Introduction

DEQ invites public input on proposed permanent rule amendments to chapter 340 of the Oregon Administrative Rules.

Background

DEQ proposal
DEQ proposes the following changes to OAR 340, division 54 that will:

- Amend Clean Water State Revolving Fund rules to align with amendments to federal law to:
  - Expand eligible land purchase costs for treatment works construction projects,
  - Define eligible recipients for additional subsidization,
  - Incorporate federal regulation requirements for procuring architectural and engineering contracts.

- Amend Clean Water State Revolving Fund rules to allow for fiscal and programmatic flexibility to ensure the fund’s perpetuity that will:
  - Increase the extension period for applicants to remain on the program’s Intended Use Plan,
  - Establish criteria for refinancing and restructuring loans,
  - Extend the timeframe for a borrower to request its first loan disbursement,
  - Require a 30 day prepayment notification from borrowers that intend to prepay a loan,
  - Offer eligible borrowers an alternate subsidy that is equivalent to principal forgiveness,
  - Create a principal forgiveness calculation for eligible green projects based on the cost of the green project components,
  - Clarify and simplify rule language to comply with plain language requirements.

- Remove bond purchase language that expired on Feb. 1, 2016.

More information
Information about this rulemaking is on this rulemaking’s web page: Clean Water State Revolving Fund Rulemaking

Public Hearings
DEQ will hold public hearings on this rulemaking.

Anyone can attend the public hearings, either in person or through teleconference. The details are listed below.
How to join a webinar or teleconference: Webinar instructions

What will happen next?
DEQ will include a written response to comments in a staff report DEQ will submit to the Environmental Quality Commission. DEQ may modify the rule proposal based on the comments.

Present proposal to the EQC
Proposed rules only become effective if the Environmental Quality Commission adopts them. DEQ plans to present the proposed rules to the commission for a decision at its meeting on Nov. 1-2, 2017.

How to comment on this rulemaking proposal
DEQ is asking for public comment on the proposed rules. Anyone can submit comments and questions about this rulemaking. A person can submit comments through an online web page, by regular mail or at the public hearing.

Comment deadline
DEQ will only consider comments on the proposed rules that DEQ receives by 4 p.m., on Aug. 18, 2017.

Submit comment online
Anyone can submit comments through this web page: CWSRF 2017 Rulemaking Comments

Note for public university students:
ORS 192.501(29) allows Oregon public university and OHSU students to protect their university email addresses from disclosure under Oregon’s public records law. If you are an Oregon public university or OHSU student you may omit your email address when you complete the online form to submit a comment.

By mail
Oregon Department of Environmental Quality
Attn: Lee Ann Lawrence
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100

At hearing
2 p.m. to 4 p.m., Aug. 15, 2017
Sign up for rulemaking notices
Get email updates about future notices about this rulemaking by signing up through:
- Clean Water State Revolving Fund Notices, or
- On the rulemaking website: Clean Water State Revolving Fund 2017 Rulemaking

Accessibility information
You may review copies of all documents referenced in this announcement at:

Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232

To schedule a review of all websites and documents referenced in this announcement, call Lee Ann Lawrence, Program Coordinator, at 503-229-5622 (800-452-4011, ext. 5622 toll-free in Oregon).

Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ, Portland, at 503-229-5696 or call toll-free in Oregon at 1-800-452-4011, ext. 5696; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. Hearing impaired persons may call 711.
Overview

Brief history
In 2015, DEQ adopted rules required by the Water Resources Reform and Development Act of 2014 that amended Titles I, II, V and VI of the federal Water Pollution Control Act, also known as the Clean Water Act. One of the several amendments changed the definition for additional subsidization. This amendment excluded certain special districts, including irrigation districts, from being eligible for additional subsidization. In Oregon, the program offers additional subsidization in the form of principal forgiveness. As a result of the amendment and corresponding rule change, the Environmental Quality Commission asked DEQ to consider options to resolve the principle forgiveness ineligibility issue that affected irrigation districts.

DEQ initiated this rulemaking to develop an alternate subsidy, in lieu of principal forgiveness, for special districts. Subsequently, on Dec. 16, 2016, President Obama signed the Water Infrastructure Improvements for the Nation Act that amended the Clean Water Act again and changed the eligibility for additional subsidization to include special districts.

Now that special districts are eligible for additional subsidization, DEQ continues to propose the alternate subsidy and to adopt the federal “eligible recipient” definition.

In addition, DEQ will incorporate the optional program policy changes from the Water Resources Reform and Development Act of 2014 to expand eligible land purchase costs for treatment works projects.

The focus of this rulemaking is to ensure the Clean Water State Revolving Fund loan program continues to revolve funds. Program staff evaluated the benefits of implementing rule changes that will allow:
- An alternate subsidy for borrowers,
- The option to refinance and restructure loans under certain circumstances, and
- Policy changes that increase programmatic flexibility to benefit borrowers and perpetuate the availability of the fund for years to come.

Regulated parties
The proposed rules apply to public agencies in the state of Oregon that seek financing for water pollution control activities through the Clean Water State Revolving Fund.
Request for other options

During the public comment period, DEQ requests public comment on whether to consider other options for achieving the rules’ substantive goals while reducing the rules’ negative economic impact on business.
# Statement of need

## Including Eligible Land Costs for Building Treatment Works

### 340-054-0015 Eligible projects and activities

| What need would the proposed rule address? | Current rules do not allow program funding to be used for purchasing land that is “integral to the treatment process” and all land that is “necessary for construction.” The 2014 Water Resources Reform and Development Act amended the Clean Water Act section 212(2)(A) definition of “treatment works” to expand eligible land purchase costs for the Clean Water State Revolving Fund loan program. The revised definition allows purchasing land that is “integral to the treatment process” as well as those lands “necessary for construction.” |
| How would the proposed rule address the need? | The proposed rule allows project costs to include the purchase of land needed to build a facility itself and land that is necessary to complete the construction process. Borrowers will be authorized to use Clean Water State Revolving Fund loans to purchase additional land integral to the treatment process when building a treatment works project that was not previously eligible for purchase with Clean Water State Revolving Fund loans. To clarify eligibility, the proposed rule change includes a reordering of the types of eligible projects listed under “public agency” and “municipality or intermunicipal, interstate, or state agency.” |
| How will DEQ know the rule addressed the need? | DEQ will receive applications for funding that include projects with additional land costs. DEQ will receive loan disbursement requests for additional land costs. Borrowers will purchase additional eligible land for constructing treatment works projects. |
### A waiver option for approved plans and specifications for nonpoint source projects

**340-054-0022(4)(f) Loan application requirements, Local community loan.**

<table>
<thead>
<tr>
<th>What need would the proposed rule address?</th>
<th>The requirement in 340-054-0022(4)(f) to approve plans and specifications is inappropriate for the majority of the nonpoint source projects funded through a Local Community Loan because few nonpoint source project are at the level of complexity needing plans and specifications approved by DEQ engineers as OAR 340-052-0022 authorizes.</th>
</tr>
</thead>
<tbody>
<tr>
<td>How would the proposed rule address the need?</td>
<td>The proposed rule would allow DEQ engineers to waive the requirement for approved plans and specifications for nonpoint source projects funded through a Local Community Loan when the project does not have a treatment works component and when the project does not have the level of complexity needing plans and specifications approved by DEQ engineers as OAR 340-052-0022 authorizes.</td>
</tr>
<tr>
<td>How will DEQ know the rule addressed the need?</td>
<td>The loan agreement process will be expedited and borrowers will save money.</td>
</tr>
</tbody>
</table>

### Increasing Intended Use Plan Extension Period

**340-054-0025(6) Removal of application from the project priority list.**

<table>
<thead>
<tr>
<th>What need would the proposed rule address?</th>
<th>Applicants’ projects can remain on the program’s Intended Use Plan for three years and applicants can request a six month extension if needed. Some applicants need more than a six month extension to complete loan agreement requirements before being removed from the Intended Use Plan.</th>
</tr>
</thead>
<tbody>
<tr>
<td>How would the proposed rule address the need?</td>
<td>The proposed rule will increase the timeframe for the extension period from six months to twelve months for applicants’ projects included in the Clean Water State Revolving Fund’s Intended Use Plan.</td>
</tr>
<tr>
<td>How will DEQ know the rule addressed the need?</td>
<td>Applicants will complete loan agreement requirements during the increased extension period and sign a loan agreement instead of being removed from the Intended Use Plan and</td>
</tr>
</tbody>
</table>
### Increasing Intended Use Plan Extension Period

| being required to reapply or forfeit Clean Water State Revolving Fund financing. |

### 340-054-0060 Loan Agreement and Conditions

**340-054-0060(1) Timely use of loan funding.**

<table>
<thead>
<tr>
<th>What need would the proposed rule address?</th>
<th>Borrowers who have not begun to use loan proceeds within two years after executing a loan agreement will have the option to avoid an automatic loan cancellation.</th>
</tr>
</thead>
<tbody>
<tr>
<td>How would the proposed rule address the need?</td>
<td>The proposed rule will allow borrowers to request a one-time, one year extension to begin using loan proceeds and pay holding costs or to cancel the loan and reapply for funding.</td>
</tr>
<tr>
<td>How will DEQ know the rule addressed the need?</td>
<td>Loans will not be automatically cancelled when a borrower has not begun to use loan proceeds within two years after signing a loan agreement.</td>
</tr>
</tbody>
</table>

### Including federal regulation requirements for procurement

**340-054-0060(15) Architectural and engineering services.**

<table>
<thead>
<tr>
<th>What need would the proposed rule address?</th>
<th>The State of Oregon procurement process for contracting architectural and engineering services does not currently apply to federally recognized Indian Tribes, a subset of eligible borrowers.</th>
</tr>
</thead>
<tbody>
<tr>
<td>How would the proposed rule address the need?</td>
<td>The proposed rule allows borrowers to choose between the State of Oregon’s process for contracting architectural and engineering services and the federal process. This allows federally recognized Indian Tribes, a subset of eligible borrowers, to elect to follow the federal process instead of the State of Oregon process, which does not apply to tribes.</td>
</tr>
<tr>
<td>How will DEQ know the rule addressed the need?</td>
<td>Borrowers will choose the federal procurement process when it applies and is beneficial.</td>
</tr>
</tbody>
</table>
### 340-054-0065 Loan Types, Terms and Interest Rates

#### Prepayment Notification

<table>
<thead>
<tr>
<th>340-054-0065(8)(b) Loan term.</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>What need would the proposed rule address?</td>
<td>DEQ needs at least a 30 day notification from a borrower when they plan to prepay a loan.</td>
</tr>
<tr>
<td>How would the proposed rule address the need?</td>
<td>The proposed rule will require borrowers to provide a written notification 30 days before the estimated pay off date. This will give DEQ enough time to plan for the prepayment or to decide whether to negotiate a refinance option for the loan to ensure the fund’s perpetuity.</td>
</tr>
<tr>
<td>How will DEQ know the rule addressed the need?</td>
<td>DEQ will receive notice if a borrower plans to prepay.</td>
</tr>
<tr>
<td></td>
<td>DEQ may refinance loans and retain the interest and fees that will ensure the fund’s perpetuity.</td>
</tr>
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<td></td>
<td>DEQ will maintain the fund’s utilization rate more securely and avoid the risk of a reduced fund utilization rate.</td>
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</tbody>
</table>

#### 340-054-0065(10) Restructure and refinance CWSRF loans.

<p>| |</p>
<table>
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<td>What need would the proposed rule address?</td>
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<td>How would the proposed rule address the need?</td>
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</tbody>
</table>
### 340-054-0065 Loan Types, Terms and Interest Rates

<table>
<thead>
<tr>
<th>How will DEQ know the rule addressed the need?</th>
<th>The program will have less prepayments and simplified repayment processes for borrowers with multiple Clean Water State Revolving Fund loans.</th>
</tr>
</thead>
</table>

### Adopting federal language

<table>
<thead>
<tr>
<th>340-054-0010(12)</th>
<th>340-054-0065(12)(a)(A),(B),(C) Additional subsidization</th>
</tr>
</thead>
<tbody>
<tr>
<td>What need would the proposed rule address?</td>
<td>Not all public agencies are eligible for additional subsidization. This limits their ability to participate in and benefit from the program.</td>
</tr>
<tr>
<td>How would the proposed rule address the need?</td>
<td>The proposed rule adopts the federal definition “eligible recipient” from the Water Infrastructure Improvements for the Nation Act that amended the Clean Water Act and changed the eligibility for additional subsidization to include special districts. This allows more public agencies to be eligible for additional subsidization.</td>
</tr>
<tr>
<td>How will DEQ know the rule addressed the need?</td>
<td>The program will offer special districts additional subsidization for eligible projects when available.</td>
</tr>
</tbody>
</table>

### Alternate Subsidy

<table>
<thead>
<tr>
<th>340-054-0065(12)(e) Alternate subsidy.</th>
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<td>What need would the proposed rule address?</td>
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<td>How would the proposed rule address the need?</td>
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<td>How will DEQ know the rule addressed the need?</td>
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</table>
### Principal Forgiveness for Green Project Components

**What need would the proposed rule address?**
Current practices may allow additional subsidization for portions of projects that are not considered green or sustainable.

**How would the proposed rule address the need?**
The proposed rule establishes a calculation that will limit the amount to 50 percent of the green and/or sustainable components of the project, not to exceed the total amount of principal forgiveness allowable. This will help ensure the subsidization is used only for the green or sustainable portions of a project.

**How will DEQ know the rule addressed the need?**
Borrowers will not receive the maximum principal forgiveness amount allowable for parts of projects that do not qualify under the [EPA’s Green Project Reserve Crosswalk](#).

### Housekeeping

**What need would the proposed rule address?**
Some existing rules are unclear or redundant.

**How would the proposed rule address the need?**
The proposed rules include small adjustments to improve readability, to use active voice and to simplify language, consistent with plain language requirements.

**How will DEQ know the rule addressed the need?**
Applicants, borrowers and stakeholders will have a better understanding of program rules.
**Rules affected, authorities, supporting documents**

**Lead division**
Operation Division

**Program or activity**
Community Programs and Assistance, the Clean Water State Revolving Fund

**Chapter 340 action**

Adopt

None.

**Amend - OAR**

340-054-0060  340-054-0065  340-054-0071  340-054-0072

**Repeal - OAR**

None.

**Renumber - OAR**

None.

**Statutory authority - ORS**

468.020  468.440

**Statute implemented - ORS**

468.423 - 468.440

**Legislation**

None.
## Documents relied on for rulemaking

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Fee Analysis

This rulemaking does not involve fees.
**Statement of fiscal and economic impact**

**Fiscal and Economic Impact**

There are numerous positive fiscal impacts from the proposed rule changes to DEQ’s Clean Water State Revolving Fund. Fiscal benefits for local governments, the primary applicants and borrowers of program funds, include better financing options such as restructuring or refinancing loans, more subsidy, additional eligible project costs and extending the period for remaining listed in the Intended Use Plan.

The program itself may experience negative fiscal impacts that increase administration costs and increase the fund’s utilization rate. No other DEQ program will be impacted.

There are also indirect economic benefits to the general public and business owners located in the service area near a project funded by the loan program. Loan funds allow a borrower to avoid rate increases through new financing options or principal forgiveness.

**Statement of Cost of Compliance**

**State agencies**

**DEQ**

The revolving nature of the fund makes the Clean Water State Revolving Fund program self-sustaining in terms of administration and program costs. The proposed rules would have limited direct fiscal impacts to the program and no impacts to other DEQ programs.

Direct Impacts

- Including eligible land costs for building treatment works: Fund utilization could increase which could increase the cost to the program but also increase the amount of interest and fees generated by the program.
- Increasing Intended Use Plan extension period: Fund utilization could increase which could increase the cost to the program but also increase the amount of interest and fees generated by the program.
- Timely use of loan funding: Collecting holding costs for loans not disbursed within the original two year timeline would reduce program costs by filling the gap between what funds earn in the treasury pool and what a loan would earn in repayment.
- Prepayment notification: Prepayments in fiscal years 2014 through 2016 totaled $83 million, costing the program about $10.6 million in lost interest and $2.7 million in lost fees over the next 20 years. Notification of intent to prepay a loan
allows DEQ to prepare for recommitting the additional funds, reducing the loss of interest and fees, and reducing negative impacts to the program’s perpetuity.

- Restructuring and refinancing CWSRF loans: DEQ could incur additional administrative time and costs to restructure a borrower’s loans. Refinancing loans would allow the program to collect the interest and fees needed for the fund to revolve and generate future loan dollars. The ability to refinance loans could also reduce the impact of loan prepayments as described above.
- Alternate subsidy: May increase the number of projects awarded additional subsidization which would ensure DEQ meets its allocation requirement.
- Principle forgiveness for green projects: May increase the number of projects awarded additional subsidization which would ensure DEQ meets its allocation requirement. This could require more administrative costs in assessing and tracking fiscal information for more projects because the calculation may incentivize more borrowers to choose green project components. In turn, DEQ could forgive more principal and avoid carrying the additional subsidization balance into the next fiscal year.
- Housekeeping items: No known fiscal impact.

Other State and Federal Agencies

Proposed rule changes to the Clean Water State Revolving Fund program, including restructuring or refinancing loans and an alternate subsidy, could make the program a more economical financing option than other funding programs and increase the number of applicants. This could increase administrative time and costs for agencies that evaluate a project’s compliance with federal cross-cutting authorities.

Local governments

Local governments are the primary Clean Water State Revolving Fund applicants and borrowers. This includes cities, counties, sanitary districts, special districts, soil and water conservation districts and certain intergovernmental entities.

Direct Impacts

- Including eligible land costs for building treatment works: Eligible project costs now include purchasing land that is necessary to complete constructing treatment works, which benefits borrowers. Applicants will be able to request additional funds and increase the size and cost of projects.
- Increasing Intended Use Plan extension period: Extending the length of time an applicant can remain listed in the Intended Use Plan could result in an applicant obtaining a loan without reapplying to the program, reducing administrative time and costs.
- Timely use of loan funding: Borrowers could be invoiced for holding costs if a borrower does not request loan disbursements during the two year period and chooses not to have the loan canceled. Holding costs will make up the difference
between the amount the program could earn in the State Treasury Pool and the amount of interest the program could earn during loan repayment.

- Prepayment notification: No known fiscal impact.
- Restructuring or refinancing loans: Restructuring or combining loans could lower administrative costs for the borrower by reducing the number of multiple monthly transactions. Refinancing with DEQ could reduce a borrower’s costs to refinance an existing DEQ loan with another funding source. Conversely, by utilizing more loan funds to refinance debt, there would be potentially less funds available for other projects.
- Alternate subsidy: Offering additional subsidization in lieu of principal forgiveness would reduce the debt service.
- Principal forgiveness for green projects: DEQ will provide an incentive of up to 50 percent of the calculated dollar value for green project components, not to exceed 50 percent of the loan amount or $500,000, whichever is less. The current rule provides the incentive based upon the dollar amount of the entire loan. Changing the rule could potentially reduce the amount of principal forgiveness awarded. Conversely, applicants would be incentivized to increase the dollar amount allocated towards green projects and therefore increase the utilization of green project components for a project.
- Housekeeping items: The proposed rules could impose more costs on applicants and borrowers by requiring additional upfront planning and consulting for considerations such as: construction costs, replacement, maintenance and operations as well as the amount of water and energy conservation resulting from the project. However, the long-term fiscal impact of these new requirements should be beneficial because they promote more effective and sustainable projects.

Public

The general public is not eligible to borrow program funds.

Direct Impacts

No known direct impacts.

Indirect Impacts

Individual ratepayers may indirectly benefit if the new financing or principal forgiveness options allow the borrower to avoid service rate increases.

Large businesses - businesses with more than 50 employees

The proposed rules would have no direct economic impact on large businesses because they are not eligible to borrow program funds.

Direct Impacts
No known direct impacts

Indirect Impacts

There may be indirect beneficial economic impacts to businesses located in the service area near a project funded by the loan program, if the proposed changes allow the borrower to avoid rate increases.

Construction-related businesses may benefit from an increase in contracts if borrowers hire them to work on a project funded by the loan program.

**Small businesses – businesses with 50 or fewer employees**

The effect of the proposed rules on small businesses would be identical to the effect on large businesses, as described above.

**a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.**

None. Small businesses are not eligible to borrow the program’s funds.

**b. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.**

No additional activities are required to comply with the proposed rules.

**c. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.**

No additional resources are required for compliance with the proposed rules.

**d. Describe how DEQ involved small businesses in developing this proposed rule.**

No small businesses participated in developing the proposed rules because the rules do not directly affect them.
Documents relied on for fiscal and economic impact

<table>
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Advisory committee

DEQ appointed an advisory committee to provide input on the proposed rules and make recommendations on this fiscal and economic impact statement.

As ORS 183.33 requires, DEQ asked for the committee’s recommendations on:

- Whether the proposed rules would have a fiscal impact,
- The extent of the impact, and
- Whether the proposed rules would have a significant adverse impact on small businesses and how DEQ could comply with ORS 183.540.

The committee reviewed the draft fiscal and economic impact statement. The committee’s recommendations are documented in the advisory committee meeting summary dated April 12, 2017. The committee noted that the proposed rules will likely increase the fund utilization rate.

The committee determined the proposed rules would not have a significant adverse impact on small businesses in Oregon.

Housing cost

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. DEQ determined the proposed rules only affect the cost of developing publically-owned water quality control and protection projects and therefore do not affect housing costs under this statute.
Federal relationship

ORS 183.332, 468A.327 and OAR 340-011-0029 require DEQ to attempt to adopt rules that correspond with existing equivalent federal laws and rules unless there are reasons not to do so.

Relationship to federal requirements
The Clean Water State Revolving Fund is a federal program established in the Clean Water Act Section VI - STATE WATER POLLUTION CONTROL REVOLVING FUNDS (33 U.S. Code §1383) and 40 CRF Part 35.31.

Adoption of federal requirements
DEQ proposes to adopt optional federal requirements to expand program options for CWSRF borrowers.

Including Eligible Land Costs for Building Treatment Works

<table>
<thead>
<tr>
<th>Proposed Rule and Topic</th>
<th>Relationship to Federal Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>The proposed rule will allow the program to finance additional eligible land purchase costs for the construction of treatment works projects.</td>
<td>The 2014 Water Resources Reform and Development Act amended the Clean Water Act section 212(2)(A) definition of “treatment works” to include additional eligible land purchase costs for the Clean Water State Revolving Fund loan program. The revised definition allows purchasing land that is “integral to the treatment process” as well as those lands “necessary for construction.” The proposed rule allows the program to finance these costs.</td>
</tr>
</tbody>
</table>

Adopting federal language for additional subsidization eligibility

<table>
<thead>
<tr>
<th>Proposed Rule and Topic</th>
<th>Relationship to Federal Law</th>
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</thead>
<tbody>
<tr>
<td>The proposed rule will allow all public agencies, including special districts, to be eligible for additional subsidization.</td>
<td>The proposed rule adopts the federal definition “eligible recipient” from the Water Infrastructure Improvements for the Nation Act that amended</td>
</tr>
</tbody>
</table>
## Adopting federal language for additional subsidization eligibility

340-054-0010(13) Definitions

340-054-0065(12)(a)(A),(B),(C) Additional subsidization

### Proposed Rule and Topic | Relationship to Federal Law
---|---
| | Section 603(i)(1) of the Clean Water Act and changed the eligibility for additional subsidization to include special districts.

## Including federal regulation requirements for procurement

340-054-0060(15) Architectural and engineering services.

### Proposed Rule and Topic | Relationship to Federal Law
---|---
| The proposed rule will allow borrowers to choose between the state of Oregon’s and the federal process for contracting architectural and engineering services. | The Water Resources Reform and Development Act of 2014 incorporated section 602(b)(14) into the Clean Water Act, requiring borrowers to comply with specific procedures when contracting architectural and engineering services. The federal regulation requires that the process of procuring these contracts comply with either 40 United States Code, Chapter 11 or an equivalent state qualification-based process.

## The following proposed rules are not different from or in addition to federal requirements.

## Restructure and refinance CWSRF loans

340-054-0065(10) Restructure and refinance CWSRF loans. (new section)

### Proposed Rule and Topic | Relationship to Federal Law
---|---
| Oregon Administrative Rules do not allow refinancing or restructuring debt. The proposed rule will allow refinancing and restructuring and establish the criteria for refinancing and restructuring CWSRF debt. | Section 602(d)(2) of the Clean Water Act authorizes using the CWSRF to refinance debt. The Clean Water Act does not establish criteria for restructuring debt. |
The following proposed rules add requirements additional to those in federal requirements.

The proposed rules add requirements in addition to federal requirements to expand on how the State will implement the federal requirements to ensure the fund’s perpetuity. It is the state’s role to determine how to operate the program procedurally in order to meet the federal requirements. The proposed rules will define the state’s requirements to implement the program effectively.

### Increasing Intended Use Plan Extension Period

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<th>Relationship to Federal Law</th>
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</thead>
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<tr>
<td>340-054-0025(6) Removal of application from the project priority list.</td>
<td>Section 602(c) of the Clean Water Act does not specify the timeframe an applicant remains on the Intended Use Plan.</td>
</tr>
<tr>
<td>The proposed rule will increase the extension period for applicants to remain on the program’s Intended Use Plan from six months to twelve months to allow applicants to complete loan requirements. This prevents the applicant from having to reapply when they are close to signing a loan agreement.</td>
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</table>

### Timely Use of Loan Funding

<table>
<thead>
<tr>
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<th>Relationship to Federal Law</th>
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</thead>
<tbody>
<tr>
<td>340-054-0060(1) Timely use of loan funding</td>
<td>The Clean Water Act does not establish a timeframe for borrowers to request its first loan disbursement.</td>
</tr>
<tr>
<td>The proposed rule will extend the timeframe for a borrower to request its first loan disbursement.</td>
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<thead>
<tr>
<th><strong>Prepayment Notification</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>340-054-0065(8)(b) Loan Term</strong></td>
<td><strong>Relationship to Federal Law</strong></td>
</tr>
<tr>
<td>The proposed rule will require a 30 day prepayment notification from borrowers that intend to prepay a loan.</td>
<td>The Clean Water Act does not establish a prepayment notification from borrowers that intend to prepay a loan.</td>
</tr>
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<table>
<thead>
<tr>
<th><strong>Alternate Subsidy</strong></th>
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<tbody>
<tr>
<td><strong>340-054-0065(12)(e) Alternate subsidy.</strong></td>
<td><strong>Relationship to Federal Law</strong></td>
</tr>
<tr>
<td>The proposed rule will establish an alternate subsidy for eligible borrowers that is equivalent to principal forgiveness that would be available if EPA no longer required additional subsidization.</td>
<td>Section 603(i) of the Clean Water Act establishes additional subsidization in the form of principal forgiveness or as a negative interest loan.</td>
</tr>
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<table>
<thead>
<tr>
<th><strong>Principal Forgiveness for Green Project Components</strong></th>
<th></th>
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<tbody>
<tr>
<td><strong>340-054-0065(12)(f)(B) Additional subsidization, Award amount.</strong></td>
<td><strong>Relationship to Federal Law</strong></td>
</tr>
<tr>
<td>The proposed rule will create a principal forgiveness calculation for eligible green projects based on the cost of the green project components.</td>
<td>Section 603(i) of the Clean Water Act establishes additional subsidization in the form of principal forgiveness or as a negative interest loan based. Eligibility is based on affordability criteria and green/sustainability criteria.</td>
</tr>
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<table>
<thead>
<tr>
<th><strong>Housekeeping</strong></th>
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<tbody>
<tr>
<td><strong>Proposed Rule and Topic</strong></td>
<td><strong>Relationship to Federal Law</strong></td>
</tr>
<tr>
<td>The proposed rule will clarify and simplify rule language and punctuation.</td>
<td>This is in addition to federal requirements in order to address administrative issues.</td>
</tr>
</tbody>
</table>
What alternatives did DEQ consider if any?

DEQ chooses to align the Clean State Revolving Fund program with federal law as much as possible in the proposed rules. Program staff evaluated alternatives for addressing changes to the federal Clean Water Act in the rules. Staff chose to optimize complying with federal law and to incorporate additional policies that are unique to Oregon in an effort to help communities meet water quality infrastructure needs in an affordable way and to protect the perpetuity of the revolving loan fund.
Land use

Land-use considerations
In adopting new or amended rules, ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with statewide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 660-030-0005 and OAR 340 Division 18, DEQ considers that rules affect land use if:
- The statewide land use planning goals specifically refer to the rule or program, or
- The rule or program is reasonably expected to have significant effects on:
  - Resources, objectives or areas identified in the statewide planning goals, or
  - Present or future land uses identified in acknowledged comprehensive plans

To determine whether the proposed rules involve programs or actions that affect land use, DEQ reviewed its Statewide Agency Coordination plan, which describes the DEQ programs that have been determined to significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

<table>
<thead>
<tr>
<th>Goal</th>
<th>Title</th>
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<tbody>
<tr>
<td>5</td>
<td>Open Spaces, Scenic and Historic Areas, and Natural Resources</td>
</tr>
<tr>
<td>6</td>
<td>Air, Water and Land Resources Quality</td>
</tr>
<tr>
<td>9</td>
<td>Ocean Resources</td>
</tr>
<tr>
<td>11</td>
<td>Public Facilities and Services</td>
</tr>
<tr>
<td>16</td>
<td>Estuarial Resources</td>
</tr>
</tbody>
</table>

Statewide goals also specifically reference the following DEQ programs:
- Nonpoint source discharge water quality program – Goal 16
- Water quality and sewage disposal systems – Goal 16
- Water quality permits and oil spill regulations – Goal 19

Determination

DEQ determined that all the proposed rules affect programs or activities that the DEQ State Agency Coordination Program considers a land-use program.

There are implications for land use throughout the state if the proposed rules result in the program funding more water quality improvement projects.
DEQ’s land-use planning goals compliance and local plan compatibility procedures adequately cover the proposed rules. Any new projects funded under these proposed rules would have to comply with OAR 340-054-0022(5)(e), which requires demonstration that the projects comply with land-use requirements in OAR 340-018-0050 before they receive CWSRF funding.
Stakeholder and public involvement

Advisory committee

Background
DEQ convened the standing Clean Water State Revolving Fund advisory committee. The committee included representatives from organizations with an interest in public water quality financing and water quality improvement projects. The committee met three times.

The committee’s web page is located at: CWSRF advisory committee.

The committee members were:

<table>
<thead>
<tr>
<th>Name</th>
<th>Representing</th>
</tr>
</thead>
<tbody>
<tr>
<td>April Snell</td>
<td>Oregon Water Resources Congress</td>
</tr>
<tr>
<td>Carl Tappert</td>
<td>Rogue Valley Sewer Services, representing Special Districts Association of Oregon</td>
</tr>
<tr>
<td>Chris Marko</td>
<td>Rural Community Assistance Corp.</td>
</tr>
<tr>
<td>Chris Thomas</td>
<td>The Freshwater Trust</td>
</tr>
<tr>
<td>Doug Waugh</td>
<td>Clackamas Water Environment Services, representing Oregon Association of Clean Water Agencies</td>
</tr>
<tr>
<td>Emily Ackland</td>
<td>Association of Oregon Counties</td>
</tr>
<tr>
<td>Jan Lee</td>
<td>Oregon Association of Conservation Districts</td>
</tr>
<tr>
<td>Jason Green</td>
<td>Oregon Association of Water Utilities</td>
</tr>
<tr>
<td>Jeremy McVeety</td>
<td>Infrastructure Finance Authority</td>
</tr>
<tr>
<td>Lori Grant</td>
<td>Oregon Environmental Council</td>
</tr>
<tr>
<td>Sam Goldstein</td>
<td>USDA, Rural Development</td>
</tr>
<tr>
<td>Todd Miller</td>
<td>City of Springfield, representing League of Oregon Cities</td>
</tr>
<tr>
<td>Tom Elliott</td>
<td>Oregon Department of Energy</td>
</tr>
</tbody>
</table>

Meeting notifications

To notify people about the advisory committee’s activities, DEQ:
- On April 4, 2017, sent GovDelivery bulletins, a free e-mail subscription service, to the following lists:
• Rulemaking
• Clean Water State Revolving Fund
• DEQ Public Notices

• Added advisory committee announcements to DEQ’s calendar of public meetings at DEQ Calendar.
• On April 4, 2017, DEQ provided notice of meetings and links to committee information through postings on Facebook and Twitter.
• On April 6, 2017, published a press release

Committee discussions
In addition to the recommendations described under the Statement of Fiscal and Economic Impact section above, the committee reviewed and commented on each of the proposed rule topics. The committee recommended parameters for restructuring and refinancing loans, the prepayment notification, and the principal forgiveness calculation for green projects. The committee concluded that the proposed rules meet the needs of the fund’s stakeholders. Some committee members requested additional discussions to better understand the meaning of “integral to treatment works” as it relates to eligible land costs. The discussion will be scheduled at a later time.

EQC prior involvement
DEQ did not present additional information specific to this proposed rule revision.
Public notice and hearings

Public notice
DEQ provided notice of the proposed rulemaking and rulemaking hearing on July 14, 2017 by:

- Filing notice with the Oregon Secretary of State for publication in the Aug. 2017 Oregon Bulletin;
- Posting the Notice, including the draft rules, on the web page for this rulemaking, located at: CWSRF 2017 rulemaking;
- Emailing 11,610 interested parties on the following DEQ lists through GovDelivery:
  - Rulemaking
  - Clean Water State Revolving Fund
  - DEQ public notices
- Emailing the following key legislators required under ORS 183.335:
  - Senator Michael Dembrow, Chair, Senate Environment and Natural Resources Committee
  - Representative Ken Helm, Chair, House Energy and Environment Committee
- Emailing advisory committee members,
- Postings on Twitter and Facebook,
- Posting on the DEQ event calendar: DEQ Calendar

Public hearings
DEQ plans to hold one public hearing. The details are listed below. Anyone can attend a hearing in person, or by teleconference.

DEQ will consider all written comments received at the hearings listed below before completing the draft rules. DEQ will summarize all comments and respond to comments in the Environmental Quality Commission staff report.

<table>
<thead>
<tr>
<th>Hearing</th>
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<tbody>
<tr>
<td>Date</td>
</tr>
<tr>
<td>Time</td>
</tr>
<tr>
<td>Street Address</td>
</tr>
<tr>
<td>City</td>
</tr>
<tr>
<td>Presiding Officer</td>
</tr>
<tr>
<td>Staff Presenter</td>
</tr>
</tbody>
</table>
### How to comment on the proposed rules:

**Submit comment online**

[CWSRF rulemaking comment page](#)

**Note for public university students:**
ORS 192.501(29) allows Oregon public university and OHSU students to protect their university email addresses from disclosure under Oregon’s public records law. If you are an Oregon public university or OHSU student you may omit your email address when you complete the online form to submit a comment.

**By mail**

Oregon DEQ  
Attn: Lee Ann Lawrence  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232

**At the hearing**

**Close of public comment period**

The comment period will close 4 p.m. on Aug. 18, 2017.

**Accessibility Information**

You may review copies of all documents referenced in this announcement at:

Oregon Department of Environmental Quality  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232
To schedule a review of all websites and documents referenced in this announcement, call Lee Ann Lawrence, Program Coordinator, 503-229-5622 (800-452-4011, ext. 5622 toll-free in Oregon).

Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ, Portland, at 503-229-5696 or call toll-free in Oregon at 1-800-452-4011, ext. 5696; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. Hearing impaired persons may call 711.
DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 54

CLEAN WATER STATE REVOLVING FUND PROGRAM

340-054-0005

Purpose

(1) The rules in this division establish procedures and requirements for the funding of projects and activities that enhance, protect or restore water quality through the Water Pollution Control Revolving Fund, called the Clean Water State Revolving Fund.

(2) This division:

(a) Assists a public agency to obtain financing for a project that enhances, protects or restores water quality.

(b) Ensures the loan application and funding processes, procedures and requirements are clear.

(c) Promotes loan affordability by offering below-market interest rates.

(d) Ensures CWSRF perpetuity of the CWSRF for reliability of project funding reliability.

Stats. Implemented: ORS 468.423 – 468.440

340-054-0010
Definitions

The following definitions apply to this rule division:

(1) “Applicant” means a public agency that has applied for a CWSRF loan under this division.

(2) “Borrower” means a public agency that has signed a CWSRF loan agreement with DEQ.

(3) “Change order” means a written order, and supporting information from a borrower, to a borrower’s contractor authorizing an addition, deletion or revision in the work within the scope of the contract documents, including any required adjustment in contract price or time.

(4) “Checklist of application requirements” means a list that DEQ provides of all documents an applicant must submit to DEQ under this division.


(6) “Clean Water State Revolving Fund” or “CWSRF” means the Water Pollution Control Revolving Fund established under ORS 468.427.

(7) “Construction” means the erecting, installing, expanding or improving of a wastewater or stormwater facility, nonpoint source control activity or estuary management project, and includes the demolishing of an obsolete facility.

(8) “Cross-cutting authorities” means requirements of federal laws and Executive Orders that apply to projects and activities funded under the CWSRF program.

(9) “Default” means the failing to pay principal, interest or annual fees, or to comply with other CWSRF loan terms or provisions, and includes the filing of bankruptcy or other written admission of an inability to satisfy a borrower’s obligations under a CWSRF loan.

(10) “DEQ” means the Oregon Department of Environmental Quality.

(11) “Design” means preparing engineering drawings and specifications for the proposed construction, and may include pre-design activities.

(12) “Eligible recipient” means public agency with the meaning given in ORS 468.423.

(13) “EPA” means the U.S. Environmental Protection Agency.

(14) “Estuary management” means implementing actions identified in a Comprehensive Conservation Management Plan developed for a designated national estuary.
“Federal loans” are loans DEQ designates yearly in its Intended Use Plan that represent projects that are funded with monies directly made available by the federal capitalization grant for the associated federal fiscal year.

“Local community loan” means a loan, the proceeds of which a public agency uses to establish a local financial program that will fund an eligible nonpoint source control or estuary management activity.

“Maintenance” means regularly scheduled work performed to repair, replace or upgrade equipment in a facility, or to prevent or correct a failure or a malfunction of a wastewater or stormwater facility, nonpoint source control or estuary management project.

“Natural infrastructure” means the using of a natural form and ecosystem function to restore or augment a project’s intended water quality benefits.

“Nonpoint source” has the meaning given in ORS 468B.005.

“Nonpoint source control” means implementing a nonpoint source control activity under section 319 of the Clean Water Act and 40 C.F.R. § 35.3115(b) that is included in the 2014 Oregon Nonpoint Source Management Program Plan.

“Operation” means the controlling of wastewater collection system pumping stations and wastewater facility treatment unit processes, the controlling of equipment and processes of stormwater facilities, nonpoint source control and estuary management projects, and the financial and personnel management, records, laboratory control, process control, safety, and emergency planning for these facilities and projects.

“Planning” means monitoring, data collection and measurement, evaluation, analysis, security evaluations, report preparation, environmental review, public education and review process and any other activity leading to a written plan for providing a wastewater or stormwater facility, nonpoint source control or estuary management project intended to remediate an existing or anticipated water pollution problem, but does not include the preparation of detailed bid documents for construction.

“Point source” has the meaning given in ORS 468B.005.

“Principal forgiveness” means additional subsidization that allows a borrower to repay only a specified portion of the loan principal.

“Project” means the activities or tasks identified in a loan application or a loan agreement for which a borrower may expend or obligate funds.

“Public agency” has the meaning given in ORS 468.423.
“Ready to proceed” means, in regard to a project, that a loan applicant’s project details have been published in the Intended Use Plan under OAR 340-054-0025(3)–340-054-0025(5) and the applicant has met all loan requirements set out in OAR 340-054-0022.

“Replacement” means obtaining and installing equipment, accessories or appurtenances necessary for the ongoing operation of a wastewater or stormwater facility, nonpoint source control or estuary management project in order to maintain a facility or project for the purpose for which it was designed and constructed during its useful life, but does not mean the replacement of a facility or project at the end of its useful life.

“Small community” means a public agency serving a population of 10,000 or less.

“Sponsorship option” means DEQ’s financing mechanism that allows a public agency with the authority to finance and implement a wastewater facility project and an eligible nonpoint source control or estuary management activity to be financed through one combined CWSRF application.

“Stormwater” means water runoff from a precipitation event, snowmelt runoff, and surface runoff and drainage.

“Sustainability” means the long term reliability and viability of finance, operations, environmental performance or technology, or the use of natural infrastructure.

“Treatment works” has the meaning given in ORS 468.423.

“Wastewater” has the meaning given for “sewage” in ORS 468B.005.

“Wastewater collection system” means publicly owned pipelines, conduits, pumping stations, force mains and any other related structures, devices or equipment used to convey wastewater to a wastewater treatment facility.

“Wastewater facility” means a wastewater collection system or wastewater treatment facility.

“Wastewater treatment facility” means a publicly owned device, structure or equipment used to treat, neutralize, stabilize, reuse or dispose of wastewater and treatment residuals.

“Water quality standards” means the surface water standards established in OAR 340-041 and the minimum groundwater protection requirements established in OAR 340-040.

[Publications: The Intended Use Plan referenced are available from the agency. The Oregon Nonpoint Source Management Program Plan is available as a PDF by clicking on this link: ONSMP]
Authorized Fund Uses

DEQ will use the CWSRF only to:

1. Make loans to eligible borrowers identified in the Intended Use Plan developed under OAR 340-054-0025;

2. Fund loan reserves specified in OAR 340-054-0036;

3. Purchase bonds or acquire other debt obligations incurred after March 7, 1985 as provided in OAR 340-054-0071 provides;

4. Pay CWSRF program administration costs to the extent federal and state law allow;

5. Earn interest on fund accounts;

6. Establish reserves for bonds issued by the state for use by the fund; or

7. Pay principal and interest of bond obligations sold to benefit the fund.

Clean Water State Revolving Fund Loans

Eligible Projects and Activities

1. A public agency may apply for a CWSRF loan up to 100 percent of the cost of a water quality project or the project related costs for the following project types:

1a. Implementing a management program established under section 319 of the Clean Water Act.
(3b2) Developing and implementing a comprehensive conservation and management plan under section 320 of the Clean Water Act.

(3c) Constructing, repairing, or replacing decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage.

(1) To any municipality or intermunicipal, interstate, or State agency to construct publicly owned treatment works.

(2) Implementing a management program established under section 319 of the Clean Water Act.

(3) Developing and implementing a comprehensive conservation and management plan under section 320 of the Clean Water Act.

(4) Constructing, repairing, or replacing decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage.

(54d) Measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water.

(75e) Developing and implementing watershed projects meeting the criteria set forth in section 122 of the Clean Water Act.

(96f) For reusing or recycling wastewater, stormwater, or subsurface drainage water.

(2) A municipality or intermunicipal, interstate, or State agency may apply for a CWSRF loan up to 100 percent of the cost of a water quality project or the project related costs for the following project types:

(1a8) To any municipality or intermunicipal, interstate, or State agency to construct publicly owned treatment works.

(b) Acquiring the land that will be an integral part of the treatment process. These lands include land used for storing treated wastewater in land treatment systems prior to land application, or will be used for ultimate disposal of residues resulting from such treatment and acquiring other land, and interest in land, that are necessary for construction.

(6eb9) To any municipality or intermunicipal, interstate, or State agency for measures to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse.

(7) Developing and implementing watershed projects meeting the criteria set forth in section 122 of the Clean Water Act.

(8de0) To any municipality or intermunicipal, interstate, or State agency for measures to reduce the energy consumption needs for publicly owned treatment works.
For measures to increase the security of publicly owned treatment works.

For measures to increase the security of publicly owned treatment works.

For reusing or recycling wastewater, stormwater, or subsurface drainage water.

Loan Application Requirements

(1) Application submittal. DEQ will notify interested parties at least annually of the opportunity to submit applications for a CWSRF loan. An eligible public agency may submit a CWSRF loan application to DEQ at any time.

(2) Consideration for funding. DEQ will consider an applicant for funding only if its project is included in the Intended Use Plan and its application meets all of this division’s application requirements in this division are met.

(3) All CWSRF loans. An applicant must submit the following to DEQ:

(a) A complete application on the applicable DEQ form;

(b) Documents specified in the DEQ checklist of application requirements;

(c) Audited financial statements for the three years preceding prior to the application date and the applicant’s current budget, unless waived in writing by DEQ;

(d) Evidence the applicant has the authority to undertake the project including, but not limited to, evidence of a loan approval resolution or similar authorization for signing a loan agreement and establishing a loan reserve account;

(e) Evidence the applicant has authority to collect and pledge the revenue offered as repayment for a CWSRF loan, repay a loan and, where applicable, the ability to ensure ongoing operation and maintenance of the proposed wastewater or stormwater facility, nonpoint source control or estuary management project. DEQ may require an applicant to meet the following criteria for a revenue-secured loan described under OAR 340-054-0065(2):
(A) An applicant’s revenue stream is not at risk from undue dependence upon a limited portion of the system’s customer base or a pattern of delinquent payment from that portion of the system’s customer base, and

(B) An applicant must have the ability to collect from delinquent customers;

(f) Pre-award compliance review report or other evidence DEQ requires showing compliance with federal nondiscrimination requirements;

(g) For projects serving two or more public agencies, the executed inter-agency agreements, contracts or other legally binding instruments necessary for financing, constructing and operating of the proposed project. The documents must be satisfactory to DEQ for determining an adequate pledge of security;

(h) Evidence of resolution, ordinance or other authorization approving bonds secured by sewer or other revenue sources if required by DEQ;

(i) Official statement of recently issued bonds if required by DEQ;

(j) A DEQ-approved certification that the requirements for the cost and effectiveness analysis and the subsequent project selection are completed as required by section 602(b)(13) of the CWA;

(k) Any other information DEQ requests as necessary to complete the loan application.

(4) Local community loan. In addition to the requirements in section (3) of this rule, an applicant applying for a CWSRF local community loan must submit the following to DEQ:

(a) A description of how the project will implement a nonpoint source control activity or estuary management effort.

(b) A projected cash flow statement based on anticipated number of local loans, their repayment schedule, amount and timing of department disbursement and amount and timing of repayments to DEQ.

(c) Unless waived by DEQ, evidence of a user charge system or other source of revenue if the applicant will be securing and repaying the loan with sewer system revenues.

(d) Unless waived by DEQ, demonstration of compliance with applicable federal environmental cross-cutting authorities.

(e) Documentation that demonstrates compliance with the land use requirements in OAR 340-018-0050.

(f) DEQ-approved plans and specifications that comply with as required under OAR chapter 340, division 52, unless waived by a DEQ engineer.
(g) An environmental determination obtained from DEQ for a nonpoint source pollution control (CWA § 319) or estuary management (CWA § 320) project that are construction and treatment works as defined in ORS 468.423. The environmental determination must meet the following conditions:

(A) An applicant must provide all necessary documentation to support DEQ’s review of the entire projects’ potential environmental impacts and include an analysis of a no action alternative and other reasonable alternatives considered.

(B) Project construction must begin within five years of the environmental determination.

(h) If an applicant does not obtain an environmental determination as specified in subsection (4)(g) of this section, an applicant may submit to DEQ, and DEQ may accept, an environmental determination made by another agency that meets the following conditions:

(A) The project scope must be essentially unchanged from the scope that the other agency accepted.

(B) The other agency’s determination must have been made within the previous five years.

(C) The applicant met and documented the federal environmental cross-cutting authorities have been met and documented.

(5) All design or construction loans. In addition to the requirements in section (3) of this rule, an applicant applying for a CWSRF design or construction loan must submit the following to DEQ:

(a) Unless waived by DEQ, evidence of a user charge system or other source of revenue if the applicant will be securing and repaying the loan with sewer system revenues.

(b) Unless waived by DEQ, demonstration of compliance with applicable federal environmental cross-cutting authorities for a construction project.

(c) An environmental determination obtained from DEQ for a construction project of a treatment works as defined in ORS 468.423, including a nonpoint source pollution control (CWA § 319) or estuary management (CWA § 320) project, that are construction and treatment works as defined in ORS 468.423. The environmental determination must meet the following conditions:

(A) An applicant must provide all necessary documentation to support DEQ’s review of the entire projects’ potential environmental impacts and include an analysis of a no action alternative and other reasonable alternatives considered.

(B) Project construction must begin within five years of the environmental determination.
(d) If an applicant does not obtain an environmental determination, as specified in subsection (5)(c) of this section, an applicant may submit to DEQ, and DEQ may accept, an environmental determination made by another agency that meets the following conditions:

(A) The project scope must be essentially unchanged from that the other agency accepted by the other agency.

(B) The other agency’s determination must have been made within the previous five years.

(C) The applicant met and documented the federal environmental cross-cutting authorities have been met and documented.

(e) Documentation that demonstrates compliance with the land use requirements in OAR 340-018-0050.

(f) For a construction-only loan, DEQ-approved plans and specifications for the project as OAR chapter 340, division 052 requires.

(g) If the estimated cost of a project is in excess of $10 million, a value engineering study satisfactory to DEQ done prior to beginning construction. The study must be a specialized cost control technique specifically applicable to the wastewater treatment facility design identifying cost savings that can be made without sacrificing project reliability or efficiency.

(6) Design or construction loan for a point source project. In addition to the requirements in sections (3) and (5) of this rule, an applicant applying for a CWSRF design or construction loan for a point source project must submit the following to DEQ:

(a) An engineered planning document in the form of either a facility plan or project pre-design report that provides a comprehensive evaluation of environmental factors, engineering alternatives and financial considerations affecting the project area. This document must adequately describe the effectiveness and suitability of the proposed project to address the identified water quality problem. An applicant must have DEQ review and approve this document before signing a design or construction loan.

(b) Evidence of a sewer use ordinance or equivalent authority that prohibits:

(A) New connections from inflow sources into the wastewater collection system; and

(B) Introducing wastewater into the wastewater collection system containing toxics or other pollutants in amounts or concentrations that have the potential of endangering public safety, adversely affecting the project or precluding the selection of the most cost-effective alternative for the project.

(c) When a public agency applies for a wastewater facility construction loan that includes a sponsorship option, complete information about the nonpoint source control or estuary management activity on the applicable application form. DEQ will only consider a
sponsorship option if a nonpoint source control or estuary management activity is included as part of the entire project scope.

(7) Design or construction loan for a nonpoint source project. In addition to the requirements in sections (3) and (5) of this rule, an applicant applying for a CWSRF design or construction loan for a nonpoint source project must submit an engineered planning report to DEQ. The report must define the water quality problem and specify actions an applicant will implement to correct the problem.

(8) Federal loans. In addition to the applicable requirements in sections (3)–(7) of this rule, a loan designated as a federal loan must meet the requirements for federally funded projects in accordance with the Clean Water Act Title VI and EPA’s January 6, 2015, memo “Interpretive Guidance for Certain Amendments in the Water Resources Reform and Development Act to Titles I, II, V, and VI of the Federal Water Pollution Control Act.”

[Ed. Note: Publications referred to are not included here. The CWSRF Intended Use Plan is available from the agency. The EPA Interpretive Guidance can be viewed in PDF form by clicking on this link.]

Stats. Implemented: ORS 468.423 – 468.440
Hist.: DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 11-2012, f. & cert. ef. 12-14-12; DEQ 9-2015, f. & cert. ef. 10-16-15

340-054-0025

Intended Use Plan (IUP) and Project Priority List

(1) IUP development. DEQ will annually develop and submit an IUP to EPA as described in the CWA §606 and 40 C.F.R. §35.3150. DEQ will update the IUP as specified in section (2) of this rule. The IUP will describe how DEQ proposes to fund projects through the CWSRF and will include a project priority list that numerically ranks all eligible applications received.

(2) IUP update.

(a) Except as specified in subsection (b) of this section, DEQ will update the annual IUP and project priority list at least every four months or when DEQ receives five eligible applications, whichever timeframe is shorter, and will submit the updated plan to EPA.

(b) If DEQ does not receive an eligible application during a four month period and determines the project priority list does not need to be updated, DEQ will not update the IUP.

(3) IUP public notice. DEQ will provide public notice and 30 days for the public to comment on a proposed draft IUP.
(a) DEQ will notify all new applicants of their project application ranking on the project priority list when DEQ develops and updates an annual IUP.

(b) An applicant may ask DEQ to reevaluate their project application’s score and ranking on the proposed project priority list or to make other changes to an IUP during the public comment period.

(c) DEQ will consider and respond to all comments submitted during the public comment period before finalizing an IUP.

(4) Project priority list development. DEQ will include an eligible project under OAR 340-054-0015 on the project priority list if an applicant submits a completed application on a DEQ-approved form.

(5) Project priority list ranking. DEQ will numerically rank all eligible proposed project applications based on the point sum from the criteria specified in OAR 340-054-0026 and 340-054-0027.

(a) Except as specified in subsection (b) of this section, DEQ will evaluate each criterion in OAR 340-054-0026 and 340-054-0027 on a point scale from one to five as follows:

(A) One point = No or very low likelihood.

(B) Two points = Low or in some minor way.

(C) Three points = Moderate to significant likelihood.

(D) Four points = High likelihood.

(E) Five points = Very high likelihood.

(b) DEQ will evaluate criteria 1(c), 1(d), 2(b), 2(c), 2(d), 2(e), and 3(d) in OAR 340-054-0026 and criterion 5 in OAR 340-054-0027 by doubling the point scale specified in subsection (a) of this section.

(6) Removal of application from the project priority list.

(a) DEQ may retain an applicant’s ranked project on the project priority list in an IUP for up to 36 months while an applicant pursues all applicable CWSRF financing requirements specified in this division.

(b) After DEQ initially includes a ranked project on the project priority list, an applicant must submit to DEQ an annual written project status report to remain on the project priority list.
(c) DEQ may provide one sixtwelve-month extension to an applicant asking to remain on the project priority list beyond the 36-month limit. An applicant asking for an extension must submit to DEQ a written project status report on the applicant’s project progress and an updated time frame indicating when the applicant will complete all CWSRF financing requirements.

(d) DEQ will provide written notice to an applicant before removing the applicant’s project from the project priority list.

(e) DEQ will remove a project from the project priority list if:

(A) An applicant does not submit an annual written project status report as subsection (b) of this section requires;

(B) An applicant does not ask for a sixtwelve-month extension beyond the 36-month limit and submit the project status report as subsection (c) of this section requires;

(C) DEQ determines the project scope changed from the original ranked application;

(D) DEQ determines a project does not meet eligibility requirements;

(E) An applicant does not require CWSRF financing; or

(F) An applicant asks to be removed from the project priority list.

(f) If DEQ removes a project from the project priority list as specified in paragraph (e)(A through C) of this section, an applicant may resubmit to DEQ a loan application for an eligible project that DEQ will evaluate under section (5) of this rule.

[Ed. Note: Publications referred to are not included here. The Project Priority List is contained within the CWSRF Intended Use Plan. That document is available from the agency.]

Stats. Implemented: ORS 468.423 – 468.440
Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09; DEQ 7-2009, f. & cert. ef. 10-28-09; DEQ 3-2010(Temp), f. & cert. ef. 5-4-10 thru 10-29-10; DEQ 13-2010, f. & cert. ef. 10-27-10; DEQ 11-2012, f. & cert. ef. 12-14-12; DEQ 9-2015, f. & cert. ef. 10-16-15

340-054-0026

CWSRF Project Ranking Criteria for Non-planning Loans
(1) Category 1. Water quality standards and public health considerations.

(a) Does the project improve water quality by addressing water quality parameters including, but not limited to: temperature, dissolved oxygen, contaminated sediments, toxic substances, bacteria or nutrients?

(b) Does the project ensure that a facility currently in compliance, but at risk of noncompliance, remains in compliance?

(c) Does the project address noncompliance with water quality standards, public health issues or effluent limits related to surface waters, biosolids, water reuse or groundwater?

(d) If the project is not implemented, is a water quality standard likely to be exceeded or an existing exceedance likely to worsen?

(2) Category 2. Watershed and health benefits.

(a) Does the project improve or sustain aquatic habitat supporting native species or state or federally threatened or endangered species?

(b) Does the project address a water quality or public health issue within a federally designated wild and scenic river or sole source aquifer, state designated scenic waterway, the Lower Columbia River or Tillamook Bay estuary, a river designated under OAR 340-041-0350, or a significant wetland and riparian area identified and listed by a local government?

(c) Does the project support implementation of a total maximum daily load (TMDL) allocation, a department water quality status and action plan or designated groundwater management area declared under ORS 468B.180?

(d) Does the project provide performance-based water quality improvements supported by monitoring and reasonable assurance that the project will continue to function over time?

(e) Does the project integrate or expand sustainability or the use of natural infrastructure, or use approaches including, but not limited to, water quality trading, that are not specified in subsections (f) through (i) of this section of the rule?

(f) Does the project incorporate or expand green stormwater infrastructure including, but not limited to, practices that manage wet weather and that maintain and restore natural hydrology by infiltrating, evapotranspiring, harvesting or using stormwater on a local or regional scale?

(g) Does the project incorporate or expand water efficiency including, but not limited to, using improved technologies and practices to deliver equal or better services with less water, such as conservation, reuse efforts or water loss reduction and prevention?
(h) Does the project incorporate or expand energy efficiency including, but not limited to, using improved technologies and practices to reduce energy consumption of water quality projects, use energy in a more efficient way or to produce or utilize renewable energy?

(i) Does the project incorporate or expand environmentally innovative projects including, but not limited to, demonstrating new or innovative approaches to deliver services or manage water resources in a more sustainable way?

(3) Category 3. Other considerations.

(a) Does the project include a long-term planning effort that addresses financial, managerial or technical capability, or asset planning that ensures the project will be maintained?

(b) Does the project include a significant on-going educational or outreach component?

(c) Does the project incorporate other resources including, but not limited to, in-kind support, other funding sources or a partnership with a governmental, tribal or non-governmental organization?

(d) Does the project address a small community’s water quality improvement or restoration need?

(e) Does the project include a sponsorship option?

Stats. Implemented: ORS 468.423 - 468.440
Hist.: DEQ 11-2012, f. & cert. ef. 12-14-12; DEQ 9-2015, f. & cert. ef. 10-16-15

340-054-0036

Reserves, CWSRF General Fund and Project Funding

(1) Allocation to reserves and CWSRF general fund. DEQ will allocate available CWSRF funds in a state fiscal year first to the small community, planning and green project reserves, and then to the CWSRF general fund based on the following amounts:

(a) A maximum of 25 percent of the total available CWSRF funds to the small community reserve

(b) A maximum of $3 million to the planning reserve

(c) An amount at least equal to the minimum required by the federal capitalization grant to the green project reserve

(d) Amount of funds remaining, after allocation to the reserves as specified in subsections (a) through (c) of this section of the rule, to the CWSRF general fund.
(2) Project funding increase.

(a) DEQ will offer a funding increase to a borrower for an existing project based on the original project priority list ranking before offering a loan to an applicant for a new project loan if:

(A) Funds are available in the CWSRF; and

(B) The borrower submits a written request to DEQ for additional funding, has the legal authority to borrow the increased loan amount and has the financial capability to repay the increased loan amount.

(b) Any funding increase DEQ awards to a borrower will be in an amount specified in section (3) of this rule and will be done by increasing the amount of the borrower’s existing loan or by DEQ making an additional loan to the borrower at the current interest rate.

(3) Project funding allocation.

(a) During a state fiscal year DEQ will assign a project to an appropriate reserve, to the CWSRF general fund or to both.

(b) Based on availability of funds in the CWSRF at the time of allocation, DEQ will allocate an amount to a borrower in project priority list rank order that:

(A) Is not more than the greater of $2.5 million or 15 percent of the total available CWSRF funds in a state fiscal year. DEQ may allocate additional funds if funds are available after allocating the maximum amount under paragraph subsection (b)(A) of this section of the rule to each borrower who requested project funding in a state fiscal year;

(B) Is not more than the greater of $750,000 or 25 percent of the small community reserve, until all eligible small community requests have been allocated;

(C) Is not more than $250,000 of the planning reserve; and

(D) Only finances the portion of a project funded under the green project reserve that DEQ determines meets federal requirements for green infrastructure, water or energy efficiency improvement, or other environmentally innovative activities as defined by EPA requirements.

(c) During a state fiscal year DEQ will allocate funding for a new design or construction project loan from the CWSRF general fund if the project is not funded from a reserve.

(d) DEQ will allocate in project priority list rank order available funding from the CWSRF general fund for a small community or planning project that was not allocated from their respective reserves, or allocated less than the total loan amount requested.
(4) Reallocation of reserve funds.

(a) DEQ may reallocate funds between small community and planning reserves and the CWSRF general fund unless demand exceeds available funds.

(b) DEQ will not reallocate funds remaining in the green project reserve to the CWSRF general fund.

(5) Sponsorship option allocation. DEQ will determine the total amount of CWSRF funds to be allocated at a reduced interest rate through the sponsorship option in each state fiscal year.

Stats. Implemented: ORS 468.423 - 468.440
Hist.: DEQ 11-2012, f. & cert. ef. 12-14-12; DEQ 9-2015, f. & cert. ef. 10-16-15

340-054-0056

CWSRF Loan Use Conditions

(1) Clean Water Act plans. DEQ will only provide a loan to a project that is consistent with plans developed under sections 303(e), 319 or 320 of the Clean Water Act.

(2) Refinancing a long-term loan. DEQ will not provide a loan that will be used to refinance another lender’s loan or other debt obligations.

(3) Refinancing an interim loan. DEQ may provide a loan to refinance an interim loan or self-generated funds used to pay DEQ-approved project costs if the borrower:

(a) Provides DEQ with a written notice of intent to apply for long-term financing;

(b) Wants to proceed with the project using interim financing or self-generated funds; and

(c) Agrees to proceed at its own risk whether or not the CWSRF is available to provide long-term financing.

(4) Interim financing. DEQ may provide short-term, construction-period financing for an eligible project if the following conditions are met:

(a) The CWSRF’s liquidity is sufficient to provide financing without adversely affecting the amount and timing of disbursements needed for prior obligations;

(b) The borrower has a legally enforceable obligation for long-term project financing satisfactory to DEQ; and
(c) The loan agreement for interim financing will stipulate DEQ is not obligated to provide long-term financing for the project.

Stats. Implemented: ORS 468.423 - 468.440  
Hist.: DEQ 11-2012, f. & cert. ef. 12-14-12; DEQ 9-2015, f. & cert. ef. 10-16-15

**340-054-0060**

**Loan Agreement and Conditions**

DEQ will include conditions in a loan agreement that apply to the type of project being financed, including, but not limited to, the following:

1. **Timely use of loan funding.**

   (a) DEQ may cancel a loan agreement if a borrower fails to begin using loan proceeds within two years after signing a loan agreement.

   (b) Borrowers that do not begin using loan proceeds within two years after signing a loan agreement will have a choice of canceling the loan and reapplying for DEQ funding or paying holding costs to DEQ.

   (A) Holding costs are, on an annual basis, the estimated amount of the loan interest payable to DEQ, less the amount of the interest DEQ earned from the Treasurer’s investment of funds for DEQ’s account. DEQ will itemize holding costs on a semi-annual invoice DEQ sends to the borrower. The borrower must pay these costs within 30 days after DEQ sends the invoice. Holding costs shall be itemized on a semi-annual invoice sent by DEQ to the Borrower and paid within 30 days of the date of such invoice.

   (B) A borrower may apply for a one-time one year extension to begin using loan proceeds.

2. **Accounting.** A borrower must maintain all CWSRF project accounts as separate accounts and must use accounting, audit and fiscal procedures that conform to Generally Accepted Governmental Accounting Standards and the requirements of the Governmental Accounting Standards Board.

3. **Records retention.** A borrower must retain project files and records for six years after project performance affirmative certification or project completion as DEQ determines, or such longer period as applicable state or federal law requires. A borrower must also retain financial files and records for three years after the loan is repaid in full.

4. **Wage requirements.**

   (a) A borrower for construction of a treatment works project must comply with all provisions of the Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 to 3144 and 3146, as
detailed in section 513 of the Clean Water Act. Wage rates must be based on the wage requirements of the Davis Bacon Act or the prevailing wage rate requirements for public works projects under ORS 279C.800 to 279C.870 and OAR 839-025-0000 to 839-025-0540, whichever is higher.

(b) A borrower for a project not specified in subsection (a) of this section of the rule must comply with the prevailing wage rate requirements under ORS 279C.800 to 279C.870 and OAR 839-025-0000 to 839-025-0540.

(5) Construction materials. A borrower for construction of a treatment works project must ensure that all of the iron and steel products used in the project are produced in the United States as required by section 608 of the Clean Water Act.

(6) Debarment and suspension. A borrower must comply with Subpart C of 2 C.F.R part 180, Responsibilities of Participants Regarding Transactions Doing Business with Other Persons and Subpart C of 2 C.F.R part 1532, Responsibilities of Participants Regarding Transactions.

(7) Engineering documents. If a borrower uses CWSRF financing to construct a wastewater facility subject to OAR 340-052, it must submit to DEQ plans and specifications, operation and maintenance manuals, inspection and certification of proper construction, and any other applicable documentation OAR 340-052 and 340-054-022 require.

(8) Inspections and progress reports.

(a) A borrower must have a qualified inspector under the direction of a registered civil, mechanical or electrical engineer, as appropriate, conduct on-going inspections during the construction phase of a wastewater facility subject to OAR 340-052 to ensure the project complies with approved plans and specifications. DEQ or its representative may enter property the borrower owns or controls to conduct interim inspections. DEQ may require progress reports sufficient to determine compliance with approved plans and specifications and with other loan agreement provisions.

(b) DEQ may request review and analysis of construction plans from relevant agencies or offices to ensure the project plans not subject to department review under OAR 340-052 support the project’s successful implementation and completion. A borrower must allow inspections by appropriately qualified persons during project construction or implementation to ensure the project as constructed conforms to project plans and other provisions of the loan agreement.

(9) Loan amendments.

(a) DEQ will not require a loan amendment for changes in project work that are consistent with project objectives and within the loan scope and funding level.

(b) DEQ will execute a loan amendment if:
(A) DEQ awards a borrower an increase in the original approved loan amount at any time during the project;

(B) The borrower requests a decrease in the original loan amount at any time during the project or completes the project and does not request disbursement of all loan proceeds; or

(C) DEQ determines a borrower must meet additional federal or state requirements for CWSRF financing.

(10) Change orders. DEQ may approve or reject a change order based on the loan eligibility of the project modification and on engineering value under OAR 340-052-0015. A borrower must submit a change order to DEQ for engineering and financial review:

(a) When any change order is executed, and

(b) Before executing any change order that exceeds $100,000 or will alter project performance.

(11) Project performance certification for a wastewater facility. A borrower must submit to DEQ, within a timeframe DEQ specifies, project performance documents to verify whether the facility meets performance and operational requirements and specifications which the project was planned, designed and built to achieve. The documents may include, but are not limited to, construction certification, performance evaluation report or performance certification.

(12) Eligible construction costs. DEQ will only disburse loan funds for construction costs limited to work that complies with plans, specifications, change orders and addenda DEQ reviewed or approved.

(13) Adjustments. DEQ may at any time review and audit requests for payment and make adjustments for eligibility, math errors, items not built or bought, unacceptable construction or other discrepancies.

(14) Contract and bid documents. A borrower must submit a copy of the awarded contract and bid documents to DEQ, including a tabulation of all bids received.

(15) Architectural and engineering services. Contractors for program management, construction management, feasibility studies, preliminary engineering design, design, engineering, surveying, mapping, or architectural related services for federal loans must be selected as provided in ORS 279C.110 and OAR chapter 137, division -048-0220.; or equivalent federal requirement for selection of architectural and engineering services.

(16) Audit.

(a) If DEQ requests it, a borrower must submit audited financial statements to DEQ each year until the loan is repaid.
(b) If a borrower expends $500,000 or more in federal funds, (from all sources,) in its fiscal year beginning before December 26, 2014, the borrower must have a single organization-wide audit conducted under accordance with the Single Audit Act, as amended. If a borrower expends $750,000 or more in federal funds, (from all sources,) in a fiscal year beginning on or after December 26, 2014, borrower must have a single organization-wide audit conducted under accordance with the provisions of 2 C.F.R. Subtitle B, with guidance at 2 C.F.R. part 200. The borrower must submit copies of all audits must be submitted to DEQ within 30 days of completion. If a borrower expends less than $500,000 in federal funds in a fiscal year beginning prior to December 26, 2014, or less than $750,000 in a fiscal year beginning on or after that date, the borrower is exempt from federal audit requirements for that year. Records must be available to DEQ, the Oregon Secretary of State’s Office, the federal government and their duly authorized representatives for the purpose of making audits, examinations and copies.

(17) Default remedies. A loan agreement must provide adequate remedies for DEQ to enforce the agreement’s terms. Upon default by a borrower, DEQ may proceed with one or more of the following:

(a) Pursuing any remedy available to it against the borrower.

(b) Appointing a receiver at the borrower’s expense of the borrower to operate the facility that generates the pledged revenues.

(c) Setting and collecting utility rates and charges pledged as security for the loan.

(d) Withholding any amounts otherwise due to the borrower from the State of Oregon and directing such funds be applied to the debt service and fees due on the CWSRF loan. If DEQ finds the loan to the borrower is otherwise adequately secured, DEQ may waive this right in the loan agreement or other loan documentation.

(e) Declaring all or any part of the indebtedness immediately due and payable.

(18) Release. A borrower must release and discharge DEQ, its officers, agents and employees from all liabilities, obligations and claims occurring from project work or under the loan, subject only to exceptions previously agreed upon in a written contract between DEQ and the borrower.

(19) Effect of document approval or certification.

(a) DEQ’s review and approval of facilities plans, design drawings and specifications, or any other documents by or for DEQ does not relieve a borrower of responsibility to properly plan, design, build and effectively operate and maintain a wastewater or stormwater facility, nonpoint source control or estuary management project as required by law, regulations, permits and good management practices.

(b) DEQ may not be held responsible for:
(A) Any project costs or any losses or damages resulting from defects in plans, design drawings and specifications, or other sub-agreement documents; or

(B) Verifying cost-effectiveness, cost comparisons or adherence to state procurement regulations.

(20) Reservation of rights.

(a) A borrower may not be prohibited from requiring such assurances, guarantees, indemnity or other contractual requirements as it deems necessary or prudent from any party performing project work.

(b) This rule does not affect DEQ’s right to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a borrower that fails to carry out its obligations under OAR chapter 340.

(21) Other provisions and documentation. DEQ may include other provisions in a CWSRF loan agreement necessary to meet the Clean Water Act and ORS 468.423 to 468.440. DEQ may require documentation including, but not limited to, a legal counsel opinion that the loan agreement is enforceable.

Stats. Implemented: ORS 468.423 – 468.440

340-054-0065

Loan Types, Terms and Interest Rates

(1) Loan types. A CWSRF loan must be one of the following:

(a) A loan secured by a general obligation bond, as defined in ORS 287A.001(1).

(b) A loan secured by the borrower’s pledge of its full faith and credit and taxing power, as described in ORS 287A.315.

(c) A loan agreement, bond or other unconditional obligation that meets the requirements specified in section (2) of this rule.

(d) An alternative loan that meets the requirements specified in section (3) of this rule.

(2) A CWSRF loan that is Aa revenue secured loan that must:
(a) Be represented by a properly executed loan agreement, bonds or other unconditional obligations to pay from specified revenues that are pledged by the borrower to DEQ. The obligation to pay must include a pledge of security acceptable to DEQ.

(b) Include a rate provision that requires the borrower to impose and collect revenues sufficient to pay:

(A) All expenses of operating, maintaining and replacing a wastewater or stormwater facility, nonpoint source control or estuary management project;

(B) All debt service;

(C) All other financial obligations including, but not limited to, contributions to reserve accounts imposed in connection with prior lien obligations; and

(D) An amount equal to the loan’s coverage requirements. This requirement is the product of the coverage factor times the debt service due in that year on the CWSRF loan. The coverage factor used must correspond to the coverage factor and reserve percentage selected by the borrower from subsection (d) of this section of the rule.

(c) Include a debt service reserve provision requiring the borrower to maintain a pledged reserve dedicated to the CWSRF loan payment and that meets the following requirements:

(A) The debt service reserve must be maintained in an amount at least equal to the product of the reserve percentage listed in subsection (d) of this section of the rule times one half the average annual debt service during the repayment period based on the repayment schedule or revised repayment schedule in the loan agreement. The reserve percentage selected from subsection (d) of this section of the rule must correspond to the coverage factor selected for the CWSRF loan.

(B) A loan reserve may be funded with the borrower’s cash, a letter of credit, repayment guaranty or other third party commitment to advance funds that is satisfactory to DEQ. If DEQ determines reserve funding imposes an undue hardship on the borrower, DEQ may allow reserves to be funded with CWSRF loan proceeds.

(d) Comply with the one of the following coverage factors (net income to debt service) and reserve percentages (percentage of one-half the average annual debt service):

(A) 1.05:1-100 percent.

(B) 1.15:1-75 percent.

(C) 1.25:1-50 percent.

(D) 1.35:1-25 percent.
(e) Include a requirement for the borrower to conduct a periodic rate review and rate adjustment of rates, if necessary, to ensure estimated revenues in subsequent years are sufficient.

(f) Include a requirement that, if revenues fail to achieve the required rate level, the borrower must promptly adjust rates and charges to assure future compliance with the rate requirements. DEQ may determine that failure to adjust rates does not constitute a default if the borrower transfers unencumbered resources in an amount equal to the revenue deficiency to the utility system that generates the revenues.

(g) Include a requirement that if the reserve account is depleted for any reason, the borrower must take prompt action to restore the reserve to the required minimum amount.

(h) Include a requirement restricting additional debt appropriate to the borrower’s financial condition.

(i) Prohibit the borrower from selling, transferring or encumbering any financial or fixed asset of the utility system that produces the pledged revenues if the borrower is in violation of a CWSRF loan requirement, or if such sale, transfer or encumbrance may cause a violation of a CWSRF loan requirement.

(3) Alternative loans. DEQ may authorize an alternative loan for a reasonable alternative financing method if the borrower demonstrates to DEQ’s satisfaction that:

(a) Borrowing money from the CWSRF through general obligation bonds, revenue bonds or a revenue-secured loan, as described in subsection (a), (b), (c), or (d) of section (1) of this rule, is unduly burdensome or costly to the borrower; and

(b) The alternative loan has a credit quality substantially equal to, or better than, the revenue secured loan credit quality to the borrower. DEQ may consult with a financial advisor and may charge the borrower reasonable consultation costs to determine if an alternative loan meets the credit quality requirement.

(4) Interest rates.

(a) Effective date. The interest rates as specified in this section are effective for all loan agreements executed on or after January 1, 2013.

(b) Base rate. DEQ will determine the base rate used in computing the interest rates on all direct loans for a quarter based on the weekly average of state and local government bond interest rates for the preceding quarter. This base rate will be the “state and local bonds” entry reported in “Selected Interest Rates, H.15” posted by the Federal Reserve from the “Bond Buyer Index” for general obligation bonds (20 years to maturity, mixed quality).

(c) Planning loans. The interest rate for a planning loan will be equal to 25 percent of the base rate.
(d) Local community loans. The interest rate for a local community loan will be equal to 50 percent of the base rate.

(e) Federal loans. DEQ will determine the interest rate for federal loans. DEQ will not set a rate that exceeds the highest rate described in Table 2 of this rule.

(f) All other direct loans. Except as provided in OAR 340-054-0065(10), DEQ will provide the following interest rates for all other CWSRF loans:

(A) For loans with a maximum repayment period of up to 20 years, DEQ will provide the following interest rates as detailed in Table 1 of this rule.

<table>
<thead>
<tr>
<th>Borrowers</th>
<th>Repayment Period</th>
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<tbody>
<tr>
<td></td>
<td>0-5 Years</td>
</tr>
<tr>
<td>Small communities with less than statewide median household income</td>
<td>25%</td>
</tr>
<tr>
<td>All other borrowers</td>
<td>25%</td>
</tr>
</tbody>
</table>

(B) (Effective January 1, 2016) For loans with a maximum repayment period of up to 30 years, DEQ will provide the following interest rates as detailed in Table 2 of this rule.
DEQ will set interest rate premiums as described in Tables 1 and 2 in this rule, and Table 3 in OAR 340-054-0072, will be set so as to safeguard the fund’s perpetuity of the fund and DEQ will be reevaluated them from time to time.

(g) Sponsorship option. When a sponsorship option is implemented within the scope of a construction loan, DEQ:

(A) Will calculate the debt service on the wastewater facility project based on subsection (f) of this section of the rule;

(B) Will calculate the debt service on a combined sponsorship loan by reducing the interest rate so the debt service on the sponsorship loan equals the debt service as calculated in subsection (g)(A) of this section of the rule; and

(C) May not reduce the resulting interest rate below one percent.

(h) Bond proceeds for direct loans. DEQ may use bond proceeds that are matching funds for federal capitalization grants to fund direct loans at the interest rates listed in this section. Any change in the source of repayment for matching bonds will not affect this subsection’s requirements.

(5) Interest accrual and payment period. Interest begins accruing when DEQ makes the first CWSRF loan disbursement to a borrower. A borrower must include all outstanding accrued interest with each loan repayment.

<table>
<thead>
<tr>
<th>OAR 340-054-0065</th>
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<tbody>
<tr>
<td>Table 2</td>
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<tr>
<td>Interest Rates for Loans with Terms of Over 20 Years but No More Than 30 Years</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Borrowers</th>
<th>Rates (percent of base rate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small communities with less than statewide median household income</td>
<td>40%</td>
</tr>
<tr>
<td>Communities other than small communities with less that the statewide median household income</td>
<td>55% plus an interest premium</td>
</tr>
<tr>
<td>Communities with equal to or more than the statewide median household income</td>
<td>55% plus an incrementally higher interest premium than for the borrower type listed directly above</td>
</tr>
</tbody>
</table>
(6) Annual loan fee.

(a) Except as provided in subsection (b) of this section of the rule, a borrower must pay DEQ an annual loan fee of 0.5 percent on the unpaid loan balance specified in the payment schedule in its loan agreement. This annual loan fee is in addition to any other payments a borrower is required to make under its loan agreement.

(b) DEQ will not charge a borrower any annual loan fee for a planning loan.

(7) Commencement of loan repayment. A borrower must begin its loan principal and interest repayments within one year of the date the facility is operationally complete and ready for the purpose for which it was planned, designed, and built or DEQ determines that the project is completed.

(8) Loan term.

(a) A borrower must fully repay a loan under in accordance with a repayment schedule determined by DEQ. DEQ will consider the useful life of the assets financed when determining the repayment schedule. The repayment term for:

(A) A planning loan must not exceed five years;

(B) A local community loan may not exceed ten years;

(C) All other loans must not exceed 20 years after project completion; and

(D) Effective January 1, 2016, loan terms must not exceed 30 years after project completion.

(b) DEQ will allow prepayments without penalty on all CWSRF loans except as section (110) of this rule specifies in section (10) of this rule. Borrowers must provide a written prepayment notification at least 30 days before the estimated pay off date. at any time without penalty on all CWSRF loans except as specified in section (10) of this rule.

(c) A loan must be fully amortized by the maturity date of the loan.

(9) Minor variations in loan terms. DEQ may authorize minor variations in financial terms of loans described in this rule to facilitate administration and repayment of a loan.

(10) Restructure and refinance of CWSRF loans.

(a) DEQ may consider a one-time loan restructure, such as combining two or more existing CWSRF loans, if such restructure safeguards the CWSRF’s perpetuity.

(A) The existing CWSRF loans must have at least 10 years term remaining except where a Planning loan is combined with a Construction loan.
(B) A Sponsorship loan may not be combined with any other loan except its sponsoring point source project and only after the construction period for the nonpoint source control project has closed.

(b) DEQ may consider a one-time refinance of an existing CWSRF loan if such refinance safeguards the CWSRF’s perpetuity.

(A) The existing CWSRF loan must have at least 10 years term remaining.

(B) Any extension of term must not exceed the project’s useful life.

(C) The refinance may not reduce the interest rate below one percent.

(D) A refinance may only be for rate, term, or rate and term and may not include any funding disbursed to the borrower.

(c) DEQ may not charge a fee for a restructure or refinance.

(4011) Leveraged loans.

(a) DEQ may fund loans with bond proceeds through a leveraged loan program under the following terms and conditions:

(A) Interest rates will be less than the interest rate paid by the state on bonds sold to fund the leveraged loans. Rates will be fixed at 65 percent of the base rate.

(B) Loan fees will be calculated in accordance with section (6) of this rule.

(C) Notwithstanding other provisions of this rule, DEQ may make changes to the terms and conditions of a leveraged CWSRF loan to make it marketable. To the maximum extent practicable, the terms and conditions will be the same as for direct loans.

(b) Bond issuance and related transaction costs will be paid out of bond proceeds to the extent permitted by law.

(121) Additional subsidization (principal forgiveness). DEQ may provide additional subsidization in the form of principal forgiveness to the maximum extent allowed by the federal capitalization grant requires and as in accordance with the criteria established in this section. A loan with principal forgiveness additional subsidization is subject to standard interest rates, fees, and loan terms as defined in this rule.

(a) Eligibility. Except as specified in subsection (b) of this section of the rule, the following applicants are eligible for principal forgiveness additional subsidization:
(A) Applicants that are a municipality or intermunicipal, interstate, or State agency an eligible recipient and meet affordability criteria as specified in subsection (c) of this section of the rule;

(B) Applicants that are a municipality or intermunicipal, interstate, or State agency an eligible recipient with a project, that determined by DEQ determines, that implements a process, material, technique, or technology to address water-efficiency goals, and energy-efficiency goals, to mitigate stormwater runoff, or to encourage sustainable project planning, design, and construction; or

(C) Applicants that are a municipality or intermunicipal, interstate, or State agency an eligible recipient and that do not meet the requirements of paragraph subsection (a)(A) or (a)(B) in this section of the rule but have individual ratepayers who will experience financial hardship from a rate increase that resulting from financing a project causes. Applicants qualifying under this section must have an established ratepayer hardship assistance program. DEQ will review the applicant’s ratepayer hardship assistance program for duration and effectiveness.

(b) Ineligible Loans. The following types of loans are not eligible for principal forgiveness:

(A) Loans for projects that are not ready to proceed;

(B) Loans that have loan agreements that include incentives such as sponsorship option loans;

(C) Interim loans; and

(D) Planning loans, except for planning loans for projects described in subsection (a)(B) of this section of the rule.

c) Affordability Criteria. DEQ will use the following criteria to determine affordability, with the most weight added to paragraph subsection (c)(A) of this section of the rule:

(A) Distressed as calculated by the Oregon Business Development Department’s Oregon Distressed Index using the methodology described in OAR 123-024-0031; and

(B) Negative population trends as calculated by the annual United States’ Census Bureau’s American Community Survey.

(d) Additional subsidization allocation amount. DEQ may allocate or adjust the allocation of principal forgiveness from time to time to safeguard the perpetuity of the CWSRF’s perpetuity.
(e) Alternate subsidy. DEQ may offer an alternate subsidy in lieu of principal forgiveness, such as a reduced interest rate, to eligible recipients that meet all other additional subsidization criteria. DEQ will include any alternate subsidy awarded in the total additional subsidization allocated in any fiscal year and may not exceed the individual award amount in subsection (f) of this rule.

(f) Award Amount.

(A) Eligible applicants may receive additional subsidization principal forgiveness for up to fifty percent of their loan but not to exceed $500,000.

(B) For applicants that qualify for additional subsidization under paragraph 12(a)(B), DEQ will limit the additional subsidization to 50 percent of the project components qualifying under paragraph 12(a)(B), not to exceed 50 percent of the loan amount or $500,000, whichever is less.

(B) Applicants may only receive one principal forgiveness additional subsidization award per project.

(g) Award Reserves.

(A) DEQ will reserve seventy percent of the principal forgiveness additional subsidization allocation for applicants meeting the affordability criteria in subsection (a)(A) of this section of the rule.

(B) DEQ will reserve thirty percent of the principal forgiveness additional subsidization allocation for applicants with projects eligible under paragraph subsection 12(a)(B) of this section of the rule.

(C) At the close of the federal fiscal year, DEQ may reallocate any unawarded allocation of principal forgiveness additional subsidization in one reserve to the other reserve, and if reserve, DEQ may reallocate unawarded principal forgiveness additional subsidization to those borrowers that are eligible under paragraph subsection (a)(C) of this section of the rule.

(h) Loan Term. Applicants eligible for additional subsidization under the affordability criteria as specified in paragraph subsection (a)(A) of this section of the rule must take the longest term available for their loan. All other applicants may choose any term permitted in section (8) of this rule. A borrower may prepay its loan without penalty.

[ED. NOTE: Tables referenced are not included in rule text. Click here for PDF copy of table(s).]

Stats. Implemented: ORS 468.423 – 468.440
Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 31-1989(Temp), f. & cert. ef. 12-14-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 3-2010(Temp), f. & cert. ef. 5-4-10 thru 10-29-10; DEQ 13-2010, f. & cert. ef. 10-27-10; DEQ 11-2012, f. & cert. ef. 12-14-12; DEQ 9-2015, f. & cert. ef. 10-16-15

Purchase and Refinancing of Debt Obligation

340-054-0071

Debt Obligation Purchase

DEQ may use the CWSRF to buy a public agency’s debt obligation subject to all of the following limitations:

(1) The debt was incurred after March 7, 1985.

(2) The debt obligation does not exceed 20-30 years except for a bond purchase as specified in OAR 340-054-0072.

(3) DEQ will not use the purchase of a debt obligation to refinance a pre-existing CWSRF loan or other debt obligation except as specified in OAR 340-054-0072(5)(b).

Stats. Implemented: ORS 468.423 - 468.440
Hist.: DEQ 2-2014, f. 1-28-14, cert. ef. 2-3-14; DEQ 9-2015, f. & cert. ef. 10-16-15

340-054-0072

Bond Purchase

(1) Application requirements. All application requirements for a CWSRF loan as specified in OAR 340-054-0022 apply to a bond purchase under this rule.

(2) Intended Use Plan and project priority list. All applications for a bond purchase are subject to IUP and project priority list development in the same manner as specified in OAR 340-054-0025.

(3) Project ranking criteria. All applicants for a bond purchase will be ranked based on the point sum from the criteria specified in OAR 340-054-0026 and 340-054-0027.

(4) Reserves, CWSRF general fund and project funding. DEQ will allocate reserves and CWSRF general funds for a bond purchase in the same manner as specified in OAR 340-054-0036.

(5) Requirements for a bond purchase.
(a) Clean Water Act plans. DEQ will only purchase a bond whose proceeds are used to finance a project that is consistent with plans developed under sections 303(e), 319 or 320 of the Clean Water Act.

(b) Refunding an existing CWSRF loan or debt obligation is not an eligible use of the proceeds of a bond purchase for treatment works unless all of the following apply:

(A) All of the following conditions must be met on February 1, 2014:

(i) The public agency’s existing CWSRF loan or debt obligation for treatment works is not in default.

(ii) The median household income in the area that the treatment works of the public agency serves is less than 70 percent of the statewide median household income.

(iii) The public agency’s existing CWSRF loan or debt obligation for treatment works has a remaining term of 10 years or greater.

(iv) The public agency’s existing CWSRF loan or debt obligation for treatment works does not include any American Recovery and Reinvestment Act funds or provide for principal forgiveness.

(B) The public agency must:

(i) Submit written confirmation to DEQ by May 1, 2014 that it intends to refinance its existing CWSRF loan or debt obligation for treatment works with the proceeds of a bond for treatment works issued by the public agency and purchased by DEQ, and

(ii) Complete the issuance and sale of the bond for treatment works by February 1, 2016.

(C) When DEQ purchases a debt obligation to replace an existing CWSRF loan or debt obligation, the amortization period of the debt obligation may not exceed the lesser of:

(i) The useful life of the asset, or

(ii) Thirty years minus the number of years that the existing CWSRF loan or debt obligation has been in repayment.

(D) The interest rate for the bond for treatment works DEQ purchases as described in subsection (b) of this section of the rule is determined under subsection (b) of section (7) of this rule.

(c) Refinancing an interim loan. A public agency may sell a bond to DEQ to refinance an interim loan or reimburse itself for self-generated funds used to pay DEQ-approved project costs for treatment works if the public agency meets the conditions in OAR 340-054-0056(3).
(6) Conditions for bond purchase. The terms, conditions and requirements set out in OAR 340-054-0060 apply to a bond purchase.

(7) Bond purchase, terms and interest rates.

(a) Bonds. A bond DEQ purchases under this rule must be a revenue bond for a term not to exceed 30 years and meet the requirements specified in OAR 340-054-0065(2).

(b) Interest rates. OAR 340-054-0065(4)(b) specifies the base rate for a bond purchase. DEQ will provide the following interest rates for bond purchases:

(A) For bond purchase agreements for treatment works executed between February 1, 2014 and January 31, 2016, DEQ will calculate the interest rates as in accordance with Table 3 of this section specifies.

(B) For bond purchase agreements executed on or after February 1, 2016, interest rates will be calculated under in accordance with OAR 340-054-0065(4)(f)(B).

(c) Interest accrual and payment. OAR 340-054-0065(5) sets the terms for interest accrual and payment for bond purchases under this rule.

(d) Annual fee. OAR 340-054-0065(6) specifies the annual fee for a bond purchase.

(e) Commencement of bond repayment. OAR 340-054-0065(7) prescribes when a public agency must begin principal and interest repayment for a bond DEQ purchased under this rule.

(f) Term. A public agency must fully repay bond purchases under this rule under in accordance with a schedule DEQ prescribes. The term of the bond DEQ purchases under this rule will not exceed 30 years after project completion or the useful life of the asset financed by the bond, whichever is less.

(g) Minor variations in bond terms. DEQ may, as OAR 340-054-0065(9) specifies, authorize minor variations in financial terms of a bond purchased under this rule to facilitate administration and repayment of the bond.

(h) Principal forgiveness Additional subsidization. DEQ may provide principal forgiveness additional subsidization for a bond purchase in the same manner as for a loan under OAR 340-054-0065(124).

OAR 340-054-0072

Table # 3

Bond Purchase Interest Rates
<table>
<thead>
<tr>
<th>Borrowers</th>
<th>Rates (percent of base rate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small communities with less than statewide median household income</td>
<td>40</td>
</tr>
<tr>
<td>Communities other than small communities with less than statewide median household income</td>
<td>55 plus 0.25%</td>
</tr>
<tr>
<td>Communities with equal to or more than the statewide median household income</td>
<td>55 plus 0.5%</td>
</tr>
</tbody>
</table>

[ED. NOTE: Tables referenced are not included in rule text. Click here for PDF copy of table(s).]

Stats. Implemented: ORS 468.423 - 468.440
Hist.: DEQ 2-2014, f. 1-28-14, cert. ef. 2-3-14; DEQ 9-2015, f. & cert. ef. 10-16-15
340-054-0005

Purpose

(1) The rules in this division establish procedures and requirements for funding projects and activities that enhance, protect or restore water quality through the Water Pollution Control Revolving Fund, called the Clean Water State Revolving Fund.

(2) This division:

(a) Assists a public agency to obtain financing for a project that enhances, protects or restores water quality.

(b) Ensures the loan application and funding processes, procedures and requirements are clear.

(c) Promotes loan affordability by offering below-market interest rates.

(d) Ensures CWSRF perpetuity for project funding reliability.

Stats. Implemented: ORS 468.423 – 468.440

340-054-0010

Definitions

The following definitions apply to this rule division:

(1) “ Applicant” means a public agency that has applied for a CWSRF loan under this division.
(2) “Borrower” means a public agency that has signed a CWSRF loan agreement with DEQ.

(3) “Change order” means a written order, and supporting information from a borrower, to a borrower’s contractor authorizing an addition, deletion or revision in the work within the scope of the contract documents, including any required adjustment in contract price or time.

(4) “Checklist of application requirements” means a list that DEQ provides of all documents an applicant must submit to DEQ under this division.


(6) “Clean Water State Revolving Fund” or “CWSRF” means the Water Pollution Control Revolving Fund established under ORS 468.427.

(7) “Construction” means erecting, installing, expanding or improving a wastewater or stormwater facility, nonpoint source control activity or estuary management project, and includes demolishing an obsolete facility.

(8) “Cross-cutting authorities” means requirements of federal laws and Executive Orders that apply to projects and activities funded under the CWSRF program.

(9) “Default” means failing to pay principal, interest or annual fees, or to comply with other CWSRF loan terms or provisions, and includes filing bankruptcy or other written admission of an inability to satisfy a borrower’s obligations under a CWSRF loan.

(10) “DEQ” means the Oregon Department of Environmental Quality.

(11) “Design” means preparing engineering drawings and specifications for the proposed construction, and may include pre-design activities.

(12) “Eligible recipient” means public agency with the meaning given in ORS 468.423.

(13) “EPA” means the U.S. Environmental Protection Agency.

(14) “Estuary management” means implementing actions identified in a Comprehensive Conservation Management Plan developed for a designated national estuary.

(15) “Federal loans” are loans DEQ designates yearly in its Intended Use Plan that represent projects that are funded with monies directly made available by the federal capitalization grant for the associated federal fiscal year.

(16) “Local community loan” means a loan, the proceeds of which a public agency uses to establish a local financial program that will fund an eligible nonpoint source control or estuary management activity.
(17) “Maintenance” means regularly scheduled work performed to repair, replace or upgrade equipment in a facility, or to prevent or correct a failure or a malfunction of a wastewater or stormwater facility, nonpoint source control or estuary management project.

(18) “Natural infrastructure” means using a natural form and ecosystem function to restore or augment a project’s intended water quality benefits.

(19) “Nonpoint source” has the meaning given in ORS 468B.005.

(20) “Nonpoint source control” means implementing a nonpoint source control activity under section 319 of the Clean Water Act and 40 C.F.R. § 35.3115(b) that is included in the 2014 Oregon Nonpoint Source Management Program Plan.

(21) “Operation” means controlling wastewater collection system pumping stations and wastewater facility treatment unit processes, controlling equipment and processes of stormwater facilities, nonpoint source control and estuary management projects, and the financial and personnel management, records, laboratory control, process control, safety, and emergency planning for these facilities and projects.

(22) “Planning” means monitoring, data collection and measurement, evaluation, analysis, security evaluations, report preparation, environmental review, public education and review process and any other activity leading to a written plan for providing a wastewater or stormwater facility, nonpoint source control or estuary management project intended to remediate an existing or anticipated water pollution problem, but does not include the preparation of detailed bid documents for construction.

(23) “Point source” has the meaning given in ORS 468B.005.

(24) “Principal forgiveness” means additional subsidization that allows a borrower to repay only a specified portion of the loan principal.

(25) “Project” means the activities or tasks identified in a loan application or a loan agreement for which a borrower may expend or obligate funds.

(26) “Public agency” has the meaning given in ORS 468.423.

(27) “Ready to proceed” means, in regard to a project, that a loan applicant’s project details have been published in the Intended Use Plan under OAR 340-054-0025(3)–340-054-0025(5) and the applicant has met all loan requirements set out in OAR 340-054-0022.

(28) “Replacement” means obtaining and installing equipment, accessories or appurtenances necessary for operating a wastewater or stormwater facility, nonpoint source control or estuary management project in order to maintain a facility or project for the purpose for which it was designed and constructed during its useful life, but does not mean replacing a facility or project at the end of its useful life.
(29) “Small community” means a public agency serving a population of 10,000 or less.

(30) “Sponsorship option” means DEQ’s financing mechanism that allows a public agency with the authority to finance and implement a wastewater facility project and an eligible nonpoint source control or estuary management activity to be financed through one combined CWSRF application.

(31) “Stormwater” means water runoff from a precipitation event, snowmelt runoff, and surface runoff and drainage.

(32) “Sustainability” means the long term reliability and viability of finance, operations, environmental performance or technology, or using natural infrastructure.

(33) “Treatment works” has the meaning given in ORS 468.423.

(34) “Wastewater” has the meaning given for “sewage” in ORS 468B.005.

(35) “Wastewater collection system” means publicly owned pipelines, conduits, pumping stations, force mains and any other related structures, devices or equipment used to convey wastewater to a wastewater treatment facility.

(36) “Wastewater facility” means a wastewater collection system or wastewater treatment facility.

(37) “Wastewater treatment facility” means a publicly owned device, structure or equipment used to treat, neutralize, stabilize, reuse or dispose of wastewater and treatment residuals.

(38) “Water quality standards” means the surface water standards established in OAR 340-041 and the minimum groundwater protection requirements established in OAR 340-040.

[Publications: The Intended Use Plan referenced is available from the agency. The Oregon Nonpoint Source Management Program Plan is available as a PDF by clicking on this link: ONSMP]

Stats. Implemented: ORS 468.423 – 468.440
Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 3-2010(Temp), f. & cert. ef. 5-4-10 thru 10-29-10; DEQ 13-2010, f. & cert. ef. 10-27-10; DEQ 11-2012, f. & cert. ef. 12-14-12; DEQ 2-2014, f. 1-28-14, cert. ef. 2-3-14; DEQ 9-2015, f. & cert. ef. 10-16-15

340-054-0011

Authorized Fund Uses
DEQ will use the CWSRF only to:

(1) Make loans to eligible borrowers identified in the Intended Use Plan developed under OAR 340-054-0025;

(2) Fund loan reserves specified in OAR 340-054-0036;

(3) Purchase bonds or acquire other debt obligations incurred after March 7, 1985 as OAR 340-054-0071 provides;

(4) Pay CWSRF program administration costs to the extent federal and state law allow;

(5) Earn interest on fund accounts;

(6) Establish reserves for bonds issued by the state for use by the fund; or

(7) Pay principal and interest of bond obligations sold to benefit the fund.

Stats. Implemented: ORS 468.423–468.440
Hist.: DEQ 11-2012, f. & cert. ef. 12-14-12; DEQ 2-2014, f. 1-28-14, cert. ef. 2-3-14; DEQ 9-2015, f. & cert. ef. 10-16-15

340-054-0015

Eligible Projects and Activities

(1) A public agency may apply for a CWSRF loan up to 100 percent of the cost of a water quality project or the project related costs for the following project types:

(a) Implementing a management program established under section 319 of the Clean Water Act.

(b) Developing and implementing a comprehensive conservation and management plan under section 320 of the Clean Water Act.

(c) Constructing, repairing, or replacing decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage.

(d) Managing, reducing, treating, or recapturing stormwater or subsurface drainage water.

(e) Developing and implementing watershed projects meeting the criteria set forth in section 122 of the Clean Water Act.
(f) Reusing or recycling wastewater, stormwater, or subsurface drainage water.

(2) A municipality or intermunicipal, interstate or State agency may apply for a CWSRF loan up to 100 percent of the cost of a water quality project or the project related costs for the following project types:

(a) Constructing publicly owned treatment works.

(b) Acquiring the land that will be an integral part of the treatment process. These lands include land used for storing treated wastewater in land treatment systems prior to land application, or will be used for ultimate disposal of residues resulting from such treatment and acquiring other land, and interest in land, that are necessary for construction.

(c) Reducing the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse.

(d) Reducing the energy consumption needs for publicly owned treatment works.

(e) Increasing the security of publicly owned treatment works.

Stats. Implemented: ORS 468.423 - 468.440

340-054-0022

Loan Application Requirements

(1) Application submittal. DEQ will notify interested parties at least annually of the opportunity to submit applications for a CWSRF loan. An eligible public agency may submit a CWSRF loan application to DEQ at any time.

(2) Consideration for funding. DEQ will consider an applicant for funding only if its project is included in the Intended Use Plan and its application meets all of this division’s requirements.

(3) All CWSRF loans. An applicant must submit the following to DEQ:

(a) A complete application on the applicable DEQ form;

(b) Documents specified in the DEQ checklist of application requirements;

(c) Audited financial statements for the three years preceding the application date and the applicant’s current budget, unless waived in writing by DEQ;
(d) Evidence the applicant has the authority to undertake the project including, but not limited to, evidence of a loan approval resolution or similar authorization for signing a loan agreement and establishing a loan reserve account;

(e) Evidence the applicant has authority to collect and pledge the revenue offered as repayment for a CWSRF loan, repay a loan and, where applicable, the ability to ensure ongoing operation and maintenance of the proposed wastewater or stormwater facility, nonpoint source control or estuary management project. DEQ may require an applicant to meet the following criteria for a revenue-secured loan described under OAR 340-054-0065(2):

(A) An applicant’s revenue stream is not at risk from undue dependence on a limited portion of the system’s customer base or a pattern of delinquent payment from that portion of the system’s customer base, and

(B) An applicant must have the ability to collect from delinquent customers;

(f) Pre-award compliance review report or other evidence DEQ requires showing compliance with federal nondiscrimination requirements;

(g) For projects serving two or more public agencies, the executed inter-agency agreements, contracts or other legally binding instruments necessary for financing, constructing and operating the proposed project. The documents must be satisfactory to DEQ for determining an adequate pledge of security;

(h) Evidence of resolution, ordinance or other authorization approving bonds secured by sewer or other revenue sources if required by DEQ;

(i) Official statement of recently issued bonds if required by DEQ;

(j) A DEQ-approved certification that the requirements for the cost and effectiveness analysis and the subsequent project selection are completed as required by section 602(b)(13) of the CWA;

(k) Any other information DEQ requests as necessary to complete the loan application.

(4) Local community loan. In addition to the requirements in section (3) of this rule, an applicant applying for a CWSRF local community loan must submit the following to DEQ:

(a) A description of how the project will implement a nonpoint source control activity or estuary management effort.

(b) A projected cash flow statement based on anticipated number of local loans, their repayment schedule, amount and timing of department disbursement and amount and timing of repayments to DEQ.
(c) Unless waived by DEQ, evidence of a user charge system or other source of revenue if the applicant will be securing and repaying the loan with sewer system revenues.

(d) Unless waived by DEQ, demonstration of compliance with applicable federal environmental cross-cutting authorities.

(e) Documentation that demonstrates compliance with the land use requirements in OAR 340-018-0050.

(f) DEQ-approved plans and specifications that comply with OAR chapter 340, division 52, unless waived by a DEQ engineer.

(g) An environmental determination obtained from DEQ for a nonpoint source pollution control (CWA § 319) or estuary management (CWA § 320) project that are construction and treatment works as defined in ORS 468.423. The environmental determination must meet the following conditions:

(A) An applicant must provide all necessary documentation to support DEQ’s review of the entire projects’ potential environmental impacts and include an analysis of a no action alternative and other reasonable alternatives considered.

(B) Project construction must begin within five years of the environmental determination.

(h) If an applicant does not obtain an environmental determination as specified in subsection (4)(g) of this section, an applicant may submit to DEQ, and DEQ may accept, an environmental determination made by another agency that meets the following conditions:

(A) The project scope must be essentially unchanged from the scope the other agency accepted.

(B) The other agency’s determination must have been made within the previous five years.

(C) The applicant met and documented the federal environmental cross-cutting authorities.

(5) All design or construction loans. In addition to the requirements in section (3) of this rule, an applicant applying for a CWSRF design or construction loan must submit the following to DEQ:

(a) Unless waived by DEQ, evidence of a user charge system or other source of revenue if the applicant will be securing and repaying the loan with sewer system revenues.

(b) Unless waived by DEQ, demonstration of compliance with applicable federal environmental cross-cutting authorities for a construction project.

(c) An environmental determination obtained from DEQ for a construction project of a treatment works as defined in ORS 468.423, including a nonpoint source pollution control
(CWA § 319) or estuary management (CWA § 320) project, that are construction and treatment works as defined in ORS 468.423. The environmental determination must meet the following conditions:

(A) An applicant must provide all necessary documentation to support DEQ’s review of the entire projects’ potential environmental impacts and include an analysis of a no action alternative and other reasonable alternatives considered.

(B) Project construction must begin within five years of the environmental determination.

(d) If an applicant does not obtain an environmental determination, as specified in subsection (5)(c) of this section, an applicant may submit to DEQ, and DEQ may accept, an environmental determination made by another agency that meets the following conditions:

(A) The project scope must be essentially unchanged from that the other agency accepted.

(B) The other agency’s determination must have been made within the previous five years.

(C) The applicant met and documented the federal environmental cross-cutting authorities.

(e) Documentation that demonstrates compliance with the land use requirements in OAR 340-018-0050.

(f) For a construction-only loan, DEQ-approved plans and specifications for the project as OAR chapter 340, division 052 requires.

(g) If the estimated cost of a project is in excess of $10 million, a value engineering study satisfactory to DEQ done prior to beginning construction. The study must be a specialized cost control technique specifically applicable to the wastewater treatment facility design identifying cost savings that can be made without sacrificing project reliability or efficiency.

(6) Design or construction loan for a point source project. In addition to the requirements in sections (3) and (5) of this rule, an applicant applying for a CWSRF design or construction loan for a point source project must submit the following to DEQ:

(a) An engineered planning document in the form of either a facility plan or project pre-design report that provides a comprehensive evaluation of environmental factors, engineering alternatives and financial considerations affecting the project area. This document must adequately describe the effectiveness and suitability of the proposed project to address the identified water quality problem. An applicant must have DEQ review and approve this document before signing a design or construction loan.

(b) Evidence of a sewer use ordinance or equivalent authority that prohibits:

(A) New connections from inflow sources into the wastewater collection system; and
(B) Introducing wastewater into the wastewater collection system containing toxics or other pollutants in amounts or concentrations that have the potential of endangering public safety, adversely affecting the project or precluding selecting the most cost-effective alternative for the project.

c) When a public agency applies for a wastewater facility construction loan that includes a sponsorship option, complete information about the nonpoint source control or estuary management activity on the applicable application form. DEQ will only consider a sponsorship option if a nonpoint source control or estuary management activity is included as part of the entire project scope.

(7) Design or construction loan for a nonpoint source project. In addition to the requirements in sections (3) and (5) of this rule, an applicant applying for a CWSRF design or construction loan for a nonpoint source project must submit an engineered planning report to DEQ. The report must define the water quality problem and specify actions an applicant will implement to correct the problem.

(8) Federal loans. In addition to the applicable requirements in sections (3)–(7) of this rule, a loan designated as a federal loan must meet the requirements for federally funded projects in the Clean Water Act Title VI and EPA’s January 6, 2015, memo “Interpretive Guidance for Certain Amendments in the Water Resources Reform and Development Act to Titles I, II, V, and VI of the Federal Water Pollution Control Act.”

[Ed. Note: Publications referred to are not included here. The CWSRF Intended Use Plan is available from the agency. The EPA Interpretive Guidance can be viewed in PDF form by clicking on this link.]

Stats. Implemented: ORS 468.423 – 468.440
Hist.: DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 11-2012, f. & cert. ef. 12-14-12; DEQ 9-2015, f. & cert. ef. 10-16-15

340-054-0025

Intended Use Plan (IUP) and Project Priority List

(1) IUP development. DEQ will annually develop and submit an IUP to EPA as described in the CWA § 606 and 40 C.F.R. § 35.3150. DEQ will update the IUP as specified in section (2) of this rule. The IUP will describe how DEQ proposes to fund projects through the CWSRF and will include a project priority list that numerically ranks all eligible applications received.

(2) IUP update.
(a) Except as specified in subsection (b) of this section, DEQ will update the annual IUP and project priority list at least every four months or when DEQ receives five eligible applications, whichever timeframe is shorter, and will submit the updated plan to EPA.

(b) If DEQ does not receive an eligible application during a four month period and determines the project priority list does not need to be updated, DEQ will not update the IUP.

(3) IUP public notice. DEQ will provide public notice and 30 days for the public to comment on a proposed draft IUP.

(a) DEQ will notify all new applicants of their project application ranking on the project priority list when DEQ develops and updates an annual IUP.

(b) An applicant may ask DEQ to reevaluate their project application’s score and ranking on the proposed project priority list or to make other changes to an IUP during the public comment period.

(c) DEQ will consider and respond to all comments submitted during the public comment period before finalizing an IUP.

(4) Project priority list development. DEQ will include an eligible project under OAR 340-054-0015 on the project priority list if an applicant submits a completed application on a DEQ-approved form.

(5) Project priority list ranking. DEQ will numerically rank all eligible proposed project applications based on the point sum from the criteria specified in OAR 340-054-0026 and 340-054-0027.

(a) Except as specified in subsection (b) of this section, DEQ will evaluate each criterion in OAR 340-054-0026 and 340-054-0027 on a point scale from one to five as follows:

(A) One point = No or very low likelihood.

(B) Two points = Low or in some minor way.

(C) Three points = Moderate to significant likelihood.

(D) Four points = High likelihood.

(E) Five points = Very high likelihood.

(b) DEQ will evaluate criteria 1(c), 1(d), 2(b), 2(c), 2(d), 2(e), and 3(d) in OAR 340-054-0026 and criterion 5 in OAR 340-054-0027 by doubling the point scale specified in subsection (a) of this section.
(6) Removal of application from the project priority list.

(a) DEQ may retain an applicant’s ranked project on the project priority list in an IUP for up to 36 months while an applicant pursues all applicable CWSRF financing requirements specified in this division.

(b) After DEQ initially includes a ranked project on the project priority list, an applicant must submit to DEQ an annual written project status report to remain on the project priority list.

(c) DEQ may provide one twelve-month extension to an applicant asking to remain on the project priority list beyond the 36-month limit. An applicant asking for an extension must submit to DEQ a written project status report on the applicant’s project progress and an updated time frame indicating when the applicant will complete all CWSRF financing requirements.

(d) DEQ will provide written notice to an applicant before removing the applicant’s project from the project priority list.

(e) DEQ will remove a project from the project priority list if:

(A) An applicant does not submit an annual written project status report as subsection (b) of this section requires;

(B) An applicant does not ask for a twelve-month extension beyond the 36-month limit and submit the project status report as subsection (c) of this section requires;

(C) DEQ determines the project scope changed from the original ranked application;

(D) DEQ determines a project does not meet eligibility requirements;

(E) An applicant does not require CWSRF financing; or

(F) An applicant asks to be removed from the project priority list.

(f) If DEQ removes a project from the project priority list as specified in paragraph (e)(A through C) of this section, an applicant may resubmit to DEQ a loan application for an eligible project that DEQ will evaluate under section (5) of this rule.

[Ed. Note: Publications referred to are not included here. The Project Priority List is contained within the CWSRF Intended Use Plan. That document is available from the agency.]

Stats. Implemented: ORS 468.423 – 468.440
Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993,
CWSRF Project Ranking Criteria for Non-planning Loans

(1) Category 1. Water quality standards and public health considerations.

(a) Does the project improve water quality by addressing water quality parameters including, but not limited to: temperature, dissolved oxygen, contaminated sediments, toxic substances, bacteria or nutrients?

(b) Does the project ensure that a facility currently in compliance, but at risk of noncompliance, remains in compliance?

(c) Does the project address noncompliance with water quality standards, public health issues or effluent limits related to surface waters, biosolids, water reuse or groundwater?

(d) If the project is not implemented, is a water quality standard likely to be exceeded or an existing exceedance likely to worsen?

(2) Category 2. Watershed and health benefits.

(a) Does the project improve or sustain aquatic habitat supporting native species or state or federally threatened or endangered species?

(b) Does the project address a water quality or public health issue within a federally designated wild and scenic river or sole source aquifer, state designated scenic waterway, the Lower Columbia River or Tillamook Bay estuary, a river designated under OAR 340-041-0350, or a significant wetland and riparian area identified and listed by a local government?

(c) Does the project support implementation of a total maximum daily load (TMDL) allocation, a department water quality status and action plan or designated groundwater management area declared under ORS 468B.180?

(d) Does the project provide performance-based water quality improvements supported by monitoring and reasonable assurance that the project will continue to function over time?

(e) Does the project integrate or expand sustainability or using natural infrastructure, or use approaches including, but not limited to, water quality trading, that are not specified in subsections (f) through (i) of this section of the rule?
(f) Does the project incorporate or expand green infrastructure including, but not limited to, practices that manage wet weather and that maintain and restore natural hydrology by infiltrating, evapotranspiring, harvesting or using stormwater on a local or regional scale?

(g) Does the project incorporate or expand water efficiency including, but not limited to, using improved technologies and practices to deliver equal or better services with less water, such as conservation, reuse efforts or water loss reduction and prevention?

(h) Does the project incorporate or expand energy efficiency including, but not limited to, using improved technologies and practices to reduce energy consumption of water quality projects, use energy in a more efficient way or to produce or utilize renewable energy?

(i) Does the project incorporate or expand environmentally innovative projects including, but not limited to, demonstrating new or innovative approaches to deliver services or manage water resources in a more sustainable way?

(3) Category 3. Other considerations.

(a) Does the project include a long-term planning effort that addresses financial, managerial or technical capability, or asset planning that ensures the project will be maintained?

(b) Does the project include a significant on-going educational or outreach component?

(c) Does the project incorporate other resources including, but not limited to, in-kind support, other funding sources or a partnership with a governmental, tribal or non-governmental organization?

(d) Does the project address a small community’s water quality improvement or restoration need?

(e) Does the project include a sponsorship option?

Stats. Implemented: ORS 468.423 - 468.440
Hist.: DEQ 11-2012, f. & cert. ef. 12-14-12; DEQ 9-2015, f. & cert. ef. 10-16-15

340-054-0036

Reserves, CWSRF General Fund and Project Funding

(1) Allocation to reserves and CWSRF general fund. DEQ will allocate available CWSRF funds in a state fiscal year first to the small community, planning and green project reserves, and then to the CWSRF general fund based on the following amounts:

(a) A maximum of 25 percent of the total available CWSRF funds to the small community reserve;
(b) A maximum of $3 million to the planning reserve;

(c) An amount at least equal to the minimum required by the federal capitalization grant to the green project reserve;

(d) Amount of funds remaining, after allocation to the reserves as specified in subsections (a) through (c) of this section of the rule, to the CWSRF general fund.

(2) Project funding increase.

(a) DEQ will offer a funding increase to a borrower for an existing project based on the original project priority list ranking before offering a loan to an applicant for a new project loan if:

(A) Funds are available in the CWSRF; and

(B) The borrower submits a written request to DEQ for additional funding, has the legal authority to borrow the increased loan amount and has the financial capability to repay the increased loan amount.

(b) Any funding increase DEQ awards to a borrower will be in an amount specified in section (3) of this rule and will be done by increasing the amount of the borrower’s existing loan or by DEQ making an additional loan to the borrower at the current interest rate.

(3) Project funding allocation.

(a) During a state fiscal year DEQ will assign a project to an appropriate reserve, to the CWSRF general fund or to both.

(b) Based on availability of funds in the CWSRF at the time of allocation, DEQ will allocate an amount to a borrower in project priority list rank order that:

(A) Is not more than the greater of $2.5 million or 15 percent of the total available CWSRF funds in a state fiscal year. DEQ may allocate additional funds if funds are available after allocating the maximum amount under paragraph (b)(A) of this section of the rule to each borrower who requested project funding in a state fiscal year;

(B) Is not more than the greater of $750,000 or 25 percent of the small community reserve, until all eligible small community requests have been allocated;

(C) Is not more than $250,000 of the planning reserve; and

(D) Only finances the portion of a project funded under the green project reserve that DEQ determines meets federal requirements for green infrastructure, water or energy efficiency improvement, or other environmentally innovative activities as defined by EPA requirements.
(c) During a state fiscal year DEQ will allocate funding for a new design or construction project loan from the CWSRF general fund if the project is not funded from a reserve.

(d) DEQ will allocate in project priority list rank order available funding from the CWSRF general fund for a small community or planning project that was not allocated from their respective reserves, or allocated less than the total loan amount requested.

(4) Reallocation of reserve funds.

(a) DEQ may reallocate funds between small community and planning reserves and the CWSRF general fund unless demand exceeds available funds.

(b) DEQ will not reallocate funds remaining in the green project reserve to the CWSRF general fund.

(5) Sponsorship option allocation. DEQ will determine the total amount of CWSRF funds to be allocated at a reduced interest rate through the sponsorship option in each state fiscal year.

Stats. Implemented: ORS 468.423 - 468.440
Hist.: DEQ 11-2012, f. & cert. ef. 12-14-12; DEQ 9-2015, f. & cert. ef. 10-16-15

340-054-0056

CWSRF Loan Use Conditions

(1) Clean Water Act plans. DEQ will only provide a loan to a project that is consistent with plans developed under sections 303(e), 319 or 320 of the Clean Water Act.

(2) Refinancing a long-term loan. DEQ will not provide a loan that will be used to refinance another lender's long-term loan or other debt obligations.

(3) Refinancing an interim loan. DEQ may provide a loan to refinance an interim loan or self-generated funds used to pay DEQ-approved project costs if the borrower:

(a) Provides DEQ with a written notice of intent to apply for long-term financing;

(b) Wants to proceed with the project using interim financing or self-generated funds; and

(c) Agrees to proceed at its own risk whether or not the CWSRF is available to provide long-term financing.

(4) Interim financing. DEQ may provide short-term, construction-period financing for an eligible project if the following conditions are met:
(a) The CWSRF’s liquidity is sufficient to provide financing without adversely affecting the amount and timing of disbursements needed for prior obligations;

(b) The borrower has a legally enforceable obligation for long-term project financing satisfactory to DEQ; and

(c) The loan agreement for interim financing will stipulate DEQ is not obligated to provide long-term financing for the project.

Stats. Implemented: ORS 468.423 - 468.440
Hist.: DEQ 11-2012, f. & cert. ef. 12-14-12; DEQ 9-2015, f. & cert. ef. 10-16-15

340-054-0060

Loan Agreement and Conditions

DEQ will include conditions in a loan agreement that apply to the type of project being financed, including, but not limited to, the following:

(1) Timely use of loan funding.

(a) DEQ may cancel a loan agreement if a borrower fails to begin using loan proceeds within two years after signing a loan agreement.

(b) Borrowers that do not begin using loan proceeds within two years after signing a loan agreement will have a choice of canceling the loan and reapplying for DEQ funding or paying holding costs to DEQ.

(A) Holding costs are, on an annual basis, the estimated amount of the loan interest payable to DEQ, less the amount of the interest DEQ earned from the Treasurer’s investment of funds for DEQ’s account. DEQ will itemize holding costs on a semi-annual invoice DEQ sends to the borrower. The borrower must pay these costs within 30 days after DEQ sends the invoice.

(B) A borrower may apply for a one-time one year extension to begin using loan proceeds.

(2) Accounting. A borrower must maintain all CWSRF project accounts as separate accounts and must use accounting, audit and fiscal procedures that conform to Generally Accepted Governmental Accounting Standards and the requirements of the Governmental Accounting Standards Board.

(3) Records retention. A borrower must retain project files and records for six years after project performance affirmative certification or project completion as DEQ determines or such longer period as applicable state or federal law requires. A borrower must also retain financial files and records for three years after the loan is repaid in full.
(4) Wage requirements.

(a) A borrower for constructing a treatment works project must comply with all provisions of the Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 to 3144 and 3146, as detailed in section 513 of the Clean Water Act. Wage rates must be based on the wage requirements of the Davis Bacon Act or the prevailing wage rate requirements for public works projects under ORS 279C.800 to 279C.870 and OAR 839-025-0000 to 839-025-0540, whichever is higher.

(b) A borrower for a project not specified in subsection (a) of this section of the rule must comply with the prevailing wage rate requirements under ORS 279C.800 to 279C.870 and OAR 839-025-0000 to 839-025-0540.

(5) Construction materials. A borrower for a treatment works construction project must ensure that all of the iron and steel products used in the project are produced in the United States as required by section 608 of the Clean Water Act.

(6) Debarment and suspension. A borrower must comply with Subpart C of 2 C.F.R part 180, Responsibilities of Participants Regarding Transactions Doing Business with Other Persons and Subpart C of 2 C.F.R part 1532, Responsibilities of Participants Regarding Transactions.

(7) Engineering documents. If a borrower uses CWSRF financing to construct a wastewater facility subject to OAR 340-052, it must submit to DEQ plans and specifications, operation and maintenance manuals, inspection and certification of proper construction, and any other applicable documentation OAR 340-052 and 340-054-022 require.

(8) Inspections and progress reports.

(a) A borrower must have a qualified inspector under the direction of a registered civil, mechanical or electrical engineer, as appropriate, conduct on-going inspections during the construction phase of a wastewater facility subject to OAR 340-052 to ensure the project complies with approved plans and specifications. DEQ or its representative may enter property the borrower owns or controls to conduct interim inspections. DEQ may require progress reports sufficient to determine compliance with approved plans and specifications and with other loan agreement provisions.

(b) DEQ may request review and analysis of construction plans from relevant agencies or offices to ensure the project plans not subject to department review under OAR 340-052 support the project’s successful implementation and completion. A borrower must allow inspections by appropriately qualified persons during project construction or implementation to ensure the project as constructed conforms to project plans and other provisions of the loan agreement.

(9) Loan amendments.
(a) DEQ will not require a loan amendment for changes in project work that are consistent with project objectives and within the loan scope and funding level.

(b) DEQ will execute a loan amendment if:

(A) DEQ awards a borrower an increase in the original approved loan amount at any time during the project;

(B) The borrower requests a decrease in the original loan amount at any time during the project or completes the project and does not request disbursement of all loan proceeds; or

(C) DEQ determines a borrower must meet additional federal or state requirements for CWSRF financing.

(10) Change orders. DEQ may approve or reject a change order based on the loan eligibility of the project modification and on engineering value under OAR 340-052-0015. A borrower must submit a change order to DEQ for engineering and financial review:

(a) When any change order is executed, and

(b) Before executing any change order that exceeds $100,000 or will alter project performance.

(11) Project performance certification for a wastewater facility. A borrower must submit to DEQ, within a timeframe DEQ specifies, project performance documents to verify whether the facility meets performance and operational requirements and specifications which the project was planned, designed and built to achieve. The documents may include, but are not limited to, construction certification, performance evaluation report or performance certification.

(12) Eligible construction costs. DEQ will only disburse loan funds for construction costs for work that complies with plans, specifications, change orders and addenda DEQ reviewed or approved.

(13) Adjustments. DEQ may at any time review and audit requests for payment and make adjustments for eligibility, math errors, items not built or bought, unacceptable construction or other discrepancies.

(14) Contract and bid documents. A borrower must submit a copy of the awarded contract and bid documents to DEQ, including a tabulation of all bids received.

(15) Architectural and engineering services. Contractors for program management, construction management, feasibility studies, preliminary engineering design, design, engineering, surveying, mapping, or architectural related services for federal loans must be selected as provided in ORS 279C.110 and OAR chapter 137, division 048; or equivalent federal requirement for selection of architectural and engineering services.
(16) Audit.

(a) If DEQ requests it, a borrower must submit audited financial statements to DEQ each year until the loan is repaid.

(b) If a borrower expends $500,000 or more in federal funds, from all sources, in its fiscal year beginning before December 26, 2014, the borrower must have a single organization-wide audit conducted under the Single Audit Act, as amended. If a borrower expends $750,000 or more in federal funds, from all sources, in a fiscal year beginning on or after December 26, 2014, borrower must have a single organization-wide audit conducted under the provisions of 2 C.F.R. Subtitle B, with guidance at 2 C.F.R. part 200. The borrower must submit copies of all audits to DEQ within 30 days of completion. If a borrower expends less than $500,000 in federal funds in a fiscal year beginning prior to December 26, 2014, or less than $750,000 in a fiscal year beginning on or after that date, the borrower is exempt from federal audit requirements for that year. Records must be available to DEQ, the Oregon Secretary of State’s Office, the federal government and their duly authorized representatives for the purpose of making audits, examinations and copies.

(17) Default remedies. A loan agreement must provide adequate remedies for DEQ to enforce the agreement’s terms. Upon default by a borrower, DEQ may proceed with one or more of the following:

(a) Pursuing any remedy available to it against the borrower.

(b) Appointing a receiver at the borrower’s expense to operate the facility that generates the pledged revenues.

(c) Setting and collecting utility rates and charges pledged as security for the loan.

(d) Withholding any amounts otherwise due to the borrower from the State of Oregon and directing such funds be applied to the debt service and fees due on the CWSRF loan. If DEQ finds the loan to the borrower is otherwise adequately secured, DEQ may waive this right in the loan agreement or other loan documentation.

(e) Declaring all or any part of the indebtedness immediately due and payable.

(18) Release. A borrower must release and discharge DEQ, its officers, agents and employees from all liabilities, obligations and claims occurring from project work or under the loan, subject only to exceptions previously agreed upon in a written contract between DEQ and the borrower.

(19) Effect of document approval or certification.

(a) DEQ’s review and approval of facilities plans, design drawings and specifications, or any other documents does not relieve a borrower of responsibility to properly plan, design, build and effectively operate and maintain a wastewater or stormwater facility, nonpoint
source control or estuary management project as required by law, regulations, permits and good management practices.

(b) DEQ may not be held responsible for:

(A) Any project costs or any losses or damages resulting from defects in plans, design drawings and specifications, or other sub-agreement documents; or

(B) Verifying cost-effectiveness, cost comparisons or adherence to state procurement regulations.

(20) Reservation of rights.

(a) A borrower may require such assurances, guarantees, indemnity or other contractual requirements as it deems necessary or prudent from any party performing project work.

(b) This rule does not affect DEQ’s right to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a borrower that fails to carry out its obligations under OAR chapter 340.

(21) Other provisions and documentation. DEQ may include other provisions in a CWSRF loan agreement necessary to meet the Clean Water Act and ORS 468.423 to 468.440. DEQ may require documentation including, but not limited to, a legal counsel opinion that the loan agreement is enforceable.

Stats. Implemented: ORS 468.423 – 468.440

340-054-0065

Loan Types, Terms and Interest Rates

(1) Loan types. A CWSRF loan must be one of the following:

(a) A loan secured by a general obligation bond, as defined in ORS 287A.001(1).

(b) A loan secured by the borrower’s pledge of its full faith and credit and taxing power, as described in ORS 287A.315.

(c) A loan agreement, bond or other unconditional obligation that meets the requirements specified in section (2) of this rule.
(d) An alternative loan that meets the requirements specified in section (3) of this rule.

(2) A CWSRF loan that is a revenue secured loan must:

(a) Be represented by a properly executed loan agreement, bonds or other unconditional obligations to pay from specified revenues that are pledged by the borrower to DEQ. The obligation to pay must include a pledge of security DEQ accepts.

(b) Include a rate provision that requires the borrower to impose and collect revenues sufficient to pay:

(A) All expenses of operating, maintaining and replacing a wastewater or stormwater facility, nonpoint source control or estuary management project;

(B) All debt service;

(C) All other financial obligations including, but not limited to, contributions to reserve accounts imposed in connection with prior lien obligations; and

(D) An amount equal to the loan’s coverage requirements. This requirement is the product of the coverage factor times the debt service due in that year on the CWSRF loan. The coverage factor used must correspond to the coverage factor and reserve percentage the borrower selects from subsection (d) of this section of the rule.

(c) Include a debt service reserve provision requiring the borrower to maintain a pledged reserve dedicated to the CWSRF loan payment and that meets the following requirements:

(A) The debt service reserve must be maintained in an amount at least equal to the product of the reserve percentage listed in subsection (d) of this section of the rule times one half the average annual debt service during the repayment period based on the repayment schedule or revised repayment schedule in the loan agreement. The reserve percentage selected from subsection (d) of this section of the rule must correspond to the coverage factor selected for the CWSRF loan.

(B) A loan reserve may be funded with the borrower’s cash, a letter of credit, repayment guaranty or other third party commitment to advance funds that is satisfactory to DEQ. If DEQ determines reserve funding imposes an undue hardship on the borrower, DEQ may allow reserves to be funded with CWSRF loan proceeds.

(d) Comply with the one of the following coverage factors (net income to debt service) and reserve percentages (percentage of one-half the average annual debt service):

(A) 1.05:1-100 percent.

(B) 1.15:1-75 percent.
(C) 1.25:1-50 percent.

(D) 1.35:1-25 percent.

(e) Include a requirement for the borrower to conduct a periodic rate review and rate adjustment, if necessary, to ensure estimated revenues in subsequent years are sufficient.

(f) Include a requirement that, if revenues fail to achieve the required rate level, the borrower must promptly adjust rates and charges to assure future compliance with the rate requirements. DEQ may determine that not adjusting rates does not constitute a default if the borrower transfers unencumbered resources in an amount equal to the revenue deficiency to the utility system that generates the revenues.

(g) Include a requirement that if the reserve account is depleted for any reason, the borrower must take prompt action to restore the reserve to the required minimum amount.

(h) Include a requirement restricting additional debt appropriate to the borrower’s financial condition.

(i) Prohibit the borrower from selling, transferring or encumbering any financial or fixed asset of the utility system that produces the pledged revenues if the borrower is in violation of a CWSRF loan requirement, or if such sale, transfer or encumbrance may cause a violation of a CWSRF loan requirement.

(3) Alternative loans. DEQ may authorize an alternative loan for a reasonable alternative financing method if the borrower demonstrates to DEQ’s satisfaction that:

(a) Borrowing money from the CWSRF through general obligation bonds, revenue bonds or a revenue-secured loan, as described in subsection (a), (b), (c), or (d) of section (1) of this rule, is unduly burdensome or costly to the borrower; and

(b) The alternative loan has a credit quality substantially equal to, or better than, the revenue secured loan credit quality to the borrower. DEQ may consult with a financial advisor and may charge the borrower reasonable consultation costs to determine if an alternative loan meets the credit quality requirement.

(4) Interest rates.

(a) Effective date. The interest rates as specified in this section are effective for all loan agreements executed on or after January 1, 2013.

(b) Base rate. DEQ will determine the base rate used in computing the interest rates on all direct loans for a quarter based on the weekly average of state and local government bond interest rates for the preceding quarter. This base rate will be the “state and local bonds” entry reported in “Selected Interest Rates, H.15” posted by the Federal Reserve from the “Bond Buyer Index” for general obligation bonds (20 years to maturity, mixed quality).
(c) Planning loans. The interest rate for a planning loan will be equal to 25 percent of the base rate.

(d) Local community loans. The interest rate for a local community loan will be equal to 50 percent of the base rate.

(e) Federal loans. DEQ will determine the interest rate for federal loans. DEQ will not set a rate that exceeds the highest rate described in Table 2 of this rule.

(f) All other direct loans. Except as provided in OAR 340-054-0065(10), DEQ will provide the following interest rates for all other CWSRF loans:

(A) For loans with a maximum repayment period of up to 20 years, DEQ will provide the following interest rates as detailed in Table 1 of this rule.

<table>
<thead>
<tr>
<th>OAR 340-054-0065</th>
<th>Table 1</th>
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<tbody>
<tr>
<td>Interest Rates (percent of base rate) for Loans with Terms of Up to 20 Years</td>
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<tr>
<td><strong>Borrowers</strong></td>
<td><strong>Repayment Period</strong></td>
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<tr>
<td></td>
<td>0-5 Years</td>
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<tr>
<td>Small communities with less than statewide median household income</td>
<td>25%</td>
</tr>
<tr>
<td>All other borrowers</td>
<td>25%</td>
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</tbody>
</table>

(B) (Effective January 1, 2016) For loans with a maximum repayment period of up to 30 years, DEQ will provide the following interest rates as detailed in Table 2 of this rule.
DEQ will set interest rate premiums as described in Tables 1 and 2 in this rule so as to safeguard the fund’s perpetuity and DEQ will reevaluate them from time to time.

(g) Sponsorship option. When a sponsorship option is implemented within the scope of a construction loan, DEQ:

(A) Will calculate the debt service on the wastewater facility project based on subsection (f) of this section of the rule;

(B) Will calculate the debt service on a combined sponsorship loan by reducing the interest rate so the debt service on the sponsorship loan equals the debt service as calculated in paragraph (g)(A) of this section of the rule; and

(C) May not reduce the resulting interest rate below one percent.

(h) Bond proceeds for direct loans. DEQ may use bond proceeds that are matching funds for federal capitalization grants to fund direct loans at the interest rates listed in this section. Any change in the source of repayment for matching bonds will not affect this subsection’s requirements.

(5) Interest accrual and payment period. Interest begins accruing when DEQ makes the first CWSRF loan disbursement to a borrower. A borrower must include all outstanding accrued interest with each loan repayment.
(6) Annual loan fee.

(a) Except as provided in subsection (b) of this section of the rule, a borrower must pay DEQ an annual loan fee of 0.5 percent on the unpaid loan balance specified in the payment schedule in its loan agreement. This annual loan fee is in addition to any other payments a borrower is required to make under its loan agreement.

(b) DEQ will not charge a borrower any annual loan fee for a planning loan.

(7) Commencement of loan repayment. A borrower must begin its loan principal and interest repayments within one year of the date the facility is operationally complete and ready for the purpose for which it was planned, designed, and built or DEQ determines that the project is completed.

(8) Loan term.

(a) A borrower must fully repay a loan under a repayment schedule DEQ determines. DEQ will consider the useful life of the assets financed when determining the repayment schedule. The repayment term for:

(A) A planning loan may not exceed five years;

(B) A local community loan may not exceed ten years;

(C) All other loans may not exceed 20 years after project completion; and

(D) Effective January 1, 2016, loan terms may not exceed 30 years after project completion.

(b) DEQ will allow prepayments without penalty on all CWSRF loans except as section (11) of this rule specifies. Borrowers must provide a written prepayment notification at least 30 days before the estimated pay off date.

(c) A loan must be fully amortized by the maturity date of the loan.

(9) Minor variations in loan terms. DEQ may authorize minor variations in financial terms of loans described in this rule to facilitate administration and repayment of a loan.

(10) Restructure and refinance of CWSRF loans.

(a) DEQ may consider a one-time loan restructure, such as combining two or more existing CWSRF loans, if such restructure safeguards the CWSRF’s perpetuity.

(A) The existing CWSRF loans must have at least 10 years term remaining except where a Planning loan is combined with a Construction loan.
(B) A Sponsorship loan may not be combined with any other loan except its sponsoring point source project and only after the construction period for the nonpoint source control project has closed.

(b) DEQ may consider a one-time refinance of an existing CWSRF loan if such refinance safeguards the CWSRF’s perpetuity.

(A) The existing CWSRF loan must have at least 10 years term remaining.

(B) Any extension of term must not exceed the project’s useful life.

(C) The refinance may not reduce the interest rate below one percent.

(D) A refinance may only be for rate, term, or rate and term and may not include any funding disbursed to the borrower.

(c) DEQ may not charge a fee for a restructure or refinance.

(11) Leveraged loans.

(a) DEQ may fund loans with bond proceeds through a leveraged loan program under the following terms and conditions:

(A) Interest rates will be less than the interest rate paid by the state on bonds sold to fund the leveraged loans. Rates will be fixed at 65 percent of the base rate.

(B) Loan fees will be calculated in accordance with section (6) of this rule.

(C) Notwithstanding other provisions of this rule, DEQ may make changes to the terms and conditions of a leveraged CWSRF loan to make it marketable. To the maximum extent practicable, the terms and conditions will be the same as for direct loans.

(b) Bond issuance and related transaction costs will be paid out of bond proceeds to the extent permitted by law.

(12) Additional subsidization DEQ may provide additional subsidization in the form of principal forgiveness to the maximum extent the federal capitalization grant allows and as the criteria established in this section require. A loan with additional subsidization is subject to standard interest rates, fees, and loan terms as defined in this rule.

(a) Eligibility. Except as specified in subsection (b) of this section of the rule, the following applicants are eligible for additional subsidization:

(A) Applicants that are an eligible recipient and meet affordability criteria as specified in subsection (c) of this section of the rule;
(B) Applicants that are an eligible recipient with a project that DEQ determines implements a process, material, technique, or technology to address water-efficiency goals, energy-efficiency goals, to mitigate stormwater runoff, or to encourage sustainable project planning, design, and construction; or

(C) Applicants that are an eligible recipient and that do not meet the requirements of paragraph (a)(A) or (a)(B) in this section of the rule but have individual ratepayers who will experience financial hardship from a rate increase that financing a project causes. Applicants qualifying under this section must have an established ratepayer hardship assistance program. DEQ will review the applicant’s ratepayer hardship assistance program for duration and effectiveness.

(b) Ineligible Loans. The following types of loans are not eligible for additional subsidization:

(A) Loans for projects that are not ready to proceed;

(B) Loans that have loan agreements that include incentives such as sponsorship option loans;

(C) Interim loans; and

(D) Planning loans, except for planning loans for projects described in subsection (a)(B) of this section of the rule.

(c) Affordability Criteria. DEQ will use the following criteria to determine affordability, with the most weight added to paragraph (c)(A) of this section of the rule:

(A) Distressed as calculated by the Oregon Business Development Department’s Oregon Distressed Index using the methodology described in OAR 123-024-0031; and

(B) Negative population trends as calculated by the annual United States’ Census Bureau’s American Community Survey.

(d) Additional subsidization allocation amount. DEQ may allocate or adjust the allocation of additional subsidization every federal fiscal year as a percentage of the annual federal capitalization grant, not to exceed the maximum the federal allocation regulation permits. DEQ will determine the maximum allowable annual percentage allocation of subsidization from time to time to safeguard the CWSRF’s perpetuity.

(e) Alternate subsidy. DEQ may offer an alternate subsidy in lieu of principal forgiveness, such as a reduced interest rate, to eligible recipients that meet all other additional subsidization criteria. DEQ will include any alternate subsidy awarded in the total additional subsidization allocated in any fiscal year and may not exceed the individual award amount in subsection (f) of this rule.

(f) Award Amount.
(A) Eligible applicants may receive additional subsidization for up to fifty percent of their loan but not to exceed $500,000.

(B) For applicants that qualify for additional subsidization under paragraph 12(a)(B), DEQ will limit the additional subsidization to 50 percent of the project components qualifying under paragraph 12(a)(B), not to exceed 50 percent of the loan amount or $500,000, whichever is less.

(C) Applicants may only receive one additional subsidization award per project.

(g) Award Reserves.

(A) DEQ will reserve seventy percent of the additional subsidization allocation for applicants meeting the affordability criteria in subsection (a)(A) of this section of the rule.

(B) DEQ will reserve thirty percent of the additional subsidization allocation for applicants with projects eligible under paragraph 12(a)(B) of this section of the rule.

(C) At the close of the federal fiscal year, DEQ may reallocate any unawarded allocation of additional subsidization in one reserve to the other reserve. If after such reallocation, unawarded allocation still remains, DEQ may reallocate unawarded additional subsidization to those borrowers that are eligible under paragraph (a)(C) of this section of the rule.

(h) Loan Term. Applicants eligible for additional subsidization under the affordability criteria as specified in paragraph (a)(A) of this section of the rule must take the longest term available for their loan. All other applicants may choose any term permitted in section (8) of this rule. A borrower may prepay its loan without penalty.

[ED. NOTE: Tables referenced are not included in rule text. Click here for PDF copy of table(s).]

Stats. Implemented: ORS 468.423 – 468.440
Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 31-1989(Temp), f. & cert. ef. 12-14-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 3-2010(Temp), f. & cert. ef. 5-4-10 thru 10-29-10; DEQ 13-2010, f. & cert. ef. 10-27-10; DEQ 11-2012, f. & cert. ef. 12-14-12; DEQ 9-2015, f. & cert. ef. 10-16-15

Purchase and Refinancing of Debt Obligation

340-054-0071

Debt Obligation Purchase
DEQ may use the CWSRF to buy a public agency’s debt obligation subject to all of the following limitations:

(1) The debt was incurred after March 7, 1985.

(2) The debt obligation does not exceed 30 years.

Stats. Implemented: ORS 468.423 - 468.440
Hist.: DEQ 2-2014, f. 1-28-14, cert. ef. 2-3-14; DEQ 9-2015, f. & cert. ef. 10-16-15

340-054-0072

Bond Purchase

(1) Application requirements. All application requirements for a CWSRF loan as specified in OAR 340-054-0022 apply to a bond purchase under this rule.

(2) Intended Use Plan and project priority list. All applications for a bond purchase are subject to IUP and project priority list development in the same manner as specified in OAR 340-054-0025.

(3) Project ranking criteria. All applicants for a bond purchase will be ranked based on the point sum from the criteria specified in OAR 340-054-0026 and 340-054-0027.

(4) Reserves, CWSRF general fund and project funding. DEQ will allocate reserves and CWSRF general funds for a bond purchase in the same manner as specified in OAR 340-054-0036.

(5) Requirements for a bond purchase.

(a) Clean Water Act plans. DEQ will only purchase a bond whose proceeds are used to finance a project that is consistent with plans developed under sections 303(e), 319 or 320 of the Clean Water Act.

(c) Refinancing an interim loan. A public agency may sell a bond to DEQ to refinance an interim loan or reimburse itself for self-generated funds used to pay DEQ-approved project costs for treatment works if the public agency meets the conditions in OAR 340-054-0056(3).

(6) Conditions for bond purchase. The terms, conditions and requirements set out in OAR 340-054-0060 apply to a bond purchase.

(7) Bond purchase, terms and interest rates.
(a) Bonds. A bond DEQ purchases under this rule must be a revenue bond for a term not to exceed 30 years and meet the requirements specified in OAR 340-054-0065(2).

(b) Interest rates. OAR 340-054-0065(4)(b) specifies the base rate for a bond purchase. DEQ will provide the following interest rates for bond purchases:

(A) For bond purchase agreements executed on or after February 1, 2016, interest rates will be calculated under OAR 340-054-0065(4)(f)(B).

(c) Interest accrual and payment. OAR 340-054-0065(5) sets the terms for interest accrual and payment for bond purchases under this rule.

(d) Annual fee. OAR 340-054-0065(6) specifies the annual fee for a bond purchase.

(e) Commencement of bond repayment. OAR 340-054-0065(7) prescribes when a public agency must begin principal and interest repayment for a bond DEQ purchased under this rule.

(f) Term. A public agency must fully repay bond purchases under this rule under a schedule DEQ prescribes. The term of the bond DEQ purchases under this rule will not exceed 30 years after project completion or the useful life of the asset financed by the bond, whichever is less.

(g) Minor variations in bond terms. DEQ may, as OAR 340-054-0065(9) specifies, authorize minor variations in financial terms of a bond purchased under this rule to facilitate administration and repayment of the bond.

(h) Additional subsidization. DEQ may provide additional subsidization for a bond purchase in the same manner as for a loan under OAR 340-054-0065(12).

Stats. Implemented: ORS 468.423 - 468.440
Hist.: DEQ 2-2014, f. 1-28-14, cert. ef. 2-3-14; DEQ 9-2015, f. & cert. ef. 10-16-15