

DIVISION 2002

OREGON PRODUCTION INVESTMENT FUND PRODUCTION SPENDING REBATES

951-002-0000

Purpose

The purpose of these rules is to provide guidance for the administration of the Oregon Production Investment Fund film and television production rebates as authorized by ORS 284.367 to 284.368. The Oregon Production Investment Fund was authorized by the 2003 legislature to encourage film and video production in Oregon, thereby increasing job opportunities for Oregonians in the film and video industry and bringing additional production spending into the state.

Stat. Auth: ORS 284.335 & 284.368

Stats. Implemented: ORS 284.367 & 284.368

Hist: FVO 4-2004, f. & cert. ef. 11-26-04

951-002-0001

Definitions

(1) “Qualifying film or television production” means a movie produced for release to theaters, video or the internet or a television movie or one or more episodes of a single television series, **or a media production services project produced by a local media production services company**, the production of which will result in the spending of at least \$1 million directly to Oregon resident vendors or for work done in Oregon. “Qualifying film or television production” does not include the production of a commercial or one or more segments of a newscast or sporting event.

(2) “OPIF” means Oregon Production Investment Fund created by ORS 284.367.

(3) “OFVO” means the Oregon Film & Video Office created by ORS 284.305.

(4) “Filmmaker” means a person who owns a television or film production company.

(5) “Local filmmaker” means a person who owns a television or film production company that has its principal place of business in this state.

(6) “Local media production services company” means a media production services company that has its principal place of business in this state.

(7) “Media production services” includes postproduction services and interactive video game development. “Media production services” does not include the production of a commercial or one or more segments of a newscast or sporting event.

(8) “Media production services company” means a person who is engaged in media production services.

(9) "Principal place of business" means the office, in or out of this state, where the principal executive offices of a domestic or foreign corporation are located and where the company identifies as its singular “corporate headquarters.”

Stat. Auth: ORS 284.335 & 284.368

Stats. Implemented: ORS 284.367 & 284.368

Hist: FVO 4-2004, f. & cert. ef. 11-26-04

951-002-0005

Program Application

A person proposing to produce a qualifying film or television production and wishing to receive a production spending rebate from the OPIF with respect to the production shall submit an application to the Oregon Film and Video Office for an eligibility determination. Unless otherwise permitted by the OFVO, the application must be submitted prior to the commencement of production. Incomplete applications will not be accepted.

Stat. Auth: ORS 284.335 & 284.368-

Stats. Implemented: ORS 284.367 & 284.368-

Hist: FVO 4-2004, f. & cert. ef. 11-26-04; FVO 1-2007 f. & cert. ef. 6-1-07

951-002-0010

Eligibility Determination

(1) Except as set forth in sections (2), (3) and (34), the OFVO will approve the applications for eligibility for productions that satisfy the following requirements:

(a) The production satisfies the non-monetary portions of the “qualifying film or television production” definition.

(b) Projected spending in Oregon on the production is reasonably anticipated to equal or exceed US \$750,000.001 million.

(c) The producer includes, with its application, a letter to the OFVO stating the producer's intent to film the production in Oregon and its willingness and ability to enter into a contract with the OFVO setting forth the terms and conditions of the rebate.

(2) The following productions are not eligible:

(a) Productions of a producer that has, or whose principals have, a verifiable history of previous production problems that create significant doubt, as determined by the OFVO, regarding the producer's ability to complete a production in Oregon successfully. The production problems may include, but are but not limited to:

~~(A) Unpaid(i) unpaid~~ financial obligations;

~~(B) Crew(ii) crew~~ mistreatment; or

~~(C)(iii)~~ damage to locations that the producer did not repair upon completion of the production.

(b) Productions with respect to which the producer withdraws its application for eligibility determination.

(c) Productions whose applications for eligibility are filed at times when there are not sufficient funds available in the Oregon Production Investment Fund to pay the anticipated rebates.

(d) Productions that the OFVO determines are unlikely to further the purposes of the Oregon Production Investment Fund. ~~Productions that pay any employee less than the minimum wage as set forth in Oregon Minimum Wage Rule. Rebates will not be issued until complaints filed with the Bureau of Labor and Industries have been satisfied.~~

~~(e) Productions that pay any employee less than minimum wage as set forth in (Oregon minimum wage rule - ORS653.025).~~

~~(f) Media production services projects (specifically, postproduction and interactive games) principally produced by media production services companies who's principal place of business is not located within the state of Oregon.~~

(3) If the OFVO receives multiple relatively concurrent applications for eligibility determinations and there are not sufficient funds available in the Oregon Production Investment Fund to pay anticipated rebates with respect to all of the productions, the

OFVO will determine which applications to approve and which to deny based on the following factors:

- (a) ~~Satisfactionsatisfaction~~ of requirements of section (1);
- (b) ~~Chronologicalchronological~~ order of receipt of application;
- (c) ~~Amountamount~~ of production spending anticipated in Oregon;
- (d) ~~Numbernumber~~ of film workers expected to be hired;
- (e) experience level of producer
- (f) reputation of the producer and its principals
- (g) estimated production start date
- ~~(e) Other benefits to Oregon, including but not limited to promotional value, long-term financial benefits, contribution to development of Oregon's crew and talent base or production industry infrastructure.~~
- (i) Whether the production company has contributed to the Oregon Production Investment Fund.
- (j) Whether the production company intends to pay prevailing industry rates and provide health, retirement and other benefits;
- (k) Whether receipt of a production rebate from the OPIF is a determining factor in bringing or keeping the production in Oregon;

~~(g) Experience level of producer;—~~

~~Reputation of the producer and its principals;—~~

~~(i) Estimated production start date;—~~

~~(j) Other benefits to Oregon, including but not limited to promotional value, long-term financial benefits, contribution to development of Oregon's crew and talent base or production industry infrastructure.—~~

~~(k) Whether the production company has contributed to the Oregon Production Investment Fund.—~~

(4) Upon approval of an application for eligibility with respect to a production, the producer must enter into a contract with OFVO stipulating the producer's intent to film the production in Oregon and setting forth the terms and conditions of the rebate. If the producer and the OFVO have not entered into the contract within 30 days of the production's eligibility approval, the production's eligibility will be automatically revoked unless the OFVO, in its discretion, extends the deadline for contract execution.

(5) No single qualifying film or television production or filmmaker or local filmmaker or media production services company or local media production services company can be awarded more than 50% of the entire OPIF fund (net the annual allocations for iOPIF and rOPIF) in any given single fiscal year.

Stat. Auth: ORS 284.335 & 284.368

Stats. Implemented: ORS 284.367 & 284.368

Hist: FVO 4-2004, f. & cert. ef. 11-26-04; FVO 1-2007, f. & cert. ef. 6-1-07; FVO 1-2008, f. & cert. ef. 6-27-08

951-002-0020

Payment of rebates

(1) Regardless of whether the production is otherwise a qualifying film or television production or whether the OFVO determined the production eligible, rebates from the Oregon Production Investment Fund will only be paid pursuant to and upon the terms and conditions of a contract entered into between the OFVO and producer pursuant to OAR 951-002-0010(4). If no contract is entered into, no rebates will be paid. Amounts paid by the production to an individual who receives compensation in excess of \$1 million are excluded and ineligible for a rebate.

(2) In addition to any other terms and conditions that the OFVO considers necessary or desirable, contracts for Oregon Production Investment Fund rebates will usually include the following:

(a) A requirement that the producer submit to the OFVO, after completion of the production work in Oregon, financial and other records sufficient to verify that the production satisfied the minimum expenditure requirement for a rebate;

(b) Authorization for the OFVO to deduct from the rebate the costs reasonably incurred by the OFVO in verifying the production expenditures in Oregon, including but not limited to, the costs incurred by OFVO in obtaining an outside accounting review, audit, or both, of the financial and other records evidencing the expenditures. The OFVO will usually submit the expenditure documentation

to an outside accounting firm for a review after the OFVO has completed its review. Based on the advice of the outside accounting firm, the OFVO may require an audit of the production's financial records.

(c) Provisions conditioning OFVO's obligation to pay the rebate on the producer's compliance with the terms of the contract and satisfactory verification of production spending in Oregon of at least US \$1 million.

(d) Provisions conditioning OFVO's obligation to pay the rebate on the production spending in Oregon after the date that OFVO approves the production's eligibility, of at least US \$1 million.

(e) Production to provide final crew and vendor lists with final accounting.

(f) Production to provide promotional materials (such as photos, trailers, electronic press kits) to OFVO. OFVO may use such materials strictly for non profit purposes such as for archival, governmental relations and marketing purposes. OFVO shall not grant usage to any other entity and shall request additional permission prior to any use other than those listed. OFVO understands that talent contracts may prohibit use of actors' images without express permission and agrees to abide by such agreements when advised of the production company of said limitations.

(g) Productions receiving rebates will include the approved "Oregon Film" logo and/or the "Oregon Made" logo in the final end crawl or packaging of the project wherever allowed by Filmmaker's contracts with its clients.

(3) Payment of OPIF reimbursements are subject to funds being available in the OPIF program.

(4) OFVO makes a recommendation on reimbursement to the Oregon Business Development Department ("OBDD") with the final decision made, and funds released by, OBDD.

Stat. Auth: ORS 284.335 & 284.368-

Stats. Implemented: ORS 284.367 & 284.368-

Hist: FVO 4-2004, f. & cert. ef. 11-26-04; FVO 1-2007, f. & cert. ef. 6-1-07-