

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Relationship to Federal Requirements

Amend the Clean Water State Revolving Fund – Permanent Rules

Answers to the following questions identify how the proposed rulemaking relates to federal requirements and the justification for differing from, or adding to, federal requirements. This statement is required by OAR 340-011-0029(1).

1. Is the proposed rulemaking different from, or in addition to, applicable federal requirements? If so, what are the differences or additions?

DEQ's Clean Water State Revolving Fund (CWSRF) is administered in Oregon under the federal Clean Water State Revolving Fund program authorized by title VI of the Clean Water Act. This rulemaking will amend DEQ's CWSRF program to also address requirements of the American Recovery and Reinvestment Act of 2009.

The proposed amendments are not different from or in addition to requirements of either the Clean Water Act or the American Recovery and Reinvestment Act. Both federal programs allow states flexibility in how federal program requirements are implemented. DEQ is exercising this flexibility both in defining eligible projects and the level of incentives to be incorporated in loans.

The American Recovery and Reinvestment Act (the Act) provides economic stimulus funds to states to be incorporated into their CWSRF programs. The U.S. Environmental Protection Agency (EPA) determined funds may not be used to provide assistance for the purchase or refinancing of municipal debt or restructuring outstanding CWSRF loans unless the initial debt was incurred on or after October 1, 2008. DEQ is imposing limitations beyond the Act, making any project funded by the CWSRF loan program prior to the October 1, 2008 date ineligible.

Another important provision of the Act requires at least fifty percent of the grant received by a state provide "additional subsidization" to eligible recipients. Yet, the Act allows each state to decide if that additional incentive will be offered as a negative interest rate, grants, principal forgiveness or a combination of these. DEQ chose to provide principal forgiveness. So the proposed amendments to DEQ's CWSRF loan program will establish incentives different from the incentives offered by other states, but allowed under the flexible requirements of the Act.

If adopted, the proposed amendments will align DEQ's CWSRF program with the requirements of both the Clean Water Act and the American Recovery and Reinvestment Act.

2. If the proposal differs from, or is in addition to, applicable federal requirements, explain the reasons for the difference or addition (including as appropriate, the public health, environmental, scientific, economic, technological, administrative or other reasons).

The proposed amendments are not different from, or in addition to, either the Clean Water Act or the American Recovery and Reinvestment Act. Describing any reasons here for any differences is not necessary.

3. If the proposal differs from, or is in addition to, applicable federal requirements, did DEQ consider alternatives to the difference or addition? If so, describe the alternatives and the reason(s) they were not pursued.

DEQ considered the alternatives available within the Act in providing an additional subsidization, but no alternatives outside the Act itself were considered.

DEPARTMENT OF ENVIRONMENTAL QUALITY
 Chapter 340
 Proposed Rulemaking
STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT

Amend Clean Water State Revolving Fund - Permanent Rules

This form accompanies a Notice of Proposed Rulemaking

Title of Proposed Rulemaking	Amend Clean Water State Revolving Fund - Permanent Rules. Chapter 340, Division 54
Statutory Authority or other Legal Authority	<p>The Oregon Department of Environmental Quality (DEQ) and the Environmental Quality Commission (EQC) have the statutory authority to address this issue under ORS 468.020 and 468.423 - 468.440.</p> <p>Additional authority is provided by the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).</p>
Statutes Implemented	These proposed rules implement ORS 468.423 - 468.440.
Need for the Rule(s)	<p>President Obama signed the American Recovery and Reinvestment Act of 2009 (the Act) in February 2009. The Act provides economic stimulus funds to the federal Clean Water State Revolving Fund (CWSRF) loan program that is administered by the U.S. Environmental Protection Agency (EPA). The EPA allocated \$44.3 million in funds to Oregon DEQ's CWSRF program. In April 2009, the EQC adopted temporary amendments to DEQ's CWSRF program administrative rules to ensure the program addressed all requirements of the Act and therefore was eligible to receive the \$44 million capitalization grant.</p> <p>By law, the temporary amendments adopted by the EQC in April will expire in 180 days (late October). This permanent rulemaking is necessary to ensure DEQ is able to meet the requirements of the Act and to receive possible additional funds from the Act if those funds become available after October 2009. The intention of this rulemaking is to permanently adopt the temporary amendments with only minimal changes in language necessary to ensure DEQ and borrowers are able to comply with requirements of the Act.</p>
Documents Relied Upon for Rulemaking	<p>The principal documents relied upon in preparing this rulemaking include:</p> <ul style="list-style-type: none"> • The American Recovery and Reinvestment Act of 2009; • U.S. Environmental Protection Agency Memo dated March 2, 2009 from the EPA Office of Wastewater Management – guidance document on awarding capitalization grants under the Act; • Oregon administrative rules, chapter 340, division 54. <p>These documents are available from DEQ's Water Quality Division, 811 SW Sixth Avenue, Portland Oregon. To arrange to review these documents call Larry McAllister, (503) 229-6412.</p>
Requests for Other Options	Pursuant to ORS 183.335(2)(b)(G), DEQ 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.
Fiscal and Economic Impact, Statement of Cost Compliance	
Overview	Adoption of the proposed rule amendments will allow DEQ's CWSRF program to address certain requirements of the American Recovery and Reinvestment Act. As a result of addressing those requirements, DEQ's CWSRF loan program was eligible for \$44.3 million in funding from the Act. The

	<p>additional funds will be used for loans incorporating zero percent interest rates and substantial principal forgiveness. The incentives of these loans will make it possible for borrowers to substantially reduce the cost of needed water quality improvement projects</p> <p>These loans will be available to cities, counties and other public entities. There are additional reporting requirements under ARRA associated with the loans, but the cost of that reporting are expected to be negligible.</p>	
<p>Impacts on the General Public</p>	<p>The adoption of the proposed rules will have no direct impact on the general public. Borrowers of these loans are limited to public agencies and they will benefit from the additional subsidization of the loans offered under the rules in financing their water quality projects. For example, a loan made to a small community would include a subsidy of 75% principal forgiveness. In this example, only \$250,000 of a \$1 million loan would have to be repaid to DEQ.</p> <p>The public should benefit from the water quality improvements made possible by projects receiving CWSRF loans. Due to variables such as the type and size of the project and a community's population, quantifying specific fiscal impacts to the public from this rulemaking is beyond the scope of this fiscal analysis.</p>	
<p>Impacts to Small Business (50 or fewer employees – ORS183.310(10))</p>	<p>Small businesses are not eligible applicants to the CWSRF loan program, so the proposed rules will have no measurable direct impact on Oregon's small businesses.</p> <p>DEQ's funding of additional water quality improvement projects may increase the demand for some services provided by Oregon's small businesses such as consulting and construction services.</p>	
<p>Cost of Compliance on Small Business (50 or fewer employees – ORS183.310(10))</p>	<p>a) Estimated number of small businesses subject to the proposed rule</p>	<p>Small businesses are not eligible applicants to the CWSRF program and are not subject to the proposed rules.</p>
	<p>b) Types of businesses and industries with small businesses subject to the proposed rule</p>	<p>There are various types and numbers of companies who might indirectly benefit from the proposed rules. These primarily include consultants and contractors who would be employed to design and construct funded projects.</p>
	<p>c) Projected reporting, recordkeeping and other administrative activities required by small businesses for compliance with the proposed rule, including costs of professional services</p>	<p>The Act does require additional reporting by borrowers. As contractors or consultants to borrowers, small businesses may be required to report regularly on the number of jobs created and hours worked.</p>
	<p>d) The equipment, supplies, labor, and increased administration required by small businesses for compliance with the proposed rule</p>	<p>This information is not available. The additional reporting (see above) is the only identified additional administrative activities associated with CWSRF loans using Act funds.</p>
	<p>e) A description of the manner in which DEQ involved small businesses in the development of this rulemaking</p>	<p>Small businesses were not involved in the development of the proposed rules.</p>
<p>Impacts on Large Business (all businesses that are not "small businesses" under ORS183.310(10))</p>	<p>If adopted, the proposed rules are not expected to have any measurable direct impact on Oregon's large businesses. Businesses are not eligible applicants to the CWSRF loan program and so are not expected to be impacted by the proposed changes in the loan program.</p>	

Impacts on Local Government	<p>Local governments are the primary borrowers of CWSRF loans. The proposed rule revisions will ensure that local governments (borrowers) remain in compliance with the requirements of the Act.</p> <p>The generous incentives within these loans would result in measurable project cost savings compared to most other financing options available. Again, as an example, a small community in Oregon with a population of 5,000 or less might qualify for 75% of the cost of their wastewater project being forgiven. Other communities with larger populations qualifying for these loans might have 50% of their loan amount forgiven if the proposed rules are adopted. Determining specific fiscal impacts to local governments requires information on variables that is beyond the scope of this fiscal analysis.</p>
Impacts on State Agencies other than DEQ	<p>It is not expected the proposed rules will have a measurable impact on other state agencies, although certain agencies play a role in the CWSRF loan program's environmental review process. For instance, the Department of Land Conservation and Development (DLCD) is responsible for evaluating certain environmental impacts of projects receiving CWSRF funding. Additional projects (due to Act funding) may result in additional environmental review work by staff at DLCD.</p>
Impacts on DEQ	<p>Adoption of the proposed rule amendments will have no significant impact on DEQ's CWSRF program or the Department. The related activities due to the availability of the Act funding are being addressed with current DEQ resources.</p>
Assumptions	<p>The proposed permanent rules are critical for DEQ to successfully implement the American Recovery and Reinvestment Act. The rules will ensure Oregon's CWSRF loan program and its borrowers continue to meet the requirements of the Act at that time the temporary rules expire.</p>
Housing Costs	<p>DEQ has determined that this proposed rulemaking will have no measurable effect 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.</p>
Administrative Rule Advisory Committee	<p>An advisory committee was not used in developing this permanent rulemaking. Because this rulemaking does not address new policy issues, an advisory committee was not convened. A financial work group provided policy direction during the development of the earlier temporary rule language.</p>

Larry McAllister
 Prepared by

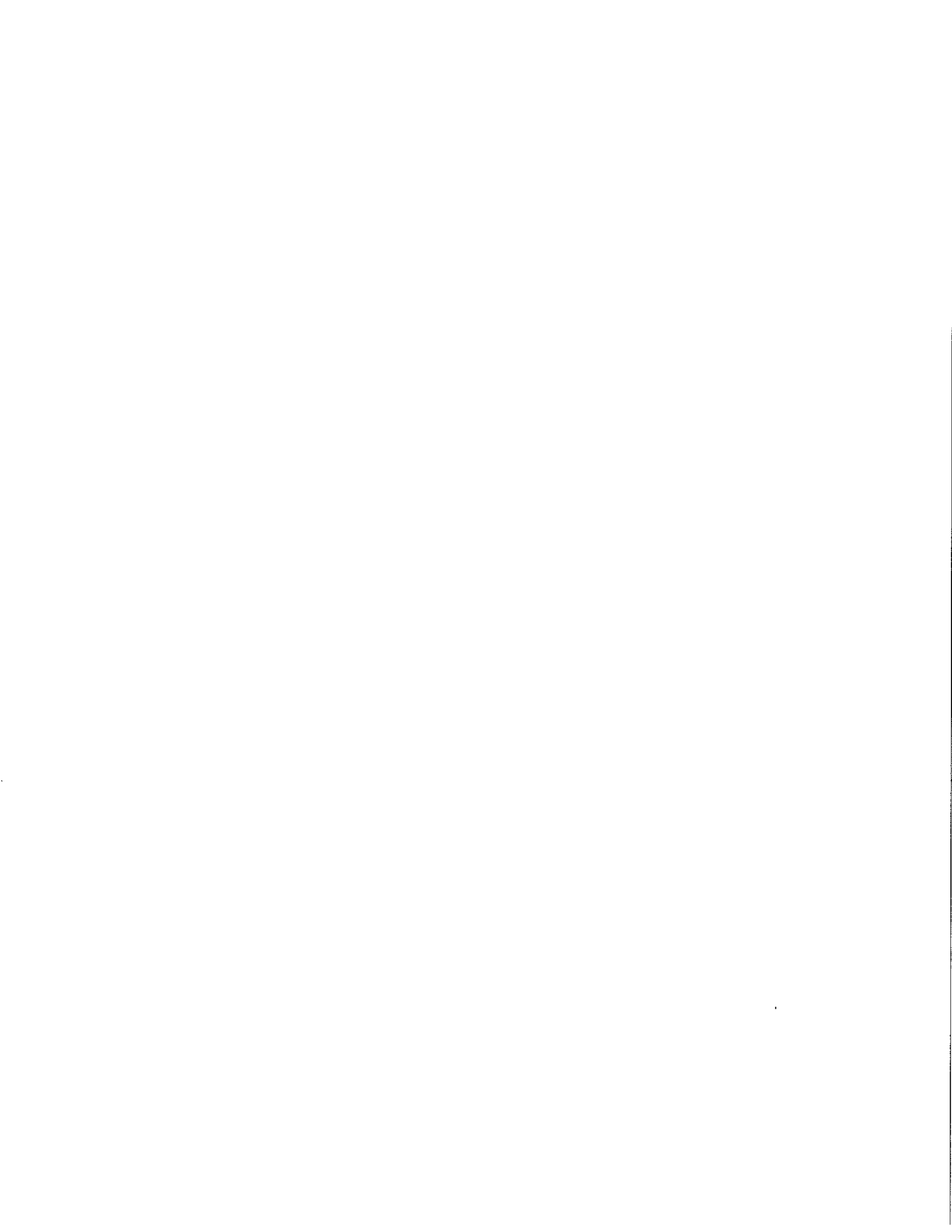
Larry McAllister
 Printed name

7-14-09
 Date

J. P. [Signature]
 Approved by DEQ Budget Office

JAMES ROYS
 Printed name

7-14-09
 Date



State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Land Use Evaluation Statement

Rulemaking Proposal
for

Amend the Clean Water State Revolving Fund - Permanent Rules

1. Explain the purpose of the proposed rules.

The American Recovery and Reinvestment Act of 2009 (the Act) allows the U.S. Environmental Protection Agency to allocate \$44.3 million to Oregon DEQ's Clean Water State Revolving Fund to create jobs and promote economic recovery. To meet the requirements of the Act, the Environmental Quality Commission (EQC) adopted temporary amendments to DEQ's CWSRF loan program administrative rules in April 2009. By law, these temporary rules will expire in October 2009. The adoption of this permanent rulemaking will replace these temporary rules and ensure DEQ's program will meet the requirements of the Act.

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?

Yes X No _____

a. If yes, identify existing program/rule/activity:

Oregon administrative rule 340-018-0030(5)(b) identifies the approval of a state revolving loan application as one of DEQ's programs and actions determined to have significant effects on land use.

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes X No _____ (if no, explain):

c. If no, apply the following criteria to the proposed rules.

NA

3. **If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.**
NA