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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 809
BOARD OF GEOLOGIST EXAMINERS

FILED
09/30/2020 8:50 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Updates to Address Postponement or Cancellation of Examination Administration

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/09/2020 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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Salem, OR 97301

Filed By:
Christine Valentine
Rules Coordinator

HEARING(S)

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

DATE: 11/09/2020

TIME: 10:00 AM - 10:30 AM

OFFICER: Christine Valentine

ADDRESS: Christine Valentine

707 13th St SE

Suite 114

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Due to COVID-19 and related restrictions on public gatherings, this hearing may instead be held via conference call or as a virtual hearing via internet. Visit the OSBGE website prior to the hearing date to check on the hearing location status, and for any call-in number or link as may be applicable. Public comment can be submitted in writing instead of at the hearing.

NEED FOR THE RULE(S):

The Board routinely proctors in-person examinations for individuals working towards various types of professional registrations (e.g., Geologist-in-Training, Registered Geologist, Certified Engineering Geologist). The Board realized as a result of the COVID-19 public health emergency that it needed to explicitly address how postponement or cancellation of examination administrations would be carried out when necessary due to emergency or similar circumstances. Absent the proposed rule changes, the Board will not have sufficient flexibility in the future related to procedures and

fees to be able to minimize potential impacts from examination postponements or cancellations on examination candidates. Prior to the current public health emergency, the Board never had to postpone or cancel an examination administration and had not contemplated the need to address this scenario in its rules for examination administration.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Board rules in OAR Chapter 809, Board meeting packets for 05/29/2020 and 09/28/2020 meetings, various emergency declarations from Oregon Governor, and legal advice. Contact the Board office for more details.

FISCAL AND ECONOMIC IMPACT:

The Board does not anticipate any fiscal or economic impact from these rule amendments. To the contrary, the Board will be better positioned to work with examination candidates to minimize potential fiscal or economic impacts on them in the event of future postponements or cancellations of examination administrations. The rules only apply to candidates for examination.

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) No state agencies, units of local government, or members of the public will be economically affected by the proposed rule amendments. The rules only apply to candidates for examination.

(2) No effect on small businesses anticipated.

(a) The rules do not apply to any small businesses, except for if a small business has an examination candidate as an employee and is covering examination costs for that employee. In that case, the rule amendments should minimize potential fiscal or economic impacts in the event of future postponements or cancellations of examination administrations. This is because the Board will have more flexibility to work with examination candidates on withdrawal from examination and refunds.

(b) No new reporting, recordkeeping, or administrative activities or costs will result from these rule amendments,

(c) No new costs for professional services, equipment supplies, labor, or increased administration will result from these rule amendments.

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

To address cancellation of examination earlier in 2020, the Board adopted temporary rules similar to those now proposed. The Board notified its registrants of the temporary rulemaking and welcomed input. Board registrants include individuals working for or owning and running small businesses, The Board then engaged its Rules Advisory Committee to review draft rules and made adjustments to rule language as a result of input received. The Rules Advisory Committee includes several members that work for or own and run small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

809-040-0002, 809-040-0003, 809-040-0023, 809-040-0030

AMEND: 809-040-0002

RULE SUMMARY: This rule addresses scheduling of examination administrations.

CHANGES TO RULE:

809-040-0002

Date of Examinations ¶¶

(1) The Board will generally administer the national examination on the dates set by ASBOG.¶¶

(2) The Board will generally administer the engineering geologist examination on the same dates as the national examination.¶¶

(3) The Board may, at its sole discretion, postpone or cancel an examination administration.¶¶

(a) The Board Chair and Board Administrator each have the authority to independently decide on behalf of the Board that an examination administration is postponed or cancelled. ¶¶

(b) To the extent practical, the Board Chair and Board Administrator shall:¶¶

(i) Coordinate and strive to seek agreement between themselves before deciding to postpone or cancel an examination administration; and¶¶

(ii) Seek input from individual Board members and consider that input in the decision-making process.¶¶

(4) Except when not practical due to extenuating circumstances, the Board will notify examination candidates as soon as possible by mailed letter, email, or telephone of a decision to postpone or cancel an examination administration.

Statutory/Other Authority: ORS 670.310, ORS 672.575

Statutes/Other Implemented: ORS 672.575

AMEND: 809-040-0003

RULE SUMMARY: This rule addresses notice to examination candidates of examination administration details and changes.

CHANGES TO RULE:

809-040-0003

Examination Notice ¶

(1) The Board shall give written notice to each candidate approved to take an examination or examination section of the date, time, and location of the examination. This notice will be sent approximately 25 calendar days before the examination administration date. The Board, at its discretion, may send notification by mailed letter or email.¶

(2) In the event of a Board decision to postpone an examination administration, the Board may provide notice under this rule of the new examination administration date in whatever timeframe the Board, in its sole discretion, considers practical. Generally, the Board will strive to provide notice of approximately 25 calendar days but in no case less than 7 calendar days before the rescheduled examination administration date. A candidate who is unable to sit for examination on the rescheduled examination administration date can request to be forwarded to a future examination administration date or to withdraw from examination as provided in OAR 809-040-0023.

Statutory/Other Authority: ORS 670.310(1), 672.575

Statutes/Other Implemented: ORS 672.555 to 672.585

AMEND: 809-040-0023

RULE SUMMARY: This rule addresses how the Board considers requests from candidates to withdraw from an examination administration.

CHANGES TO RULE:

809-040-0023

Withdrawal from Examination or Forwarding of Examination Approval ¶

(1) ~~Prior to~~Before Board approval of an application to take an examination or examination section, a candidate can request to withdraw the application and receive a full refund of application and examination fees.¶

(2) After Board approval is granted to take an examination or examination section, the candidate can request in writing to withdraw from the examination but forfeits application and examination fees paid. The only exception to this is if a refund of examination fees is approved under OAR 809-040-0030. ¶

(3) After Board approval is granted to take an examination or examination section, a candidate may request in writing to forward the Board approval to the next scheduled examination administration date. The candidate's written request must be received in the Board office at least ~~one~~1 week (7 calendar days) ~~prior to~~before the examination administration date on which the candidate was originally approved to take the examination or examination section. ¶

(a) The Board shall not consider an untimely request to forward the approval to take an examination or examination section. ¶

(b) The Board may only forward an examination approval to the next scheduled examination administration date. ¶

(4) When forwarding an approval to take an examination or examination section to the next examination administration date, the Board will credit the candidate the application and examination fees already paid. The candidate is responsible for paying the following additional fees no later than 60 days ~~prior to~~before the next examination administration date:¶

(a) The examination processing fee specified in OAR 809-010-0001; and¶

(b) If the application or examination fees set in OAR 809-010-0001 increase between the examination administration date specified in the original Board approval and the ~~next~~candidate's new examination administration date, then the candidate will be required to pay the balance due. The Board will notify the candidate of any change in the fees due.¶

(5) The amendments to this rule adopted in 2019 are effective and shall apply to all applications received by the Board for examinations administered in 2019 or later.¶

(6) Effective for examination administrations in 2020 and later, the Board will not apply the following provisions of this rule when an examination candidate is forwarded to a future examination administration date or requests to withdraw from examination due to a Board decision to postpone or cancel an examination administration:¶

(a) The 1 week (7 calendar days) request timeframe in subsection (3); ¶

(b) The restriction in subsection (3) on forwarding past the next examination administration date, with the Board, in its sole discretion, allowing forwarding to the next or subsequent examination administration date; and ¶

(c) The examination processing fee in OAR 809-010-0001(5) and (4)(a).

Statutory/Other Authority: ORS 182.466(4), 670.310(1), 672.555, 672.585, ORS 672.705

Statutes/Other Implemented: ORS 672.705, ORS 672.555 to 672.585

AMEND: 809-040-0030

RULE SUMMARY: This rule addresses how the Board considers requests from candidates for refund of examination fees.

CHANGES TO RULE:

809-040-0030

Refunds ¶¶

(1) The Board may refund examination fees if:¶¶

(a) The Board or authorized designee of the Board determines that a candidate does not qualify for examination;¶¶

(b) The candidate withdraws application for examination ~~prior to~~before Board approval or denial of the application for examination.¶¶

(c) No later than ~~one~~1 week (7 calendar days) ~~prior to~~before the examination administration date, the Board receives in the Board office from the candidate written documentation sufficient to demonstrate good cause for not being able to take an examination. For purposes of this section, "good cause" is determined by the Board Administrator or designee of the Board on a case-by-case basis upon receipt of sufficient information and evidence showing that the candidate is prevented from or faces considerable difficulty taking the examination on the approved examination administration date for one of the following reasons:¶¶

(A) The candidate, the candidate's close family member, or the candidate's significant other is experiencing physical, mental, or emotional disability, illness, or other similar hardship that significantly and materially interferes with the candidate taking the examination; or¶¶

(B) The candidate, the candidate's close family member, or the candidate's significant other is called to active duty in the armed forces of the United States for a period of time that prevents the candidate from taking the examination.¶¶

(C) For purposes of this rule, close family member is a spouse, domestic partner, child, parent, or grandparent of the candidate ~~and a, or a child, parent, or grandparent of the candidate's spouse, domestic partner, or significant other.~~ A significant other is a person whom the candidate has had a long, close, and personal relationship. ¶¶

(d) ~~A~~Except as provided in subsection (5) below, any refund of examination fees will be reduced by an examination processing fee as set in OAR 809-010-0001.¶¶

(2) The Board will not refund examination fees if:¶¶

(a) A candidate, without giving notice to the Board under (1)(c) of this rule, does not appear to take an examination or examination section on the examination administration date at the scheduled time;¶¶

(b) A candidate requests to withdraw from an examination or examination section with less than ~~one~~1 week (7 days) written notice to the Board; or¶¶

(c) A candidate requests to withdraw from an examination or examination section due to a schedule conflict or other reason that does not qualify as good cause under (1)(c) of this rule.¶¶

(3) The application fee, which is separate from the examination fees, is not refundable.¶¶

(4) The amendments to this rule adopted in 2019 are effective and apply to all applications received by the Board for examinations administered in 2019 or later.¶¶

(5) Effective for examination administrations in 2020 and later, the Board will issue a full refund of the examination fee and not charge the examination processing fee to any examination candidate that requests a refund as a result of a Board decision to postpone or cancel the examination administration for which the candidate was approved.

Statutory/Other Authority: ORS 182.466(4), 670.310(1), 672.555, 672.585, ORS 672.705

Statutes/Other Implemented: ORS 672.705, ORS 672.555 to 672.585