



OREGON
WATERSHED
ENHANCEMENT BOARD

Agenda Item H

**Rulemaking 101 and
Authorization to Initiate FIP
Rulemaking**

Board Meeting January 23-24, 2024



Oregon

Tina Kotek, Governor



OREGON
WATERSHED
ENHANCEMENT BOARD

775 Summer Street NE, Suite 360
Salem OR 97301-1290
www.oregon.gov/oweb
(503) 986-0178

Agenda Item H supports all Strategic Plan priorities.

MEMORANDUM

TO: Oregon Watershed Enhancement Board
FROM: Eric Hartstein, Senior Policy Coordinator
SUBJECT: Agenda Item H – Rulemaking 101 and Authorization to Initiate FIP Rulemaking
January 23-24, 2024, Board Meeting

I. Introduction

As a part of an ongoing effort to familiarize the board with OWEB grant programs and processes, 'OWEB 101' sessions have been included at board meetings. At the January 2024 meeting, staff will provide a brief 'OWEB 101' presentation focusing on rulemaking. Following the 'OWEB 101' presentation, staff will seek board authorization to initiate rulemaking for the Focused Investment Partnership (FIP) program (Oregon Administrative Rules Chapter 695, Division 47).

II. Background

Grant programs at OWEB are guided by administrative rules. Rules cover topics such as 'project eligibility', 'application requirements', 'evaluation criteria', 'technical review process', and 'funding decision' for OWEB grant programs/types.

OWEB regularly conducts rulemaking to update existing rules and establish rules for new programs. Recently, the board has authorized the following rulemaking processes.

- OWEB Grant Program (Oregon Administrative Rules Chapter 695, Division 005). This rulemaking added climate-related evaluation criteria that apply across OWEB's grant programs.
- Small Grant Program (OAR Chapter 695, Division 35). This rulemaking is in progress.
- A new grant program for Drinking Water Source Protection Grants.

Staff envision that a similar pace of rulemaking will continue through this biennium and into the 2025-2027 biennium. For each of these rulemaking endeavors, OWEB will follow similar processes.

The FIP program is an OWEB investment that: addresses a board-identified focused investment priority of significance to the state; achieves clear and measurable ecological outcomes; uses integrated, results-oriented approaches as identified through a strategic action plan; and is implemented by a high-performing partnership. FIP funding supports partnerships in pursuing conservation initiatives with up to \$12 million over six years.

Administrative rules for the FIP program were adopted by the board in 2018 (Attachment A).

III. Rulemaking at OWEB

Rulemaking at OWEB is initiated by the board with a draft timeline provided by staff. Following board initiating rulemaking, staff begin working on draft rule concepts and language, and begin recruiting a rulemaking advisory committee (RAC), which is made up of those that are most likely to be impacted by the proposed rules. Once developed, the RAC meets virtually to review and discuss the proposed rules. RAC meetings are open to the public and both public verbal and written comments are sought for these meetings. At intervals, staff will update relevant board committees (and at times the full board) on rulemaking themes and progress made through the RAC meetings. When a final draft of the proposed rules has been developed, staff file a notice with the Oregon Secretary of State's Office to seek formal public comment on the rules through written comments and via a virtual public hearing. After consideration, OWEB provides a response to each comment provided, including whether the comment resulted in a change to the draft rules. The final draft rules are then brought to the board for consideration to adopt.

IV. FIP Rulemaking

The board has awarded three cohorts of FIP initiatives, with the fourth cohort set to begin following board awards in April 2024. Much has been learned during the existing FIP program and staff are proposing to open the rule division for potential revisions. These potential revisions include some technical changes and updating, and also some more substantive areas, including:

- The process for determining board-identified ecological priorities for the FIP program.
- Revisiting how required match is accounted for in FIP initiatives.
- Open Solicitation grant program eligibility for projects that are focused on the programs and actions within a FIP initiative.

If the board authorizes rulemaking, staff propose to develop revisions to the FIP rules in accordance with the draft schedule below.

Rulemaking Action	Dates/Deadlines
Board Authorization for Rulemaking	January 2024
Draft Rule Concepts/Language Developed	Winter-Spring 2024
RAC Meetings to Vet Draft Rules and Provide Feedback	May-September 2024
Draft Rules Revised Based on RAC Feedback	October 1, 2024
Notice Filed with Secretary of State	October 1, 2024

Public Comment Materials posted online	October 1, 2024
Notice to Agency Mailing List and Legislators	October 1, 2024
Public Comment Period	October 1-October 30, 2024
Public Hearing(s)	October 2024
Revisions to Draft Rules Based on Public Comment	November/December 2024
Board Adoption of Rules	January 2025

V. Recommendation

Staff recommend that the board authorize rulemaking for the Focused Investment Partnership program in Division 47.

Attachments

A. Division 47 - Focused Investment Partnership Grants Administrative Rules

DIVISION 47 - FOCUSED INVESTMENT PARTNERSHIP GRANTS

695-047-0010

Purpose

The Board shall provide grants, as funds are available, for Focused Investment Partnership initiatives that address Board-identified priorities of significance to the state through either Implementation grants or Development grants.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890-541.969

History:

OWEB 1-2018, adopt filed 02/02/2018, effective 02/02/2018

695-047-0020

Definitions

- (1) "Focused Investment Partnership" means an OWEB investment that addresses a Board-identified priority of significance to the state, achieves clear and measurable ecological outcomes, uses integrated and results-oriented approaches as identified through a strategic action plan, and is implemented by a high-performing partnership.
- (2) "Focused Investment Partnership Development" means an initiative with an existing partnership that is pursuing enhancement of that partnership, development of a strategic action plan and community engagement in support of the strategic action plan.
- (3) "Focused Investment Partnership Implementation" means an initiative with an existing strategic action plan that is ready for implementation by a high-performing partnership.
- (4) "Initiative" means the program that the partnership will pursue with Focused Investment Partnership funding.
- (5) "Strategic Action Plan" is the long term conservation strategy of a partnership. Plans will include all components identified by OWEB as a part of the application process.
- (6) "High-Performing Partnership" means a collaborating group of organizations with an existing governance structure that includes a formal decision making process resulting in an effective performance history.
- (7) "Core Partners" are the partners identified in the proposal that will bring substantial capacity to a partnership and will lead the implementation effort.
- (8) "Measurable Ecological Outcomes" means quantifiable long-term ecological effects resulting from a series of conservation actions.
- (9) "Expert Review Team" means a team of designated personnel with statewide knowledge and interdisciplinary expertise drawn from agencies represented on the Board and other entities as appropriate to evaluate Focused Investment Partnership Implementation proposals and Development applications.
- (10) "Technical Review Team" means a team of designated personnel with regional knowledge and interdisciplinary expertise drawn from agencies represented on the Board and other entities to evaluate Focused Investment Partnership Implementation project-level grant applications.
- (11) "Work Plan" means the proposed actions of the partnership in each biennium of the Initiative. Focused Investment Partnership Implementation partnerships will submit to OWEB an updated work plan in advance of each new biennium.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890-541.969

History:

OWEB 1-2018, adopt filed 02/02/2018, effective 02/02/2018

695-047-0030

Board-identified Priorities

At least every five years, the Board shall approve ecological priorities of significance to the State to be addressed by Focused Investment Partnerships Initiatives. Ecological priorities shall be determined with public input and scientific rigor, and shall include maps and narrative describing the desired ecological outcomes for eligible Focused Investment Partnership Initiative activities.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890-541.969

History:

OWEB 1-2018, adopt filed 02/02/2018, effective 02/02/2018

695-047-0040

Eligibility

(1) The Board shall only consider a Focused Investment Partnership Implementation Initiative proposal that:

- (a) Addresses a Board-identified priority of significance to the state; and
- (b) Is to be implemented by a high-performing partnership.

(2) The Board shall only consider a Focused Investment Partnership Development Initiative application that:

- (a) Addresses a Board-identified priority of significance to the state; and
- (b) Is to be implemented by an existing partnership.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890-541.969

History:

OWEB 1-2018, adopt filed 02/02/2018, effective 02/02/2018

695-047-0050

Focused Investment Partnership Implementation Proposal and Focused Investment Partnership Development Application Requirements

(1) Focused Investment Partnership Implementation Initiative proposals shall:

- (a) Be submitted on the most current form using the process prescribed by the Board; and
- (b) Demonstrate that 25% match is sought, and shall be expended within the scope and geography of the Initiative application.

(2) Focused Investment Partnership Development Initiative applications shall:

- (a) Be submitted on the most current form using the process prescribed by the Board; and
- (b) Demonstrate that 25% match is sought.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890-541.969

History:

OWEB 1-2018, adopt filed 02/02/2018, effective 02/02/2018

695-047-0060

Evaluation Criteria

(1) Focused Investment Partnership Implementation proposals shall be evaluated on:

- (a) The extent to which the initiative addresses a Board-identified priority;
- (b) The capacity to partner, engage the community, and catalyze additional investments applied to activities within the initiative geography;
- (c) The performance history and composition of the partnership;
- (d) The extent to which the proposed approach will make progress toward measurable ecological outcomes;
- (e) The ability to track progress towards proposed outcomes;
- (f) The scientific basis and planning tools that support the proposed Initiative; and
- (g) The extent to which the allocation of funds across proposed grant types will support the achievement of the proposed ecological outcomes.

(2) Focused Investment Partnership Development applications shall be evaluated on:

- (a) The extent to which the initiative addresses a Board-identified priority;
- (b) The capacity to partner, engage the community, and catalyze additional investments within the initiative geography; and
- (c) The performance history and composition of the partnership.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890-541.969

History:

OWEB 1-2018, adopt filed 02/02/2018, effective 02/02/2018

695-047-0070

Focused Investment Partnership Initiative Expert Review Process

The Board shall convene expert review teams to evaluate Focused Investment Partnership Implementation proposals and Development applications according to criteria described in OAR 695-047-0060. Expert review teams shall evaluate each application based on the information provided and deliver recommendations to OWEB staff. The results of the expert review process, including evaluations, shall be provided to applicants and the Board.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890-541.969

History:

OWEB 1-2018, adopt filed 02/02/2018, effective 02/02/2018

695-047-0080

Focused Investment Partnership Initiative Funding Recommendation Process

(1) For Focused Investment Partnership Implementation Initiatives:

- (a) OWEB staff shall review the recommendations from each expert review team and make a funding recommendation to a Board subcommittee. The OWEB staff recommendation shall be provided to applicants and the Board.

(b) The Board subcommittee shall interview core partners proposing an Implementation Initiative.

(c) The Board subcommittee shall review OWEB staff recommendations, and the results of the interview of the core partners, and make a funding recommendation to the Board.

(2) For Focused Investment Partnership Development Initiatives, OWEB staff shall review the recommendations from each expert review team and make a funding recommendation to the Board. This recommendation shall also be provided to applicants.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890-541.969

History:

OWEB 1-2018, adopt filed 02/02/2018, effective 02/02/2018

695-047-0090

Board Funding Decision

(1) For Focused Investment Partnership Implementation Initiatives:

(a) The Board may fund an Initiative in whole or in part.

(b) The Board shall award funds on a biennial basis. Subject to Board evaluation and future appropriations, the Board seeks investment for up to six years for each Initiative. A biennial award will not exceed \$4 million and the full six-year award will not exceed \$12 million.

(2) For Focused Investment Partnership Development Initiatives the Board may fund an Initiative in whole or in part.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890-541.969

History:

OWEB 1-2018, adopt filed 02/02/2018, effective 02/02/2018

695-047-0100

Focused Investment Partnership Implementation Initiative Partnership Agreement

(1) For Focused Investment Partnership Implementation Initiatives, a partnership agreement shall be executed between OWEB and core partners that shall stipulate the terms of the initiative.

(2) The agreement shall include at a minimum: points of contact, purpose of initiative, scope of initiative, process for submitting project-level grant applications, review process, funding conditions, roles and responsibilities of signatories, and methodology to address any potential changes in composition of the core partnership.

(3) Only organizations that are signatory to the partnership agreement are eligible to apply for project level grants.

(4) Projects in the defined geographic area of the Initiative, and focused on the programs and actions identified in the Initiative's proposal, are ineligible for the grant types listed in OAR 695-047-0110(8) that are offered outside of the Focused Investment Partnership program.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890-541.969

History:

OWEB 1-2018, adopt filed 02/02/2018, effective 02/02/2018

695-047-0110

Focused Investment Partnership Implementation Initiative Project-level Grant Process

- (1) The core partners of a Focused Investment Implementation Initiative shall select projects to implement the Initiative.
- (2) Project applications shall be submitted on current forms on a schedule determined by the partnership and OWEB staff.
- (3) Project applications shall include a matching contribution from other non-Board program funds or in-kind services, notwithstanding OAR 695-005-0030(3).
- (4) Following consultation with the partnership about expertise that is relevant to the Implementation Initiative's focus, a technical review team shall be convened by OWEB. Technical review team members shall have appropriate expertise in the Focused Investment Partnership Initiative subject matter and geography.
- (5) The technical review team shall meet to evaluate project-level applications according to the project's compatibility with the Initiative's proposal and relevant evaluation criteria established in OAR Chapter 695. Representatives of the partnership shall be provided an opportunity to meet with the technical review team during the project evaluation to provide context for proposed projects.
- (6) OWEB staff shall provide the technical review team evaluations to the applicant. Applicants and staff shall address review team comments through an amendment or other agreed upon process.
- (7) Notwithstanding 695-005-0060(2) and (8) initiatives require 25% match, reported at the Initiative-level for the biennium. Each project within the initiative also requires match. Prior to disbursement of Board funds for a project the grantee must provide proof that the matching contribution has been secured for the project. Initiatives that do not meet the required 25% match by the end of the biennium will not be awarded subsequent Implementation Initiative funding.
- (8) Grant types for Focused Investment Implementation Initiatives are Restoration (OAR 695-010), Stakeholder Engagement (OAR 695-015), Monitoring (OAR 695-025), Technical Assistance (OAR 695-030), Land Acquisition (OAR 695-045), and Water Lease and Transfer (OAR 695-046).

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890-541.969

History:

OWEB 1-2018, adopt filed 02/02/2018, effective 02/02/2018

695-047-0120

Distribution of Funds

- (1) Focused Investment Partnership Development Initiative funds shall be distributed through grant agreements executed in accordance with OAR 695-005-0050 and 695-005-0060.
- (2) Focused Investment Partnership Implementation Initiative funds shall be distributed through project-level grant agreements through a process described in the partnership agreement described in OAR 695-047-0100.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890-541.969

History:

OWEB 1-2018, adopt filed 02/02/2018, effective 02/02/2018

695-047-0130

Reporting

- (1) Reporting for Focused Investment Partnership Development Initiatives shall be in accordance with OAR chapter 695, division-005.

- (2) Focused Investment Partnership Implementation Initiatives shall report to OWEB staff through a collaboratively established process and timeline.
- (3) Reporting for project-level grants shall be determined in each project grant agreement.
- (4) At the end of each biennium, the Focused Investment Implementation Initiative partnerships shall report the following to the Board:
- (a) Demonstrated 25% secured match for the Initiative for the biennium plus any additional investments generated by the Initiative.
 - (b) Initiative progress for the biennium
 - (c) Updated work plan and budget proposed for the next biennium
 - (d) Any proposed changes to the geography, scope, or partners of the Initiative.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890-541.969

History:

OWEB 1-2018, adopt filed 02/02/2018, effective 02/02/2018

695-047-0140

Waiver and Periodic Review of Rules

The Director may waive the requirements of Division 47 unless required by statute, when doing so will result in more efficient or effective implementation of the Board's Focused Investment Partnership grant program. Any waiver must be in writing and included in the grant file to which the waiver applies. Any waiver of the requirements of Division 47 will be reported to the Board at the next Board meeting. The administrative rules for Focused Investment Partnership grants shall be periodically reviewed by the Board and revised as necessary and appropriate.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890-541.969

History:

OWEB 1-2018, adopt filed 02/02/2018, effective 02/02/2018