

## **NOTICE OF PROPOSED RULEMAKING**

CHAPTER 123  
OREGON BUSINESS DEVELOPMENT DEPARTMENT

FILING CAPTION: This new division of rules relates to the Oregon Royalty Fund.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/31/2018 5:00 PM

### **NEED FOR THE RULE(S):**

Rulemaking is needed to set forth the criteria and procedures to implement the Small Business Expansion Fund also known as the Oregon Royalty Fund.

### **DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:**

SB 1516 from 2018.

### **FISCAL AND ECONOMIC IMPACT:**

There is no fiscal impact to small business as a whole resulting from these rules.

### **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).

Small business as a whole would not be affected by these rules. This is a voluntary program. No small business is required to apply for a loan. If a small business were to apply and approved for a loan, they could be positively affected by the loan they receive. There are also fees associated with the loan that are required.

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

Small business were represented by the members of our Finance Committee who were consulted in the development of these rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

### **CONTACT:**

John Saris  
503-383-8612  
john.saris@oregon.gov  
775 Summer Street SE  
Suite 200  
Salem,OR 97301

**RULES PROPOSED:**

123-092-0010, 123-092-0020, 123-092-0030, 123-092-0040, 123-092-0050, 123-092-0060,  
123-092-0080, 123-092-0090

**ADOPT:** 123-092-0010

**RULE TITLE:** Purpose

**RULE SUMMARY:** This new division of rules is created as a result of SB 1516 in the 2018 session.  
This rule sets out the purpose for the chapter.

**RULE TEXT:**

The purpose of these rules is to provide procedures, standards and criteria for the making of loans from the Small Business Expansion Loan Fund, also referred to as the Oregon Royalty Fund (ORF).

**STATUTORY/OTHER AUTHORITY:** ORS 285B.092, OL Ch 71 2018

**STATUTES/OTHER IMPLEMENTED:** ORS 285B.092, OL Ch 71 2018

ADOPT: 123-092-0020

RULE TITLE: Definitions

RULE SUMMARY: Definitions for this chapter of rules.

RULE TEXT:

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001-0050. For purposes of this division of administrative rules, unless the context demands otherwise:

(1) "Applicant" means any person or any combination of persons applying for a loan from the Oregon Royalty Fund.

(2)(a) "Business development project" means the acquisition, engineering, improvement, rehabilitation, construction, operation or maintenance of any property, real or personal, or providing for working capital, that is used or is suitable for use by an economic enterprise and is located in Oregon. Funds may not be used for personal uses.

(3) "Finance Committee" means the Finance Committee whose members are appointed by the Chair of the Oregon Business Development Commission as outlined in OAR 123-001-0520. Regarding the approval, setup, documentation, or issuance of a new loan from the ORF in a principal amount of \$250,000 or less, "Finance Committee" means the Director of the Oregon Business Development Department or the Director's designee.

(4) "Oregon Royalty Fund" or "Fund" or "ORF" means the Small Business Expansion Loan Fund as defined and set forth in Oregon Law Chapter 71 2018.

(5) "Local Development Group" means any contracted group based in Oregon that is a:

(a) public or private corporation that has as one of its primary purposes, as stated in its articles of incorporation, charter or bylaws, the promotion of economic development in any part of the State of Oregon.

(b) Angel or venture fund or group, or

(c) local or regional business incubator or accelerator that, in the sole discretion of the Department, targets early stage, high growth oriented, traded sector companies.

(6) "Person" means any individual, association of individuals, joint venture, partnership, limited liability company or corporation.

(7) "Traded sector" has the meaning given that term in ORS 285A.010.

(8) "Traded sector activities" means activities that produce goods or services for the traded sector.

STATUTORY/OTHER AUTHORITY: ORS 285B.092, OL Ch 71 2018

STATUTES/OTHER IMPLEMENTED: ORS 285B.092, OL Ch 71 2018

ADOPT: 123-092-0030

RULE TITLE: Eligibility

RULE SUMMARY: This rules explains the eligibility requirements for the Oregon Royalty Fund.

RULE TEXT:

- (1) Eligible projects are business development projects as defined in OAR 123-092-0020(2).
- (2) To be eligible, applicants must be in the traded sector or primarily support traded sector activities, and must operate a business with 50 or fewer full-time-equivalent employees.
- (3) Relending of funds shall not be an eligible activity.
- (4) The primary focus of ORF is on providing net, new funding. However, requests to refinance existing debt or equity financing shall be considered on a limited basis at the sole discretion of the Department.

STATUTORY/OTHER AUTHORITY: ORS 285B.092, OL Ch 71 2018

STATUTES/OTHER IMPLEMENTED: ORS 285B.092, OL Ch 71 2018

ADOPT: 123-092-0040

RULE TITLE: Reserved Loans

RULE SUMMARY: This rules explains the criteria associated with the twenty percent portion of the fund that is dedicated to funding applicants of low to moderate income and having low to moderate personal net worth required by SB 1516.

RULE TEXT:

(1) The Department may reserve up to 20 percent of all moneys available for lending in the ORF on July 1 of each fiscal year for loans during the fiscal year that begins on that day to applicants who are individuals or a majority of whose owners are individuals considered to have low to moderate household income and low to moderate personal net worth, as defined by the Department, and who operate businesses:

(a) With at least 51 percent ownership interest by minorities (as defined by the Department), women, or honorably discharged veterans; or

(b) That are located outside of the Portland, Oregon, Metropolitan Statistical Area.

STATUTORY/OTHER AUTHORITY: ORS 285B.092, OL Ch 71 2018

STATUTES/OTHER IMPLEMENTED: ORS 285B.092, OL Ch 71 2018

ADOPT: 123-092-0050

RULE TITLE: Application Procedure

RULE SUMMARY: This rule explains the application procedures to begin a loan request for the Oregon Royalty Fund.

RULE TEXT:

- (1) An applicant may submit an application to the Department on a form or in a format approved by the Department, together with an Application Fee.
- (2) If the amount of the loan being sought from the Fund is \$250,000 or less, the Director may in the Director's sole discretion approve or deny the loan request or make a recommendation to the Finance Committee for the Committee's consideration.
- (3) For loan requests that exceed \$250,000, the Department may deny the loan requested or make a recommendation to the Finance Committee, which may then in its sole discretion approve or deny the loan request.
- (4) If a loan request is approved, the Department shall prepare the documents necessary to close the loan transaction. Such documents shall reflect all terms and conditions upon which the Finance Committee conditioned approval of the loan. Any material modifications of those terms and conditions must be approved by the Chair of the Finance Committee or his/her designee, or the Director for loans of \$250,000 or less.

STATUTORY/OTHER AUTHORITY: ORS 285B.092, OL Ch 71 2018

STATUTES/OTHER IMPLEMENTED: ORS 285B.092, OL Ch 71 2018

ADOPT: 123-092-0060

RULE TITLE: Loan Conditions

RULE SUMMARY: This rule explains repayment of the loan.

RULE TEXT:

The Finance Committee may approve a loan request if it finds that:

- (1) The proposed business development project is feasible and a reasonable risk from practical and economic standpoints, the applicant demonstrates readiness for market, and the loan has reasonable prospect of repayment.
- (2) The applicant can provide good and sufficient collateral for the loan, or personal and/or corporate guarantees, or a combination of the preceding items, that are adequate relative to the risks and potential returns, and the applicant's financial resources are adequate to ensure success of the project, all as determined by the Finance Committee at its sole discretion. Collateral value will be determined at the sole discretion of the Department.
- (3) The applicant demonstrates to the satisfaction of the Department a reasonable potential for strong gross profit margin and rapid sales growth that may support economic diversification in the state or the region in which the business is conducted, increase employment opportunities or retain existing jobs in the state or region, or increase the competitiveness of the applicant business in the traded sector;
- (4) Preference may be given to business development projects which include funding sources other than ORF, but ORF may fund up to 100% of the business development project.
- (5) Monies in the Fund are or will be available for the proposed business development project.
- (6) The applicant agrees to abide by all federal, state and local laws and regulations applicable to the applicant's project.
- (7) The applicant, borrower, guarantors and principal owners are current on all obligations to the State of Oregon.

STATUTORY/OTHER AUTHORITY: ORS 285B.092, ORS 285A.060, ORS 285A.070, OL Ch 71  
2018

STATUTES/OTHER IMPLEMENTED: ORS 285B.092, ORS 285A.060, ORS 285A.070, OL Ch 71  
2018

ADOPT: 123-092-0080

RULE TITLE: Servicing, Amendments and Modifications

RULE SUMMARY: This rule provides instruction if changes are needed to any loan agreement.

RULE TEXT:

- (1) All loans shall be monitored by, and all loan repayments shall be made to, the Department.
- (2) It is the responsibility of the Borrower to ensure that the Department receives its payment by the due date.
- (3) Any request for modification or amendment to any loan condition including extension of payments shall be made in writing to the Department and approved or declined by the Chair of the Finance Committee, or the Director for loans with a principal balance of \$250,000 or less.

STATUTORY/OTHER AUTHORITY: ORS 285B.092, OL Ch 71 2018

STATUTES/OTHER IMPLEMENTED: OL Ch 71 2018



ADOPT: 123-092-0090

RULE TITLE: Fees and Charges

RULE SUMMARY: This rule explains the various fees and charges imposed if an individual chooses to apply for a loan from the Oregon Loyalty Fund.

RULE TEXT:

(1) The Department shall charge and collect an Application Fee of \$ \$200 at the time the application is submitted. If the loan is declined or does not close, the Application Fee will not be refunded.

(2) The Department may charge and collect a Commitment Fee in an amount up to one percent (1%) of the approved principal amount of the loan. The Commitment Fee will to be applied at closing of the loan to the Loan Fee specified in section (3) of this rule. If the loan does not close, the Commitment Fee will not be refunded.

(3) The applicant, immediately upon the loan closing, shall pay to the Department a Loan Fee of one and one-half percent (1.5%) of the approved amount of the loan. The amount collected by the Department will be reduced by the amount of the Commitment Fee collected as provided for in section (2) of this rule. If the full amount of the loan is not disbursed, the Loan Fee will not be refunded.

(4) The Department may charge and collect a Modification Fee of up to \$200 at the time of the modification request. A loan modification may include, but, is not limited to, modification to terms of repayment, subordination requests, or changes to the collateral or the guarantees. In addition the borrower will be responsible for payment of, separate and above any other amounts owed on the loan, closing costs associated with the modification including, but not limited to, document preparation, review of documentation for legal sufficiency, title, and escrow, recording or filing fees.

(5) Monies referred to in (1), (2), (3), (4) and (5) of this rule, not including closing costs, shall be paid into the Fund.

(6) The Department may, in its sole discretion, use some or all of the money collected under section (3) of this rule, as payment to a contracted Local Development Group for referring projects for financing, packaging the loans, processing applications, investigating proposed business development projects and servicing outstanding loans. In no case shall the Department make any payment of more than one percent (1%) of the loan principal amount for any one project. In no case shall the Department make any payment under this section until the loan has been closed and the Department has collected in full the fee specified in section (3) of this rule.

STATUTORY/OTHER AUTHORITY: ORS 285B.092, ORS 285A.075, OL Ch 71 2018

STATUTES/OTHER IMPLEMENTED: ORS 285A.075, OL Ch 71 2018

