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NOTICE OF PROPOSED RULEMAKING

INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 635
DEPARTMENT OF FISH AND WILDLIFE

FILED

10/28/2019 12:03 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: 2019 Updates Fish Restoration and Enhancement Program

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/06/2019 5:00 PM

The Agency 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.

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Salem, OR 97302

Filed By:
April Mack
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 12/06/2019

TIME: 8:00 AM - 5:00 PM

OFFICER: Oregon Department of Fish
& Wildlife Commissioners

ADDRESS: Oregon Department of Fish
& Wildlife Headquarters

Commission Room
4034 Fairview Industrial DR SE
Salem, OR 97302

NEED FOR THE RULE(S):

The passage of Senate Bill 42 during the 2019 legislative session removed the sunset provision for the Restoration and Enhancement Program. Modifications to the Fish Restoration and Enhancement Board member selection requirements were also made. The proposed rulemaking would incorporate the associated statutory changes along with general housekeeping revisions into administrative rule.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

1. Staff Report prepared for the Oregon Fish and Wildlife Commission hearing on December 6, 2019.

A copy of the rules and the other documents relied upon for this rulemaking [the above document(s)] are available from the Oregon Department of Fish and Wildlife, Fish Division, Second Floor, 4034 Fairview Industrial Drive SE, Salem, Oregon 97302-1142, between the hours of 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

FISCAL AND ECONOMIC IMPACT:

No major fiscal or economic effects are expected to result from these proposed rules.

State agencies are unlikely to be affected. The Oregon Department of Fish and Wildlife (Department) and the Oregon

State Police are not expected to experience any major fiscal or economic impacts, as these amendments reflect recent changes in statute that allowed for the continuation of the existing Fish and Restoration Program's structure and general housekeeping revisions that clarify the Department's current administrative rules.

There are no expected impacts to local governments.

It is unlikely that these rules would affect the general public.

No additional recordkeeping and/or administration costs are anticipated.

No additional equipment, supplies, labor or administration are anticipated.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

There are no major anticipated effects to small businesses.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Not Applicable.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

Department proposes the rule changes to address housekeeping issues. The rules are believed to be fully compatible with legislative direction on the goals of wildlife management in Oregon.

RULES PROPOSED:

635-009-0200, 635-009-0205, 635-009-0210, 635-009-0215, 635-009-0220, 635-009-0225, 635-009-0230, 635-009-0235, 635-009-0240

AMEND: 635-009-0200

RULE SUMMARY: The rule amendments provide general updates, including new selection requirements for the Fish Restoration and Enhancement board. There are also proposed housekeeping changes, such as updating the definitions for an Enhancement Project and for a Restoration Project to make them consistent with ORS 496.289(1).

CHANGES TO RULE:

635-009-0200

~~Fish Restoration and Enhancement Program Purpose ¶~~

These rules guide the operation and project selection of the Fish Restoration and Enhancement Program as authorized under ~~the Oregon Fisheries Restoration and Enhancement Act of 1989 (Oregon Laws 1989, Chapter 512)~~ ORS 496.280 through 496.291.

Statutory/Other Authority: ORS 512

Statutes/Other Implemented: ORS 512

AMEND: 635-009-0205

RULE SUMMARY: The rule amendments provide general updates, including new selection requirements for the Fish Restoration and Enhancement board. There are also proposed housekeeping changes, such as updating the definitions for an Enhancement Project and for a Restoration Project to make them consistent with ORS 496.289(1).

CHANGES TO RULE:

635-009-0205

~~Fish Restoration and Enhancement Program Definitions~~ ¶¶

The following definitions shall apply:¶¶

- (1) ~~"Act" means the Oregon Fisheries Restoration and Enhancement Act of 1989.~~¶¶
- (2) "Board" means the Fish Restoration and Enhancement Board appointed by the Commission.¶¶
- (3) ~~"Commission" means the Oregon Fish and Wildlife Commission.~~¶¶
- (4) ~~"Council(s)" means Regional Advisory Council(s).~~¶¶
- (5) ~~"Department" means the Oregon Department of Fish and Wildlife.~~¶¶
- (6) ~~"Enhancement Project" means any activity to:~~¶¶
- (a) ~~Increase recreational or commercial opportunities or access to fish resources~~includes:¶¶
- (a) Angler Access;¶¶
- (b) New fishways and screens;¶¶
- (c) Habitat;¶¶
- (d) New hatchery equipment and technology;¶¶
- (e) ~~Increase fish pro~~Public education;~~or~~¶¶
- (f) ~~Improve fish management~~Aquatic inventories.¶¶
- (7) ~~"Grant Agreement" means a legally binding contract between the Department and a project sponsor detailing project conditions and financial support on a form prescribed by the Department.~~¶¶
- (8) ~~"Project" means restoration project or enhancement project as defined here~~that provides a benefit to the sport or commercial fisheries.¶¶
- (9) ~~"Project Sponsor" means any public, organization or private, nonprofit, or STEP organization applying for, or implementing a project under the Act.~~¶¶
- (10) ~~"Public Organization" means any public agency in the State of Oregon, including but not limited to agencies of the State, counties, municipalities, special districts, school districts, port districts, cooperating agencies pursuant to ORS 190.110 (e.g. Tribes and U.S. Government), and public institutions of higher education.~~¶¶
- (11) ~~"Private Nonprofit Organization" means any organization recognized as such under Section 501(c)(3) of the Internal Revenue Code for purposes of charitable tax exemption.~~¶¶
- (12) ~~"Restoration Project" means any activity to:~~¶¶
- (a) ~~Rehabilitate or restore fish production facilities (including fish liberation equipment);~~¶¶
- (b) ~~Rehabilitate or restore fish passage or protection facilities;~~¶¶
- (c) ~~Collect information on physical and biological characteristics of streams, lakes or estuaries; or information on recreational or commercial use of fisheries.~~¶¶
- (13) ~~"Region" means Department Administrative Region (i.e., Northwest, Southwest, Central, Northeast, Southeast and Columbia).~~includes:¶¶
- (a) Modification of existing fishways and existing screens;¶¶
- (b) Hatchery restoration;¶¶
- (c) Liberation equipment.¶¶
- (14) ~~"STEP Organization" means any group or organization participating in the Salmon Trout Enhancement Program.~~¶¶
- (15) ~~"Technical Advisory Committee" means the team of~~Internal Review Team" means Department personnel providing assistance to the Board, including review and evaluation of proposed projects.
- Statutory/Other Authority: ORS 512

Statutes/Other Implemented: ORS 512

AMEND: 635-009-0210

RULE SUMMARY: The rule amendments provide general updates, including new selection requirements for the Fish Restoration and Enhancement board. There are also proposed housekeeping changes, such as updating the definitions for an Enhancement Project and for a Restoration Project to make them consistent with ORS 496.289(1).

CHANGES TO RULE:

635-009-0210

Fish Restoration and Enhancement Board ¶

The Fish Restoration and Enhancement Board shall:¶

- (1) Review and evaluate proposed restoration and enhancement projects submitted for funding under this Act.¶
- (2) Consult with the affected Regional Advisory council, if one exists, concerning projects affecting that region.¶
- (3) Recommend fish restoration and enhancement projects to the Commission consistent with available funds. In so doing, the Board shall:¶
 - (a) Recommend a mix of projects which provide a balance between restoration and enhancement benefits;¶
 - (b) Recommend projects that are to be implemented by STEP and nonprofit organizations engaged in restoration and enhancement activities authorized by the Act;¶
 - (c) Encourage projects which result in obtaining matching funds from other sources; and¶
 - (d) Recommend projects benefiting the recreational angling and commercial fishing industry in the same proportion as revenues derived from the Act or other funding sources.¶
- (4) The Board may recommend conditions for project approval.¶
- (5) The Board may recommend funding a project in whole or in part.

Statutory/Other Authority: ORS 512

Statutes/Other Implemented: ORS 512

AMEND: 635-009-0215

RULE SUMMARY: The rule amendments provide general updates, including new selection requirements for the Fish Restoration and Enhancement board. There are also proposed housekeeping changes, such as updating the definitions for an Enhancement Project and for a Restoration Project to make them consistent with ORS 496.289(1).

CHANGES TO RULE:

635-009-0215

~~Fish Restoration and Enhancement Program Regional Advisory Councils~~ ¶

~~The Board shall periodically hold Regional Advisory Council meetings in each of the Department's Administrative Regions.~~ ¶

~~(1) Council meetings shall be open to the public.~~ ¶

~~(2) A review of proposed or approved projects shall be provided at each meeting.~~ ¶

~~(3) The public shall have the opportunity to comment on projects.~~ ¶

~~(4) Meeting locations shall be rotated among cities within each region to assure convenient citizen/staff access.~~ ¶

~~(5) Department staff shall arrange for and publicize meeting times and locations in consultation with the Board.~~ ¶

~~(6) One or more Board members shall attend each Council meeting and report back to the full Board Reserving number.~~

Statutory/Other Authority: ORS 512

Statutes/Other Implemented: ORS 512

AMEND: 635-009-0220

RULE SUMMARY: The rule amendments provide general updates, including new selection requirements for the Fish Restoration and Enhancement board. There are also proposed housekeeping changes, such as updating the definitions for an Enhancement Project and for a Restoration Project to make them consistent with ORS 496.289(1).

CHANGES TO RULE:

635-009-0220

~~Fish Restoration and Enhancement Program~~ Project Application ¶

- (1) Any public, or private nonprofit ~~or STEP~~ organization may propose a project for funding. ¶
- (2) Proposed projects shall be submitted to the Board in writing and on forms provided by the ~~Board.~~ ¶
- ~~(3) A Department. ¶~~
- (3) Except as allowed by the Board, a separate application is required for each proposed project or project site. ¶
- (4) Each project must have explicit goals, methods of achievement, beginning and ending date, estimated cost and estimate of contribution to recreational and/or commercial fisheries. ¶
- (5) Incomplete applications may be returned to the project sponsor for completion. ¶
- (6) Project proposals ~~for~~ ~~from~~ STEP ~~organization~~ projects shall be accompanied by an approved STEP Project Proposal form. ¶
- ~~(7) The or confirmation from the Department that it is an approved STEP activity. ¶~~
- (7) The Department Board or Commission may require any additional information it deems necessary in order to evaluate the project proposal.

Statutory/Other Authority: ORS 512

Statutes/Other Implemented: ORS 512

AMEND: 635-009-0225

RULE SUMMARY: The rule amendments provide general updates, including new selection requirements for the Fish Restoration and Enhancement board. There are also proposed housekeeping changes, such as updating the definitions for an Enhancement Project and for a Restoration Project to make them consistent with ORS 496.289(1).

CHANGES TO RULE:

635-009-0225

Evaluation of ~~Fish Restoration and Enhancement Program~~ Projects Submitted for Funding ¶

(1) All projects shall be evaluated by the Board and ~~Technical Advisory Committee~~ Internal Review Team for consistency with fish management goals and objectives as set forth in OAR 635-007-0501 through 635-007-0830, and species and/or management plans adopted by the Commission. ¶

(2) A project shall not be recommended for funding if, based on review by the Department or the Board, the project: ¶

(a) Is inconsistent with the intent of ~~the Act~~ ORS 496.280 through 496.291; ¶

(b) Is contrary to sound biological principles; ¶

(c) Proposes to use inappropriate methods to accomplish project objectives; ¶

(d) Is inconsistent with state land use planning goals and local acknowledged land use plans; ~~or~~ ¶

(e) Violates goals, policies, rules, species or basin management plans adopted by the Commission. ¶

(3) Project proposals shall be evaluated according to their potential impact on all fish species, the environment, and contribution to the resource.

Statutory/Other Authority: ORS 512

Statutes/Other Implemented: ORS 512

AMEND: 635-009-0230

RULE SUMMARY: The rule amendments provide general updates, including new selection requirements for the Fish Restoration and Enhancement board. There are also proposed housekeeping changes, such as updating the definitions for an Enhancement Project and for a Restoration Project to make them consistent with ORS 496.289(1).

CHANGES TO RULE:

635-009-0230

~~Fish Restoration and Enhancement Program—Commission Approval~~ ¶

(1) The Commission shall review the Board's recommendations, and may approve or disapprove any or all projects recommended for funding. ¶

~~(2) The Commission may attach such terms and conditions to project approval as it deems necessary, including but not limited to: ¶~~

~~(a) No project may commence without prior written approval by the Commission; ¶~~

~~(b) The project sponsor shall agree to complete the project as approved by the Commission and within the time frame specified in the Grant Agreement; ¶~~

~~(c) The project sponsor shall obtain all necessary Commission may water rights, access agreements, easements, use permits or any other permits needed to undertake the project. Copies shall be provided to the Commission prior to commencing the project; ¶~~

~~(d) The project sponsor shall file a written request for permission to amend or expand the project construction or the construction time schedule including the rationale for the requested change. Proposed modifications shall be submitted to and approved by the Board and Commission prior to the beginning of any work proposed in the modification; ¶~~

~~(e) The project sponsor shall submit a project report at the completion of the project describing the work done; ¶~~

~~(f) The project sponsor shall monitor and report, as determined by the Commission, the long-term effectiveness of the project; ¶~~

~~(g) The project sponsor shall allow Commission or Board members, or their designated representatives, access to the project to monitor and/or evaluate the project; ¶~~

~~(h) The project sponsor shall account for funds distributed by the Department, using project expense forms provided by the Department; ¶~~

~~(i) The project sponsor shall maintain the project for a period of time as deemed appropriate by the Commission~~
~~attach terms and conditions to project approval as it deems necessary.~~

Statutory/Other Authority: ORS 512

Statutes/Other Implemented: ORS 512

AMEND: 635-009-0235

RULE SUMMARY: The rule amendments provide general updates, including new selection requirements for the Fish Restoration and Enhancement board. There are also proposed housekeeping changes, such as updating the definitions for an Enhancement Project and for a Restoration Project to make them consistent with ORS 496.289(1).

CHANGES TO RULE:

635-009-0235

~~Fish Restoration and Enhancement Program~~—Revocation of Project Approval ¶

(1) The Commission may revoke its approval of a project if, after consultation with the Board, it determines that:¶

(a) Implementation of the project has exceeded or is inconsistent with the approved project proposal; or¶

(b) The project sponsor has violated any term or condition imposed on the project; or¶

(c) Continued operation of the project may adversely affect fish populations in, above, or below the project site; or¶

(d) The project does not meet its proposed objectives; or¶

(e) The project is inconsistent with current Department goals, policies or management plans.¶

(2) Proceedings to revoke approval of a project shall be conducted in accordance with ORS 183.413 to 183.550.¶

(3) The revocation of a project's approval shall automatically invalidate any Department permits issued for such project as of the date of revocation.¶

(4) Revocation of approval for a project is in addition to, and not in lieu of, other penalties provided by law.

Statutory/Other Authority: ORS 512

Statutes/Other Implemented: ORS 512

AMEND: 635-009-0240

RULE SUMMARY: The rule amendments provide general updates, including new selection requirements for the Fish Restoration and Enhancement board. There are also proposed housekeeping changes, such as updating the definitions for an Enhancement Project and for a Restoration Project to make them consistent with ORS 496.289(1).

CHANGES TO RULE:

635-009-0240

~~Fish Restoration and Enhancement Program~~—Grant Agreement ¶¶

- (1) Project sponsors, other than the Department, shall enter into a Grant Agreement with the Department prior to undertaking the project. The project sponsor shall obtain all necessary water rights, access agreements, easements, use permits or any other permits needed to undertake the project. Copies shall be provided prior to commencing the project.¶¶
- (2) No funds shall be disbursed under a Grant Agreement until the Department receives satisfactory evidence that necessary permits and licenses have been granted and required documents submitted.¶¶
- (3) Advance funds may be released upon presentation of a detailed estimate of expenses for a time period specified in the Grant Agreement. No additional funds will be released until all receipts for expenditures of a previous fund release are submitted.¶¶
- (4) The project sponsor shall account for funds distributed by the Department, using project expense forms provided by the Department. Funds may be released upon presentation of a completed Fund Release Request Form accompanied by proof of completion of specific work elements of the project as identified in the Grant Agreement. Proof of completion may be made through presentation of paid receipts of invoices for materials of contracted labor, or inspection reports.¶¶
- (5) ~~Except for grants of less than \$2,000, the Department shall retain ten percent of project funds until the report required in OAR 635-009-0230(2)(e) has~~ The project sponsor shall agree to complete the project as approved by the Commission and within the time frame specified on the Grant Agreement.¶¶
- (6) The project sponsor shall file a written request for permission to amend or expand the project or the time schedule including the rationale for the requested change. Proposed modifications shall be submitted and the project has been evaluated for completion and compliance with the Grant Agreement approved prior to the beginning of any work proposed in the modification.¶¶
- (7) The project sponsor shall submit a project report at the completion of the project describing the work done.¶¶
- (8) The project sponsor shall allow Commission, Board members, or Department staff, access to the project to monitor and/or evaluate the project.¶¶
- (9) The project sponsor shall maintain the project for a period of time as deemed appropriate by the Commission.

Statutory/Other Authority: ORS 512

Statutes/Other Implemented: ORS 512