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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 141
DEPARTMENT OF STATE LANDS

FILED
05/29/2020 9:23 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amend/Adopt 141-141, Rules Governing the Oregon Ocean Science Trust

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 07/01/2020 4:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Kaitlyn Wiggins
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 06/16/2020

TIME: 4:30 PM - 5:30 PM

OFFICER: Kaitlyn Wiggins

ADDRESS: Zoom Meeting

Request Zoom link by email or online.

Salem, OR 97301

SPECIAL INSTRUCTIONS:

To request Zoom link, go to DSL's
webpage under Laws & Rules, or email
Rules Coordinator at
kaitlyn.r.wiggins@state.or.us.

NEED FOR THE RULE(S):

The amendments and new rules included in this notice are needed to provide the OOST with direction on how to exercise its new statutory authority under 2019 SB 753 (ORS 196.570) for entering into agreements with private, nonprofit organizations for fundraising, and distributing those funds. Since the OOST's creation in 2013, it has not received legislative appropriations to carry out its mission of supporting ocean science research. The new authority granted to the OOST in 2019, allows the OOST's executive director to enter into a formal agreement with a non-profit, under which the non-profit organization shall solicit gifts, grants, and donations in support of the work of the trust. Funds solicited are separate and distinct from funds available to the OOST in the Oregon Ocean Science Fund (ORS 196.567), within the treasury. This rule is needed to clarify the OOST Executive Director's authority and the parameters for entering into such an agreement.

In addition, these amendments and new rules outline the OOST's competitive grant program, ability to award noncompetitive grants to public entities, ability to pay administrative fees, and clarify definitions for peer-review and

competitive research and competitive grants.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

HB 2829 (2019), Oregon State Legislature

SB 753 (2019), Oregon State Legislature

ORS 196.570, Oregon State Legislature

FISCAL AND ECONOMIC IMPACT:

It is believed that there will be no significant fiscal or economic impacts to small businesses as a result of this rulemaking.

The Department of State Lands (DSL) is directed to provide administrative support to the Oregon Ocean Science Trust (OOST). The fiscal impacts of this administrative rule will be dependent on the success of the OOST in their ability to secure funding. Administration of a competitive grant program and other duties supported by DSL in the proposed rulemaking will be dependent on if the OOST chooses to use a third party to administer the grant program. If so, this rule change may only have a minimal fiscal impact to the agency. If not, further analysis will be needed.

While the OOST has the ability to contract administration of the grant program to a third party, any funds raised by the OOST would be appropriated to DSL for deposit in the Oregon Ocean Science Fund. Appropriated funds could then be spent over multiple biennia subject to authorization by the Legislature.

Since the OOST is not a state agency, they do not have the authority to authorize warrants upon money held in the State Treasury. As such, DSL will require additional expenditure limitation in order to disburse these appropriated funds as grants. Further analysis is needed to determine the correct level of additional Other Funds expenditure limitation in the 2021- 23 biennia related to these funds. It is unclear how quickly these funds will be disbursed as grants, and how much funding will be used from this account in each biennium.

Statutorily, up to 5% of funds in the Oregon Ocean Science Fund can be allocated to DSL for administrative support of the OOST. Further analysis is needed to determine staffing needs related to this rule change, however, that is funding dependent, which is not known at this time.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) The OOST may make direct, noncompetitive grants to public entities, including but not limited to state agencies, county agencies, local agencies, or public universities, for projects that advance the strategic priorities of the OOST. The OOST also receives administrative support directly from the Oregon Department of State Lands. Additional activity of the OOST will require additional support from the agency.

(2) Small businesses may not be affected by this rule change. Small businesses could apply for competitive grant funding and may be awarded those funds. A small business could also be hired to support the OOST as the third-party administrator of the grant program. These effects would all be voluntary participation in the OOST program and would not be considered compliance costs.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Local small businesses were represented in this rulemaking through the participation of Oregon Fishermen's Cable Committee as a member of the Rules Advisory Committee. The Oregon Fishermen's Cable Committee is a coastal non-profit representing Oregon's commercial fishermen. Fishermen and commercial vessels can be used in research and monitoring efforts but are not required to participate in OOST projects or programs through the adoption of these rules. Participation is voluntary and will not directly impact small businesses.

Additionally, a coastal restaurant small business owner is supporting the RAC as the current executive director of the OOST. While not a member of the public, her participation will add insight and can offer additional small business perspective.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

141-141-0100, 141-141-0110, 141-141-0120, 141-141-0130, 141-141-0140, 141-141-0150, 141-141-0160, 141-141-0170, 141-141-0180

AMEND: 141-141-0100

RULE SUMMARY: 141-141-0100 is amended to recognize the broader scope of the rule division, update statutes implemented to align with legislation adopted in 2019, and to change the acronym "OST" to "OOST".

CHANGES TO RULE:

141-141-0100

Purpose and Applicability ¶¶

These rules govern the Oregon Ocean Science Trust (OOST) ~~competitive grants program, subject to available funding.~~

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565-196.56970

AMEND: 141-141-0110

RULE SUMMARY: 141-141-0110 is amended to more closely align with the statutory direction of the Trust, to update statutes implemented to align with legislation adopted in 2019, and to change the acronym "OST" to "OOST".

CHANGES TO RULE:

141-141-0110

Policies ¶

(1) The QOOST shall promote peer-reviewed, competitive research and monitoring that leads to increased knowledge and understanding of Oregon's ocean and coastal resources. ¶

(2) The QOOST shall promote innovative, collaborative, community-oriented, multi-institutional approaches to research, monitoring and data management related to Oregon's ocean and coastal resources. ¶

(3) The QOOST shall ~~identify funding priorities periodically through a public process.~~enhance this state's capacity for peer-reviewed scientific ocean and coastal research; and ¶

(4) The OOOST shall, subject to available funding, establish and execute a competitive grant program to conduct research and monitoring related to Oregon's ocean and coastal resources. [2013 c.776 ¶2]

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565-196.56970

AMEND: 141-141-0120

RULE SUMMARY: 141-141-0120 is amended to define "peer review," remove the definition of "technical review," update statutes implemented to align with legislation adopted in 2019, and change the acronym "OST" to "OOST" for consistency.

CHANGES TO RULE:

141-141-0120

Definitions ¶¶

- (1) "Oregon Ocean Science Trust (OOST)" has the meaning provided in ORS 196.565.¶¶
- (2) "Oregon's Ocean and Coastal Resources" means the ocean and coast resources under the jurisdiction of the state of Oregon and adjacent waters.¶¶
- (3) "Period of Performance" means the period between the project start and end dates as specified in the executed grant agreement.¶¶
- (4) "Person" means any individual or entity.¶¶
- (5) "Science and Technical Advisory Committee (STAC)" has the meaning provided in ORS 196.451.¶¶
- (6) "~~Technical~~Peer Review" means ~~a review of the proposed projects requested by the OST and performed by individuals qualified by their experience to evaluate proposed activities~~scrutiny of work or ideas by colleagues (peers) who are qualified to provide scientific merit-based review.

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565-196.56970

AMEND: 141-141-0130

RULE SUMMARY: 141-141-0130 is amended to clarify that the Oregon Ocean Science Trust may pay for administrative costs and to allow third party administrators the ability to make funding decisions, consistent with the new authority in SB 753 (2019), codified in ORS 196.570. The acronym "OST" is also changed to "OOST," statutes implemented is updated to align with legislation adopted in 2019, and the term "technical review" is replaced with "peer review."

CHANGES TO RULE:

141-141-0130

Competitive Grants Process ¶¶

- (1) The QOOST shall oversee a competitive grants process that will carry out funding priorities established by the QOOST.¶
- (2) The QOOST, or a third party administrator selected by the QOOST, shall solicit and review proposals to address the funding priorities.¶
- (3) The OOST may use a portion of funds available to support the administrative costs of the OOST or the costs of a third party administrator selected by the OOST.¶
- (4) The competitive grants process shall consist of the following:¶
 - (a) Development of a request for proposals (RFP).¶
 - (A) The QOOST shall develop an RFP for each grant cycle.¶
 - (B) Pre-proposals may be requested depending on the scope of the RFP. Requirements of any pre-proposals will be described in the RFP.¶
 - (b) Issuance and notification of the RFP.¶
 - (A) Any person may submit a proposal to the competitive grant program in accordance with the eligibility requirements outlined in the RFP.¶
 - (B) Details of proposal length and scope will be specified in the RFP and shall include information necessary for objective evaluation of the submission such as but not limited to:¶
 - (i) Qualifications of investigators to complete the work;¶
 - (ii) Alignment of proposed activities with QOOST funding priorities;¶
 - (iii) Potential partners and their anticipated involvement;¶
 - (iv) Identification of a fiscal agent;¶
 - (v) Planned outcomes;¶
 - (vi) Realistic project timeline;¶
 - (vii) Budget and budget justification, including sources and amount of cash and in-kind matching funds;¶
 - (viii) Peer review process; and¶
 - (ix) Data management plan.¶
 - (c) ~~Technical~~Peer review of all proposals received in response to the RFP.¶
 - (A) Written evaluation of each project based on established criteria shall be provided by ~~technical~~peer reviewers to the QOOST along with funding recommendations. Review criteria may include but are not limited to:¶
 - (i) Projects that are cost-effective, innovative, collaborative and multi-institutional; and¶
 - (ii) Include involvement by, or address issues relevant to, community stakeholders with interests in Oregon's ocean and coastal resources.¶
 - (B) Actual and perceived conflicts of interest shall be avoided in the review process.¶
 - (d) Selection of proposals to be funded, contingent upon availability of funds.¶
 - (A) In the event a third party administrator is selected by the QOOST to manage the competitive grants process, the third party shall provide recommendations to the QOOST based on the ~~technical~~peer review process. The QOOST is the final decision authority in selection of proposals to be funded, unless such authority is inconsistent with the terms of any agreement reached under OAR 141-141-0180.¶
 - (B) The QOOST's funding decision shall take into account overall programmatic considerations such as but not

limited to:¶

- (i) The balance of priorities addressed;¶
- (ii) Geographic regions and communities represented; and¶
- (iii) The diversity of participants within the portfolio of proposals being considered.¶
- (C) Notification of supported projects shall be publicly disseminated.¶
- (e) Development and execution of grant agreements with selected proposals and their applicants.¶
- (A) Each successful applicant shall enter into a grant agreement with the QOST or its administrator.¶
- (B) All grant agreements will be on a form provided by the QOST that has been approved by the Oregon Department of Justice.¶
- (C) No grant expenditures may be incurred outside of the period of performance.¶
- (D) The grant agreement describes requirements as determined by the QOST, which may include but are not limited to those related to:¶
- (i) Schedule and submission of deliverables;¶
- (ii) Project management;¶
- (iii) Allowable administrative costs;¶
- (iv) Insurance requirements;¶
- (v) Schedule for the release of grant payments;¶
- (vi) Requirements for release of funds;¶
- (vii) Data accessibility;¶
- (viii) Compliance with local, state, federal and other applicable regulations; and¶
- (ix) Programmatic and financial reporting.¶
- (f) Engagement and management of interactions with applicants during proposal development and review, and project and grant execution including but not limited to technical and fiscal oversight.¶
- (A) The QOST, or third party administrator, will serve as the point-of-contact for management and questions regarding all aspects of the grant program.¶
- (B) The QOST reserves the right to negotiate and/or adjust the final grant amount and work plan prior to the award as appropriate and consistent with QOST policy and funds available.¶
- (g) Management of grant reporting requirements.¶
- (A) Programmatic and financial reporting requirements will be outlined in the grant agreement.¶
- (B) Continued support of grants is subject to compliance with grant agreements and approval of required reports.¶
- (C) Future funding is contingent on successful completion and reporting of existing grants.

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565-196.56970

AMEND: 141-141-0140

RULE SUMMARY: 141-141-0140 is amended to change the acronym "OST" to "OOST" and update statutes implemented to align with legislation adopted in 2019

CHANGES TO RULE:

141-141-0140

Management of data reporting and data management requirements ¶

(1) Data and information collected or created under OOST grants must be publicly visible and accessible in a timely manner at no cost, with the exception of reproduction costs, in a format which is machine-readable and based on open standards along with the metadata necessary to find and properly use the data.¶

(2) The grant agreement shall stipulate when data access must be provided. The data access deadline shall be no later than two years after the performance period end except where limited by law, regulation, policy or by security requirements.¶

(3) The RFP shall stipulate requirements for proposals to include data management and accessibility plans.¶

(4) Applicants who fail to share data as required in the grant agreement may be subject to a number of sanctions including but not limited to denial of future awards, freezing of funds in any current awards or repayment of the award.

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565-196.56970

AMEND: 141-141-0150

RULE SUMMARY: Updating statutes implemented to align with legislation adopted in 2019, and to change the acronym "OST" to "OOST".

CHANGES TO RULE:

141-141-0150

Request for Qualifications (RFQ) ¶

(1) The QOOST may request qualifications in order to support a project or activity that has not been proposed for funding through the competitive grants process but may be necessary for the QOOST to address one or more funding priorities.¶

(2) Proposals submitted by qualified applicants shall be managed in the same manner as outlined in OAR 141-141-0130 and 141-141-0140 above.

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565-196.56970

AMEND: 141-141-0160

RULE SUMMARY: 141-141-0160 is amended to change the acronym "OST" to "OOST," and to update statutes implemented to align with legislation adopted in 2019.

CHANGES TO RULE:

141-141-0160

Competitive Grants Program Evaluation ¶

(1) The QOOST shall request that the competitive grants program be evaluated at regular intervals by the STAC based on evaluation criteria developed by the STAC in consultation with the QOOST.¶

(2) Results of the evaluation will be communicated to the Oregon State Legislature, the State Land Board and the public.

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565-196.56970

ADOPT: 141-141-0170

RULE SUMMARY: 141-141-0170 is adopted to explain Oregon Ocean Science Trust's authority to make noncompetitive grants to public entities.

CHANGES TO RULE:

141-141-0170

Grants to Public Entities

(1) The OOST may make direct, noncompetitive grants to public entities, including but not limited to state agencies, county agencies, local agencies, or public universities, for projects that advance the strategic priorities of the OOST. ¶

(2) The grant making authority in subsection (1) is in addition to the authority in ORS 196.568 to reimburse the State Treasurer, the Department of State Lands, or other agencies for the costs of administering the fund or supporting the trust. ¶

(3) The OOST may use a portion of funds received to support the administrative costs of the OOST.

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565 - 196.570

ADOPT: 141-141-0180

RULE SUMMARY: 141-141-0180 is adopted to explain the Oregon Ocean Science Trust's ability to enter into agreements with private, nonprofit organizations for fundraising and grant distributions. This new authority is based on 2019 SB 753, codified in ORS 196.570.

CHANGES TO RULE:

141-141-0180

Agreement with Private, Nonprofit Organizations

(1) Under the direction of the OOST, the executive director of the OOST may enter into an agreement with a private, nonprofit organization under which the organization shall solicit gifts, grants and donations in support of the work of the trust.¶

(2) The agreement may allow for the private, nonprofit organization to:¶

(a) Distribute the funds received for an activity that advances the strategic priorities of the OOST, consistent with the policies and procedures established by the private, nonprofit organization, and the statutes, rules, policies and procedures under which OOST operates, or¶

(b) Transfer the funds received to the OOST for deposit into the Oregon Ocean Science Fund to be used as provided for in ORS 196.567.¶

(c) Acknowledge that the OOST may use a portion of the funds received to support the administrative costs of the OOST.

Statutory/Other Authority: ORS 196.565(6)

Statutes/Other Implemented: ORS 196.565 - 196.570