**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**DIVISION 54**

**CLEAN WATER STATE REVOLVING FUND PROGRAM**

**340-054-0005**

**Purpose**

(1) These rules, OAR 340-054-0005 to 340-054-0108, establish procedures and requirements for the funding of projects and activities that enhance, protect or restore water quality through the Water Pollution Control Revolving Fund, called the Clean Water State Revolving Fund.

(2) The purpose of this division is to:

(a) Assist a public agency to obtain financing for a project that enhances, protects or restores water quality.

(b) Ensure the loan application and funding processes, procedures and requirements are clear.

(c) Promote loan affordability by offering below-market interest rates.

(d) Ensure perpetuity of the CWSRF for reliability of project funding.

Stat. Auth.: ORS 468.020 and ORS 468.440
Stats. Implemented: ORS 468.423 to ORS 468.440
Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 3-1995, f. & cert. ef. 1-23-95; DEQ 10-2003, f. & cert. ef. 5-27-03

**340-054-0010**

**Definitions**

The following definitions apply to this division of rules:

(1) "Act" means the American Recovery and Reinvestment Act of 2009, Public Law 111-5, signed into law on February 17, 2009.

(2) "Applicant" means a public agency that has applied for a CWSRF loan under this division.

(3) "Borrower" means a public agency that has signed a CWSRF loan agreement with the department.

(4) "Change order" means a written order and supporting information from a borrower to a borrower's contractor authorizing an addition, deletion or revision in the work within the scope of the contract documents, including any required adjustment in contract price or time.

(5) "Checklist of application requirements" means a list, provided by the department, of all documents that must be submitted with an application to the department under this division.

(6) "Clean Water Act" or "CWA" means the federal Water Pollution Control Act, 33 U.S.C. §1251 - §1387.

(7) "Clean Water State Revolving Fund" or "CWSRF" means the Water Pollution Control Revolving Fund established under ORS 468.427.

(8) "Collector sewer" means the portion of a public wastewater system installed primarily to receive wastewater directly from individual residences and other individual public or private structures.

(9) "Construction" means the erection, installation, expansion or improvement of a wastewater or stormwater facility, nonpoint source control activity or estuary management project, and includes the demolition of an obsolete facility.

(10) "Cross-cutting authorities" means requirements of federal laws and Executive Orders that apply to projects and activities funded under the CWSRF program.

(11) "Default" means the failure to pay principal, interest or annual fees, or to comply with other CWSRF loan terms or provisions, and includes the filing of bankruptcy or other written admission of an inability to satisfy a borrower's obligations under a CWSRF loan.

(12) "Department" means the Oregon Department of Environmental Quality.

(13) "Design" means the preparation of engineering drawings and specifications for the proposed construction, and may include pre-design activities.

(14) "EPA" means the U.S. Environmental Protection Agency.

(15) "Estuary management" means the implementation of actions identified in a Comprehensive Conservation Management Plan developed for a designated national estuary.

(16) "Local community loan" means a loan used by a public agency to establish a local financial program that will fund an eligible nonpoint source control or estuary management activity.

(17) "Maintenance" means regularly scheduled work performed to repair, replace or upgrade equipment in a facility, or to prevent or correct a failure or a malfunction of a wastewater or stormwater facility, nonpoint source control or estuary management project.

(18) "Natural infrastructure" means the use of natural form and ecosystem function to restore or augment the intended water quality benefits of a project.

(19) "Nonpoint source" has the meaning given in ORS 468B.005.

(20) "Nonpoint source control" means implementation of a nonpoint source control activity under section 319 of the Clean Water Act and 40 CFR §35.3115(b) that is included in the department's current Oregon Nonpoint Source Control Program Plan.

(21) "Operation" means the control of wastewater collection system pumping stations and wastewater facility treatment unit processes, the control of equipment and processes of stormwater facilities, nonpoint source control and estuary management projects, and the financial and personnel management, records, laboratory control, process control, safety, and emergency planning for these facilities and projects.

(22) Planning.

(a) "Planning" means monitoring, data collection and measurement, evaluation, analysis, security evaluations, report preparation, environmental review, public education and review process and any other activity leading to a written plan for the provision of a wastewater or stormwater facility, nonpoint source control or estuary management project intended to remediate an existing or anticipated water pollution problem.

(b) "Planning" does not mean the preparation of detailed bid documents for construction.

(23) "Point source" has the meaning given in ORS 468B.005.

(24) “Principal forgiveness” means additional subsidization that allows a borrower to repay only a specified portion of the loan principal.

(25) "Project" means the activities or tasks identified in a loan application or a loan agreement for which a borrower may expend or obligate funds.

(26) "Public agency" has the meaning given in ORS 468.423.

(27) Replacement.

(a) "Replacement" means expenditures for obtaining and installing equipment, accessories or appurtenances necessary for the ongoing operation during the design or useful life, if longer, of a wastewater or stormwater facility, nonpoint source control or estuary management project to maintain a facility or project for the purpose it was designed and constructed.

(b) "Replacement" does not mean the replacement of a facility or project at the end of its useful life.

(28) "Small community" means a public agency serving a population of 10,000 or less.

(29) "Sponsorship option" means the department's financing mechanism that allows a public agency with the authority to finance and implement a wastewater facility project and an eligible nonpoint source control or estuary management activity to be financed through one CWSRF loan.

(30) "Stormwater" means water runoff from a precipitation event, snowmelt runoff, and surface runoff and drainage.

(31) "Sustainability" means the long term reliability and viability of finance, operations, environmental performance or technology, or the use of natural infrastructure.

(32) "Wastewater" has the meaning given for "sewage" in ORS 468B.005.

(33) "Wastewater collection system" means publicly owned pipelines, conduits, pumping stations, force mains and any other related structures, devices or equipment used to convey wastewater to a wastewater treatment facility.

(34) "Wastewater facility" means a wastewater collection system or wastewater treatment facility.

(35) "Wastewater reuse" means a project that uses recycled water, as defined in OAR 340-055-0010, or effluent from a commercial or industrial process that is suitable for a direct beneficial purpose or a controlled use.

(36) "Wastewater treatment facility" means a publicly owned device, structure or equipment used to treat, neutralize, stabilize, reuse or dispose of wastewater and treatment residuals.

(37) "Water quality standards" means the surface water standards established in OAR 340-041 and the minimum groundwater protection requirements established in OAR 340-040.

Stat. Auth.: ORS 468.020 and ORS 468.440
Stats. Implemented: ORS 468.423 to ORS 468.440
Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 3-2010(Temp), f. & cert. ef. 5-4-10 thru 10-29-10; DEQ 13-2010, f. & cert. ef. 10-27-10

**340-054-0011**

**Authorized Fund Uses**

The department will use the CWSRF only to:

(1) Offer loans to eligible borrowers identified in the Intended Use Plan developed pursuant to OAR 340-054-0025.

(2) Fund loan reserves specified in OAR 340-054-0036.

(3) Purchase bonds or acquire other debt obligations.

(4) Pay CWSRF program administration costs to the extent allowed by federal law and state statute.

(5) Earn interest on fund accounts.

(6) Establish reserves for bonds issued by the state for use by the fund.

(7) Pay principal and interest of bond obligations sold to benefit the fund.

Stat. Auth.: ORS 468.020 and ORS 468.440
Stats. Implemented: ORS 468.423 to ORS 468.440

**340-054-0015**

**Eligible Projects and Activities**

A public agency may apply for a CWSRF loan up to 100 percent of a water quality project and project related costs including, but not limited to, the following:

(1) Planning for wastewater facilities, nonpoint source control or estuary management projects including supplements or updates.

(2) Wastewater treatment facilities.

(3) Reserve capacity for a wastewater treatment or disposal facility that serves a population not to exceed a 20-year population projection, and for a wastewater collection system, or any portion thereof, not to exceed a 50-year population projection.

(4) Facilities related to solids treatment, disposal, resource recovery, or management.

(5) Interceptors, force mains and pumping stations.

(6) Identification and correction of the intrusion of groundwater into a collector sewer or interceptor sewer (infiltration) and the direct flow of water other than wastewater or groundwater into a collector or interceptor sewer (inflow).

(7) Replacement or repair of interceptor or collector sewers necessary to maintain the structural integrity and function of the sewer.

(8) Overflow correction of a sewer designed as both a sanitary and stormwater sewer (combined sewer), if required to protect sensitive estuarine waters or to comply with department water quality statutes, rules or permits, provided the project is the most cost effective alternative.

(9) New collector sewers required to correct documented water quality violations of state statutes, administrative rules or permit conditions or to serve an area with a documented health hazard due to failing onsite wastewater treatment systems or other wastewater disposal practices resulting in discharge of inadequately treated wastes.

(10) Stormwater facilities, systems or projects, including, but not limited to, engineered or natural facilities to treat, convey or control stormwater discharge, and source controls intended to improve water quality or reduce stormwater volume.

(11) Estuary management activities that address environmental quality directly related to water quality.

(12) Nonpoint source control activities that address environmental quality directly related to water quality.

(13) Wastewater reuse projects.

Stat. Auth.: ORS 468.020 and ORS 468.440
Stats. Implemented: ORS 468.423 to ORS 468.440
Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; DEQ 10-2003, f. & cert. ef. 5-27-03

**340-054-0022**

**Loan Application Requirements**

(1) Application submittal. The department will notify interested parties at least annually of the opportunity to submit applications for a CWSRF loan. An eligible public agency may submit to the department a CWSRF loan application at any time.

(2) Consideration for funding. The department will consider an applicant for funding only if its project is included in the Intended Use Plan and all application requirements in this division are met.

(3) All CWSRF loans. An applicant must submit the following to the department:

(a) A complete application on the applicable form provided by the department.

(b) Documents specified in the checklist of application requirements provided by the department.

(c) Audited financial statements for the three years prior to the application date and the applicant's current budget, unless waived in writing by the department.

(d) Evidence the applicant has the authority to undertake the project including, but not limited to, evidence of a loan approval resolution or similar authorization for signing a loan agreement and establishing a loan reserve account.

(e) Evidence the applicant has authority to collect and pledge the revenue offered as repayment for a CWSRF loan, repay a loan and, where applicable, the ability to ensure ongoing operation and maintenance of the proposed wastewater or stormwater facility, nonpoint source control or estuary management project. The department may require the following criteria to be met for a revenue-secured loan described under OAR 340-054-0065(2):

(A) An applicant's revenue stream is not at risk from undue dependence upon a limited portion of the system's customer base or a pattern of delinquent payment from that portion of the system's customer base, and

(B) An applicant must have the ability to collect from delinquent customers.

(f) Pre-award compliance review report or other evidence as determined by the department to show compliance with federal nondiscrimination requirements.

(g) For projects serving two or more public agencies, the executed inter-agency agreements, contracts or other legally binding instruments necessary for financing, construction and operation of the proposed project. The documents must be satisfactory to the department for determining an adequate pledge of security.

(h) Evidence of resolution, ordinance or other authorization approving bonds secured by sewer or other revenue sources if required by the department.

(i) Official statement of recently issued bonds if required by the department.

(j) Any other information requested by the department as necessary to complete the loan application.

(4) Local community loan. In addition to the requirements in section (3) of this rule, an applicant applying for a CWSRF local community loan must submit the following to the department:

(a) A description of how the project will implement a nonpoint source control activity or estuary management effort.

(b) A projected cash flow statement based on anticipated number of local loans, their repayment schedule, amount and timing of department disbursement and amount and timing of repayments to the department.

(c) Unless waived by the department, evidence of a user charge system or other source of revenue if the applicant will be securing and repaying the loan with sewer system revenues.

(d) Unless waived by the department, demonstration of compliance with applicable federal environmental cross-cutting authorities.

(e) Documentation that demonstrates compliance with the land use requirements in OAR 340-018-0050.

(f) In accordance with OAR 340-052, department approved plans and specifications for the project as applicable.

(g) An environmental determination obtained from the department for a nonpoint source pollution control (CWA § 319) or estuary management (CWA § 320) project that are construction and treatment works as defined in the CWA § 212. The environmental determination must meet the following conditions:

(A) An applicant must provide all necessary documentation to support the department's review of the entire projects' potential environmental impacts and include an analysis of a no action alternative and other reasonable alternatives considered.

(B) Project construction must begin within five years of the environmental determination.

(h) If an applicant does not obtain an environmental determination as specified in subsection (4)(g) of this section, an applicant may submit to the department, and the department may accept, an environmental determination made by another agency that meets the following conditions:

(A) The project scope must be essentially unchanged from that accepted by the other agency.

(B) The other agency's determination must have been made within the previous five years.

(C) The federal environmental cross-cutting authorities have been met and documented.

(5) All design or construction loans. In addition to the requirements in section (3) of this rule, an applicant applying for a CWSRF design or construction loan must submit the following to the department:

(a) Unless waived by the department, evidence of a user charge system or other source of revenue if the applicant will be securing and repaying the loan with sewer system revenues.

(b) Unless waived by the department, demonstration of compliance with applicable federal environmental cross-cutting authorities for a construction project.

(c) An environmental determination obtained from the department for a construction project of a treatment works as defined in the CWA § 212, including a nonpoint source pollution control (CWA § 319) or estuary management (CWA § 320) project that are construction and treatment works as defined in the CWA § 212. The environmental determination must meet the following conditions:

(A) An applicant must provide all necessary documentation to support the department's review of the entire projects' potential environmental impacts and include an analysis of a no action alternative and other reasonable alternatives considered.

(B) Project construction must begin within five years of the environmental determination.

(d) If an applicant does not obtain an environmental determination as specified in subsection (5)(c) of this section, an applicant may submit to the department, and the department may accept, an environmental determination made by another agency that meets the following conditions:

(A) The project scope must be essentially unchanged from that accepted by the other agency.

(B) The other agency's determination must have been made within the previous five years.

(C) The federal environmental cross-cutting authorities have been met and documented.

(e) Documentation that demonstrates compliance with the land use requirements in OAR 340-018-0050.

 (f) In accordance with OAR 340-052 and for a construction-only loan, department approved plans and specifications for the project as applicable.

(g) If the estimated cost of a project is in excess of $10 million, a value engineering study satisfactory to the department, prior to construction beginning. The study must be a specialized cost control technique specifically applicable to the wastewater treatment facility design identifying cost savings that can be made without sacrificing project reliability or efficiency.

(6) Design or construction loan for a point source project. In addition to the requirements in sections (3) and (5) of this rule, an applicant applying for a CWSRF design or construction loan for a point source project must submit the following to the department:

(a) An engineered planning document in the form of either a facility plan or project pre-design report that provides a comprehensive evaluation of environmental factors, engineering alternatives and financial considerations affecting the project area. This document must adequately describe the effectiveness and suitability of the proposed project to address the identified water quality problem. An applicant must have this document reviewed and approved by the department prior to signing a design or construction loan.

(b) Evidence of a sewer use ordinance or equivalent authority that prohibits:

(A) New connections from inflow sources into the wastewater collection system, and

(B) Wastewater introduced into the wastewater collection system containing toxics or other pollutants in amounts or concentrations that have the potential of endangering public safety, adversely affecting the project or precluding the selection of the most cost-effective alternative for the project.

(c) When a public agency applies for a wastewater facility construction loan that includes a sponsorship option, complete information about the nonpoint source control or estuary management activity on the applicable application form. The department will only consider a sponsorship option if a nonpoint source control or estuary management activity is included as part of the entire project scope.

(7) Design or construction loan for a nonpoint source project. In addition to the requirements in sections (3) and (5) of this rule, an applicant applying for a CWSRF design or construction loan for a nonpoint source project must submit to the department an engineered planning report. The report must define the water quality problem and specify actions an applicant will implement to correct the problem.

Stat. Auth.: ORS 468.020 and ORS 468.440
Stats. Implemented: ORS 468.423 to ORS 468.440
Hist.: DEQ 10-2003, f. & cert. ef. 5-27-03

**340-054-0025**

**Intended Use Plan and Project Priority List**

(1) IUP development. The department will annually develop and submit an IUP to EPA as described in the CWA § 606 and 40 CFR §35.3150, and will update the IUP as specified in section (2) of this rule. The IUP will describe how the department proposes to fund projects through the CWSRF and will include a project priority list that numerically ranks all eligible applications received.

(2) IUP update.

(a) Except as specified in subsection (2)(b) of this section, the department will update the annual IUP and project priority list at least every four months or when the department receives five eligible applications, whichever timeframe is shorter, and will submit the updated plan to EPA.

(b) If the department does not receive an eligible application during a four month period and determines the project priority list does not need to be updated, the department will not update the IUP.

(3) IUP public notice. The department will provide public notice and an opportunity for the public to comment on a proposed draft IUP.

(a) The department will notify all new applicants of their project application ranking on the project priority list when an annual IUP is developed and updated.

(b) The department will provide 30 days for public comments on a proposed draft IUP.

(c) An applicant may request the department to reevaluate their project application's score and ranking on the proposed project priority list or to make other changes to an IUP during the public comment period.

(d) The department will consider and respond to all comments submitted during the public comment period before finalizing an IUP.

(4) Project priority list development. The department will include an eligible project under OAR 340-054-0015 on the project priority list if an applicant submits a completed application on a department approved form.

(5) Project priority list ranking. The department will numerically rank all eligible proposed project applications based on the point sum from the criteria specified in Table 1 under OAR 340-054-0026 and Table 2 under OAR 340-054-0027.

(a) Except as specified in subsection (5)(b) of this section, the department will evaluate each criterion in Table 1 under OAR 340-054-0026 and Table 2 under OAR 340-054-0027 on a point scale from one to five as follows:

(A) One point = No or very low likelihood

(B) Two points = Low or in some minor way

(C) Three points = Moderate to significant likelihood

(D) Four points = High likelihood

(E) Five points = Very high likelihood

(b) The department will evaluate criteria 1C, 1D, 2B, 2C, 2D, 2E, and 3D in OAR 340-054-0026 and criterion 5 in OAR 340-054-0027 by doubling the point scale specified in subsection (5)(a) of this section.

(6) Application removal from the project priority list.

(a) The department may retain an applicant's ranked project on the project priority list in an IUP for up to 36 months while an applicant pursues all applicable CWSRF financing requirements specified in this division.

(b) After the department initially includes a ranked project on the project priority list, an applicant must submit to the department an annual written project status report to remain on the project priority list.

(c) The department may provide one six-month extension to an applicant requesting to remain on the project priority list beyond the 36-month limit. An applicant requesting an extension must submit to the department a written project status report on the applicant's project progress and an updated time frame indicating when all CWSRF financing requirements will be completed.

(d) The department will remove a project from the project priority list upon written notice to an applicant if:

(A) An applicant does not submit an annual written project status report as required in subsection (6)(b) of this section;

(B) An applicant does not request a six-month extension beyond the 36-month limit and submit the project status report as required in subsection (6)(c) of this section;

(C) The department determines the project scope changed from the original ranked application;

(D) The department determines a project does not meet eligibility requirements;

(E) An applicant does not require CWSRF financing; or

(F) An applicant requests to be removed from the project priority list.

(e) If the department removes a project from the project priority list as specified in paragraph (6)(d)(A through C) of this section, an applicant may resubmit to the department a loan application for an eligible project that the department will evaluate in accordance with section (5) of this rule.

Stat. Auth.: ORS 468.020 and ORS 468.440
Stats. Implemented: ORS 468.423 to ORS 468.440
Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09; DEQ 7-2009, f. & cert. ef. 10-28-09; DEQ 3-2010(Temp), f. & cert. ef. 5-4-10 thru 10-29-10; DEQ 13-2010, f. & cert. ef. 10-27-10

**340-054-0026**

**Table 1: CWSRF Project Ranking Criteria for Non-planning Loans**

Category 1. Water quality standards and public health considerations.

1A – Does project improve water quality by addressing water quality parameters including, but not limited to, the following: temperature, dissolved oxygen, contaminated sediments, toxic substances, bacteria or nutrients?

1B – Does project ensure that a facility currently in compliance, but at risk of noncompliance, maintains compliance?

1C – Does project address noncompliance with water quality standards, public health issues, limits for wastewater or stormwater discharge to surface water or groundwater, or waste discharge limits for reuse of biosolids or wastewater?

1D – If project is not implemented, is a water quality standard likely to be exceeded or an existing exceedance likely to worsen?

Category 2. Watershed and health benefits.

2A – Does project improve or sustain aquatic habitat supporting native species or state or federally threatened or endangered species?

2B – Does project address water quality or public health issue within a federally designated wild and scenic river or sole source aquifer, state designated scenic waterway, the Lower Columbia River or Tillamook Bay estuary, a river designated under OAR 340-041-0350, or a significant wetland or riparian area identified and listed by a local government?

2C – Does project support implementation of a total maximum daily load (TMDL) allocation, a department water quality status and action plan or designated groundwater management area declared under ORS 468B.180?

2D – Does project provide performance based water quality improvements supported by monitoring and reasonable assurance that the project will continue to function over time?

2E – Does project integrate or expand sustainability or the use of natural infrastructure, or use approaches including, but not limited to, water quality trading, that are not specified in Table 1, 2F through 2I of this rule?

2F – Does project incorporate or expand green stormwater infrastructure including, but not limited to, practices that manage wet weather and that maintain and restore natural hydrology by infiltrating, evapotranspiring, harvesting or using stormwater on a local or regional scale?

2G – Does project incorporate or expand water efficiency including, but not limited to, the use of improved technologies and practices to deliver equal or better services with less water such as conservation, reuse efforts or water loss reduction and prevention?

2H – Does project incorporate or expand energy efficiency including, but not limited to, the use of improved technologies and practices to reduce energy consumption of water quality projects, use energy in a more efficient way or to produce or utilize renewable energy?

2I – Does project incorporate or expand environmentally innovative projects including, but not limited to, demonstrating new or innovative approaches to deliver services or manage water resources in a more sustainable way?

Category 3. Other considerations.

3A – Does project include a long-term planning effort that addresses financial, managerial or technical capability, or asset planning that ensures project will be maintained?

3B – Does project include a significant on-going educational or outreach component?

3C – Does project incorporate other resources including, but not limited to, in-kind support, other funding sources or a partnership with a governmental, tribal or non-governmental organization?

3D – Does project address a water quality improvement or restoration need for a small community?

3E – Does project include a sponsorship option?

Stat. Auth.: ORS 468.020 and ORS 468.440
Stats. Implemented: ORS 468.423 to ORS 468.440

**340-054-0027**

**Table 2: CWSRF Project Ranking Criteria for Planning Loans**

1 – Will the scope of the planning effort include more than one water quality benefit, pollutant or restoration effort?

2 – Will the scope of the planning effort include sustainability?

3 – Will the scope of the planning effort take advantage of an opportunity with respect to timing, finances, partnership or other advantageous opportunity?

4 – Will the scope of the planning effort include financial, managerial or technical capability aspects of the project?

5 – Will the scope of the planning effort include integrating natural infrastructure and built systems?

6 – Will the scope of the planning effort demonstrate applicant cost effectiveness by considering three or more project alternatives such as optimizing an existing facility, regional partnership or consolidation?

Stat. Auth.: ORS 468.020 and ORS 468.440
Stats. Implemented: ORS 468.423 to ORS 468.440

**340-054-0036**

**Reserves, CWSRF General Fund and Project Funding**

(1) Allocation to reserves and CWSRF general fund. The department will allocate available CWSRF funds in a state fiscal year first to the small community, planning and green project reserves, and then to the CWSRF general fund based on the following amounts:

(a) A maximum of 25 percent of the total available CWSRF funds to the small community reserve.

(b) A maximum of $3 million to the planning reserve.

(c) An amount at least equal to the minimum required by the current capitalization grant to the green project reserve.

(d) Remaining amount of funds not allocated to the reserves specified in this section to the CWSRF general fund.

(2) Project funding increase.

(a) The department will offer a funding increase based on the original project priority list ranking to a borrower for an existing project loan before offering funding to a loan applicant for a new project loan if:

(A) Funding is available in the CWSRF; and

(B) A borrower submits a written request to the department for additional funding, has legal authority to borrow and financial capability to repay the increased loan amount.

(b) The department will award a funding increase to a borrower in an amount specified in section (3) of this rule by increasing the amount of the existing loan or executing an additional loan at the current interest rate.

(3) Project funding allocation.

(a) During a state fiscal year the department will assign a project to an appropriate reserve, to the CWSRF general fund or to both, and will allocate an amount to a borrower in project priority list rank order based on availability of funds that:

(A) Is not more than the greater of $2.5 million or 15 percent of the total available CWSRF funds in a state fiscal year. The department may allocate additional funds above this limit if funds are available after allocating this limit to all borrowers who request project funding in a state fiscal year.

(B) Is not more than the greater of $750,000 or 25 percent of the small community reserve, until all eligible small community requests have been allocated.

(C) Is not more than $250,000 of the planning reserve.

(D) Only finances the portion of a project funded under the green project reserve that the department determines to meet federal requirements for green infrastructure, water or energy efficiency improvement, or other environmentally innovative activities as defined by current EPA requirements.

(b) During a state fiscal year the department will allocate funding for a new design or construction project loan from the CWSRF general fund if the project is not funded from a reserve.

(c) The department will allocate in project priority list rank order available funding from the CWSRF general fund for a small community or planning project that was not allocated from their respective reserves, or allocated less than the total loan amount requested.

(4) Reallocation of reserve funds.

(a) If small community reserve or planning reserve funds remain on March 1 of a state fiscal year, the department will reallocate in project priority list rank order remaining funds to a borrower who requests additional funding for an existing project currently funded under these reserves. If funds remain after this reallocation, the department will move these funds to the CWSRF general fund.

(b) The department will not reallocate funds remaining in the green project reserve to the CWSRF general fund.

(5) Sponsorship option allocation. The department will determine the total amount of CWSRF funds to be allocated at the reduced interest rate through the sponsorship option in each state fiscal year.

Stat. Auth.: ORS 468.020 and ORS 468.440
Stats. Implemented: ORS 468.423 to ORS 468.440

**340-054-0056**

**CWSRF Loan Use Conditions**

(1) Clean Water Act plans. The department will only provide a loan to a project that is consistent with plans developed under sections 303(e), 319 or 320 of the Clean Water Act.

(2) Refinancing a long-term loan. The department will not provide a loan that will be used for refinancing a long-term loan or other debt obligations.

(3) Refinancing an interim loan. The department may provide a loan to refinance an interim loan or self-generated funds used to pay department approved project costs if the borrower:

(a) Provides the department with a written notice of intent to apply for long-term financing;

(b) Wants to proceed with the project using interim financing or self-generated funds; and

(c) Agrees to proceed at its own risk whether or not the CWSRF is available to provide long-term financing.

(4) Interim financing. The department may provide short-term, construction period financing for an eligible project if the following conditions are met:

(a) Liquidity of the CWSRF fund is sufficient to provide financing without adversely affecting the amount and timing of disbursements needed by prior obligations;

(b) The borrower has a legally enforceable obligation for long-term project financing satisfactory to the department; and

(c) The loan agreement for interim financing will stipulate the department is not obligated to provide long-term financing for the project.

Stat. Auth.: ORS 468.020 and ORS 468.440
Stats. Implemented: ORS 468.423 to ORS 468.440

**340-054-0060**

**Loan Agreement and Conditions**

The department will include conditions in a loan agreement that are applicable to the type of project being financed, including, but not limited to, the following:

(1) Timely use of loan funding. The department may cancel a loan agreement if a borrower fails to take reasonable steps to begin using loan proceeds within two years after signing a loan agreement.

(2) Accounting. A borrower must maintain all CWSRF project accounts as separate accounts and must use accounting, audit and fiscal procedures that conform to Generally Accepted Governmental Accounting Standards and the requirements of the Governmental Accounting Standards Board.

(3) Records. A borrower must retain project files and records for three years after project performance affirmative certification or project completion as determined by the department or such longer period as may be required by applicable state or federal law. A borrower must also retain financial files and records for three years after the loan is repaid in full.

(4) Wage requirements.

(a) A borrower for a construction project of a treatment works as defined in the CWA § 212, including a nonpoint source pollution (CWA § 319) or estuary management (CWA § 320) project that are construction and treatment works as defined in the CWA § 212, must comply with the Davis-Bacon Act, as amended, 40 U.S.C. §§3141 to 3144 and 3146 or the prevailing wage rate requirements for public works projects under ORS 279C.800 to 279C.870 and OAR 839-025-0000 to 839-025-0540, whichever is higher.

(b) A borrower for a project not specified in subsection (4)(a) of this section must comply with the prevailing wage rate requirements under ORS 279C.800 to 279C.870 and OAR 839-025-0000 to 839-025-0540.

(5) Debarment and suspension. A borrower must ensure compliance with Subpart C of 2 CFR 18, Responsibilities of Participants Regarding Transactions Doing Business with Other Persons and Subpart C of 2 CFR 1532, Responsibilities of Participants Regarding Transactions.

(6) Engineering documents. If a borrower uses CWSRF financing for the construction of a wastewater facility subject to OAR 340-052, it must submit to the department plans and specifications, operation and maintenance manuals, inspection and certification of proper construction, and any other applicable documentation required by OAR 340-052.

(7) Inspections and progress reports.

(a) A borrower must have a qualified inspector under the direction of a registered civil, mechanical or electrical engineer, as appropriate, conduct on-going inspections during the construction phase of a wastewater facility subject to OAR 340-052 to ensure the project complies with approved plans and specifications. The department or its representative may enter property owned or controlled by the borrower to conduct interim inspections and may require progress reports sufficient to determine compliance with approved plans and specifications and with other loan agreement provisions.

(b) The department may request review and analysis of construction plans from relevant agencies or offices to ensure the project plans not subject to department review under OAR 340-052 support the successful implementation and completion of the project. A borrower must allow inspections by appropriately qualified persons during project construction or implementation to ensure the project as constructed conforms to project plans and other provisions of the loan agreement.

(8) Loan amendments.

(a) The department will not require a loan amendment for changes in project work that are consistent with project objectives and within the loan scope and funding level.

(b) The department will execute a loan amendment if:

(A) The department awards a borrower an increase in the original approved loan amount at any time during the project;

(B) The borrower requests a decrease in the original loan amount at any time during the project or completes the project and does not request disbursement of all loan proceeds; or

(C) The department determines a borrower must meet additional federal or state requirements for CWSRF financing.

(9) Change orders. The department may approve or reject a change order based on the loan eligibility of the project modification and on engineering value in accordance with OAR 340-052-0015. A borrower must submit a change order to the department for engineering and financial review:

(a) When any change order is executed, and

(b) Prior to executing any change order that exceeds $100,000 or will alter project performance.

(10) Project performance certification for a wastewater facility. A borrower must submit to the department, within a timeframe specified by the department, project performance documents to verify if the facility meets performance and operational requirements and specifications which the project was planned, designed and built to achieve. The documents may include, but are not limited to, construction certification, performance evaluation report or performance certification.

(11) Eligible construction costs. The department will disburse loan funds for construction costs limited to work that complies with plans, specifications, change orders and addenda reviewed or approved by the department.

(12) Adjustments. The department may at any time review and audit requests for payment and make adjustments for eligibility, math errors, items not built or bought, unacceptable construction or other discrepancies.

(13) Contract and bid documents. A borrower must submit a copy of the awarded contract and bid documents to the department, including a tabulation of all bids received.

(14) Audit.

(a) If requested by the department, a borrower must submit audited financial statements to the department each year until the loan is repaid.

(b) If federal funds are disbursed as loan proceeds, a borrower must comply with the federal requirements of the Single Audit Act Amendments of 1984, 31 U.S.C. §§7501-7507 (1994) as amended by Pub. L. 104-156, §§ 1-3, 110 Stat. 1397 (1996), and Office of Management and Budget Circular A-133, Audits of States, Local Governments and Non-profit Organizations.

(15) Default remedies. A loan agreement must provide adequate remedies for the department to enforce the terms of the agreement. Upon default by a borrower, the department may proceed with one or more of the following:

(a) Pursue any remedy available to it against the borrower.

(b) Appoint a receiver at the expense of the borrower to operate the facility that generates the pledged revenues.

(c) Set and collect utility rates and charges pledged as security for the loan.

(d) Withhold any amounts otherwise due to the borrower from the State of Oregon and direct such funds be applied to the debt service and fees due on the CWSRF loan. If the department finds the loan to the borrower is otherwise adequately secured, the department may waive this right in the loan agreement or other loan documentation.

(e) Declare all or any part of the indebtedness immediately due and payable.

(16) Release. A borrower must release and discharge the department, its officers, agents and employees from all liabilities, obligations and claims occurring from project work or under the loan, subject only to exceptions previously agreed upon in a written contract between the department and the borrower.

(17) Effect of document approval or certification.

(a) The department's review and approval of facilities plans, design drawings and specifications, or any other documents by or for the department does not relieve a borrower of responsibility to properly plan, design, build and effectively operate and maintain a wastewater or stormwater facility, nonpoint source control or estuary management project as required by law, regulations, permits and good management practices.

(b) The department may not be held responsible for:

(A) Any project costs or any losses or damages resulting from defects in plans, design drawings and specifications, or other sub-agreement documents.

(B) Verifying cost-effectiveness, cost comparisons or adherence to state procurement regulations.

(18) Reservation of rights.

(a) A borrower is not prohibited from requiring more assurances, guarantees, indemnity or other contractual requirements from any party performing project work; and

(b) The department's right to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a borrower that fails to carry out its obligations under OAR Chapter 340 is not affected by this rule.

(19) Other provisions and documentation. The department may include other provisions in a CWSRF loan agreement necessary to meet the Clean Water Act and ORS 468.423 to 468.440, and require documentation including, but not limited to, a legal counsel opinion that the loan agreement is enforceable.

Stat. Auth.: ORS 468.020 and ORS 468.440
Stats. Implemented: ORS 468.423 to ORS 468.440
Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 31-1989(Temp), f. & cert. ef. 12-14-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; Administrative Correction; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 2-2008, f. & cert. ef. 2-27-08

**340-054-0065**

**Loan Types, Terms and Interest Rates**

(1) Loan types. A CWSRF loan must be one of the following:

(a) A loan secured by a general obligation bond or other full faith and credit obligation of a borrower that is supported by the borrower's unlimited ad valorem taxing power.

(b) A loan secured by a bond or other obligation of a borrower that is not subject to appropriation and meets the requirements specified in section (2) of this rule.

(c) A revenue secured loan that meets the requirements specified in section (2) of this rule.

(d) An alternative loan that meets the requirements specified in section (3) of this rule.

(2) Revenue secured loans. A revenue secured loan offered by the department must:

(a) Be represented by a properly executed loan agreement, bonds or other unconditional obligations to pay from specified revenues that are pledged by the borrower to the department. The obligation to pay must include a pledge of security acceptable to the department.

(b) Include a rate provision that requires the borrower to impose and collect revenues sufficient to pay:

(A) All expenses of operation, maintenance and replacement of a wastewater or stormwater facility, nonpoint source control or estuary management project.

(B) All debt service.

(C) All other financial obligations including, but not limited to, contributions to reserve accounts imposed in connection with prior lien obligations.

(D) An amount equal to the coverage requirements of the loan. This requirement is the product of the coverage factor times the debt service due in that year on the CWSRF loan. The coverage factor used must correspond to the coverage factor and reserve percentage selected by the borrower from subsection (2)(d) of this section.

(c) Include a debt service reserve provision requiring the borrower to maintain a pledged reserve dedicated to the CWSRF loan payment and that meets the following requirements:

(A) The debt service reserve must be maintained in an amount at least equal to the product of the reserve percentage listed in subsection (2)(d) of this section times one half the average annual debt service during the repayment period based on the repayment schedule or revised repayment schedule in the loan agreement. The reserve percentage selected from subsection (2)(d) of this section must correspond to the coverage factor selected for the CWSRF loan.

(B) A loan reserve may be funded with the borrower's cash, a letter of credit, repayment guaranty or other third party commitment to advance funds that is satisfactory to the department. If the department determines reserve funding imposes an undue hardship on the borrower, the department may allow reserves to be funded with CWSRF loan proceeds.

(d) Comply with the one of the following coverage factors (net income to debt service) and reserve percentages (percentage of one-half the average annual debt service):

(A) 1.05:1-100 percent

(B) 1.15:1-75 percent

(C) 1.25:1-50 percent

(D) 1.35:1-25 percent

(e) Include a requirement for the borrower to conduct a periodic rate review and adjustment of rates, if necessary, to ensure estimated revenues in subsequent years are sufficient.

(f) Include a requirement that if revenues fail to achieve the required rate level, the borrower must promptly adjust rates and charges to assure future compliance with the rate requirements. The department may determine that failure to adjust rates does not constitute a default if the borrower transfers unencumbered resources in an amount equal to the revenue deficiency to the utility system that generates the revenues.

(g) Include a requirement that if the reserve account is depleted for any reason, the borrower must take prompt action to restore the reserve to the required minimum amount.

(h) Include a requirement restricting additional debt appropriate to the financial condition of the borrower.

(i) Prohibit the borrower from selling, transferring or encumbering any financial or fixed asset of the utility system that produces the pledged revenues if the borrower is in violation of a CWSRF loan requirement, or if such sale, transfer or encumbrance may cause a violation of a CWSRF loan requirement.

(3) Alternative loans. The department may authorize an alternative loan for a reasonable alternative financing method if the borrower demonstrates to the department's satisfaction that:

(a) Borrowing money from the CWSRF through general obligation bonds, revenue bonds or a revenue-secured loan, as described in subsection (1)(a), (b) or (c) of this rule is unduly burdensome or costly to the borrower.

(b) The alternative loan has a credit quality substantially equal to, or better than, the revenue secured loan credit quality to the borrower. The department may consult with a financial advisor and may charge the borrower reasonable consultation costs to determine if an alternative loan meets the credit quality requirement.

(4) Interest rates.

(a) Effective date. The interest rates as specified in this section are effective for all loan agreements executed on or after January 1, 2013.

(b) Base rate. The department will determine the base rate used in computing the interest rates on all direct loans for a quarter based on the weekly average of state and local government bond interest rates for the preceding quarter. This base rate will be the "state and local bonds" entry reported in "Selected Interest Rates, H.15" posted by the Federal Reserve from the "Bond Buyer Index" for general obligation bonds (20 years to maturity, mixed quality).

(c) Planning loans. The interest rate for a planning loan will be equal to 25 percent of the base rate.

(d) Local community loans. The interest rate for a local community loan will be equal to 50 percent of the base rate.

(e) All other direct loans. Except as provided in OAR 340-054-0065(10), the department will provide the following interest rates for all other CWSRF loans:

(A) 25 percent of the base rate, with a maximum repayment period of 5 years.

(B) 30 percent of the base rate for small communities with less than statewide median household income or 45 percent for all other borrowers, with a maximum repayment period of 10 years.

(C) 35 percent of the base rate for small communities with less than statewide median household income or 50 percent for all other borrowers, with a maximum repayment period of 15 years.

(D) 40 percent of the base rate for small communities with less than statewide median household income or 55 percent for all other borrowers, with a maximum repayment period of 20 years.

(f) Sponsorship option. When a sponsorship option is implemented within the scope of a construction loan, the department:

(A) Will calculate the debt service on the wastewater facility project based on subsection (4)(e) of this rule;

(B) Will calculate the debt service on a combined sponsorship loan by reducing the interest rate so the debt service on the sponsorship loan equals the debt service as calculated in subsection (4(f)(A) of this rule; and

(C) May not reduce the resulting interest rate below one percent.

(g) Bond proceeds for direct loans. The department may use bond proceeds that are matching funds for federal capitalization grants to fund direct loans at the interest rates listed in this section. This subsection will not be affected by any change in the source of repayment for matching bonds.

(5) Interest accrual and payment period. Interest accrual begins when the department makes the first CWSRF loan disbursement to a borrower. A borrower must include all outstanding accrued interest with each loan repayment.

(6) Annual loan fee.

(a) Except as provided in subsections (6)(b) and (6)(c) of this section, a borrower must pay the department an annual loan fee of 0.5 percent on the unpaid loan balance specified in the payment schedule in its loan agreement. This annual loan fee is in addition to any other payments a borrower is required to make under its loan agreement.

(b) From January 1, 2013 through December 31, 2014, the annual loan fee will be 0.25 percent on the unpaid loan balance.

(c) The department will not charge a borrower any annual loan fee for a planning loan.

(7) Commencement of loan repayment. A borrower must begin its loan principal and interest repayments within one year of the date the facility is operationally complete and ready for the purpose it was planned, designed, and built or the project is completed, as determined by the department.

(8) Loan term.

(a) A borrower must fully repay a loan in accordance with a schedule determined by the department. The department will consider the useful life of the assets financed when determining a schedule, and the repayment term for:

(A) A planning loan will not exceed five years.

(B) A local community loan will not exceed ten years.

(C) All other loans will not exceed 20 years after project completion.

(b) The department will allow prepayments at any time without penalty on all CWSRF loans except as specified in section (10) of this rule.

(9) Minor variations in loan terms. The department may authorize minor variations in financial terms of loans described in this rule to facilitate administration and repayment of a loan.

(10) Leveraged loans.

(a) The department may fund loans with bond proceeds through a leveraged loan program under the following terms and conditions:

 (A) Interest rates will be less than the interest rate paid by the state on bonds sold to fund the leveraged loans. Rates will be fixed at 65 percent of the base rate.

(B) Loan fees will be in accordance with section (6) of this rule.

(C) Notwithstanding other provisions of this rule, the department may make changes to the terms and conditions of a leveraged CWSRF loan to make it marketable. To the maximum extent practicable, the terms and conditions will be the same as for direct loans.

(b) Bond issuance and related transaction costs will be paid out of bond proceeds to the extent permitted by law.

(11) Additional subsidization. The department must provide additional subsidization to the minimum extent required by the current federal fiscal year capitalization grant. Additional subsidization will be in the form of principal forgiveness in accordance with the criteria established in this section. A loan with principal forgiveness is subject to standard interest rates, fees, and loan terms as defined in this rule.

(a) Principal forgiveness priority. The department will offer principal forgiveness to a project based on original project priority list rank order and in the following priority to a:

(A) Small community with less than statewide median household income for an increase to a current planning loan and then to a new planning loan.

(B) Small community with less than statewide median household income for an increase to a current design or construction loan and then to a new design or construction loan.

(C) Small community with equal to or more than statewide median household income for an increase to a current planning, design or construction loan and then to a new planning, design or construction loan.

(D) Community other than a small community with less than statewide median household income for an increase to a current design or construction loan and then to a new design or construction loan; and then to a

(E) Community other than a small community with equal to or more than statewide median household income for an increase to a current design or construction loan and then to a new design or construction loan.

(b) Principal forgiveness ineligibility. A project funded under the sponsorship option is not eligible for principal forgiveness.

(c) Principal forgiveness for a point source project. The department will base eligibility and the amount of principal forgiveness for a point source project on a community’s median household income (MHI). The MHI used to calculate the level of principal forgiveness is based on the most recent and available income data provided by the U.S. Census Bureau. The department may use sub-data such as census tract, block tract data or an income survey approved by the department as a basis for calculating an applicant’s or borrower's MHI.

(A) Determining principal forgiveness eligibility.

(i) An applicant’s or borrower's MHI is multiplied by an affordability index and then the result is divided by twelve if its MHI is less than the statewide MHI. The result of this calculation yields an affordability rate expressed in dollars per month. The department will use the affordability rate to determine the maximum amount of principal forgiveness an applicant or borrower is eligible for. An applicant or borrower must submit and obtain written department approval for its projected sewer rate that reflects the additional costs of the proposed project.

(ii) The affordability index is used to calculate the affordability rate. The affordability index of 1.25 percent is the department’s standard factor representing the percentage of a household’s income necessary to cover the cost of sewer service. This factor is adjusted semi-annually for inflation based on the Portland, Oregon consumer price index as listed by the Oregon Employment Department.

(iii) Calculating the affordability rate (AR): AR = (Applicant’s MHI x affordability index)/12

(iv) If the affordability rate (in cost per month) is less than the projected sewer rate (in cost per month), then an applicant or borrower is eligible for principal forgiveness.

(B) Principal forgiveness amount. The maximum amount of principal forgiveness is the amount required to reduce the projected sewer rate to a level equal to the calculated affordability rate. The total amount of principal forgiveness the department will offer to a point source project must not exceed 75 percent of the loan amount or $1 million, whichever is less.

(d) Principal forgiveness for a nonpoint source control or an estuary management project. The total amount of principal forgiveness the department will offer to a nonpoint source control or estuary management project must not exceed 30 percent of the loan amount or $1 million, whichever is less.

(e) Principal forgiveness for a planning project. The total amount of principal forgiveness the department will offer to a planning project must not exceed 30 percent of the loan amount.

Stat. Auth.: ORS 468.020 and ORS 468.440
Stats. Implemented: ORS 468.423 to ORS 468.440
Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 31-1989(Temp), f. & cert. ef. 12-14-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 3-2010(Temp), f. & cert. ef. 5-4-10 thru 10-29-10; DEQ 13-2010, f. & cert. ef. 10-27-10

**Funding under the 2009 American Recovery and Reinvestment Act (Act)**

**340-054-0100**

**Implementation within the CWSRF Program**

(1) OAR 340-054-0100 through 340-054-0108 prescribe the use of Act funds through the CWSRF program when such funds are available to the department.

(2) When Act funds are available to the department, the department must award these funds to public agencies in accordance with the Act and the requirements of the CWSRF.

(3) All requirements for projects funded under the Act not specifically addressed in OAR 340-054-0100 through 340-054-0108 are subject to 340-054-0005 through 340-054-0065.

Stat. Auth.: ORS 468.020 and ORS 468.440
Stats. Implemented: ORS 468.423 to ORS 468.440
Hist.: DEQ 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09; DEQ 7-2009, f. & cert. ef. 10-28-09

**340-054-0102**

**Project Eligibility under the Act**

(1) Eligibility for funding under the Act is the same as prescribed in OAR 340-054-0015 except planning, as defined in 340-054-0010(22), is not eligible.

(2) The acquisition of land for any purpose, or the development or purchase of an easement are not eligible under the Act.

Stat. Auth.: ORS 468.020 and ORS 468.440
Stats. Implemented: ORS 468.423 to ORS 468.440
Hist.: DEQ 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09; DEQ 7-2009, f. & cert. ef. 10-28-09

**340-054-0104**

**Use of Funds and Intended Use Plan under the Act**

(1) Funding purpose. Notwithstanding OAR 340-054-0011, funding provided under the Act may be used only for the following CWSRF purposes:

(a) To make loans, or purchase bonds;

(b) To pay CWSRF program administration costs to the extent allowed by federal law;

(c) To earn interest on fund accounts.

(2) Loan increases. Notwithstanding OAR 340-054-0036, the department will only provide loan increases using Act funding to loans funded by the Act and only to the extent consistent with OAR 340-054-0106.

(3) Existing loan agreement. A borrower with a loan agreement executed prior to October 1, 2008 is not eligible to receive funding under the Act for a project as described and funded under that existing loan agreement.

(4) Loan reserve. Notwithstanding OAR 340-054-0036, the required reserve of any individual loan cannot be funded with CWSRF loan proceeds provided from the Act.

(5) Intended Use Plan.

(a) A project must be listed in the IUP to be eligible for funding under the Act.

(b) Notwithstanding OAR 340-054-0025(3)(b), the department must provide at least 14 days for public comments on a proposed draft IUP.

Stat. Auth.: ORS 468.020 and ORS 468.440
Stats. Implemented: ORS 468.423 to ORS 468.440
Hist.: DEQ 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09; DEQ 7-2009, f. & cert. ef. 10-28-09

**340-054-0106**

**Allocation of Act Funds**

Notwithstanding OAR 340-054-0036, funds made available by the Act must be allocated as follows:

(1) Funding of applicants. Funds will be offered to an applicant on the project priority list in rank order, subject to eligibility. A project is not eligible unless all required documentation is complete and appropriate environmental review, including any required notice and opportunity for public comment, has been completed at the time the department finalizes the intended use plan.

(2) Applicant’s funding limit. The department will determine the amount of funding to be provided to an applicant, but the amount of any loan may not exceed $5 million per applicant, except as provided in section (3) of this rule.

(3) Allocation of remaining funds. If there are no applicants on the project priority list eligible for a loan under the Act, a borrower that has received partial funding under the Act may be allocated additional funding. The department may allocate the remaining funds to a borrower based on rank order not to exceed 25 percent of the remaining funds or $2 million, whichever is greater.

(4) Green project reserve. The department must establish a green project reserve with 20 percent of the funding received under the Act for projects to address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities. If the department determines and certifies there are insufficient eligible projects for funding under this reserve, the reserve may be allocated to other eligible projects under the Act.

(5) Funding categories. Funds available under the Act may not be used to establish a small community reserve or a planning reserve.

Stat. Auth.: ORS 468.020 and ORS 468.440
Stats. Implemented: ORS 468.423 to ORS 468.440
Hist.: DEQ 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09; DEQ 7-2009, f. & cert. ef. 10-28-09

**340-054-0108**

**Financial Terms**

Notwithstanding OAR 340-054-0065, the following financial terms apply to any loan funded under the Act.

(1) Interest rates. The department may provide a loan at a zero percent interest rate.

(2) Principal forgiveness.

(a) A loan made by the department to a public agency serving a population of 5,000 or less must include 75 percent principal forgiveness on the total amount borrowed.

(b) A loan made by the department to a public agency serving a population greater than 5,000 must include 50 percent principal forgiveness on the total amount borrowed.

(c) Principal forgiveness is granted upon execution of the loan agreement.

Stat. Auth.: ORS 468.020 and ORS 468.440
Stats. Implemented: ORS 468.423 to ORS 468.440
Hist.: DEQ 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09; DEQ 7-2009, f. & cert. ef. 10-28-09