



# Oregon

Theodore R. Kulongoski, Governor

## Oregon Watershed Enhancement Board

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July 7, 2008

TO Interested Parties

FR Melissa Leoni, Senior Policy Coordinator

RE Chance to Comment on Proposed Grant Administration Rules

The Oregon Watershed Enhancement Board (OWEB) is seeking public comment on proposed rules that update grant administration rules to benefit implementation of OWEB's grant program. The proposed rule updates include the landowner agreement requirements contained in 695-005-0030(4) and 695-005-0060(4); grant amendment requirements contained in 695-005-0050(1); the ability of the Director to enter into rule waivers contained in 695-005-0070 and in divisions 10, 35, and 40; and the consistent use of the terms Director, Board, and effectiveness monitoring in divisions 5 and 10. OWEB is also proposing new rule language in division 4 that frames the ability of the OWEB Board to make watershed enhancement investments through the regular grant program or through specific initiatives or programs.

**COMMENT PERIOD:** The public comment period for the proposed rules begins on July 7, 2008, and will close at 5:00 p.m. on Friday, August 1, 2008. A copy of the proposed rules is attached. To comment on the proposed rules, please send written comments to Melissa Leoni at the address above, or send comments by email to [melissa.leoni@state.or.us](mailto:melissa.leoni@state.or.us), with the phrase "Grant Admin Rules" in the subject line.

The proposed rules and public hearing information is available on OWEB's web site at [www.oregon.gov/OWEB/admin\\_rules\\_statutes.shtml](http://www.oregon.gov/OWEB/admin_rules_statutes.shtml). Questions concerning the rules or this process may be directed to Melissa Leoni at 503-986-0179.

**PUBLIC HEARING:** The Board will hold one public hearing to receive comments regarding the proposed rules. Both oral and written comments will be accepted at the hearing.

**July 15, 2008**

**2:00 p.m. to 3:00 p.m.**

Mill Creek Room (first floor)

State Lands Building

775 Summer Street NE, Salem

**PUBLIC ACCOMMODATION:** The services, programs and activities of the Board are covered by the Americans with Disabilities Act (ADA). The ADA prohibits discrimination against persons with disabilities. To request special considerations to participate in these hearings, please contact the Board's ADA coordinator, Bonnie Ashford (503-986-0181) at least 72 hours prior to the hearing.

**BACKGROUND INFORMATION:** The following describes the rule issues OWEB would like to address with this rulemaking, including the purpose behind the existing rule language and the policy issues staff are trying to address. This is not a full review of the grant program administrative rules. Other issues will be addressed during a periodic review process that will begin in 2009.

## **I. Landowner Agreements [695-005-0060(4) and 695-005-0030(4)]**

The purpose of OWEB's rules related to landowner agreements is to ensure that OWEB grant recipients have permission to access the project site and to implement the project as proposed. These rules and the policy foundation under the rules have a long history at OWEB and its predecessor, including a statutory requirement for access and maintenance (ORS 541.396).

Under the current rule language, landowner signatures are requested in the grant application and required prior to release of a grant agreement, and a cooperative agreement must be signed by the landowner before any funding is released. OWEB would like to address the landowner agreement requirements to allow for greater flexibility to allow payments for activities within a grant agreement that meet the landowner access, approval, and maintenance agreement requirements. The proposed rules eliminate the landowner signature and cooperative agreement requirements and instead require the applicant/grantee to certify that they will have secured the required commitments.

## **II. Grant Amendments [695-005-0050(1)]**

OAR 695-005-0050(1) does not allow staff to enter into new agreements or to process any grant amendments unless the grantee has all other reporting and administrative functions completed. The purpose of the rule was to improve grant management and reporting by grantees. Small Grants were exempted at that time, primarily because most grantees were landowners (that changed in 2005 when OWEB's rule defined eligible applicants to be only tribes, watershed councils, and soil and water conservation districts) and OWEB had separate databases to track small grants and regular grants.

There have been times where the ability to amend a budget to change the fiscal agent in an agreement has created additional administrative burdens. OWEB would like to eliminate the Small Grants exemption and allow certain amendments, such as budget or fiscal agent change amendments, to proceed regardless of reporting obligation status.

## **III. Waiver of Rules [Divisions 10, 35, and 40]**

The purpose of the rule waiver in division 5 is to allow the OWEB Director some flexibility, unless required by statute, to address specific situations or particular types of Board investments where it may be more effective or efficient to use an alternate application or grant implementation process. Rules waivers are not granted easily or without serious discussion between the grantee and OWEB's grant and fiscal staff.

OWEB would like to give the Director broader discretion, unless required by statute, to waive rule requirements in other rule divisions for the same purpose, i.e. the more efficient or effective implementation of the OWEB grant program. Rule waivers are proposed for divisions 10, 35, and 40 (restoration, small grants, and council support) at this time because the education, monitoring and assessment rule divisions have few rule requirements to waive and divisions 45 and 46 already include rule waivers for due diligence requirements.

## **IV. Consistent Use of Board and Director [Divisions 5 and 10]**

The purpose for including a rule definition would be to provide clarity for a term used in that division that isn't already defined in statute. ORS 541.351(3) defines Board by the statutory reference that creates and describes the membership of the 17 member OWEB Board. There is no statutory definition of OWEB the agency.

As OWEB's administrative rules have been developed over the past nine years by different staff, the terms OWEB, Board, and Director have been used inconsistently among rule divisions. In this rulemaking, we propose to update the definitions for these terms in divisions 4 and 5 and update the references to "Director" in divisions 5 and 10. The use of OWEB, Board, and Director in the remaining divisions will be addressed in the 2009 periodic review process.

**V. Budget Form Requirements [695-005-0030(2)(d)]**

The Application Requirements rules in division 5 require that the application include an estimate line item budget including the sources and amount of funding in addition to the amount of funding requested from OWEB. There is also a rule requiring that applicants demonstrate at least 25% match on a form "prescribed by the Board." The purpose of these rules is to have the applicants provide a detailed budget showing what is proposed to be implemented and to show how and by whom match funding or in-kind contributions will be provided.

Staff are proposing updated rule language that requires applicants to provide an estimated line item budget on the most current form provided by the OWEB. This language allows staff the most flexibility to design the budget form to meet the needs of applicants, regional review teams, OWEB staff, and the OWEB Board.

**VI. Consistent use of effectiveness and implementation monitoring [695-005-0060(4)(a) and 695-010-0100(2)]**

The term effectiveness is used in three administrative rules contained in divisions 5, 10, and 35. OWEB has developed the following distinction between effectiveness and implementation monitoring (otherwise known as post-project implementation reporting or status reports). Post-project implementation reporting is a requirement of all OWEB grants and includes a brief project description of the project and the work completed, pre- and post-project photographs, lessons learned during the project, recommendations on the implementation of future projects, maintenance performed, and accounting of expenditures. Effectiveness monitoring is monitoring above and beyond grant compliance monitoring, and determines whether the project is effective at meeting its biological and ecological objectives.

The purpose of the term in two of the three rules is inconsistent with OWEB's current usage of effectiveness. OWEB proposes to change "effectiveness" to "track the status" in two of the three rules. "Effectiveness" is also used in small grant rule 695-035-0020(17), but staff propose waiting to update this rule until the full review of the small grant program rules begins this fall.

**VII. Partnership and Other Investment Rules [Division 4]**

The majority of OWEB's existing administrative rules address the Board's grant program investments. The purpose of these new rules is to give some visible recognition to the Board's other investment areas, like the Conservation Reserve Enhancement Program (CREP), Special Investment Partnerships (SIP), Whole Watersheds Partnership, or Coastal Wetlands Grants, and to provide internal and external guidance for those investments.

OWEB has proposed rule language to provide an overall framework for the Board's investments. For all investments, the Board will approve standards and guidance for application requirements, application processing, application evaluation, grant or interagency agreement conditions, and fund distribution criteria or conditions. If those standards and guidance are not already in rule, then the standards and guidance would be adopted by the Board at a Board meeting.