



State of Oregon Department of Environmental Quality

Draft Racial Equity Statement

Clean Water State Revolving Fund 2022 Rulemaking
Advisory Committee Meeting #3

Requirement

[ORS 183.335\(2\)\(a\)\(F\)](#), as amended by HB 2993, requires state agencies, when providing notice of a rulemaking, to provide a statement identifying how adoption, amendment or repeal or the proposed rules will affect racial equity in this state.

Statute language:

ORS 183.335(1)(a) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice of its intended action:

(2)(a) The notice required by subsection (1) of this section must include:

(F) A statement identifying how adoption of the rule will affect racial equity in this state.

What does “Racial Equity” mean?

HB 2993 does not define “racial equity”, and there is no one meaning of the phrase as a term of art – many different meanings have been suggested. In the legislative history, legislators acknowledged that there is no clear meaning of the phrase, and they did not attempt to provide one. Courts interpreting undefined phrases that have no fixed meaning as a term of art, give the words their ordinary meaning. The ordinary meaning of “racial equity” is treating people of all races fairly, justly and without bias. A statement of how a rule will affect “racial equity”, means how the rule will affect the fair, just and unbiased treatment of people of all races.

Scope and issues are addressed by the rule

The CWSRF 2022 rulemaking will enable the program to meet new federal requirements and priorities under the Bipartisan Infrastructure Law passed in November 2021. BIL will provide the CWSRF program more funding for below-market interest rate loans and requires the program to provide more principal forgiveness for eligible borrowers.

The proposed rules will have impacts statewide. The nature of the proposed rule changes is administrative by removing language from rule to the program’s Intended Use Plan to allow the CWSRF program flexibility to address new federal requirements and priorities regarding principal forgiveness for loans, affordability criteria, project ranking and scoring

While not directly related to the proposed rule changes, the rule changes will allow the program flexibility to incorporate environmental justice metrics into affordability criteria, which will likely have a positive impact on racial equity in financing water pollution control projects statewide.

By targeting assistance to communities that are economically distressed, health burdened, or pollution burdened, DEQ CWSRF will address the disproportionate effects that water pollution has on communities. Economically distressed communities face a greater hardship raising the revenue necessary to pay for infrastructure projects. Health burdened communities are more susceptible to the negative effects of environmental pollution. And because of their proximity to an impaired water body, pollution burdened communities bear a disproportionate amount of the negative consequences of water pollution.

DEQ CWSRF will help advance the agency's goal of ensuring that all communities are equally protected from environmental and health risks.

Persons, groups and regulated entities subject to the rule

BIL and the proposed rule changes will positively impact regulated entities under the CWSRF program by providing more below-market rate financing and principal forgiveness for loans for eligible borrowers including public agencies for planning, design and construction of water pollution control projects. The rule changes will allow the program to provide more principal forgiveness on a per loan basis for communities that meet affordability criteria, including economically distressed communities throughout Oregon.

In addition, the rule changes will allow flexibility for the program to incorporate environmental justice metrics into affordability criteria to further benefit economically distressed, water pollution burdened and health burdened communities. These metrics are being determined with input from the CWSRF rulemaking advisory committee, which will continue serving as a standing advisory committee to provide continued guidance on environmental justice metrics and program considerations beyond the rulemaking.

The proposed rule does not directly affect the general public, however the CWSRF will receive more funding under the Bipartisan Infrastructure Law, provide more below market-interest rate financing to eligible borrowers for water pollution control projects, and more principal forgiveness for loans to eligible borrowers that meet affordability criteria. By incorporating environmental justice metrics, the program will be able to further meet needs of economically distressed, water pollution burdened, and health burdened communities. This will likely indirectly impact the general public by reducing debt burden on ratepayers in communities related to water pollution control projects, including environmental justice communities. The proposed rule changes may have a positive impact on contractors, including minority and women owned businesses, related to planning, design and construction of water pollution control projects funded by CWSRF.

Racial groups likely to be affected by the issues addressed in the rule

The rule changes will increase funding and principal forgiveness for loans to borrowers that meet affordability criteria consistent with requirements under the Clean Water Act. The CWSRF has convened a rulemaking advisory committee with representatives from local, state and federal agencies and organizations that provide social, health, housing, energy and environmental services for rural and low-income communities, Tribes, and agricultural workers, including Hispanic populations throughout the state. The committee will continue serving as a standing advisory committee to continue providing guidance and input as CWSRF develops and incorporates environmental justice metrics into program practices. The Oregon DEQ CWSRF program also continues to maintain compliance with federal requirements, including Title IV of the Civil Rights Act.

Input from stakeholders representing racial groups likely to be affected by the rule

The CWSRF rulemaking advisory committee consists of organizations that support Tribes and agriculture workers, including Hispanic populations, low-income, rural, disadvantaged communities statewide. The program encourages input and information sharing from the advisory committee regarding environmental justice metrics. One committee member offered to provide additional data tools for CWSRF to consider in developing environmental justice metrics, which program staff welcomed. One member indicated interest in sharing information from Oregon CWSRF regarding environmental justice metrics being developed as an example of best practices. The rulemaking process includes opportunity for public comment at every meeting and process will include public notice and hearing for input on proposed rules. The program will continue working with the rulemaking advisory committee as a standing advisory committee, welcomes input from stakeholders regarding environmental justice and racial equity for further consideration by the program. CWSRF staff also participate in agency initiatives regarding environmental justice and diversity, equity and inclusion to further inform CWSRF program practice.

Data to determine racial equity impacts

The CWSRF program is utilizing guidance from U.S. Environmental Protection Agency and data tools to analyze environmental justice metrics including: “Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law”, United States Environmental Protection Agency, March 8, 2022; Center for Disease Control and Prevention/Agency for Toxic Substances and Disease Registry/ Geospatial Research, Analysis, and Services Program “CDC/ATSDR Social Vulnerability Index 2018 Database Oregon”; White House Council on Environmental Quality, “Climate and Economic Justice Screening Tool”; and “CalEnviroScreen 4.0,” California Office of Environmental Health Hazard Assessment. DEQ staff is analyzing data regarding economically distressed communities, water pollution burdened communities, and health burdened communities and has provided information on the analysis at two rulemaking advisory committee meetings in July and August 2022.

Unintended adverse consequences on racial equity

No unintended adverse consequences on racial equity are expected from the rule.

Impacts on racial groups identified as likely to be affected by the rule

The changes to rule language do not directly target a particular racial group. The program intends to use these EJ metrics to target funding and resources toward disadvantaged communities statewide.

The environmental justice metrics for the program have not yet been finalized. The program will continue working with the CWSRF standing advisory committee for input and guidance on environmental justice metrics to ensure the fair, just and unbiased treatment of people of all races in financing water pollution control projects in Oregon.

Documents relied on for racial equity impact statement

Document title	Document location
EPA guidance and policy memos for the Clean Water State Revolving Fund loan program	DEQ Headquarters, 700 NE Multnomah, Suite 600, Portland, OR 97232
Clean Water State Revolving Fund Advisory Committee documents, Meeting Summary, Presentations, and Environmental Justice Policy Briefs by DEQ staff	Oregon CWSRF 2022 Rulemaking Webpage

Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.