

Department of State Lands

[OARD Home](#)

[Search Current Rules](#)

[Search Filings](#)

[Access the Oregon Bulletin](#)

[Access the Annual Compilation](#)

[FAQ](#)

[Rules Coordinator / Rules
Writer Login](#)

Chapter 141

Division 14

RULES FOR AUTHORIZING LEASES AND LICENSES FOR THE REMOVAL OR USE OF ROCK, SAND, GRAVEL AND SILT DERIVED FROM STATE-OWNED SUBMERGED AND SUBMERSIBLE LAND

141-014-0200

Purpose and Applicability

These rules:

(1) Govern the granting of leases and licenses for the removal or use of:

(a) Rock, sand, gravel and silt derived from state-owned submerged and submersible land (hereafter referred to as "material"); and

(b) State-owned dredged material that has been placed on either land controlled by the Department of State Lands (hereafter referred to as "Department") or land belonging to another person.

(2) Describe when compensation is due to the Department for the removal or use of material.

(3) Are in addition to other rules that may also be applicable to the removal or use of material such as Division 85 (Administrative Rules Governing the Issuance and Enforcement of Removal-Fill Authorizations Within Waters of Oregon Including Wetlands).

Statutory/Other Authority: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Statutes/Other Implemented: ORS 274.525 & 274.550

History:

DSL 2-2008, f. & cert. ef. 10-15-08

141-014-0210

Definitions

(1) "Applicant" is any person applying for an authorization to remove or use material, or the successful bidder at an auction prior to final lease execution.

(2) "Article of Commerce" is material that is bought, sold or exchanged in any manner for goods or services and that otherwise would have to be acquired from alternate sources. Material is not an article of commerce if it:

(a) Remains in-place on the upland where it was first deposited for disposal after dredging (place first deposited) and is not used for any purpose for which compensation is owed to the Department under the provisions of these rules;

(b) Is contaminated and put to beneficial use; or

(c) Is used solely for a public purpose.

(3) "Asset Management Plan" is the plan adopted by the State Land Board that provides the policy direction and management principles to guide both the short and long-term management by the Department of the Common School Fund's real estate assets.

(4) "Authorization" is a written lease or license issued by the Department allowing the holder of the authorization to remove or use material pursuant to the terms and conditions of the authorization.

- (5) "Authorized Area" is the area of state-owned upland and submerged or submersible land from which the Department will allow a person to remove or use material through a lease or license.
- (6) "Beneficial Use" is any use for which contaminated material is a suitable substitute for non-contaminated material.
- (7) "Channel Improvement" is a removal activity conducted under contract or undertaken by a government body to improve federally authorized navigation channels in accordance with official minimum project specifications.
- (8) "Compensation" is the amount of money paid to the Department to remove or use material.
- (9) "Contaminated Material" is rock, sand, gravel and silt which is a part of, or originated from state-owned submerged and submersible land that contains a hazardous material as defined in ORS 466.605. Contaminated material does not include clean fill.
- (10) "Department" means the Department of State Lands.
- (11) "Director" means the Director of the Department of State Lands or designee.
- (12) "Disposal" is the permanent or long-term placement of dredged material on upland.
- (13) "Dredged material" is material that has been dredged from state-owned submerged and submersible land and placed on either state land or land belonging to another person during the process of:
- (a) Constructing, maintaining or improving channels, harbors, marinas or flood control projects;
 - (b) Constructing bridges or other structures;
 - (c) Placing pipelines; or
 - (d) Conducting other similar activities.
- (14) "Flood Control" is an activity undertaken by a person to construct, maintain or improve flood control structures, channels or projects.
- (15) "Government Body" means the State of Oregon, a political subdivision, the United States of America or an agency thereof.
- (16) "Harbor Improvement" is an activity undertaken by a person pursuant to an authorization issued by the Department to construct, maintain or improve a harbor area that has navigational access to a federally designated navigation channel.
- (17) "Lease" is a written authorization issued by the Department to a specific person allowing the exclusive removal or use of a specific amount of material from a specific area under specific terms and conditions for a term not to exceed 10 calendar years.
- (18) "Lessee" refers to any person having a lease to remove or use material.
- (19) "License" is a written authorization issued by the Department to a specific person allowing the non-exclusive removal or use of a specific amount of material from a specific area under specific terms and conditions for a term of less than three calendar years.
- (20) "Licensee" refers to any person having a license to remove or use material.
- (21) "Line of Ordinary High Water" means the line on the bank or shore to which the high water ordinarily rises annually in season.
- (22) "Line of Ordinary Low Water" means the line on the bank or shore to which the low water ordinarily recedes annually in season.
- (23) "Material" means rock, sand, gravel and silt that is a part of, or originated from state-owned submerged and submersible land.
- (24) "Non-Commercial Use" means a use that does not result in or is not associated with any monetary consideration or gain.
- (25) "Non-Trust Land" is land owned or managed by the Department other than Trust Land. Examples of Non-Trust Land include state-owned Swamp Land Act Land, and state-owned submerged and submersible land (land below ordinary high water) under navigable and tidally influenced waterways.
- (26) "Operating Plan" is a document submitted with an application for a lease or license to the Department by an applicant describing:

(a) The method(s) and equipment they intend to use to remove and, if applicable, process material from an authorized area;

(b) The sequence of when and where material will be removed over the term of the lease or license; and

(c) How the applicant will address environmental issues associated with the proposed removal of material.

(27) "Person" includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies as well as any state or other governmental or political subdivision or agency, public corporation, public authority, or Indian Tribe.

(28) "Place First Deposited" is the location on the upland where material removed from state-owned submerged and submersible land is deposited for long-term or permanent placement or use. Examples of a "place first deposited" are any of the upland sites in Oregon adjacent to the Columbia River where material removed from that waterway during channel improvement is conveyed by pipeline from the dredge and placed for long-term or permanent storage.

(29) "Political Subdivision" means any local government unit, including but not limited to, a county, city, town, port commission or district, that exists under the laws of Oregon and has power to levy and collect taxes.

(30) "Preference Right" means a riparian property owner's statutory privilege, as found in ORS 274.040, to obtain a lease without advertisement or competitive bid for the state-owned submerged and submersible land that fronts and abuts the riparian owner's property. The Department will not recognize a claim of lease preference right from a non-riparian owner. A person claiming the right of occupancy to submerged and submersible land under a conveyance recorded before January 1, 1981, has a preference right to the requested area

(31) "Preference Right Holder" means the person holding the preference right to lease as defined in these rules and ORS 274.040.

(32) "Public Purpose" is the removal or use of material if it is:

(a) Removed for channel or harbor improvement or flood control;

(b) Used to fill, dike or reclaim land owned by the state or a political subdivision if that land is located not more than two miles from the bank of the waterway from which the material was removed;

(c) Used to create, maintain or enhance fish or wildlife habitat;

(d) Used to maintain public beaches;

(e) Removed because it is determined to be contaminated with a hazardous material (as defined in ORS 466.605);

(f) Used by a state agency or political subdivision to fill any portion of a waterway up to an elevation of one foot above the line of ordinary high water of that waterway;

(g) Used solely for a public purpose by a political subdivision; or

(h) Otherwise exempt from payment of compensation by state law.

(33) "Reclaiming Land" or "Reclaim" means raising the elevation of a portion of land within a 100-year flood plain (as determined by the Federal Emergency Management Administration) to not more than one foot of elevation higher than the highest elevation of the 100-year flood plain, or protecting land otherwise in the 100-year flood plain by the construction of dikes or other flood control improvements.

(34) "Removal" or "Remove" means the:

(a) Extraction of material from state-owned submerged and submersible land by mechanized or hand-powered equipment; or

(b) Extraction, moving, spreading, leveling or other relocation of material from the place where it was first deposited to another location on, adjacent to, or away from that site by mechanized or hand-powered equipment.

(35) "Reporting Period" is the length of time or frequency for which a lessee or licensee shall report the amount of material removed or used, and for which compensation shall be paid to the Department. The Department shall determine and establish the reporting period as a term of the lease or license.

(36) "Short Tons" is a unit of material equal to 2,000 pounds.

(37) "State Agency" means every state officer, board, commission, department, institution, branch or agency of state government, whose costs are paid wholly or in part from funds held in the State Treasury, except:

(a) The Legislative Assembly, the courts and their officers and committees;

(b) The Public Defense Services Commission; and

(c) The Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices.

(38) "State-Owned Waterway" and "State-Owned Submerged and Submersible Land" refers to any Oregon waterway, the submerged and submersible land of which has been determined through application of the federal test for navigability by the State Land Board, the courts, or the Oregon Legislative Assembly to be owned by the State of Oregon, or otherwise acquired by the State of Oregon. (A list of these waterways can be obtained from the Department of State Lands or found on the agency's website: www.oregonstatelands.us)

(39) "Submerged Land" means land lying below the line of ordinary low water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

(40) "Submersible Land" means land lying above the line of ordinary low water and below the line of ordinary high water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

(41) "Trust Land" is land granted to the state upon its admission into the Union, or obtained by the state as the result of an exchange of Trust Land, or obtained in lieu of originally granted Trust Land, or purchased with trust funds, or obtained through foreclosure of loans using trust funds.

(42) "Upland" is land above the line of ordinary high water, or mean high tide line.

Statutory/Other Authority: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Statutes/Other Implemented: ORS 274.525 & 274.550

History:

DSL 2-2008, f. & cert. ef. 10-15-08

141-014-0220

Policies and General Provisions

(1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board, through the Department, has a constitutional responsibility to manage all Trust and Non-Trust Land under its jurisdiction "with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management."

(2) The Department will follow the guiding principles and resource-specific management prescriptions contained in the Asset Management Plan, and consider the comments received from federal, state and local governments, Indian Tribes and interested persons when determining whether to authorize or condition a lease or license for the removal or use of material.

(3) All material removed from state-owned submerged and submersible land continues to be owned by the state regardless of whether it is placed on state land or land belonging to another person until such time that:

(a) A written transfer of ownership of the material is issued by the Department as authorized by these rules;

(b) The parcel, including the material, is sold or exchanged by the Department to another person; or

(c) The material is exempt by law from the provisions of these rules.

(4) All persons wanting to remove or use material must, as required by these rules, either apply for and obtain an authorization from the Department, or notify the Department in writing prior to proceeding with the removal or use.

(5) The Department will not grant a lease or license if it determines that the proposed removal or use of the material:

(a) Is in an area that the Department has closed to this activity;

(b) Would unreasonably impact uses or developments proposed for, or already in place within the requested area. Such a determination will be made by the Department after consulting with holders of leases, licenses, permits and easements granted by the Department in the requested area, and other interested persons;

(c) Will be conducted in a manner that:

(A) Does not conserve fish and wildlife habitat;

(B) Does not protect water quality; or

(C) Contributes to soil erosion or the introduction or spread of noxious weeds or pests;

(d) Will significantly impact the rights of the public to use a waterway for fishing, recreation, navigation and commerce;

(e) Does not conform with local (including local comprehensive land use planning and zoning ordinance requirements), state and federal laws; or

(f) Will not be in the best interests of the State of Oregon.

(6) If an application to remove or use material is in an area where the amount of material that can be removed is limited by law (for example, in Essential Indigenous Anadromous Salmonid Habitat or a State Scenic Waterway), the Department will condition the amount of material that can be removed or used based on the statutes and administrative rules governing this activity in these areas.

(7) To the extent required by law, the Department shall honor the terms and conditions of any existing valid authorization for the removal or use of material including any that entitle the holder to renew the authorization.

Statutory/Other Authority: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Statutes/Other Implemented: ORS 274.525 & 274.550

History:

DSL 2-2008, f. & cert. ef. 10-15-08

141-014-0230

Forms of Authorization Offered by the Department for the Removal or Use of Material

(1) Two forms of authorization are available from the Department for the removal or use of material: a lease or a license. The Department will determine not only if it will issue an authorization, but also the form of that authorization.

(2) The specific form of authorization offered by the Department will depend on the term and nature of the removal or use requested by the applicant.

(3) A lease will be the only form of authorization available from the Department if the applicant wants an exclusive right to remove or use material from a specific area for a term not to exceed 10 years.

(4) A license will be the only form of authorization available from the Department if the applicant wants a non-exclusive authorization to remove or use material for less than three years.

Statutory/Other Authority: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Statutes/Other Implemented: ORS 274.525 & 274.550

History:

DSL 2-2008, f. & cert. ef. 10-15-08

141-014-0240

Application Requirements for Removal of Material

(1) Except as provided in OAR141-014-0240(4), any person wanting to remove material must:

(a) Apply in writing to the Department for a lease or license using a form provided by the Department; and

(b) Submit:

(A) A fully completed application form providing all required information;

(B) An operating plan for the removal or use of material;

(C) Evidence satisfactory to the Department that the proposed removal or use is in conformance with the local comprehensive land use plan and zoning ordinances; and

(D) A non-refundable application processing fee payable to the Department to cover the administrative costs of processing the application and issuing the authorization.

(2) The application processing fee for a lease or license is \$750;

(3) Unless otherwise allowed by the Director, a fully completed application for a lease or license and other items listed in OAR 141-014-0240(1)(b) must be submitted to the Department at least 90 calendar days prior to the proposed removal of material.

(4) Any person may remove up to 50 cubic yards of material (or the equivalent weight in short tons) from state-owned submerged and submersible land per calendar year for that person's own exclusive non-commercial use without payment of an application processing fee or compensation to the Department. However, no such removal is authorized unless the person:

(a) Gives written notification to the Department at least 30 calendar days prior to removing the material; and

(b) Obtains any other authorizations required by the Department (such as a Removal-Fill Permit) and other applicable local, state, and federal governing bodies to undertake the removal.

Statutory/Other Authority: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Statutes/Other Implemented: ORS 274.525 & 274.550

History:

DSL 2-2008, f. & cert. ef. 10-15-08

141-014-0250

Lease or License Application Review and Approval Process

(1) Upon receipt of an application for a lease or license, the Department will determine:

(a) If the application is complete;

(b) If the subject area is available for the requested removal;

(c) If, under these rules, a lease or license is the required form of authorization; and

(d) If additional information is required concerning the:

(A) Proposed use of the state land; and

(B) Applicant's financial status, or past business and management practices, or both.

(2) The Department will then advise the applicant of its determination concerning each of the four factors in OAR 141-014-0250(1). Applications determined by the Department to be incomplete, or for an area in which the use would be incompatible, will be returned to the applicant with a written explanation of the reason(s) for rejection.

(3) If an application rejected for incompleteness is resubmitted within 120 calendar days from the date the Department returned it to the applicant (as determined by the date of letter from the Department accompanying the rejected application) with all deficiencies noted by the Department corrected, no additional application processing fee will be assessed.

(4) Upon acceptance by the Department, the application for a lease or license will be circulated to various local, state and federal agencies and other interested persons including tribal governments, adjacent property holders, affected lessees and permittees, and easement holders for review and comment. As a part of this review, the Department will specifically request comments concerning:

(a) The presence of state or federal listed threatened and endangered species (including candidate species), and archaeological and historic resources within the requested area that may be disturbed by the proposed use;

(b) Conformance of the proposed use with local, state, and federal laws and rules;

(c) Conformance of the proposed use with the local comprehensive land use plan and zoning ordinances;

(d) Conformance with the policies described in OAR 141-014-0220 of these rules; and

(e) Potential conflicts of the proposed use with existing or proposed uses of the requested area.

(5) After receipt of comments concerning the proposed use, the Department will advise the applicant in writing:

(a) If changes in the use or the requested lease or license area are necessary to respond to the comments received;

(b) If additional information is required from the applicant, including but not limited to a survey of:

(A) State or federal listed threatened and endangered species (including candidate species) within the requested area; and

(B) Archaeological and historic resources within the requested area.

(c) If the area requested for the lease or license will be authorized by the Department for use by the applicant through a lease or license; and

(d) Whether the subject area will be made available to the public through competitive bidding pursuant to OAR 141-014-0290. Only requests for leases may be subject to competitive bidding. A license is not subject to competitive bid.

(6) If the Department determines that the proposed removal or use of material meets the policies set forth in these rules, the Department will determine the limits of the area that it wants to make available for the proposed activity.

(7) The Department reserves the right to request that an applicant conduct at their expense a survey of the requested area by a licensed professional engineer or surveyor to establish the limits of the area from which it will allow the

removal or use of material. The Department will provide survey instructions as well as specify the information required in the survey and accompanying notes.

Statutory/Other Authority: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Statutes/Other Implemented: ORS 274.525 & 274.550

History:

DSL 2-2008, f. & cert. ef. 10-15-08

141-014-0260

Process for Offering a License for the Removal or Use of Material Either From State-owned Submerged and Submersible Land or that is Placed on an Upland Site (Dredged Material)

(1) If, after completing the processes provided in OAR 141-014-0240(1) through (3) and 141-014-0250(1) through (5), the Department decides to offer a license for the removal of material from either state-owned submerged and submersible land, or for the removal of material that is located on upland (dredged material), the Department will:

(a) Notify the applicant in writing of the amount of compensation pursuant to OAR 141-014-0330 that the applicant must remit to the Department to obtain the authorization, and of any insurance and surety bond required by the Department pursuant to the requirements of OAR 141-014-0370; and

(b) Include with the notification a draft copy of the license.

(2) The amount of compensation that must be paid by the licensee as stipulated in the terms and conditions of the license will be:

(a) Based on the amount actually removed or used multiplied by the compensation rate in effect at the time of removal.

(b) Subject to annual adjustments by the Department pursuant to OAR 141-014-0330.

(3) The Department reserves the right to withdraw an area requested for a license at any time prior to issuance of the license.

Statutory/Other Authority: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Statutes/Other Implemented: ORS 274.525 & 274.550

History:

DSL 2-2008, f. & cert. ef. 10-15-08

141-014-0270

Process for Offering a Lease for the Removal or Use of Material From State-Owned Submerged and Submersible Land

If, after completing the processes provided in OAR 141-014-0240(1) through (3) and 141-014-0250(1) through (5), the Department decides to offer a lease for the removal of material from state-owned submerged and submersible land, the Department will, pursuant to the requirements of ORS 274.040, offer a preference right to lease to the eligible party as defined in OAR 141-014-0210(30) and (31), hereafter referred to as the preference right holder. The Department will take the following steps to offer this preference right.

(1) If the proposed lease area consists of a single parcel, or two or more contiguous parcels owned by the same person, the Department will extend the boundaries of the single parcel or combined group of single-ownership parcels perpendicular to the thread of the stream creating a single lease parcel that fronts and abuts the upland ownership.

(2) If the proposed lease area consists of parcels having different owners, the Department will subdivide the requested lease area into smaller parcels by extending lines perpendicular to the thread of the stream from the boundaries of, or within the boundaries of the adjacent riparian tax lot so that there is a separate lease parcel for each parcel of property that fronts and abuts the lease area.

(3) In accordance with the proposed use(s), the Department will calculate in a manner consistent with OAR 141-014-0320 and 141-014-0330 a minimum annual compensatory payment for each lease parcel. The minimum bid or compensation amount shall be established by the Department based on the:

(a) Compensation rate in effect at the time that the application is received by the Department; and

(b) The amount of material that the applicant states on their application they intend to remove or use each year for the term of the lease requested.

(4) The Department will notify each preference right holder in writing that a lease application has been approved by the Department and provide 30 calendar days from the date on the letter of notification for the preference right holder to exercise their preference right to take the lease at the established minimum annual compensatory payment.

(5) If the preference right holder has accepted the offer of a preference right to lease and has executed the lease form and all other documents and remitted the required minimum annual lease rental payment within the required 30 calendar day period, the Department will execute the lease.

(6) If the preference right holder does not exercise the preference right to take a lease applied for by another person, the Department will prepare and publish an advertisement for bids pursuant to ORS 274.040 and hold a public auction pursuant to OAR 141-014-0290. The highest qualified bidder will be awarded the lease. The minimum bid amount will be set by the Department.

Statutory/Other Authority: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Statutes/Other Implemented: ORS 274.525 & 274.550

History:

DSL 2-2008, f. & cert. ef. 10-15-08

141-014-0280

Process for Offering a Lease for the Removal or Use of Material that Has Been Placed on an Upland Site (Dredged material)

(1) A preference right to lease is not available to the owner of land underlying or adjacent to dredged material that has been deposited on an upland site.

(2) If after completing the processes provided in OAR 141-014-0240(1) through (3) and 141-014-0250(1) through (5), an application is for a lease to remove or use material placed on an upland site, the Department will determine if it wants to offer the requested material or site through a public auction.

(3) If the Department decides to make the requested area available at public auction, it will prepare and publish an advertisement for bids. The minimum bid or compensation amount will be established by the Department based on the:

(a) Compensation rate in effect at the time that the application is received by the Department; and

(b) The amount of material that the applicant states on their application they intend to remove or use each year for the term of the lease requested.

(4) The highest qualified bidder shall be awarded the lease.

(5) If the Department decides to not offer the lease for the requested area through public auction, it will issue the lease to the applicant.

(6) The compensation established by the Department that must be paid to the Department is subject to annual adjustments by the Department pursuant to the provisions of OAR 141-014-0330.

(7) The Department reserves the right to withdraw an area requested for a lease at any time prior to issuance of the lease.

Statutory/Other Authority: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Statutes/Other Implemented: ORS 274.525 & 274.550

History:

DSL 2-2008, f. & cert. ef. 10-15-08

141-014-0300

Measurement Determination

(1) The Department may at its discretion allow an applicant, lessee or licensee who is unable to measure and report the amount of material removed or used in cubic yards to measure and report the quantity in short tons. However, the Department:

(a) Will only allow an applicant, lessee or licensee to report removal and use of material in short tons if they develop, at their own expense, a short ton-to-cubic yard conversion factor based on tests of the material;

(b) Reserves the right to accept or reject the short ton-to-cubic yard conversion factor; and

(c) May at any time during the term of the lease or license require the lessee or licensee to re-establish, at their own expense, the validity of the conversion factor.

(2) If it is determined by the lessee, licensee or the Department that the short ton-to-cubic yard conversion factor in use is not valid, modification of the compensation owed will be prospective only.

(3) Any changes made to the short ton-to-cubic yard conversion factor used in a lease or license will be made by written addendum to that lease or license.

Statutory/Other Authority: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Statutes/Other Implemented: ORS 274.525 & 274.550

History:

DSL 2-2008, f. & cert. ef. 10-15-08

141-014-0310

Activities Subject to Payment of Compensation

(1) Unless otherwise specifically exempted by OAR 141-014-0320, all material removed or used is subject to payment of compensation to the Department.

(2) Compensation will be paid and is owed to the Department if the material is:

(a) Removed by any person directly from state-owned submerged and submersible land and subsequently:

(A) Bought by that person;

(B) Sold by that person; or

(C) Exchanged by that person in any manner for goods or services which otherwise would have to be acquired from other sources;

(b) Sold, used or exchanged as an article of commerce by any person; or

(c) Removed without notifying or applying, or both notifying and applying to the Department in writing within the required time period stipulated in OAR 141-014-0320(2)(b).

(3) Compensation will be paid to the Department for the removal or use of material that loses its exemption for the reasons given in OAR 141-014-0320(6).

Statutory/Other Authority: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Statutes/Other Implemented: ORS 274.525 & 274.550

History:

DSL 2-2008, f. & cert. ef. 10-15-08

141-014-0320

Compensation Exempt Activities

(1) Numerous exemptions to the payment of compensation to the Department are provided in ORS 274.550.

(2) Compensation is not owed to the Department if:

(a) The material is removed or used for a public purpose, and

(b) The Department is notified in writing of the proposed removal, use or disposal for a public purpose at least 30 days prior to when the removal, use or disposal will begin.

(3) The exemption provided in OAR 141-014-0320(2) exists regardless of when the material is removed or used for a public purpose (even if it is taken from the place first deposited) as long as the notification requirements are met.

(4) A public purpose occurs when the material is:

(a) Removed for channel or harbor improvement or flood control;

(b) Used to fill, dike or reclaim land owned by the state or a political subdivision if that land is located not more than two miles from the bank of the waterway from which the material was removed;

(c) Used to create, maintain or enhance fish or wildlife habitat;

(d) Used to maintain public beaches;

(e) Removed because it is determined to be contaminated with a hazardous material (as defined in ORS 466.605);

(f) Used by a state agency or political subdivision to fill any portion of a waterway up to an elevation of one foot above the line of ordinary high water of that waterway;

(g) Used solely for a public purpose by a political subdivision; or

(h) Otherwise exempt from payment of compensation by state law.

(5) In addition, any person may remove up to 50 cubic yards of material (or the equivalent weight in short tons) per calendar year for that person's own exclusive non-commercial use without payment of compensation to the Department. However, no such removal is authorized unless the person:

- (a) Gives written notification to the Department at least 30 calendar days prior to removing the material; and
 - (b) Obtains any other authorizations required by the Department (such as a Removal-Fill Permit) and other applicable local, state, and federal governing bodies to undertake the removal.
- (6) Except in the case of material determined to be contaminated, these exemptions no longer apply and compensation is owed and must be paid to the Department if the material is:
- (a) Removed from the place first deposited after removal from state-owned submerged and submersible land and not used for a public purpose;
 - (b) Sold or used as an article of commerce; or
 - (c) Removed without notifying or applying, or both notifying and applying to the Department in writing within the required time periods stipulated in OAR 141-014-0320(2)(b) and (5)(a).
- (7) Although material may be exempt from payment of compensation to the Department, any person wanting to remove or use material must apply for and receive an authorization from the Department pursuant to these rules prior to such removal or use.

Statutory/Other Authority: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Statutes/Other Implemented: ORS 274.525 & 274.550

History:

DSL 2-2008, f. & cert. ef. 10-15-08

141-014-0330

Compensation

- (1) Each lessee or licensee must pay compensation to the Department in an amount based on quantity of material actually removed or used during that reporting period multiplied by the compensation rate in effect at the time of the removal or use.
- (2) The Department will establish for each lease and license the basis for which payment of compensation shall be calculated and paid, as well as the reporting period.
- (3) Each lessee and licensee must on a monthly basis or as otherwise required as a term and condition of the lease or license:
 - (a) Report to the Department the amount of material removed or used; and
 - (b) Calculate and submit to the Department the amount of compensation owed to the Department as provided in the lease or license.
- (4) Unless otherwise agreed to in writing by both the Department and the lessee or licensee:
 - (a) Compensation must be paid on the basis of the reporting period determined by the Department and provided as a term of the authorization;
 - (b) Compensation payments and removal reports must be received by the Department no later than the 20th calendar day after the end of the reporting period during which the material was removed or used; and
 - (c) Removal reports must be submitted to the Department every period, including those reporting periods in which no material was removed or used, or compensation paid.
- (5) Compensation not paid by the due date will accrue interest at the maximum rate allowed by law from the first day of the reporting period following the end of the reporting period during which the material was removed or used.
- (6) The compensation to be paid by a lessee or licensee to the Department for material removed or used under a lease or license for calendar year 2008 shall be:
 - (a) \$0.63 per cubic yard for material removed from state-owned submerged and submersible land; and
 - (b) \$0.71 per cubic yard for state-owned dredged material that has been placed on either land controlled by the Department or land belonging to another person.
- (7) All sand and gravel leases or licenses in effect at the time the compensation rates indicated in OAR 141-014-0330(6) are adopted will be subject to the new rates upon renewal or redetermination as specified in the lease or license

agreement.

(8) The minimum compensation rates indicated in OAR 141-014-0330(6) will be adjusted every calendar year based on the annual changes in the United States Department of Labor's Producer Price Index (Industry Code #1442) for Construction Sand and Gravel.

(9) Any increase or decrease resulting from application of the United States Department of Labor's Producer Price Index (#1442) for Construction Sand and Gravel (or any other index selected by the Department) will be limited to a maximum of 5% per year. Compensation rates will not be adjusted below those rates established in OAR 141-014-0330(6).

(10) Should the United States Department of Labor's Bureau of Labor Statistics discontinue publishing this index, the Department will select another index to use.

(11) Pursuant to ORS 274.590, the Department may cooperate with, and enter into agreements with officials of the State of Washington concerning the contracting for, receipt and collection of compensation for material removed or used from the state-owned submerged and submersible land underlying the Columbia River. Consequently, notwithstanding the provisions of OAR 141-014-0330(6) through (10) of these rules, the Department may establish a compensation rate for material removed or used from Oregon's state-owned submerged and submersible land underlying the Columbia River that is equal to the compensation established by the State of Washington for the removal of rock, sand, gravel and silt derived from that state's submerged and submersible land underlying the Columbia River.

Statutory/Other Authority: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Statutes/Other Implemented: ORS 274.525 & 274.550

History:

DSL 2-2008, f. & cert. ef. 10-15-08

141-014-0340

Lease and License Modifications

(1) A lessee or licensee must submit a new application to the Department if they want to:

(a) Enlarge the area they are authorized to use under their lease or license;

(b) Increase the amount of material they want to remove; or

(c) Make substantial changes to the operating plan as determined by the Department.

(2) The Department may amend a lease or license upon receipt of a written request by a lessee or licensee to reduce the authorized area if a portion of it is not used for the removal or sale of material.

(3) Requests to enlarge the size of an authorized area, increase the amount of material removed, or change the methods used to remove or process material will be processed and reviewed in the same manner as a new lease or license application as provided in these rules.

Statutory/Other Authority: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Statutes/Other Implemented: ORS 274.525 & 274.550

History:

DSL 2-2008, f. & cert. ef. 10-15-08

141-014-0350

General Lease and License Conditions

(1) All leases are exclusive and will only be offered through a competitive bid auction procedure except when:

(a) The applicant is the preference right holder of the area for which an application is received;

(b) A preference right holder accepts an offer by the Department to enter into a lease for the state-owned submerged and submersible land fronting their upland; or

(c) The Director determines that the best interests of the Department and the policies provided in OAR 141-014-0220 are served by offering the lease to the applicant.

(2) The Department reserves the right to modify the terms and conditions of its standard lease or license if, in the judgment of the Department and concurrence of the Department of Justice, such changes are required given the size and nature of the proposed removal, use or sale of material or the risks associated therewith.

(3) The maximum term for a lease will be 10 calendar years; licenses will be issued for a term of less than three calendar years.

- (4) A lease or license issued by the Department must be on a form supplied by the Department that has been approved by the Department of Justice for legal sufficiency pursuant to ORS 291.045 to 291.047 (Public Contract Approval).
- (5) Each lessee and licensee must maintain and make available for audit by the Department adequate records and accounts which accurately reflect the amount of material removed or used from the authorized area.
- (6) State-owned submerged and submersible land, regardless of whether it is included in an authorized area, must remain available and open to the public for commerce, navigation, fishing and recreation unless restricted or closed to public entry by the State Land Board. A lessee or licensee may request the Department to close the authorized area to public entry or restrict recreational use by the public on all or portions of the authorized area to protect persons or property from harm arising from, or in connection with the removal or use of material.
- (7) A lessee or licensee may restrict public use of lessee or licensee-owned property or structures within the authorized area.
- (8) The Department or its authorized representative(s) will have the right to enter into and upon the authorized area at any time for the purposes of inspection or management.
- (9) A lessee or licensee must dispose of all waste in a proper manner and shall not permit waste, debris, garbage or other refuse to either accumulate within the authorized area or be discharged into the waterway unless so authorized by the Department of Environmental Quality. A lessee's or licensee's failure to comply with this provision will be considered a material default of the lease or license.
- (10) Except as authorized by the lease or license, a lessee or licensee must not cut, destroy or remove, or permit to be cut, destroyed or removed any vegetation (except for noxious weeds) that may be upon the authorized area without the prior written authorization of the Department. The lessee or licensee will promptly report to the Department the cutting or removal of vegetation by other persons.
- (11) A lessee or licensee must, in accordance with the terms and conditions of their lease or license, conduct all operations within the authorized area in a manner that conserves fish and wildlife habitat, protects water quality, and does not contribute to insect or animal infestation, soil erosion or the growth of noxious weeds.
- (12) A lessee or licensee must maintain all buildings; removal, processing and sales-related machinery and equipment; docks; and similar structures and improvements located within the authorized area in a good state of repair and workmanlike manner as determined by the Department.
- (13) The Department may require that an applicant for a lease or license to remove or use material present evidence to the Department prior to removal or use of any material that they have obtained:
- (a) All authorizations required by the applicable local, state, and federal governing bodies to undertake the removal or use of the material;
 - (b) Any authorization that may be required to obtain access or to cross land belonging to a person other than the Department to remove or use state-owned dredged material placed on that land; and
 - (c) A surety bond or comprehensive or commercial general liability insurance, or both, in an amount required by the Department.
- (14) The holder of a lease or license must indemnify the State of Oregon and the Department of State Lands against any claim or costs arising from or related to a release of a hazardous substance on or from the authorized area.
- (15) An authorization issued by the Department will be conditional and not valid until:
- (a) The holder has received all other authorizations required by the Department (such as a Removal-Fill Permit pursuant to OAR 141-085-0005 through 141-085-0176) and other local, state, and federal governing bodies to undertake the removal or use of the material; and
 - (b) The Department has received all fees and compensation specified in these rules, and evidence of any required insurance and surety bond.
- (16) An applicant for a lease or license is responsible for obtaining any authorization that may be required to obtain access to, or to cross land belonging to a person other than the Department to remove or use state-owned dredged material placed on that land.
- (17) The Department may, at its discretion, deny a lease or license application or lease renewal to remove or use material if the applicant's financial status, and past business and management practices indicate that the applicant may not:
- (a) Be able to fully meet the terms and conditions of a lease or license offered by the Department; or
 - (b) Use the land applied for in a way that meets the provisions of OAR 141-014-0220.

(18) The Department may:

- (a) Conduct field inspections to determine if the removal or use of material is authorized by, or conforms with the terms and conditions of a lease or license; and, if not,
- (b) Pursue whatever remedies are available under law and OAR 141-014-0410 to ensure that the unauthorized removal or use of material is either ceased or brought into compliance with the requirements of these rules.

Statutory/Other Authority: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Statutes/Other Implemented: ORS 274.525 & 274.550

History:

DSL 2-2008, f. & cert. ef. 10-15-08

141-014-0360

Lease and License Renewal

- (1) To the extent required by law, the Department shall honor the terms and conditions of any existing valid authorization for the removal or use of material including any that entitle the holder to renew the authorization.
- (2) A lessee shall have an option to renew a lease entered into after the effective date of this rule for an additional term of not more than 10 years provided that the lessee has submitted a completed lease renewal application form provided by the Department to the Department not less than 90 calendar days prior to the lease expiration date otherwise allowed by the Director. Upon receipt of such application, the lease will be renewed by the Department unless:
 - (a) The Department determines, in its sole discretion, that the lessee has not complied with the terms and conditions specified in their lease, the applicable statutes, or Oregon Administrative Rules;
 - (b) The person who held the preference right to lease at the time the lease subject to renewal was initially offered is no longer the same person, in which case the Department will offer the preference right to lease to the new owner;
 - (c) The lessee is no longer the preference right holder; or
 - (d) The Department determines that the renewal of the lease for all or portions of the authorized area would be contrary to local, state, or federal law, or would be inconsistent with the policies set forth in OAR 141-014-0220.
- (3) An application for renewal of a lease shall be accompanied by a non-refundable fee in the amount of \$750 payable to the Department.
- (4) A license is not renewable. However, a person holding a license that has expired, or is approaching expiration, may apply to the Department for a new license or lease covering the same area authorized in the expiring or expired license in the same manner as provided in OAR 141-014-0240. The Department reserves the right to deny granting a new license or lease if:
 - (a) The Department determines, in its sole discretion, that the licensee has not complied with the terms and conditions specified in their lease, the applicable statutes, or Oregon Administrative Rules; or
 - (b) The Department determines that the renewal of the license for all or portions of the authorized area would be contrary to local, state, or federal law, or would be inconsistent with the policies set forth in OAR 141-014-0220.
- (5) The Department reserves the right to limit the term of a new license to less than the maximum term allowed by these rules.

Statutory/Other Authority: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Statutes/Other Implemented: ORS 274.525 & 274.550

History:

DSL 2-2008, f. & cert. ef. 10-15-08

141-014-0370

Insurance and Bond

- (1) The Department, in the exercise of its reasonable discretion, may require the holder of a lease or license to remove or use material to obtain insurance in a specified amount if the use or removal, in the opinion of the Department, constitutes a risk to public safety, or to the State of Oregon.
- (2) The Department may request that the applicant for, or the holder of a lease or license to remove or use material provide information concerning the use of the area to the Risk Management Division of the Oregon Department of Administrative Services, which may assist the Department in determining the appropriate amount of insurance coverage based on the nature of the use.

(3) The Department may, at its discretion, require that the holder of a lease or license obtain a surety or bid bond in an amount specified by the Department (or a cash deposit in an amount equal to the surety bond and which names the State of Oregon as co-owner) to ensure that they will perform in accordance with all terms and conditions of the lease or license.

Statutory/Other Authority: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Statutes/Other Implemented: ORS 274.525 & 274.550

History:

DSL 5-2008, f. & cert. ef. 10-23-08

DSL 2-2008, f. & cert. ef. 10-15-08

141-014-0380

State Land Closures and Use Restrictions

(1) The Department may by itself, or at the request of another person, request Land Board authorization to begin rulemaking to close all or part of a parcel of state land to the removal or use of material.

(2) The Land Board may approve all or a portion of such a request upon a finding that the requested limitation is necessary to prevent unreasonable interference with the public's right to use the waterway for commerce, navigation, fishing and recreation; or to carry out the policies set out in these rules at OAR 141-014-0220; or to ensure compliance with any endangered species management or recovery plan adopted by the Department under the Oregon Endangered Species Act (ORS 496.171 to 496.192).

Statutory/Other Authority: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Statutes/Other Implemented: ORS 274.525 & 274.550

History:

DSL 2-2008, f. & cert. ef. 10-15-08

141-014-0390

Termination of a Lease or License For Default

(1) If the holder of a lease or license to remove or use material fails to comply with these rules or the terms and conditions of the authorization, or otherwise violates laws governing their removal or use of material or the authorized area, the Department will notify the holder of the authorization in writing of the default and demand correction within a specified time frame.

(2) If the holder of a lease or license to remove or use material fails to correct the default within the time frame specified, the Department may:

(a) Modify or terminate the lease or license; and

(b) Request the Attorney General to take appropriate legal action against the holder of the lease or license.

Statutory/Other Authority: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Statutes/Other Implemented: ORS 274.525 & 274.550

History:

DSL 2-2008, f. & cert. ef. 10-15-08

141-014-0400

Assignment of Leases and Licenses; Subleasing

(1) Except as authorized in the lease or these rules, in no event will the lessee sublease or assign, or licensee assign any portion of the authorized area prior to receipt of written approval from the Department. Violation of this provision may be grounds for termination of the lease or license.

(2) A lessee must apply in writing on a form provided by the Department to the Department for a sublease or an assignment.

(3) Licensees may only apply to the Department for an assignment.

(4) Lessees desiring to sublease or assign a lease, or licensees desiring to assign a license in a manner not permitted outright by the lease, license or these rules must:

(a) Apply to the Department on a form provided by the Department; and

(b) Submit a non-refundable application processing fee of \$750 payable to the Department of State Lands.

(5) If the application is incomplete, the Department will return the application to the applicant with a written explanation of the reason(s) for rejection.

(6) If an application is rejected by the Department for incompleteness or some other reason, the applicant may resubmit it to the Department within 120 calendar days from the date of the letter of written explanation sent by the Department with no additional application fee due.

(7) Sublessees and assignees must meet all applicable requirements set forth in these rules and the lease or license.

(8) The transfer of ownership of the lease or license caused by the death of the lessee or licensee will be considered an assignment requiring the Department's approval. A transfer of ownership to a spouse or immediate family member is an assignment that does not require the Department's prior approval.

(9) A lessee or licensee may not grant a mortgage or security interest in the lease or license without the prior written consent of the Department which shall not be unreasonably withheld. Any subsequent assignment by the creditor will require the prior written approval of the Department.

(10) The Department may request additional information on the sublessee's or assignee's financial status, or past business and management practices, or both. The Department may, at its discretion, deny the assignment request if the assignee's financial status, or past business and management practices, or both, indicate that they may not be able to fully meet the terms and conditions of a lease offered by the Department.

Statutory/Other Authority: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Statutes/Other Implemented: ORS 274.525 & 274.550

History:

DSL 2-2008, f. & cert. ef. 10-15-08

141-014-0410

Enforcement Actions; Civil Penalties and Other Remedies

(1) Upon the Director's own initiative, or in response to a complaint, the Director may investigate a suspected violation of a lease, license or other authorization to use or remove material, or the alleged unauthorized use of state land and removal of material, to determine if the use or removal of material conforms with the terms and conditions of a lease, license or other authorization, or to determine if the use or removal of material is not authorized.

(2) In conducting the inspection relative to suspected or alleged violations of a lease, license or other authorization issued by the Director, the Director, or the Director's agent, may enter onto private property of the holder of the authorization in order to determine if a violation has occurred.

(3) Upon a determination that a violation of the lease, license or other authorization has occurred or that an unauthorized use of, or removal of material from state land has occurred, the Director may exercise the remedies set forth in the lease, license or other material use or removal authorization, any other remedies available at law, or impose civil penalties consistent with OAR 141-014-0410(4) and (5), below.

(4) ORS 273.241 provides that the removal or use of material from any property of the State of Oregon under the control of the Department by any person without an authorization constitutes a trespass for which the state, in addition to any action commenced under 273.990, may also commence an action for damages. If damages are assessed against the defendant in any such action, the state will be awarded double the amount of damages assessed if the trespass is willful.

(5) The unauthorized use or removal of material from state-owned submerged and submersible land or a violation of a lease, license or other authorization granted under these rules authorizing the use of, or removal of material from state-owned submerged and submersible land are a violation of ORS 274.040 and OAR 141-082. In addition to any other penalty or sanction provided by law, the Director may assess a civil penalty pursuant to ORS 274.992, 274.994, and OAR 141-082-0130 for the unauthorized use of state-owned submerged and submersible land, or for the violation of a special use authorization granted under these rules authorizing the use of state-owned submerged and submersible land.

Statutory/Other Authority: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Statutes/Other Implemented: ORS 274.525 & 274.550

History:

DSL 2-2008, f. & cert. ef. 10-15-08

141-014-0420

Reconsideration of Decision

(1) An applicant for a lease or license to remove or use material, or any other person adversely affected by the issuance or denial of lease or license to remove or use material may request that the Director or the Land Board, depending upon which entity made the decision, reconsider the decision:

(a) Such a request must be received by the Director no later than 30 calendar days after the date of delivery of the decision.

(b) The Director will review the request within 60 calendar days after the date of delivery of the request.

(c) If the Director made the decision of concern, s/he may affirm the decision, issue a new or modified decision, or request the applicant to submit additional information to support the appeal.

(d) If the decision was made by the Land Board, the Director may recommend to the Land Board either that the lease or license issuance or denial be affirmed based on the merits of the request, or that the Land Board authorize initiation of a contested case proceeding.

(2) If the Director recommends initiating a contested case proceeding, the Department will select a hearing officer and proceed pursuant to ORS 183.413 through 183.470.

Statutory/Other Authority: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Statutes/Other Implemented: ORS 274.525 & 274.550

History:

DSL 2-2008, f. & cert. ef. 10-15-08

v2.0.10

[System Requirements](#) [Privacy Policy](#) [Accessibility Policy](#) [Oregon Veterans](#) [Oregon.gov](#)

Oregon State Archives • 800 Summer Street NE • Salem, OR 97310

Phone: 503-373-0701 • Fax: 503-373-0953 • Adminrules.Archives@sos.oregon.gov

© 2022 Oregon Secretary of State

All Rights Reserved