3)(b) does not expressly reference ORS 660.126. However, ORS 660.126 may provide an independent statutory ground for denial where the application materials related to program standards demonstrate noncompliance with the statute. *See also* ORS 660.120(4)(b) (stating that OSATC and the Division shall “[a]pprove and register program standards . . . that are submitted by appropriate local joint committees as provided in ORS 660.126, if the standards . . . are in substantial conformity with the statewide standards approved under ORS 660.155”). OAR 839-011-0140(2) may also provide an independent ground to deny an application that demonstrates noncompliance with ORS 660.126. OAR 839-011-0140(2) (“Proposed standards and revisions must be in a form or format approved by Council that includes all elements specified in ORS chapter 660.126. OSATC may require additional information of committees pursuant to OAR 839-011-0084, including program administration and training plans”).

OAR 839-011-0084(3)(h) requires the applicant to submit a plan to recruit and select “apprentice/trainee” applicants. OAR 839-011-0142 discusses apprentice and trainee qualifications. It states that the “Council and the Division shall evaluate proposed qualification standards or selection methods pursuant to the criteria set forth in 29 CFR Part 30, the Equal Employment Opportunity in Apprenticeship Plan [(the Plan)] noted in OAR 839-011-0200, the objectives expressed by the committee and/or sponsor, and such other factors as the Council and the Division may deem appropriate.”⁶ OAR 839-011-0142(1). “Evaluate” commonly means “to

⁴ Statewide minimum guideline standards are discussed further in OAR 839-011-0141.

⁵ ORS 660.137 discusses the duties of local apprenticeship and training programs, which include submitting to OSATC and the Division program standards “that are in substantial conformity with ORS 660.126” and any uniform standards. ORS 660.137(1).

⁶ The Plan has been “adopted and incorporated by reference as if fully set forth in these rules,” OAR 839-011-0200, and is available at <https://www.oregon.gov/boli/apprenticeship/Documents/The%20Oregon%20Plan.pdf>.

examine and judge concerning the worth, quality, significance, amount, degree, or condition of.” *Webster’s Third New International Dictionary* 786 (unabridged ed 2002). Accordingly, this rule may envision that OSATC judge whether the criteria at 29 CFR § 30, in effect at the time this rule was adopted, and in the Plan are satisfied. OAR 839-011-0142(2) prohibits consideration of standards including certain minimum qualifications set forth in (2)(a) through (2)(d)). Should materials submitted to satisfy the technical review requirements related to the selection and recruitment of apprentices and trainees demonstrate noncompliance with OAR 839-011-0142(1) or (2), this may provide a separate regulatory ground for denial of an application.

E. Other Authority

Under some circumstances, an application may reveal noncompliance with a requirement of a statute or rule such that denial of the application is appropriate, even where the technical review criteria does not appear to incorporate or indirectly reference the law or rule.

ORS 660.135(1) states “In each locality where apprentices are employed, [OSATC] may approve as many local joint committees as are necessary to serve the needs of the various apprenticeable occupations.” Information submitted to meet the technical review requirements of OAR 860-011-0084(3) may well inform a decision under this standard. *See* OAR 839-011-0084(3)(h) (“applicant shall submit a plan to recruit, evaluate and select apprentice/trainee applicants throughout the proposed geographic area, including an application form that meets Council requirements.”). If on review of an application, OSATC determined that the applicant will not serve the needs of any apprenticeable occupation, that would be a decision based on statutory grounds, rather than on a finding of noncompliance with OAR 839-011-0084(3). This standard is discussed in more detail in response to Question 2 below.

ORS 660.135(1) additionally states that “[l]ocal joint committees in building and construction trade occupations may be approved by the council only as group programs serving multiple employers.” If on review of an application, OSATC determined that a committee application in a building and construction trade occupation was not for a group program serving multiple employers, ORS 660.135(1) may provide a statutory ground to deny the application.

ORS 660.137(6) states: “The council and the division may withhold approval of a new program or terminate an existing program for failure or refusal by the committee or its training agents to keep the established journeyworker hourly rate of wage current and correct.” If on review of an application OSATC determined that the applicant had not kept the “established journeyworker hourly wage current and correct,” ORS 660.137(6) may provide a statutory ground to deny the application.

Other subsections of OAR 839-011-0084 may also provide grounds for denial of an application. Subsection (1) requires that new committees in the same area and “trade, craft, or occupation” as other local committees be established in the same manner. OAR 839-011-0084(1). Existing committees are subject to statutory operational requirements, including ORS 660.126 (apprenticeship standards), ORS 660.137 (program duties), ORS 660.139 (indenture

limitations), ORS 660.142 (pay rates), ORS 660.147 (minimum registration), and ORS 660.157 (course of study). These duties are further specified in the Division 11 administrative rules. If on review of an application, OSATC determined that the applicant cannot fulfill one of these operational requirements, OAR 839-011-0084(1) may provide an independent ground for denial of the application.

Subsection (2) provides that “[a]ll employers and their qualified employees shall be afforded the opportunity to participate, on a non-discriminatory basis, in existing programs.” OAR 839-011-0084(2). OSATC may have grounds to deny an application if it included program material that was inconsistent with the non-discrimination requirement in subsection (2).

2. *ORS 660.135(1) provides grounds for OSATC to deny an application for a new apprenticeship program only if it will not provide apprenticeship opportunities.*

ORS 660.135 provides that OSATC may approve “as many local joint committees as are necessary to serve the needs of the various apprenticeable occupations” in each locality where apprentices are employed. Determining the extent of OSATC’s discretion requires application of the methodology for statutory construction to determine legislative intent in enacting ORS 660.135. Under the methodology for statutory construction, we first give primary weight to the statutory text in context, with appropriate additional weight accorded to any relevant legislative history.⁷ Whether a statute contains language that is “exact,” “inexact” or “delegative” is another consideration in determining the range of authority delegated to a state agency by the legislature.⁸ Inexact terms, on the other hand, contain some ambiguity, but are complete expressions of legislative policy. When interpreting inexact terms, the agency’s interpretation must be consistent with the standard principles of statutory construction.⁹ The term “necessary” has been found to be an inexact term in similar statutory constructs as ORS 660.135.¹⁰

With these authorities in mind, we consider the use of the term “necessary” in ORS 660.135(1). The legislature did not simply delegate the task of approving as many local joint committees as OSATC finds necessary. Instead, it defined the purpose for which additional committees may be approved, which is to approve a number of committees that is sufficient to serve the needs of apprenticeable occupations. Thus, this statute appears to be a complete expression of policy, and the legislature delegated to ATC the task of approving local joint committees as necessary *to fulfill that policy*. Further context is provided in ORS 660.002, stating the legislature’s intended purpose in enacting ORS Chapter 660, which states, in part, that it is the policy of the State to “encourage the development of an apprenticeship and training system.” Reading both statutes together, the delegation to OSATC to approve “as many local

⁷ ORS 174.020; *City of Portland v. Bartlett*, 369 Or 606, 610 (2022); *State v. Gaines*, 346 Or 160, 171-72 (2009).

⁸ *Springfield Education Assn v. School District*, 290 Or 217, 223 (1980).

⁹ *Id.*, at 224-226; *See Coast Security Mortgage Corp v. Real Estate Agency*, 331 Or 348 (2000).

¹⁰ *Diack v. City of Portland*, 306 Or 287, 299 (1988); *J. R. Simplot Co. v. Dept. of Agriculture*, 340 Or 188, 197 (2006); *Penn v. Bd. of Parole & Post-prison Supervision*, 365 Or 607, 629-31 (2019).

joint committees as are necessary” is intended to encourage approval of a sufficient number of committees, rather than restrict the development of the system.

The legislative history of ORS 660.135 is consistent with this interpretation. In 1967, seemingly in response to apprenticeship programs’ failure to enroll minority apprentices,¹¹ the Oregon Legislature first enacted ORS 660.135(1). In relevant part, the bill provided that: “In each locality where apprentices or trainees or both are employed there shall be formed as many local joint apprenticeship committees or local joint training committees or both as are necessary for the administration of local problems concerning apprenticeship and training.”¹² This bill was described as “authoriz[ing] the creation of local joint committees in sufficient number to administer local problems.”¹³ This description supports the conclusion that the legislature intended for the ATC to determine what number of additional committees, if any, would be necessary to serve the needs of the apprenticeable occupations. The phrase “local problems” was not defined in 1967, but the legislative history reflects an expectation that the new law would provide members of racial minority groups greater access to apprenticeship training, in light of the lack of applications for open apprenticeships by those members.¹⁴

In 2007, ORS 660.135(1) was amended to its current language: “In each locality where apprentices are employed, the State Apprenticeship and Training Council may approve as many local joint committees as are necessary to serve the needs of the various apprenticeable occupations.” The passive-voice phrase “there shall be formed” was replaced with an active-voice phrase, “[OSATC] may approve.” This change was included among other “housekeeping changes.”¹⁵ We are mindful that state agencies are “creatures of statute,” and they “derive their authority from (1) the enabling legislation that mandates that particular agency’s function and grants powers, and (2) from general laws affecting administrative bodies.”¹⁶ The extent of OSATC’s authority under ORS 660.135(1) is to approve as many committees as necessary to serve apprenticeable occupations. For ORS 660.135(1) to provide grounds for denying an application, OSATC would need to find the inverse, that a program applicant does not serve those occupations.

We find that ORS 660.135(1) was enacted in order to ensure that prospective apprentices who were being excluded from existing apprenticeship programs could find opportunities at new programs, created to address “local problems.” As such, programs were “necessary” if they would allow would-be apprentices to enroll in apprenticeship opportunities. Thus, ORS

¹¹ Minutes, Senate Labor and Industries Committee, at page 3 (HB 1105) February 1, 1967.

¹² Or Laws 1967 c. 6 § 19.

¹³ Senate Labor and Industries Committee, Exhibit 1 at 7, Analysis of HB 1105 (HB 1105) February 1, 1967.

¹⁴ Minutes, Senate Labor and Industries Committee, at page 3 (HB 1105) February 1, 1967.

¹⁵ House Committee on Business and Labor, Staff Measure Summary at 1, HB 2261, February 6, 2007. The same bill made substantive changes to ORS 660.135(2) and (3).

¹⁶ *City of Klamath Falls v. Environ. Quality Comm.*, 318 Or 532, 545 (1994) (internal citations and quotation marks omitted); see also *City of Portland v. Bldg. Codes Div.*, 313 Or App 93, 101, 496 P.3d 1108, 1113 (2021).

660.135(1) does not grant OSATC unfettered discretion, but rather authorizes OSATC to approve any number of new committees that is sufficient to serve the needs of apprenticeable occupations. It authorizes OSATC to approve new local joint committees when it finds there are employees in apprenticeable occupations that can be served by the new committee. Only when OSATC finds that no employees in apprenticeable occupations can be served by a new committee may it deny the application based on a lack of authority under ORS 660.135(1).

At least since 2006, OSATC's rules have not included any additional substantive standards for the approval of new committees. OAR 839-011-0084(3) stated that new programs "will" be approved if they meet enumerated requirements, which includes, notably, a requirement that the program demonstrate it can "ensure that participating employers will provide work in all areas covered by the program standards." OAR 839-011-0084(3)(e). This requirement appears to put the onus on the program to ensure the existence of actual apprenticeship opportunities for would-be apprentices, which is consistent with the purpose of ORS 660.135(1). When an application meets the criteria set forth in rule, OAR 839-011-0084(3)(e), which expressly includes a requirement to demonstrate that the program can provide apprenticeship opportunities, the applicant has likely shown that the program is necessary under ORS 660.135(1). In the event there is supporting evidence that an applicant for a new committee cannot serve any apprenticeable employees, OSATC may deny an application under ORS 660.135(1) by determining that the program is not "necessary."

CONCLUSION

As set forth in this memorandum, there are circumstances where OSATC may deny a program application under a statute or rule independent from the technical review requirements under OAR 839-011-0084(3).

It appears that ORS 660.135(1) does not grant OSATC unlimited discretion to determine whether there is a new apprenticeship program is "necessary." Instead, ORS 660.135(1) authorizes OSATC to approve a new committee if it will provide apprenticeship opportunities to employees in apprenticeable occupations.

This memorandum, in accordance with ORS 180.060(2), is prepared solely for OSATC's use and benefit. It cannot be relied upon as advice by anyone other than a state officer, except as authorized under ORS 180.060(3).