From:	VANDEHEY Maggie
To:	CALDERA Stephanie
Subject:	RE: RM - 401FeeIncrease - rules published too early (rule adoption language from October 2012)
Date:	Friday, March 15, 2013 9:42:24 AM

Thank you!

From: CALDERA Stephanie
Sent: Friday, March 15, 2013 9:42 AM
To: VANDEHEY Maggie
Cc: MRAZIK Steve; ALDRICH Greg
Subject: RE: RM - 401FeeIncrease - rules published too early (rule adoption language from October 2012)
Importance: High

Hi Maggie,

This is the notation of the October 2012 adoption of the 401 rules:

> **Action:** Repeal the existing fee schedule for 401 Certifications and adopt the proposed rule presented in attachment A with one amendment to revise the effective date from Jan. 1, 2013, to July 31, 2013.
> Move: Commissioner Rider
> Second: Vice-chair O'Keeffe
>
> *The commission unanimously approved the rules with the noted amendment.*

The notes reference a written amendment to the rules (essentially an errata sheet). I don't have that on-hand, as far as I can tell, but I'd venture we can get it from Steve Mrazik very quickly if necessary.

Let me know if I need to check back against the audio or if this notation is sufficient. We can certainly do an emergency/temporary rule for this next week if that makes the most sense for staff. From what I understand about the program, that might be the best fix.

Thanks,
Stephanie

From: VANDEHEY Maggie
Sent: Friday, March 15, 2013 9:26 AM
To: CLIPPER Chris; MRAZIK Steve; CHRISTENSEN Sara
Cc: STEVENS-SCHWENGER Joanie; CALDERA Stephanie
Subject: RE: RM - 401FeeIncrease - rules published too early

Hi,

Though Phil is right that Oregon rules on rulemaking are silent on how long we have to file rules with SOS after they are adopted, we cannot simply pull filed rules from the SOS. Chris, thank you for your offer but my authorization and signature would be required.

We cannot usurp the EQC's authority. The staff report states the fees become effective January 2013, presumably upon filing. The amended fees, however, state the fees become effective Jul. 1, 2013 but failed to include a fee schedule for the period between January and July. How we approach this depends on the EQC's motion. Larry and I brainstormed several options but the remedy will depend on the exact words in the recommendation/motion. The best case is that we can rely on the schedule in the earlier rule. Another remedy may be to ask the EQC to adopt a temporary rule reinstating the old schedule -- NEXT week. An additional remedy may be to postpone issuing certificates until July 1.

I'll sending the motion/recommendation to Larry and we should have a direction a bit later today.

Regards,

Maggie Vandehey |EIM |Sr. Operations and Policy Analyst
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From: CLIPPER Chris
Sent: Thursday, March 14, 2013 12:52 PM
To: MRAZIK Steve; CHRISTENSEN Sara
Cc: CLIPPER Chris; VANDEHEY Maggie
Subject: RM - 401FeeIncrease - rules published too early

Hey Everyone,

I received a call yesterday from Sara and Steve notifying me the 401 rules adopted by EQC in October 2012 are currently on the Secretary of State OAR website (OAR 340-048-0055, http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_048.html). This is an issue because it's my understanding these rules were not to become effective until July 31, 2013.

The reason the rules are already on the OAR website is because we prematurely filed the rules. I just spoke to Phil Wiebe (Secretary of State, Archives Division). Per Phil, there is no rule language regarding when DEQ must file adopted rules by EQC to SOS. The Secretary of State publishes rules on their website and in the Bulletin based upon the date filed to SOS, <u>not</u> the effective date of the rule listed on the Certificate and Order for Filing. Phil recommended delaying rule filing to SOS for those rules that become effective in the distant future, so the "old" rules do not get replaced by the "new" rules prematurely. This is exactly what happened in the case of 401.

Two things need to happen:

1) The situation needs to be explained to the Secretary of State and the "old" rules need to be posted to the website. Technically, fees collected since Jan. 16 that are based on the "old" fees are void, invalid, etc.

Maggie – would you like me to contact them or would you prefer to take the lead? Also, a file containing the old rules needs to be posted in folder 1c on the Rule Development share drive.

2) Assuming #1 is completed, I advise filing the “new” rules July 14. This way the new rules will appear on the SOS website and be published in the Bulletin August 1.

Thanks.

Christopher Clipper
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