

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***  
A Statement of Need and Fiscal Impact accompanies this form

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Department of Consumer and Business Services, Finance and Corporate Securities  
Agency and Division

441

Administrative Rules Chapter Number

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Rules Coordinator

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Department of Consumer and Business Services, Finance and Corporate Securities, 350 Winter St. NE, Rm. 410, Salem, OR 97301

Address

**RULE CAPTION**

Implements securities registration exemption for renewal energy cooperative corporations

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

Hearing Date	Time	Location	Hearings Officer
9-8-14	9:00 a.m.	350 Winter St. NE; Salem, OR 97301; Conference Room 260	Division Staff

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

441-025-0120, 441-025-0121, 441-025-0122, 441-025-0123, 441-025-0124, 441-025-0125, and 441-025-0126.

**AMEND:**

**REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**Statutory Authority:**

ORS 59.025

**Other Authority:**

2014 Or Laws ch. 69, Section 2 (Enrolled Senate Bill 1520)

**Statutes Implemented:**

ORS 59.025, 2014 Or Laws ch. 69, Section 1

**RULE SUMMARY**

In 2014, the Legislature enacted Senate Bill 1520. This act exempts renewable energy cooperative corporations from registering membership shares or capital stock as securities. The Legislature conditioned this exemption on any rules adopted by the Director of the Department of Consumer and Business Services. This proposed rulemaking places certain substantive restrictions on a renewable energy cooperative corporations relying on this exemption, such as restrictions on the amount of raised money from non-accredited investors. The rulemaking activity also requires two disclosures be given to prospective members: a general disclosure that discusses the workings of the renewable energy cooperative corporation and risks associated with developing renewable energy generations facilities, and a specific disclosure discussing the risks endemic to a specific project.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

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.

09-12-2014 5:00 p.m. Shelley Greiner Shelley.A.Greiner@state.or.us  
Last Day (m/d/yyyy) and Time Rules Coordinator Name Email Address

for public comment

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

**STATEMENT OF NEED AND FISCAL IMPACT**

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

Dept. of Consumer & Business Services, Div. of Finance & Corporate Securities  
Agency and Division

OAR 441

Administrative Rules Chapter Number

Implements securities registration exemption for renewable energy cooperative corporations.

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

In the Matter of: The adoption of OAR 441-025-0120, 441-025-0121, 441-025-0122, 441-025-0123, 441-025-0124, 441-025-0125, & 441-025-0126 to implement an exemption from securities registration for renewable energy cooperative corporations, as required by enrolled Senate Bill 1520 (2014).

Statutory Authority: ORS 59.025

Other Authority: 2014 Or Laws ch. 69, § 2 (Enrolled Senate Bill 1520)

Stats. Implemented: ORS 59.025, 2014 Or Laws ch. 69, § 2

Need for the Rule(s): In 2014, the Legislature enacted Senate Bill 1520 (the act). The act exempts renewable energy cooperative corporations from registering membership shares or capital stock as securities. Under the act, a renewable energy cooperative corporation is a single-purpose entity formed to develop and generate electricity from wind, waste, solar or geothermal power, low-emission nontoxic biomass, landfill gas and digester gas, and certain hydroelectric facilities.

Reflecting concerns among members of the legislative body that the exemption needed balancing with reasonable investor protections, the act conditioned the exemption on any rules adopted by the Director of the Department of Consumer and Business Services. In implementing the legislative directive, this proposed rulemaking places certain substantive restrictions on a renewable energy cooperative corporation if it relies on this exemption. For example, the proposed rulemaking places restrictions on the amount that can be raised from non-accredited investors and limits the amount a non-accredited investor can invest based on the individual's net worth. The proposed rulemaking allows renewable energy cooperative corporations to draw on lower-net worth investors from a local community, whether that community is geographic or is an association of like-minded individuals. The proposed rulemaking does not affect the availability of other exemptions, such as existing exemption for accredited investors (e.g., institutional and higher-net worth individuals).

The proposed rulemaking also creates two disclosures given to prospective members: a general disclosure discussing the workings of the renewable energy cooperative corporation and risks associated with developing renewable energy generations facilities, and a specific disclosure discussing the risks endemic to a specific project.

The act becomes operative on October 1, 2014, so the conditions needed to be implemented prior to the operative date of the act.

Documents Relied Upon, and where they are available: Draft rules are available from the division's rules coordinator, located at 350 Winter St. NE, Rm. 410, Salem, OR 97301 and are available on the division's Web site at <http://dfcs.oregon.gov/rulestat.html>. A copy of enrolled Senate Bill 1520 may be downloaded from the Legislature's website, <https://olis.leg.state.or.us/liz/2014R1/Downloads/MeasureDocument/SB1520>.

Fiscal and Economic Impact: The act primarily impacts renewable energy cooperative corporations formed to build facilities and generate electricity from renewable sources. While the act ensures that renewable energy cooperative corporations can opt to avoid the securities registration process, cooperatives will bear some costs, to ensure investor protection, in order to rely on the exemption. There are several potential ways a cooperative may experience a fiscal impact due to this proposed rulemaking:

- A renewable energy cooperative corporation may rely on this exemption to avoid securities registration, but the exemption only extends to registration procedures in the Oregon Securities Law. Other portions of Oregon's securities act, such as anti-fraud provisions, licensing of individuals, and advertising restrictions, may still apply to a cooperative seeking exemption under the proposed rules. As private, for-profit entities, renewable energy cooperative corporations have the burden of making those important determinations. Obtaining professional advice and process changes necessary

to comply with state and federal securities laws will impact a renewable energy cooperative corporation. However, because the proposed rules implement a registration exemption, they may have a net positive impact on renewable energy cooperative corporations utilizing the exemption.

- The “reasonable investor” restrictions placed on the cooperative itself will limit the amount of money that can be raised from certain members or investors. Cooperatives may experience an impact due to limitations on the potential pools of investors. Once cooperatives reach out to allowable pools of membership, they will in turn experience limitations on the amount of money a person may contribute to the cooperative. Even though restrictions will limit the funds raised for a particular project, the cost of compliance should be balanced against the likely administrative savings from not going through a full registration process.
- This proposed rulemaking requires renewable energy cooperative corporations to develop and employ two separate disclosures to inform potential and current members of the cooperative about the risks associated with the cooperative’s mission. Depending on the expertise and resources available to the renewable energy cooperative corporation, the cooperative may need to invest time and money to develop these documents. The fiscal impact of developing information for members on the governance of the cooperative and model forms for discrete projects may be mitigated by several factors. Cooperatives may share best practices and forms, reducing the startup costs initial cooperatives might experience. The democratic nature of the cooperative form of corporate governance depends on open disclosures, so the cooperative would need this information even in the absence of administrative rule.
- Finally, the proposed rules require renewable energy cooperative corporations to file copies of the two disclosures with the director. The impact of these filings on the corporation should remain comparatively low, however. The filings are not registrations and will not be reviewed as such. The cooperative will not likely experience delays in offering memberships. Also, the proposed rule only requires cooperatives to file documents in two instances, so the volume of filings will be reduced compared to registration.

#### Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): This proposed rulemaking activity impacts two subsets of the public – those joining a renewable energy cooperative corporation and those forming and running renewable energy cooperative corporations. Impact on individuals and cooperative corporations under the proposed rules will be lower than those associated with registration. The exemption is subject to certain requirements and limitations so the fiscal impact will be greater than an exemption with no parameters, but it should be substantially similar to costs associated with pursuing other available exemptions.

State agencies or units of local government should remain generally unaffected. A state or a political subdivision of a state does not need to register securities it issues, though other provisions of the Oregon Securities Law apply if the government entity chooses to issue securities. It is unknown at this time if any state agency or unit of local government intends on forming a renewable energy cooperative corporation, and if so, whether those renewable energy cooperative corporations would operate as a private entity relying on this exemption or operate as a municipal utility under ORS chapter 225 or as a people’s utility district under ORS chapter 261. The division will most likely see some additional work from cooperative filings. However at the outset the number of filings is expected to be relatively low and the agency should be able to absorb that additional work.

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

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: The department does not maintain information on the number of renewable energy cooperative corporations that exist in Oregon. Furthermore, as the bill is not even operative yet, the department would not know how many persons have formed these special-purposes cooperatives in order to rely on the exemption in ORS 59.025. Finally, without general information on the existence of renewable energy cooperative corporations in the state, the department is unable to estimate how many of these cooperatives employ 50 or fewer employees. However as legislative history suggests, the community nature of the cooperatives and concern about the use of raised funds for excessive salaries, it is likely that most renewable energy cooperative corporations relying on this exemption will employ 50 or fewer employees.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: The proposed rules impose some reporting, recordkeeping and administrative activities, though renewable energy cooperative corporations relying on this new exemption will have fewer compliance activities than other for-profit entities registering securities with the department. The proposed rules require filing information with the department, but the filings remain minimal compared to registrations. Renewable energy cooperative corporations will need to produce and keep copies of disclosures given to prospective members and investors. Renewable energy cooperative corporations may also need to seek professional assistance, particularly from legal counsel, on how to structure the

cooperative and how to meet the terms of the exemption. The cost of legal counsel should remain lower than if the renewable energy cooperative corporation hired an attorney to register securities. The exact impact is unknown at this time because the division does not know how many cooperatives will form or seek the exemption under the proposed rules.

c. Equipment, supplies, labor and increased administration required for compliance: The department does not anticipate that renewable energy cooperative corporations will need to procure additional equipment or supplies in order to comply with this proposed rulemaking activity. A renewable energy cooperative corporation relying on this exemption will likely need to develop policies and processes to ensure that the cooperative meets the substantive restrictions in the proposed rule, as well as properly disclose the right information at the right time. Because renewable energy cooperative corporations may employ individuals with varying levels of knowledge and experience in cooperative governance and securities, it is unclear whether a cooperative will need to hire additional staff in order to rely on this exemption. The exact impact is unknown at this time because the division does not know how many cooperatives will form or seek the exemption under the proposed rules.

How were small businesses involved in the development of this rule? The rulemaking advisory committee consisted of an association that advocated for the legislation and could potentially act as a resource to small business, and at least one person actively involved in the development of small-scale renewable energy installations. Otherwise, because the department is unaware that anyone has formed a renewable energy cooperative corporation to rely on this exemption, the department could not directly invite a representative of an entity employing 50 or fewer persons.

Administrative Rule Advisory Committee consulted?: Yes.

If not, why?: n/a

/s/ David Tatman

David C. Tatman

8/12/14

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007

## Renewable Energy Cooperative Corporations

### 441-025-0120

#### Definitions

1 For purposes of 441-025-0121 through 441-025-0124, the following definitions apply unless the  
2 context requires otherwise:

3 (1) “Accredited investor” has the same meaning as that term is defined under OAR 441-035-0010.

4 (2) “Capital stock” means a proportional part of a renewable energy cooperative corporation’s capital  
5 that may show a person’s respective interests in or entitlement to assets, reserves or dividends, if  
6 authorized by the articles of incorporation, but does not show a member’s right to vote in matters  
7 affecting the governance of the renewable energy cooperative corporation, unless authorized by  
8 applicable law.

9 (3) “Project” includes conducting studies as to the feasibility of a potential facility, as well as the  
10 planning, design, construction and operation of a discrete facility to generate electricity from renewable  
11 energy sources.

12 (4) “Renewable energy cooperative corporation” has the same meaning as that term is used in ORS  
13 59.025.

14 (5) “Membership share” includes membership certificates and membership stock as defined in ORS  
15 62.015, but does not include capital stock.

16 (6) “Well-defined community” means:

17 (a) One or more adjacent precincts, districts, cities, counties or other boundaries defined by the state  
18 or a unit of local government or by a state or local government agency; or

19 (b) Individuals with a common bond of occupation or association, including family members.

Stat. Auth.: ORS 59.025, 2014 Or Laws ch. 69, § 2

Stat. Implemented: ORS 59.025, 2014 Or Laws ch. 69, § 1

Hist.: New.

## **441-025-0121**

### **General Requirements for Renewable Energy Cooperative Corporations**

1 (1) In order to rely on the exemption under ORS 59.025(12), a renewable energy cooperative  
2 corporation must:

3 (a) Have a certificate of existence issued by the Oregon Secretary of State pursuant to ORS 62.065  
4 and be in good standing;

5 (b) Meet all the conditions set out in 441-025-0122;

6 (c) Provide the disclosures in the manner required by 441-025-0123; and

7 (d) Make any required filings under 441-025-0124.

8 (2) Reliance on ORS 59.025(12) does not preclude renewable energy cooperative corporations from  
9 relying on other exemptions under ORS 59.025 or 59.035, as appropriate, for the offer or sale of  
10 membership shares, capital stock, or other authorized securities.

Stat. Auth.: ORS 59.025, 2014 Or Laws ch. 69, § 2

Stat. Implemented: ORS 59.025, 2014 Or Laws ch. 69, § 1

Hist.: New.

## **441-025-0122**

### **Requirements for Reliance on Registration Exemption for Renewable Energy Cooperative Corporations**

14 A renewable energy cooperative corporation relying on the exemption in ORS 59.025(12) is limited  
15 to the following actions in connection with the exempt offering:

16 (1) Admit individuals for membership into the cooperative, but may not admit legal entities or non-  
17 natural persons.

18 (2) Sell capital stock as permitted under ORS chapter 62 and the renewable energy cooperative  
19 corporation's articles of incorporation or bylaws.

20 (3) Raise up to \$750,000 per project from non-accredited investors.

1 (4) Raise funds from non-accredited members that are part of a well-defined community.

2 (5) Allow a non-accredited member to contribute or invest no more than ten percent of the member's  
3 liquid net worth in the purchase of membership shares or in the investment in a project of a particular  
4 renewable energy cooperative corporation.

5 (6) Place funds raised through the sale of membership shares or capital stock in escrow or impound  
6 the funds in an interest-bearing trust account until the renewable energy cooperative corporation raises all  
7 the money needed to complete a feasibility study or to undertake the project.

8 (7) With approval from the renewable energy cooperative corporation's membership, use excess  
9 funds raised for one project for other renewable energy projects of the renewable energy cooperative  
10 corporation. Approval must be obtained using voting procedures specified in ORS chapter 62 and the  
11 renewable energy cooperative corporation's bylaws.

12 (8) Pursue in good faith and secure one or more executed interconnection agreements for the  
13 production and transmission of electricity.

14 (9) Pay its officers, directors, employees or third parties reasonable salaries comparable to  
15 cooperative corporations conducting similar business, but may not pay its officers, directors, employees,  
16 or any third party any commission or other remuneration directly or indirectly for the offer or sale of  
17 membership interests or capital stock in the renewable energy cooperative corporation.

18 (10)(a) Engage in limited advertising to prospective members in the renewable energy cooperative  
19 corporation. "Engage in limited advertising" means that the renewable energy cooperative corporation  
20 may provide general information about the cooperative including information about its purpose and  
21 general nature and about its operating history, including a brief description of current projects in  
22 operation, to the public in Oregon for the limited purpose of promoting the cooperative and gauging or  
23 soliciting interest in membership in the cooperative.

24 (b) "Engage in limited advertising" does not include general solicitation or offering of investments in  
25 specific projects or in the sale of capital stock to the public. "Engage in limited advertising" does not

1 include disclosure of project deals, including pro forma financial information, to the public of pending  
2 projects being offered by the cooperative corporation.

3 (c) Any materials used for the purposes of this subsection must clearly indicate that the material does  
4 not constitute an offer of a security. Materials provided under this section do not take the place of the  
5 disclosures required by OAR 441-025-0123 and 441-025-0124.

6 (11) Allow a membership certificate or capital stock to be returned or resold to the renewable energy  
7 cooperative corporation in exchange for a price that does not exceed the price originally paid by the  
8 purchasing individual upon termination of the individual's membership in the renewable energy  
9 cooperative corporation.

Stat. Auth.: ORS 59.025, 2014 Or Laws ch. 69, § 2

Stat. Implemented: ORS 59.025, 2014 Or Laws ch. 69, § 1

Hist.: New.

#### **441-025-0123**

#### **Disclosures Required Related to the sale of membership shares in Renewable Energy Cooperative Corporations**

10 Prior to offering a membership shares in a renewable energy cooperative corporation to prospective  
11 purchaser, the renewable energy cooperative corporation shall provide, in writing, at no cost to the  
12 prospective purchaser, material information about the purpose and governance of the renewable energy  
13 cooperative corporation. For purposes of this subsection, "writing" includes printed, electronic and  
14 internet media. Disclosures under this section shall include, but are not limited to, the following:

15 (1) The renewable energy cooperative corporation's profit and loss statement or an unaudited  
16 financial statement, and estimated use of funds or financial projections of the renewable energy  
17 cooperative corporation.

1 (2) Information on the experience and ability of the renewable energy cooperative corporation's  
2 directors, principal officers and key employees to manage a renewable energy cooperative corporation  
3 and develop and operate projects to generate electricity from renewable sources.

4 (3) Discussion of the renewable energy cooperative corporation's experience with and ability in  
5 developing projects to generate electricity from renewable sources.

6 (4) Information on minimum amount to be raised to initiate a project, consistent with section (1) of  
7 this rule, and how money will be returned to members if the renewable energy cooperative corporation  
8 does not raise sufficient funds to complete a project or if the renewable energy cooperative corporation  
9 determines that a project is not feasible after completing a feasibility study.

10 (5) Information on how the renewable energy cooperative corporation will apportion returns on an  
11 investment, if any, as permitted by applicable state and federal law.

12 (6) Information on risks posed by legislative or regulatory changes affecting the development or  
13 operation of a facility to generate electricity from renewable sources, including but not limited to  
14 restrictions on the sale of generated electricity, requirements to register securities under applicable state or  
15 federal law, changes to tax treatment of facilities that generate electricity from renewable sources, or  
16 other regulations that place additional restrictions on a particular type of facility generating electricity  
17 from renewable sources.

18 (7) If applicable, disclosures of any pending or completed, material litigation against the renewable  
19 energy cooperative corporation or against the officers, directors, and key employees of the renewable  
20 energy cooperative corporation, including the legal basis for the action and, if completed, any judgments  
21 or settlements adverse to the renewable energy cooperative corporation or to its officers, directors, and  
22 key employees.

23 (8) Information on how members can participate in the decision-making process of the renewable  
24 energy cooperative corporation, consistent with ORS chapter 62 and the renewable energy cooperative  
25 corporation's articles of incorporation or its bylaws.

1 (9) Information on how members may inspect the renewable energy cooperative corporation's books  
2 and records and how the renewable energy cooperative corporation will share information with members  
3 prior to shareholder meetings.

4 (10) A plain language explanation of the rights and responsibilities between the renewable energy  
5 cooperative corporation and its members under the cooperative contract.

6  
7 **441-025-0124**

8 **Disclosures Related to Renewable Energy Cooperative Corporation Projects**

9 Prior to initiating a project to be funded through membership shares, capital stock, or other  
10 permissible securities, the renewable energy cooperative corporation shall disclose, in writing, to all  
11 members, prospective members, and prospective investors, all material information about the project. For  
12 purposes of this subsection, "writing" includes printed, electronic and internet media. However, all  
13 disclosures shall be made available in printed format and prospective purchasers shall be notified of the  
14 option to obtain printed disclosures at no cost. Information disclosed shall include, but are not limited to,  
15 the following:

16 (1) Basic terms of the project, including:

17 (a) The cost of the project;

18 (b) Projected amount of energy to be generated;

19 (c) Probable users or purchasers of the energy;

20 (d) Anticipated revenue to be generated by the project; and

21 (e) Anticipated returns and distribution of revenue to investors.

22 (2) The physical location of the electricity-generating facility and the type of facility planned to be  
23 built and operated.

24 (3) Property leased or acquired by the renewable energy cooperative corporation in order to construct  
25 the facility.

1 (4) Information on the risks that may arise based on the outcome of an engineering analysis done to  
2 assess the suitability of a location for the project.

3 (5) Site surveys or other evaluations of the energy yields anticipated by the construction of the  
4 facility.

5 (6) All zoning approvals, building permits, and other regulatory permissions the renewable energy  
6 cooperative corporation must secure in order to complete the project.

7 (7) Insurance coverage for the projects, and risks if insurance coverage becomes more expensive or is  
8 unattainable at commercially reasonable rates.

9 (8) An estimate of how much money the renewable energy cooperative corporation intends to raise  
10 for the project, how the money will be held in escrow or otherwise impounded, and how much the  
11 renewable energy cooperative corporation may need to raise to complete the project, if any.

12 (9) If notes are offered to the membership or investors for a particular project, the renewable energy  
13 cooperative corporation shall disclose at a minimum the interest rate, the term, the maturity of the notes,  
14 payment dates, expected source of repayment, use of the proceeds, any conditions on prepayment, and a  
15 ban on secondary trading.

16 (10) A calculation of estimated net proceeds or savings that may be apportioned, distributed and paid  
17 to a member for the generation of electricity, and any risks to patronage posed by increased costs or  
18 decreased revenue.

19 (11) All other material information related to the project.

20 (12) Amendments to any information described in subsections (a) through (i) to account for any  
21 material changes in the project.

Stat. Auth.: ORS 59.025, 2014 Or Laws ch. 69, § 2

Stat. Implemented: ORS 59.025, 2014 Or Laws ch. 69, § 1

Hist.: New.

**441-025-0125**

## **Required Filings**

1 (1) At least 14 days before offering membership shares, capital stock, or other authorized securities  
2 including notes and debentures, the renewable energy cooperative corporation shall file with the director:

3 (a) The written disclosures required under 441-025-0123; and

4 (b) A generic sample of the written disclosure prepared to meet 441-025-0124.

5 (2) The renewable energy cooperative corporation shall retain copies of the written disclosure  
6 documents developed to meet the requirements of 441-025-0123 and 441-025-0124 for no less than four  
7 years after the termination of the offering or after any notes mature.

8 (3) Filing with the director does not constitute approval or acceptance of the information disclosed.

Stat. Auth.: ORS 59.025, 2014 Or Laws ch. 69, § 2

Stat. Implemented: ORS 59.025, 2014 Or Laws ch. 69, § 1

Hist.: New.

## **441-025-0126**

### **Disclaimer on Disclosures**

9 Disclosures required by OAR 441-025-0123 and 441-025-0124 shall include the following legend set  
10 out in a prominent place on the first page of the document:

11 "This offering is being made in reliance on an exemption to the securities registration requirements  
12 under the Oregon Securities Law. The Director of the Department of Consumer and Business Services of  
13 the State of Oregon has not made any finding that the statements made in this document are true,  
14 complete or not misleading. The fact that an exemption is available for a security or a transaction does not  
15 mean that the director has passed in any way upon the merits or qualifications of, or recommended or  
16 given approval to, any person, security or transaction."

Stat. Auth.: ORS 59.025, 2014 Or Laws ch. 69, § 2

Stat. Implemented: ORS 59.025, 2014 Or Laws ch. 69, § 1

Hist.: New.