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Draft Rules: State Agency Program Fund

Division 20

Chapter 699
Division 20
STATE AGENCY PROGRAM FUND

Adopt: 699-020-0010
Rule Title: Purpose
Rule Summary: The intent of this rule is to provide an overview of the purpose of this rule division.

(1) This Division provides requirements for the State Agency Program Fund.
(2) The State Agency Program Fund provides funds to state agencies that have a nexus with the projects and purposes consistent with the terms of the Monsanto Settlement Agreement and rules established under this division.

Adopt: 699-020-0020
Rule Title: Definitions
Rule Summary: The intent of this rule is to provide definitions of terms used throughout this rule division.

(1) "Agency" means any state agency in Oregon that has a nexus with the projects and purposes consistent with the terms of the Monsanto Settlement Agreement.
(2) "Available Funds" means the funds available in the State Agency Program Fund for biennial distribution. This amount may vary between biennia and is determined based on the Oregon Environmental Restoration Council's (Council) most current adopted distribution policy.
(3) "Clean Up Contaminated Sites" means the cleanup process necessary to identify, investigate, and remediate sites contaminated with hazardous substances as defined in ORS 465.200, 465.315.
(4) "Council" means the Oregon Environmental Restoration Council as defined in ORS 541.861.
(5) "Director" means the Executive Director of OWEB or the Executive Director's designee.
(6) "Monsanto Settlement Agreement" means the consent general judgement between the State of Oregon and Monsanto Company, along with other defendants, filed in Multnomah County Circuit Court on December 15, 2022.
(7) "Oregon Environmental Restoration Fund" is a statutorily established fund in the Oregon State Treasury that consists of proceeds from the Monsanto Settlement Agreement as defined in ORS 541.863.
(8) "OWEB" means the Oregon Watershed Enhancement Board state agency.
(9) "State Agency Program Fund" is a statutorily established fund that receives 50% of the annual distribution from the Oregon Environmental Restoration Fund as defined in ORS 541.867, 541.869.
(10) "Strategic Priorities" means the current set of strategic priorities adopted by the Council and as described in ORS 541.882.

Adopt: 699-020-0030

Rule Title: Eligible Recipients

Rule Summary: The intent of this rule is to establish requirements for eligible recipients of funds from the State Agency Program Fund.

Eligible recipients for the State Agency Program Fund are State of Oregon Agencies.

Adopt: 699-020-0040

Pre-Application Coordination

Rule Summary: The intent of this rule is to provide procedures for pre-application coordination between Agencies and the Governor or their Designee.

(1) OWEB shall coordinate with the Governor or their Designee in the coordination of Agencies prior to submission of applications.
(2) The Governor or their Designee may convene Agencies to provide pre-application guidance prior to an Agency applying for funding from the State Agency Program Fund.
(3) Pre-application coordination shall not be evaluative.

Adopt: 699-020-0050

Rule Title: Soliciting Agency Applications

Rule Summary: The intent of this rule is to provide procedures for Agencies applying for funding from the State Agency Program Fund.

(1) OWEB shall coordinate with the Governor or their Designee in the solicitation of State Agency Program Fund applications.
(2) Applications must be submitted by Agencies in the most current format and timeframe prescribed by the Governor or their Designee.
(3) Applications must clearly describe the project scope of work, timeline, budget, and deliverables.
(4) Applications shall serve as the official record of that scope.
(5) Applications shall be considered final as submitted. Clarification of information may be sought by the Governor or their Designee or the Council from the applicant during the review process, but additional or new information not requested by the Governor or their Designee or the Council will not be accepted after the application deadline.

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Adopt: 699-020-0060

Rule Title: Evaluation of Agency Applications

Rule Summary: The intent of this rule is to provide evaluation criteria for state agencies applying for funding from the State Agency Program Fund.

Applications will be reviewed based on the extent to which they:

(1) Align with the terms of the Monsanto settlement agreement, including:
    a. Have a nexus or connection with brownfields remediation or redevelopment;
    b. Conduct environmental or natural resource damage assessment or restoration;
    c. Result in improvements to air or water quality;
    d. Clean up contaminated sites;
    e. Remediate impaired water bodies, sediments, or soils; and/or
    f. Restore or protect wildlife or wildlife habitats, including fish, aquatic life, marine mammal, or bird habitats.
(2) Align with ORS 541.857 et seq.
(3) Align with Strategic Priorities.
(4) Demonstrate a feasible scope of work, including an implementation approach, timeline, and budget sufficient to complete the proposed activities with the requested funding.
(5) Demonstrate that requested State Agency Program Fund allocations will not supplant funding available from any other sources as consistent with ORS 541.869(2)(b).
(6) Are completed in collaboration with other state agencies and/or Tribal, community, or external partners.
(7) Connects to and supports existing statewide plans, frameworks, or policy initiatives.

Adopt: 699-020-0070

Rule Title: State Agency Program Fund Application Review Process

Rule Summary: The intent of this rule is to describe the review process for applications submitted for funding from the State Agency Program Fund.

(1) OWEB and the Council shall coordinate with the Governor or their Designee to solicit and review agency applications according to evaluation criteria described in OAR 699-020-0060.
(2) Applications shall be forwarded to the Council for funding consideration that:
    a. Meet the evaluation requirements in OAR 699-020-0060; and
    b. Are recommended by the Governor or their Designee.
(3) The Council shall, upon presence of a quorum and by majority vote, approve funding for individual applications that are recommended by the Governor or their Designee.

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Adopt: 699-020-0080

Rule Title: Eligible Uses of Funds

Rule Summary: The intent of this rule is to provide criteria for eligible uses of funding from the State Agency Program Fund.

(1) Eligible uses of funding from the State Agency Program Fund include:
   a. Projects or purposes consistent with the terms of the Monsanto Settlement Agreement and ORS 541.857-541.882 which include restoring, maintaining, and enhancing the quality of Oregon's air, land, water, natural resources, and human health and consist of but are not limited to projects that:
      i. Have a nexus or connection with brownfields remediation or redevelopment;
      ii. Conduct environmental or natural resource damage assessment or restoration;
      iii. Result in improvements to air and water quality;
      iv. Clean up contaminated sites;
      v. Remediate impaired water bodies, sediments or soil;
      vi. Restore or protect wildlife or wildlife habitats including fish, aquatic life, marine mammal or bird habitats;
      vii. Remediate harms to human health caused by environmental contamination, particularly in the presence of PCB.
   b. Activities that are a component of the projects and purposes described in section (1)(a) of this rule may include but are not limited to:
      i. Acquisition of interests in land or water. Land or water acquired must be from a willing seller.
      ii. Education or engagement activities, including the creation and implementation of materials, specific to the restitution or remediation project related to restoring, maintaining, and enhancing the quality of Oregon's air, land, water, and natural resources; this may include but is not limited to:
         1. Signage and other materials to educate or provide information about eligible projects;
         2. Stipends for volunteers, community members, or other advisory group members providing advisory services as part of the eligible project planning, scoping, or engagement;
      iii. Monitoring activities related to restoring, maintaining, and enhancing the quality of Oregon's air, land, water, and natural resources;
      iv. Restoration or remediation activities, including related capital improvement activities when related to restoring, maintaining, and enhancing the quality of Oregon's air, land, water, and natural resources;
      v. Technical assistance activities related to restoring, maintaining, and enhancing the quality of Oregon's air, land, water, and natural resources;
      vi. Capacity or staffing costs to carry out the project activities included in this section.
      vii. Indirect costs to carry out the project activities included in this section.
   c. Match for federal funds or other funding sources used for programs or projects consistent with section (1)(a) of this rule.
   d. Supplementing existing programs or projects consistent with section (1)(a) of this rule.

(2) Ineligible uses of State Agency Program Fund include:
    a. To supplant moneys available from any other source as required by ORS 541.869(2)(b);
    b. For uses not consistent with the projects and purposes included in section(1)(a) of this rule or not otherwise determined by the Council to be a project to restore, maintain and enhance the quality of Oregon's air, land, water, and other natural resources;
    c. For uses not allowed by state law.

Adopt: 699-020-0090

Rule Title: Award and Allocation of Funds

Rule Summary: The intent of this rule is to provide procedures for the allocation and disbursement of funding from the State Agency Program Fund.

(1) The Council shall approve allocations of funds to Agencies as consistent with ORS 541.869.
(2) Allocations approved by the Council must not exceed the Available Funds in the State Agency Program Fund for the current biennium and be aligned with the multi-biennium commitments identified within the Strategic Priorities as consistent with ORS 541.882(2).
(3) The Council shall approve allocations to the Agencies, following the review process in OAR 699-020-0070.
(4) Applications that do not receive funding are not eligible to resubmit in the same biennium unless otherwise allowed by the Council.
(5) State Agency Program Fund allocations are not required to be expended within a single biennium.
(6) OWEB shall transfer approved allocations from the State Agency Program Fund to Agencies at the direction of the Council as consistent with ORS 541.869.
(7) At the close of each biennium, any amounts in the State Agency Program Fund that are unexpended, unobligated, and not subject to any conditions shall revert to the Oregon Environmental Restoration Fund in accordance with ORS 541.867

Adopt: 699-020-0100

Rule Title: Administrative Conditions

Rule Summary: The intent of this rule is to provide administrative conditions including requirements and procedures for State Agency Program Fund allocations.

(1) An Agency receiving State Agency Program Funds must complete the project as approved by the Council and within the scope, budget, and timeframe specified within the application.
(2) OWEB may approve project modifications from the original allocation if the purpose and expected outcomes remain consistent with the original project. An Agency must notify OWEB of any requested modification before beginning the proposed modified work.
(3) If a project is terminated early, the Agency must notify OWEB, and any unspent State Agency Program Funds must be returned to OWEB for deposit into the State Agency Program Fund.

Adopt: 699-020-0110

Rule Title: Reporting Requirements

Rule Summary: The intent of this rule is to provide requirements and procedures for reporting on allocations of from the State Agency Program Fund.

(1) Agencies receiving State Agency Program Funds must submit a biennial progress report within 120 days of the end of the biennium until the project is complete.
(2) Once a project is complete, a final completion report shall be due 120 days after the final day of the biennium or 120 days following completion of the work, whichever comes sooner.
(3) The report format will be developed in consultation with Agencies and provided to Agencies by OWEB.
(4) Failure to submit the report may delay future allocations and distributions from the State Agency Program Fund.

Adopt: 699-020-0120

Rule Title: Waiver and Periodic Review of Rules

Rule Summary: The intent of this rule is to provide procedures for waiving administrative rules when necessary for achieving effective program implementation of the State Agency Program Fund.

The Director may waive the requirements of Division 20 unless required by statute, when doing so will result in more efficient or effective implementation of the State Agency Program Fund. Any waiver must be in writing, included in the fund transfer file records to which the waiver applies, and reported to the Council at the next meeting.

OWEB and the Council shall review the State Agency Program Fund and rules at least once every five years and make changes as needed to carry out a high quality and effective program.