

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing accompanies this form.

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Water Resources Department
Agency and Division

690
Administrative Rules Chapter Number

Amendments to Division 51 of Oregon Administrative Rules Chapter 690 related to Hydroelectric Projects.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)
In the Matter of:

Amendments to Division 51 of Oregon Administrative Rules Chapter 690 related to Hydroelectric Projects

Statutory Authority:

ORS 536.025, ORS 536.027, ORS 537 and ORS 543

Other Authority:

Statutes Implemented:

ORS 537 and ORS 543

Need for the Rule(s):

The rules are being amended for 5 purposes:

To eliminate burdensome financial accounting in keeping with the repeal of certain related statutes and to update or eliminate other references to statutes or rules that have been repealed;

To define the process for adjusting fees for annual inflation;

To provide specific examples of how to meet the natural resources standards;

To simplify the process for issuing proposed final orders and to eliminate the requirement for a contested case hearing if no protest is filed; and

To allow the Director to handle exceptions to a proposed order after a contested case hearing and to issue a final order.

Documents Relied Upon, and where they are available:

Oregon Water Resources Administrative Rules can be viewed at: <http://www.oregon.gov/owrd/pages/law/oar.aspx> or

Division 51 rules are at: http://arcweb.sos.state.or.us/pages/rules/oars_600/oar_690/690_051.html

Fiscal and Economic Impact:

The proposed amendments to the rules will eliminate some financial record-keeping and reporting requirements that are outdated and burdensome to hydroelectric project owners. A process for adjusting fees for annual inflation is established as is required by ORS 543.078(2) and ORS 543.088. The process for issuing proposed final orders and contested case hearings is simplified to eliminate hearings for which no protests have been filed, thereby reducing costs to applicants and to agencies. Resource standards are clarified so that decisions from the Oregon Department of Environmental Quality or the Oregon Department of Fish and Wildlife are acceptable for mitigation purposes. The Director will handle exceptions to a proposed order after a contested case hearing which will reduce time and expenses in a larger (multiple federal and state agency) review process.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The proposed rules are not expected to impose additional costs on state agencies, units of local government, or the general public as compared to the current status quo. The Division 51 rules mainly affect developers of new hydroelectric projects who are engaged in a complex and expensive application process. However, the amendments reduce hearing requirements for the developers if no member of the public is protesting the proposed project. This will likely reduce agency costs for attendance at these hearings.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

There are about 120 small businesses who presently hold hydroelectric water rights or licenses including individuals, small business, irrigation districts or municipalities. It is expected that the Department will receive less than 10 applications per year for new hydroelectric projects.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The amendments proposed to repeal reporting and recordkeeping requirements that are no longer necessary for hydroelectric license holders. The amendments propose to streamline the hearings process to reduce costs for new developers when mitigation issues have been resolved and no protests have been filed. The amendments set out a procedure for determining the inflation factor for annual fees that is required by statute. The inflation procedure was recommended by a fee review committee formed under ORS 543.085.

c. Equipment, supplies, labor and increased administration required for compliance:

Mitigation measures may be required of a developer to protect the natural resources of the state from possible adverse impacts of a hydroelectric project. Mitigation measures which are agreed to by the Oregon Department of Environmental Quality or the Oregon Department of Fish and Wildlife shall be considered to satisfy these rules as applicable. This provision is to provide certainty to developers and other potential settlement parties that agreements with the state agencies are recognized throughout the review process.

How were small businesses involved in the development of this rule?

The rules advisory committee included representatives of groups and entities that either are or represent small business and that are expected to be affected by the program, including: an individual hydroelectric project owner and operator, Northwest Hydroelectric Association, Hydropower Reform Coalition, Trout Unlimited, WaterWatch of Oregon, Eugene Water and Electric Board, PacifiCorp, Portland General Electric Co., Idaho Power Co., League of Oregon Cities, the Warm Springs and Umatilla Indian Tribes, Farmer's Irrigation District, Columbia River Inter-Tribal Fish Commission, interested attorneys and an environmental consultant. The Department consulted the rules advisory committee concerning drafting of the rules and the fiscal impact of the proposed rule.

Administrative Rule Advisory Committee consulted?: Yes

If not, why?:

Three meetings were held and several versions of the draft rule amendments were reviewed by the group.

<u>08-05-2015 5:00 p.m.</u>	<u>Diana Enright</u>	<u>diana.m.enright@wrdd.state.or.us</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address