

Bylaws of the American Council of Engineering Companies of Oregon

Article I. DEFINITIONS

- A. ACEC Oregon.** Founded in 1956 as the Consulting Engineers Council of Oregon, the American Council of Engineering Companies of Oregon is incorporated in the State of Oregon, affiliated with the American Council of Engineering Companies in Washington, D.C. (ACEC National), and operated as a non-profit corporation under IRS Code 501(C)(6). The American Council of Engineering Companies of Oregon operates within the State of Oregon and Clark County, Washington.
- B. Emblem.** The design and specification of the emblem of the American Council of Engineering Companies of Oregon shall be as prescribed by the Board of Directors (Board).
- C. Abbreviation.** The approved abbreviation of the name of the American Council of Engineering Companies of Oregon shall be ACEC Oregon. This abbreviation shall be the emblem of the American Council of Engineering Companies of Oregon.
- D. Seal.** The Board has prepared a suitable corporation seal. This seal shall be in the charge of the Executive Director, who shall be responsible for affixing the seal to appropriate official documents.
- E. Engineering Company.** An Engineering Company is a duly organized and constituted firm in private practice that employs Professional Engineers who perform one or more of the disciplines of professional engineering services for clients on a fee basis.
- F. Professional Engineer.** A Professional Engineer in an Engineering Company meets all of these criteria:
- (1) Is qualified by education, ability and experience to provide competent engineering services.
 - (2) Is registered as a Professional Engineer in the State of Oregon (or in the State of Washington, if the Engineering Company that employs them resides in Clark County, Washington).
 - (3) Does not have a commercial affiliation with manufacturers, material suppliers, contractors or others who could bias his or her judgments.
- G. Key Personnel.** Key Personnel are designated by Member Firms (Article II) as sole proprietors, partners, officers or managers. Key Personnel have ownership interest or exercise management responsibility for technical or business decisions.
- H. Purposes.** The purposes of ACEC Oregon are:
- (1) To promote the public welfare by assisting and protecting those who would avail themselves of the service of Engineering Companies by establishing and enforcing ethical and technical standards of practice concerning:

- (a) The conduct of Engineering Company employees toward their clients and peers.
 - (b) The responsibilities of an Engineering Company to their clients and the public.
 - (c) The position of Engineering Company employees with regard to their use of commercial and proprietary products and services.
 - (d) The services to be rendered, the quality of work to be performed, and the reimbursement therefore.
- (2) To foster professional attainment and harmony among Engineering Company employees.
- (3) To encourage membership in and cooperation with other professional organizations of good repute and purpose.
- (a) To work for the welfare of Engineering Company employees and the maintenance of their rightful place in society.
 - (b) To promote cordial relations and mutual respect among the Engineering Company employees, architects, contractors, and others concerned with the construction industry including educators and the like.
 - (c) To cultivate a more complete understanding by the public of Engineering Companies and their work.
 - (d) To advise and recommend the enactment of legislation in the interest of the public and of Engineering Companies, to oppose all legislation that is discriminatory or detrimental to the public or the engineering profession, and to assist members in matters that may have a bearing on the general interest of ACEC Oregon.

Article II. MEMBERSHIP

A. Membership classes. The three classes of membership are Member Firm, Affiliate Member Firm, and Life Member.

- (1) *Member Firm.* A Member Firm shall meet all of the following criteria:
- (a) A Member Firm is a sole proprietorship, partnership, or corporation.
 - (b) A Member Firm is an Engineering Company with no conflict of interest.
 - (c) A Member Firm maintains one or more offices within the State of Oregon or such adjacent areas as the Board may approve.
 - (d) All engineering activities of a Member Firm are conducted by or under the supervision of Professional Engineers.
- (2) *Affiliate Member Firm.* An Affiliate Member Firm shall be limited to:
- (a) Land surveying companies.
 - (b) Ancillary business firms providing non-engineering services or products to a Member Firm.

- (3) *Life Member.* A Life Membership may be bestowed upon a person who has qualified as Key Personnel for at least ten (10) years and retired from his or her most immediate Member Firm. He or she may act in a consultant capacity to his or her most immediate Member Firm but shall not be engaged in contracting, manufacturing or in any field of activity that would have rendered him or her ineligible for membership.

B. Member Firm and Affiliate Member Firm Representatives.

- (1) *Member Firm Representative.* The business of ACEC Oregon shall be conducted by a representative or an alternate representative from each Member Firm. Representatives are designated by Member Firms and considered Key Personnel by the firms.
- (2) *Enfranchisement of Member Firm Representative.* All Member Firm Representatives or their designated alternate shall be entitled to hold office and shall be entitled to one vote, whether such vote is at meetings or by letter ballot.
- (3) *Affiliate Member Firm Representative.* Affiliate Member Firm Representatives shall be designated representatives of Affiliate Member Firms but shall have no voting rights.

Article III. ADMISSION AND SEPARATION

A. Admission. Firms or individuals who qualify as defined in Article II may be admitted to ACEC Oregon as follows:

- (1) *Member Firm Application.* A firm shall make a written application for membership. The application shall be referred to the Executive Director for investigation and recommendation to the Board. An affirmative two-thirds vote of the total voting power of the Board is required for acceptance.
- (2) *Affiliate Member Firm Application.* A firm shall make a written application for membership. The application shall be referred to the Executive Director for investigation and recommendation to the Board. An affirmative two-thirds vote of the total voting power of the Board is required for acceptance.
- (3) *Life Membership Application.* A qualified person who desires Life Membership shall make written application. The application shall be referred to the Executive Director for investigation and recommendation to the Board. An affirmative two-thirds vote of the total voting power of the Board is required for acceptance.

B. Separation. A member can be separated from ACEC Oregon through resignation, termination or expulsion.

- (1) *Resignation.* A member of any class can resign from ACEC Oregon by notifying ACEC Oregon in writing. Resignations shall be effective upon fulfillment of all obligations. Dues obligations for Member Firms and Affiliate Member Firms are for an entire year regardless of payment options used.

- (2) *Termination.* A member of any class may be terminated if the member ceases to fulfill the qualifications for membership as defined in Articles II and V or if the member neglects or declines to furnish such information as may be required by ACEC Oregon to determine whether such qualifications have been met. Termination shall be by two-thirds of the total voting power of the Board.
- (3) *Expulsion.* A member of any class may be expelled from membership on the grounds that the member's conduct or policy is detrimental to the interests of ACEC Oregon. Expulsion shall be by two-thirds of the total voting power of the Board.
- (4) *Extinguishment of Rights.* Upon resignation, termination or expulsion from ACEC Oregon, a member of any class shall lose all rights and interest in any funds or other assets of ACEC Oregon.

Article IV. RESPONSIBILITY OF MEMBERSHIP

- A. Responsibility.** Members of any class are bound by properly enacted rulings of ACEC Oregon.
- B. Certification.** Annually, each Member Firm shall certify its number of full-time-equivalent employees and certify that it continues to meet membership requirements. Annual certification shall occur at the time of submitting information to ACEC National.

Article V. DUES AND ASSESSMENTS

- A. Fee.** The application fee for admission shall be a sum established by the Board.
- B. Dues.** The annual dues, fees, and assessments shall be established on the recommendation of the Board and ratified by favorable vote of a majority of the attending Member Firm Representatives present at a regular ACEC Oregon meeting. Initial dues for new members shall be prorated on a quarterly basis. Dues shall be payable in July of each year or on a quarterly basis. Any Member Firm or Affiliate Member Firm failing to pay its dues by October of that year (or within 90 days of the billing, if the quarterly option is selected) may be terminated from the membership roll at the discretion of the Board. Reinstatement shall be made upon payment of such dues as the Board shall set.
- C. Assessments.** Special dues, fees, and assessments may be levied by the Board, ratified by a favorable vote of the majority of all Member Firm representatives present at the next regular ACEC Oregon meeting.
- D. Method of Establishing Annual Dues.** Dues shall be established on the basis of the ACEC National's index number of Member Firms and shall cover the fiscal year beginning July 1.

Article VI. GOVERNMENT OF ACEC OREGON

- A. Rules of Policy and Procedure.** The Board shall adopt Rules of Policy and Procedure for the government of ACEC Oregon, consistent with applicable laws, Articles of Incorporation and these Bylaws. The Rules of Policy and Procedure may be amended by the vote of a simple majority of the Board. The Executive Director shall notify the Member Firms of any amendments.
- B. Scope.** Each Member Firm shall be duly bound by ACEC Oregon's ruling and actions, provided these have been affirmatively voted by the membership as provided by the Bylaws and provided further that such rulings and actions are within the scope and limitations of the Bylaws.
- C. Voting.** No officer, director or member of any class will take any action involving ACEC Oregon that is not consistent with approved Rules of Policy or Procedure or that has not been affirmatively voted on as provided under these Bylaws.

Article VII. BOARD OF DIRECTORS (BOARD)

- A. Positions.** The officers of the Board shall be President, President-Elect, four Vice Presidents, Secretary/Treasurer, Past President and Regional Vice President.
- B. Complement.** The Board shall consist of nine members: President, President-Elect, four Vice Presidents, Secretary/Treasurer, immediate Past President, and Regional Vice President.
- C. Duration.** Two of the four Vice Presidents shall be elected annually. A President-Elect shall be elected annually. He/she shall become President at the conclusion of a one-year term without further election. He/she will serve one year as President and one more year as Past President. The Secretary/Treasurer, Vice Presidents and Regional Vice President shall be elected for a two-year term. The Secretary/Treasurer shall be eligible for multiple two-year terms. Vice Presidents are eligible for two two-year terms.
- D. Eligibility.** Officers must be Key Personnel of Member Firms. All past and present officers, except the President and Past Presidents, are eligible for the office of President-Elect.
- E. Regional Vice President.** The Regional Vice President shall be from a firm outside the Portland metropolitan area.
- F. Limitations.** No Member Firm shall have more than one representative serving on the Board at any time.
- G. Nominations for Office.** No later than May 15 of each year, the Nominating Committee (Article XI A [3]) shall nominate candidates for the elective offices and shall seek their willingness to serve.

H. Election to Office

- (1) *Balloting.* No later than May 20 of each year, the Executive Director shall mail an election ballot containing the names of the nominees to each Member Firm Representative, who shall cast the ballot on behalf of his or her Member Firm. Completed ballots shall be validated by the signature of the Member Firm Representative or designated alternate. The election ballot shall be delivered to the Executive Director by the close of business May 31, and votes of the Member Firms shall be counted on or before June 10. The nominee who receives the largest number of valid votes for an office shall be declared elected.
- (2) *Announcement of Election Results.* The Executive Director shall announce the names of the officers elected in the next issue of the official publication of ACEC Oregon.

I. Vacancies. Vacancies on the Board shall be filled as follows:

- (1) *President.* The President-Elect shall complete the term of the President.
- (2) *President Elect.* The Board shall direct the nominating committee to nominate a replacement. A special election shall be held within 60 days from the day the vacancy was created.
- (3) *Secretary/Treasurer.* The Board with a majority vote shall appoint a replacement. The replacement shall serve until the next annual election.
- (4) *Vice President.* The Board with a majority vote shall appoint a replacement. The replacement shall serve until the next annual election.
- (5) *Immediate Past President.* The Board shall appoint another past president to fill the term.
- (6) *Regional Vice President.* The Board with a majority vote shall appoint a replacement. The replacement shall serve until the next annual election.

J. Special One-Year Terms. The Board shall monitor the expiration times of the Vice Presidents, the Secretary/Treasurer and Regional Vice President terms of office and declare elections for special one-year terms as necessary to insure that, in the future, two and only two Vice Presidential terms expire each year and the Secretary/Treasurer and Regional Vice President terms of office expire during alternate years.

Article VIII. EXECUTIVE COMMITTEE

- A. **Composition.** The Executive Committee shall consist of these five members: Past President, President, President-Elect, Secretary/Treasurer, and a Vice President who shall be elected by the Board.
- B. **Regular Meetings.** Meetings of the Executive Committee shall be held at the call of the President or at the call of at least three members of the Executive Committee.
- C. **Quorum.** The presence at a meeting of at least three of the members of the Executive Committee, and not by proxy, shall constitute a quorum for the transaction of business.
- D. **Voting Action.** For the transaction of business, a simple majority of the votes cast at a meeting shall constitute action of the Executive Committee.

Article IX. MANAGEMENT

A. Duties and Responsibilities

- (1) *Board of Directors (Board)*. The Board is responsible for establishing organizational goals to fulfill ACEC Oregon's purposes. Progress toward accomplishment of the goals shall be monitored, and control shall be exercised to ensure results. The Board shall exercise leadership in Planning, Operations, and External Relations.

The Board shall seek to fulfill the purposes of and manage the affairs of ACEC Oregon in accordance with the laws under which ACEC Oregon is organized and within the provisions of applicable law, Articles of Incorporation and Bylaws. The Board shall direct the investment and care of the funds of ACEC Oregon, adopt an annual budget and make appropriations for specific purposes, act upon applications for membership, take measures to advance the practice of consulting engineers and the interests of ACEC Oregon, designate the appointive officers, perform the specific duties required of it by the Bylaws, and generally direct the business of ACEC Oregon.
- (2) *Executive Committee*. Between meetings of the Board, the Executive Committee shall exercise full powers of the Board in matters that, in the judgment of the Executive Committee, must be acted upon before the next regular meeting of the Board. All actions taken by the Executive Committee shall be in accordance with the general policies of the Board and shall be reported to the Board at its next meeting.
- (3) *President*. The President is the chief elected officer of ACEC Oregon and shall, subject to authority of the Board, have responsibility for the general management of its affairs; preside over all meetings of ACEC Oregon, the Board, and the Executive Committee; assign administrative responsibility for committees to other members of the Board; and be an ex-officio member of all committees. The President shall serve as Alternate National Director (Article IX A [9]).
- (4) *President-Elect*. The President-Elect shall prepare for the next year as President, be assigned duties by the President, and be a member of the Operations/Administration Committee (Article XI A [4]).
- (5) *Secretary/Treasurer*. The Secretary/Treasurer shall:
 - (a) Be empowered to defray the operating expenses of ACEC Oregon.
 - (b) Be responsible for collection of all monies due to ACEC Oregon and for the transfer of such monies to the appropriate bank accounts.
 - (c) Exercise supervision over the records, files, and books of account of ACEC Oregon and exercise customary managerial functions with regard to the financial transactions of ACEC Oregon.
 - (d) Present monthly financial reports to the Board.
 - (e) Sign documents relating to transactions in securities.
 - (f) Present a balance sheet of ACEC Oregon's books to the Board annually.
 - (g) Furnish other financial documents as may be required.
 - (h) Be responsible to invest, on the recommendation of the Board, funds not needed for current disbursements.



AMERICAN COUNCIL OF ENGINEERING COMPANIES OF OREGON

- (i) Sign legal documents and be empowered to sign ACEC Oregon checks as appropriate.
 - (j) Attend all meetings of the Board and Executive Committee.
 - (k) Serve ex-officio as a member of the Operations/Administration Committee (Article XI A [4]).
 - (l) Assist in the preparation and approval of the annual budget for ACEC Oregon.
- (6) *Vice President and Regional Vice President.* Each Vice President and the Regional Vice President may be assigned duties, including the administration of committees, and may preside at any meeting of ACEC Oregon, the Board, or the Executive Committee, at the request of the President.
- (7) *Past President.* The Past President may be assigned duties including the administration of committees.
- (8) *Executive Director.* Under the direction of the President, the Executive Director shall:
- (a) Be the chief staff executive of ACEC Oregon.
 - (b) Be paid a salary and enjoy fringe benefits in such amounts as shall be determined by the Board.
 - (c) Attend all meetings of the Board and Executive Committee.
 - (d) Be responsible for preparing reports as may be prescribed by the Board or Executive Committee.
 - (e) Be responsible for keeping minutes of the meetings of the Board and the Executive Committee.
 - (f) Supervise the work of employees of ACEC Oregon.
 - (g) Have charge of all ACEC Oregon properties.
 - (h) With the direction and assistance of the Secretary/Treasurer, conduct and maintain full records of the correspondence of ACEC Oregon.
 - (i) With the assistance and approval of the Secretary/Treasurer, be responsible for the preparation of the agenda and the official records of the proceedings of the Board and Executive Committee meetings.
 - (j) Be responsible for maintaining the official records and documents of ACEC Oregon.
- (9) *National Director.* The National Director shall be appointed by the Board and shall serve for a minimum of two years. The National Director will attend all National ACEC Meetings and will report to the Board following all meetings. The National Director shall seek the opinion of the Board on issues prior to voting sessions. The President, as Alternate National Director, shall substitute with all rights and duties for the National Director if the National Director is unable to attend an ACEC National Meeting.

Article X. MEETINGS

- A. Board of Directors.** The Board shall meet at the call of the President or at such time as the Board may designate. Any member in good standing may attend any meeting of the Board.
- B. Council Meetings.** Regular council meetings shall be held on dates selected by the Board. No meeting shall be held unless an announcement, together with information on the primary subject, shall have been sent to members of each class at least five days before the date of the meeting.

- C. Procedure.** The Rules of Procedure for meetings shall be as established by the Board, or in the absence of specific Bylaws or Rules of Policy and Procedure, Robert's Rules of Order, Revised. Only Member Firm Representatives or their designated alternates shall make and second motions. The President may recognize others for discussion purposes during meetings of the Board.

Article XI. COMMITTEES

A. Creation and Classification

- (1) The Board shall annually appoint the members, designate the chairpersons, and outline the duties of all committees except the Nominating Committee. Committees shall report to the Board of Directors.
- (2) The Board may discontinue any committee or appoint other committees from the roster of Member Firms and Affiliate Member Firms.
- (3) The Nominating Committee shall consist of the five immediate Past Presidents. The chairperson shall be the Past President with the longest nominating committee tenure. If one or more of the immediate five Past Presidents cannot serve on the Nominating Committee, the Board shall appoint other Past Presidents as replacements.
- (4) The Operations/Administration Committee shall provide budget oversight, monitor the financial affairs of ACEC Oregon, and write and recommend sound fiscal policies and procedures, including investment strategies, for approval by the Board.

Article XII. AMENDMENTS TO ARTICLES OF INCORPORATION AND BYLAWS

- A. Amendments.** Amendments to the Articles of Incorporation and these Bylaws may be proposed by either of these procedures:
- (1) Written petition submitted by not fewer than ten (10) Member Firms to the Board.
 - (2) By majority vote of the Board.
- B. Proposed Amendments.** All such amendments shall be presented to the membership by written notification and presented at a general membership meeting. Notification of meeting and proposed amendments shall be a minimum of thirty (30) days prior to a general meeting.
- C. Vote.** Amendments to the Articles of Incorporation and the Bylaws shall require two-thirds majority of the voting Member Firms with at least 50 percent of Member Firms voting. Amendments shall become effective immediately unless stated otherwise in the amendment.
- D. Mail Vote.** If it is deemed necessary by the Board, a mail ballot may be used for voting on amendments if the other requirements as set forth above are met.



AMERICAN COUNCIL OF ENGINEERING COMPANIES OF OREGON

Article XIII. USE OF ACEC OREGON'S NAME AND EMBLEM

Member Firms and Affiliate Member Firms shall be authorized to use the name of ACEC Oregon or its approved abbreviation ("ACEC Oregon") after their names, and also to use the official ACEC Oregon emblem, name or abbreviation on stationery, business cards, brochures, job signs and as otherwise prescribed by the Board. ACEC Oregon's name, abbreviation or emblem shall not be imprinted upon drawings, reports, specifications, calculations or other instruments of service prepared or used by members of any class. Any use of ACEC Oregon's name, abbreviation or emblem shall be made only to signify affiliation with ACEC Oregon and shall not be made in any manner that could reasonably suggest that members of any class necessarily represent, or are, ACEC Oregon. Use of ACEC Oregon's name or emblem shall cease upon separation.

Article XIV. OFFICIAL PUBLICATION

Except as otherwise required by law or by any provision of the Articles of Incorporation or these Bylaws, notices and announcements relating to ACEC Oregon that are published in the ACEC Oregon newsletter and mailed or e-mailed to members of all classes shall be deemed to have been brought to the attention of all members of ACEC Oregon.

Article XV. INDEMNIFICATION

ACEC Oregon may, by resolution of the Board, provide for indemnification by ACEC Oregon of any and all of its current or former officers, directors, staff, or committee members against expenses actually and necessarily incurred by them in connection with the defense of any action, suit, or proceeding, in which they or any of them are made parties, or a party, by reason of having been an officer, director, staff, or committee member, except in relation to matters as to which such individuals shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty and to matters as shall be settled by agreement predicated on the existence of such liability for negligence or misconduct. ACEC Oregon shall indemnify its officers and directors to the fullest extent allowed by current or future Oregon Nonprofit Corporation Act.

Policies & Procedures of the American Council of Engineering Companies of Oregon

I. Refunds

The Executive Director is authorized to exercise discretion and may refund all or a portion of a program registration. A member of any class may appeal the Executive Director's decision concerning a refund by submitting a letter to the Board of Directors (Board). A letter of appeal from a member will be placed on the agenda for consideration at the next regularly scheduled meeting of the Board.

II. National Director's Expenses

The National Director shall submit a budget request to the Operations/Administration Committee each year. The National Director or Alternate National Director shall submit his or her actual expenses for reimbursement.

III. Member Information for Outside Groups

The Executive Director shall have discretion in making member information available to outside groups but shall not provide member information to organizations for commercial use. Engineering-related groups may generally be provided member information at cost if their purpose in making the request is deemed to be of benefit to the membership. Member information will not be made available to political candidates for their use.

IV. Life Membership

The Board of Directors shall bestow Life Membership according to the requirements set forth in the ACEC Oregon Bylaws (Article II F). The Board retains the privilege of withdrawing Life Membership should an individual resume his or her employment in a capacity not allowed in Article II F. Life Membership entitles an individual to receive all general ACEC Oregon mailings and publications, but a Life Member may not serve on the Board, as an officer of the organization, or as a regular member of a committee. The Life Member shall be listed only in the Life Membership section of the Membership Directory, and when Life Membership is bestowed, it will be noted in the newsletter and a certificate of Life Membership will be mailed or presented to the recipient at an ACEC Oregon meeting.

V. Reserve Fund Policy

ACEC Oregon shall establish and maintain a Reserve Fund. The primary purpose of the Reserve Fund shall be to provide resources for unforeseen contingencies, for example, a dramatic reduction in membership and income, a significant and unanticipated increase in operating costs, a substantial need for investment in equipment, or an essential program that could not have been anticipated in advance of the budgeting process. The Reserve Fund should be available for use on relatively short notice, and the investment policy for these funds should therefore reflect this. The Reserve Fund shall be separate from any other reserves established and maintained by ACEC Oregon

The goal of ACEC Oregon shall be to maintain the Reserve Fund at a level such that the fund is at least thirty (30) percent of ACEC Oregon's membership dues budget, exclusive of other revenue sources. ACEC Oregon shall strive to budget such that surpluses are accumulated annually and then maintained. The Reserve Fund may be used at the discretion of the Board following notification to the Operations/Administration Committee. However, if the Reserve Fund drops below the minimal level, the Board shall, through a membership dues increase, restore the Reserve Fund to the prescribed policy level within a four-year period.

The Reserve Fund shall be invested at the direction of the Board in commercial instruments that provide reasonable opportunities for good return with minimum risk for loss or fluctuation of principal.

VI. Termination Process

The Board shall terminate a member only after the member has had the opportunity to be heard by a committee designated by the Board. The findings and recommendations of the committee shall be forwarded in writing to the Board and to the member concerned. The action of the Board shall be final. All member classes waive any claim for libel or slander against ACEC Oregon, the Board, officers or employees of ACEC Oregon resulting from any action in good faith, hearing or termination procedure under this subsection.

VII. Expulsion Process

The Board shall respond to any letter of complaint that alleges a violation of ethical or professional conduct of a member by appointing a committee to investigate and render findings and recommendations in writing to the Board for disposition. The member shall have an opportunity to be heard by the committee. If the findings of the committee are approved by at least two-thirds of the Board, disposition of the complaint shall be by a letter as follows: (1) letter of dismissal of complaint, (2) letter of admonition, (3) letter of expulsion. The letter of dismissal shall be rendered when the complaint is judged to be without merit. The letter of admonition shall be rendered at the discretion of the Board if the allegations are judged to be true, but not sufficiently serious, and are judged to be neither ongoing nor likely to recur. Expulsion shall be for complaints judged sufficiently serious as to be detrimental to the interests of the engineering profession and ACEC Oregon. If the findings of the committee are not approved by at least a two-thirds majority of the Board, a letter of dismissal of the complaint shall be sent. The action of the Board shall be final. All member classes waive any claim for libel or slander against ACEC Oregon, the Board, officers, or employees of ACEC Oregon resulting from any action in good faith, hearing or termination procedure under this subsection.