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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 695
OREGON WATERSHED ENHANCEMENT BOARD

FILED

11/18/2022 3:44 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Revisions to OWEB Grant Program Rules

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/30/2022 5:00 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:
Eric Hartstein
Rules Coordinator

HEARING(S)

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

DATE: 12/21/2022

TIME: 10:00 AM

OFFICER: Eric Hartstein

ADDRESS: Virtual

775 Summer St. Ste 360

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SPECIAL INSTRUCTIONS:

Zoom Link: <https://us02web.zoom.us/j/84257428076?pwd=YnVkrHhzU1RzNUlXTk1cVBLQ0JQQT09>

Meeting ID: 842 5742 8076

Passcode: 039591

One tap mobile

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Passcode: 039591

NEED FOR THE RULE(S)

The OWEB Grant Program rules govern the administration of the agency grant applications and agreements. The last update to the rules occurred in 2017, and since then the agency has added new grant programs, reconsidered match requirements, and is seeking to clarify other elements of the grant program rules for applicants and grantees.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

The January 2022 OWEB Board staff report is available at: <https://www.oregon.gov/oweb/Documents/2022-Jan-ItemH-Division-5-Rulemaking.pdf>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The proposed rule amendments do not have a specific impact on racial equity in Oregon.

FISCAL AND ECONOMIC IMPACT:

The proposed revisions to the OWEB Grant Program rules division will be used to administer an existing program that offers grants to eligible entities engaged in the protection and restoration of local streams, rivers, wetlands, and natural areas. The proposed rule revisions are not expected to have a fiscal impact beyond the continued expenditure of grant funds in communities across Oregon.

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) It is not expected that there will be a cost of compliance to state agencies, units of local government, and members of the public as the proposed administrative rules define the process for a voluntary grant program.

2) a) Small businesses as defined by ORS 183.310(10) do not include eligible applicants for OWEB grants. OWEB grantees may contract with small businesses to implement activities and work within the scope of the grant agreement, but the proposed rule revisions do not dictate any element of that contractual relationship. b) The reporting, record keeping, and administrative activities required by the rules are principally borne by program grantees that are voluntarily entering the program and are not defined as small businesses. c) Similar to section b, the cost of professional services, equipment, supplies, labor, and increased administration to comply with the rules will be borne principally by program grantees that are not defined as small businesses.

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

As noted in "Cost of Compliance", the proposed OWEB Grant Program rules will not impact small businesses. However, representatives from the conservation community participated on the Rules Advisory Committee. These entities often contract with small businesses through the implementation of OWEB grants and would understand if any proposed administrative rule revisions would impact small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

695-005-0010, 695-005-0020, 695-005-0030, 695-005-0040, 695-005-0050, 695-005-0060, 695-005-0070, 695-005-0080

AMEND: 695-005-0010

RULE SUMMARY: Updated the purpose of the Division 5 rules to better reflect OWEB grant programs.

CHANGES TO RULE:

695-005-0010

Purpose ¶

These rules guide the Oregon Watershed Enhancement Board in accepting applications and considering grant proposals for funding under the provisions of ORS 541.890, et seq. The Board grant program includes grants described in ~~695-005-0020 et seq. Chapter 695, Divisions 10-47~~ for watershed restoration, ~~monitoring, watershed assessment and action planning, watershed council support, watershed education and outreach~~ technical assistance, monitoring, operating capacity, stakeholder engagement, land and water acquisition, and small grants. ~~In addition, the Board may from time to time, as funds are available, request proposals for technical assistance and research, and other grant programs initiated by the Board.~~

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890 - 541.969

AMEND: 695-005-0020

RULE SUMMARY: Updated language to reflect that technical review teams are used across all of OWEB grant programs, not just regional review teams. Removed requirement that pending match must be secured within 12 months of the date of the grant award.

CHANGES TO RULE:

695-005-0020

Definitions ¶¶

- (1) "Board" means the Oregon Watershed Enhancement Board created under ORS 541.900.¶¶
- (2) "Director" means the Executive Director of the Oregon Watershed Enhancement Board or the Executive Director's designee.¶¶
- (3) "Grant Agreement" is the legally binding contract between the Board and the grant recipient. It consists of the conditions specified in these rules, the notice of grant award, special conditions to the agreement, a certification to comply with applicable state and federal regulations, the project budget and the approved application for funding the project.¶¶
- (4) "~~Region~~ Technical Review Team" is a team, ~~appointed by the Director,~~ of designated personnel with regional knowledge and interdisciplinary expertise drawn from agencies represented on the Board and other entities to evaluate regional grant applications. ~~The Director may change the composition of regional review teams based on evaluation criteria.~~¶¶
- (5) "Partners" are non-governmental or governmental persons or entities that have committed funding, expertise, materials, labor, or other assistance to a proposed project.¶¶
- (6) "Match" is any contribution to a project that is non-Board funds. Match may include:¶¶
 - (a) Cash on hand or cash that is pledged to be on hand prior to commencement of the project;¶¶
 - (b) Secured funding commitments from other sources;¶¶
 - (c) Pending commitments of funding from other sources. In such instances, Board funding will not be released prior to secured commitment of the other funds. ~~Pending commitments of the funding must be secured within 12 months from the date of the award;~~ or¶¶
 - (d) The value of in-kind labor, equipment rental and materials essential to the project, based on local market rates.¶¶
- (7) "OWEB" means the Oregon Watershed Enhancement Board state agency.
Statutory/Other Authority: ORS 541.906
Statutes/Other Implemented: ORS 541.890 - 541.969

AMEND: 695-005-0030

RULE SUMMARY: Clarified that OWEB grant applications must be submitted in the current format, and eliminated the detailed requirements of each application as that is already included in the current format of all OWEB grant applications. Eliminated 25% match requirement for all grant programs. Clarified that information provided to OWEB is a public record. Moved rule considering application completeness to OAR 695-005-0040 (Application Processing) and eliminated reference to the Small Grant program.

CHANGES TO RULE:

695-005-0030

Application Requirements ¶¶

(1) Applications must be submitted on the most current format prescribed by the Board. Current applications are available on the OWEB website OWEB. An explanation must accompany the application if any of the information required on the application cannot be provided. In addition to the information required in the application, and the required attachments, an applicant may submit additional information that will aid the Board in evaluating the project. ¶¶

(2) All applicants for Board grants shall supply the following information: ¶¶

(a) Names, physical and email addresses, and telephone numbers of the applicant contact person(s) and the fiscal officer(s); ¶¶

(b) Name and address of involved landowner(s); ¶¶

(c) The name and location of the proposed project. The location shall be described in reference to the public land survey, latitude and longitude using decimal degrees, North American Datum 1983, county, watershed, and stream mile, if appropriate; ¶¶

(d) Estimated line item budget for the project using the most current budget form prescribed by the Board. Current budget forms are available on the OWEB website; ¶¶

(e) Identification of specific project elements for which Board funds will be used; ¶¶

(f) A list of any non-Board funds, services or materials available or secured for the project and any conditions which may affect the completion of the project; ¶¶

(g) If the project is part of a multi-year project, and a new funding request continues a previously Board-funded activity, a description of the previous project accomplishments and results as well as an accounting of past expenditures and revenues for the project; ¶¶

(h) Identification of volunteers and partners and the contribution they will make to the project; ¶¶

(i) A project schedule including times of project beginning and completion; and ¶¶

(j) Any information requested that is necessary to evaluate the project based on the evaluation criteria for that project type. ¶¶

(3) All applicants shall demonstrate at least 25% match is being sought, on a form prescribed by the Board, based on

(2) All applicants shall demonstrate a matching contribution is being sought at the time of application, based on the total Board grant request, at the time of application. Match requirements will be included in the announcement for each grant offering. Match requirements shall not exceed 25% of the total Board grant request, at the time of application request. ¶¶

(4) All applications that involve physical changes or monitoring on private land must include certification from the applicant that the applicant has informed all landowners involved of the existence of the application and has also advised all landowners that all monitoring information obtained on their property is public record. If contact with all landowner was not possible at the time of application, explain why. ¶¶

(5) Applications will be considered complete as submitted. Clarification of information may be sought from the applicant during the evaluation process but additional, new information will not be accepted after the application deadline. ¶¶

(6) Applicants are encouraged to submit requests for up to \$10,000 for watershed restoration projects to the Small Grant Team in their Small Grant Area, unless the project is not eligible for funding under the Small Grant Program or the Small Grant Program has no funds available at the time of application. Applicants may not submit the same proposal to both the Board and the Small Grant Team and submitted to OWEB is a public record. If contact with all landowners was not possible at the time of application, explain why.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890 - 541.969

AMEND: 695-005-0040

RULE SUMMARY: Clarified that only Oregon institutions of higher education are eligible for OWEB grants, and that state and federal agencies may partner with eligible applicants to submit an OWEB grant. Removed language that the board may require additional information when considering a project, and clarified that applications are considered complete when submitted, and that new information can be provided at the request of OWEB during the evaluation process. Clarified role of technical review teams.

CHANGES TO RULE:

695-005-0040

Application Processing ¶¶

(1) Project applications will be reviewed based on application completeness and the evaluation criteria adopted by the Board for each grant type in these rules.¶¶

(2) A ~~regular~~ grant applicant may be any tribe, watershed council, soil and water conservation district, not-for-profit institution, school, ~~community college, state~~Oregon institution of higher education, independent not-for-profit institution of higher education, or political subdivision of this state that is not a state agency. A state agency or federal agency may ~~apply for funding under this section only as a co-applicant with one of the other eligible entities. Any of these applicants or co-applicants may also serve as a fiscal agent for grants.~~¶¶

~~(3) The Board partner with an eligible entity. ¶¶~~

~~(3) The Board and OWEB may use a technical review team to review grant applications and may~~ke require additional information to aid in evaluating and considering a proposed watershed project.¶¶

~~(4) The Board may use a regional review team or other technical team to review grant applications and make funding recommendations to the staff or Board.¶¶~~

~~(5) The Board may rank projects in selecting projects for fund~~commendations to the staff or Board.¶¶

~~(4) Applications will be considered complete as submitted. Clarification of information may be sought by OWEB from the applicant during the evaluation process, but additional, new information not requested by OWEB will not be accepted after the application deadline.~~

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890 - 541.969

AMEND: 695-005-0050

RULE SUMMARY: Clarifies role of OWEB and the Board in developing grant agreement conditions. Clarifies process for grantees to demonstrate necessary permits or licenses have been secured, and commitments for landowners engaged in a project, and for grantees to maintain a project.

CHANGES TO RULE:

695-005-0050

Grant Agreement Conditions ¶

- (1) ~~The Board~~ OWEB will enter into new agreements with prior Grantees only if all reporting obligations under earlier agreements have been met. ¶
- (2) If the grant agreement has not been fully executed by all the parties within one year of Board or Director approval, funding shall be terminated. The money allocated to the grant shall be available for reallocation by the Board or Director. ¶
- (3) The Director shall establish grant agreement conditions for each grant type. Grantees shall comply with all grant agreement conditions. ¶
- (4) The Grantee shall comply with all federal, state and local laws and ordinances applicable to the work to be done under the agreement. ¶
- (5) All project activities must demonstrate, to the extent possible, consistency with local community workforce and economic development plans and policies. ¶
- (6) Following project completion, equipment purchased with Board funds shall reside with the Grantee or another approved entity. These entities will make the equipment available to others at no cost, other than nominal operation and maintenance costs. ¶
- (7) Upon notice to the Grantee in writing, the Director may terminate funding for projects not completed in the prescribed time and manner. The money allocated to the project but not used will be available for reallocation by the Board. ¶
- (8) The Grantee will account for funds distributed by the Board, using project expense forms provided. ¶
- (9) The Grantee will obtain the necessary permits and licenses from local, state or federal agencies or governing bodies and provide a copy to the Board. ¶
- ~~(10) The Board to OWEB satisfactory evidence that the necessary permits or licenses have been granted. ¶~~
- (10) OWEB may place additional conditions in the Grant Agreement as necessary to carry out the purpose of the watershed enhancement program. Such conditions ~~may include, but are not limited to:~~ ¶
 - (a) A commitment by the landowner for continued access for monitoring the project after completion, not to exceed five years following OWEB approval of a final project completion report; ¶
 - (b) A commitment by the Grantee to maintain the project for a period of time as deemed ~~appropriate by the Board~~ for the project elements or goals, to be effective; ¶
 - (c) A commitment to supply future reports on the project as required; and ¶
 - (d) Such other conditions as ~~the Board~~ OWEB deems appropriate to the particular circumstances of the project.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890 - 541.969

AMEND: 695-005-0060

RULE SUMMARY: Removes references to 25% match requirement, clarifies process requirements and content for landowner cooperative agreements that must be submitted to OWEB prior to the distribution of funds in a grant. Also clarifies role of public agencies where public land is involved in a project. Provides clarity on when funding can be released on projects that require permits or licenses.

CHANGES TO RULE:

695-005-0060

Distribution of Funds ¶

- (1) The Director may withhold payments to a Grantee in a situation where there are significant and persistent difficulties with satisfying ~~Board~~ OWEB requirements. ¶
- (2) Prior to disbursement of Board funds, the Grantee must provide proof that the ~~25%~~ required match, based on the total Board award, has been secured. ¶
- (3) Prior to disbursement of Board funds for projects involving a private lands, the Board property, OWEB must receive a cooperative agreement from the Grantee that they will obtain, prior to expending Board funds on a property, or easement holder where the property interest demonstrates sufficient control to a cooperative agreement from the landowner that, at a minimum, includes: ¶
 - (a) Permission to access the private land, at times agreeable to the landowner, to implement the project, inspect and ~~inspect~~ imply the proposed action, that, at a minimum, includes: ¶
 - (a) Landowner's certification that the landowner owns the land where the work will be carried out; ¶
 - (b) Landowner's agreement to allow Grantee to carry out the work, or a portion of the work on the landowner's property; ¶
 - (c) Landowner's agreement to maintain the pProject, track the status or allow maintenance of the pProject, or perform repairs or maintenance over a time period consistent with the grant application; ¶
 - (b) Permission for the Landowner's agreement to allow the OWEB Board or and its representatives to access to the private land for inspection and evaluation of the project; and ¶
 - (c) Identification of the party responsible for repairs and maintenance of site where the work is being carried out for inspection and evaluation; and ¶
 - (e) Landowner's acknowledgment that they are aware of the application to OWEB and that information relating to the work, including effectiveness monitoring data, is a public record. ¶
- (4) Prior to disbursement of Board funds for projects involving a public property OWEB must receive evidence from the public agency that it concurs with the project. ¶
- (45) Funds shall not be disbursed ~~until the Board~~ on project elements that require permits or licenses until OWEB receives satisfactory evidence that the necessary permits and/or licenses have been granted and documents required by the Board have been submitted. ¶
- (56) Funds will be released upon ~~presentation~~ receipt of a completed ~~fund release request form request, as prescribed by OWEB,~~ accompanied by documents as determined by the Director, and proof of completion of specific work elements of the project as identified in the Grant Agreement. ¶
- (67) Advance funds may be released upon presentation of a detailed estimate of expenses for up to 120 days. Within 120 days of the date of the advance check, receipts or invoices for the advance must be submitted, a justification to extend the advance must be approved, or the unexpended advance funds must be returned to the Board. Additional funds will not be released until receipts for expenditures of previous fund releases are submitted, or an estimate of expenditures is approved by the Director. ¶
- (78) All grant agreements authorized by the Board shall have a clause that requires the retention of up to ~~ten percent~~ 10% of project funds until the final report, as required in the grant agreement, has been approved. Final reports are due within 60 days of project completion. Any unexpended Board funds must be returned to the Board with the final report. Upon receipt of the final report, the Board shall have 90 days to approve the completed report or notify the Grantee of any concerns that must be addressed or missing information that must be submitted before the report is considered complete and reviewed for approval. Once the final report has been approved the final payment shall be promptly processed. ¶
- (89) All Grantees shall account for at least 25% in actual match, on a form prescribed by the Board the required match, based on the total Board grant expenditures, upon project conclusion and final reporting.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890 - 541.969

AMEND: 695-005-0070

RULE SUMMARY: Minor grammatical change.

CHANGES TO RULE:

695-005-0070

Waiver of Rules **¶**

The Director may waive the requirements of ~~d~~Division 5, unless they are required by statute, for individual grants, when doing so will result in more efficient or effective implementation of the Board's grant program. Any waiver granted shall be in writing and included in the permanent file of the individual grant for which the waiver was granted.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890 - 541.969

AMEND: 695-005-0080

RULE SUMMARY: Clarifies role of OWEB and the board.

CHANGES TO RULE:

695-005-0080

Periodic Rules Review and Program Evaluation ¶

~~OWEB~~ and the Board shall review the grant program and rules at least once every five years and make changes as needed to carry out a high quality and effective program.

Statutory/Other Authority: ORS 541.906

Statutes/Other Implemented: ORS 541.890 - 541.969