**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**STATEMENT OF NEED AND JUSTIFICATION**

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

**Department of Environmental Quality, Water Quality Davison**  **OAR Chapter 340**

Agency and Division Administrative Rules Chapter Number

**Rule Caption:** Amend the Clean Water State Revolving Fund Rules.

**In the Matter of**: CleanWater State Revolving Fund program, Chapter 340, Division 54

**Statutory Authority**: ORS 468.020; 468.423-468.440

**Other Authority**: American Recovery and Reinvestment Act of 2009 (Public Law 111-5)

**Statutes Implemented**: ORS 468.423-468.440; ORS 197.180

**Need for the Temporary Rule(s):**

The American Recovery and Reinvestment Act of 2009 was enacted in February to preserve and create jobs as an important means of stimulating the U.S. economy. The Act stipulates that $4 billion be allocated to fund water quality improvements through the nation's Clean Water State Revolving Fund (CWSRF) program. The Act requires funded activities be under contract or construction within 12 months of the date of enactment (by February 16, 2010).

The U.S. Environmental Protection Agency has allocated $44 million under the Act for a capitalization grant to the Department of Environmental Quality. The Act stipulates that states must meet certain financial requirements if they accept the grant. DEQ’s administrative rules must be amended to include these federal requirements. The temporary rulemaking is necessary to allow DEQ to quickly comply with the Act.

DEQ intends to have temporary rules adopted in April, allowing EPA to award the grant to DEQ by June. Loan agreements signed before September 2009 are likely to result in projects that will meet the Act’s 12-month timeframe.

**Documents Relied Upon:**

The following documents are available from the DEQ Water Quality Division, 811 SW Sixth Avenue, Portland Oregon. To make arrangements to review these documents call (503) 229-6412. SRF Website link

* The American Recovery and Reinvestment Act of 2009
* Environmental Protection Agency Memo dated 3/2/09 from the EPA Office of Wastewater Management and the Office of Ground Water and Drinking Water - guidance document on awarding capitalization grants under the Act
* Oregon Administrative Rules, Chapter 340, Division 54

**Justification of Temporary Rule(s):**

The commission finds that failure to adopt the temporary rule will result in serious prejudice to the public interest because it will have the following consequences:

The Act requires that all projects funded under the Act be under contract or construction by February 16, 2010. The Act also states that EPA’s administrator shall reallocate any funds where projects are not under contract or under construction. Wastewater projects typically take considerably longer than a year to plan, design, contract work and begin construction. It is critical that DEQ provide loans as soon as possible after being awarded the grant. By pursuing temporary rulemaking, DEQ anticipates that funds will be available for loans by June 2009. If DEQ was required to amend these rules through a permanent rulemaking, loan agreement would not occur until at least September 2009. Signing loans in September would require borrowers to have those funds under construction or contract within four to five months. Such a timeline would substantially increase the risk of borrowers having funds reallocated by EPA.

Failure to use the $44 million capitalization grant intended as economic stimulus for Oregon constitutes serious prejudice to public interest. Such a loss would be even more difficult to justify if it was solely due to a prolonged timeframe that can be avoided by implementing temporary rulemaking.

**Housing Cost Impacts:**

DEQ has determined that this proposed temporary rulemaking will have no measurable impact on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel

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*Dick Pedersen, Director Date Signed*

*(On Behalf of the Commission)*