

731-035-0010

Purpose

ORS 367.080 to 367.086 creates the Multimodal Transportation Fund, allowing for the issuance of lottery bonds for the purpose of financing grants and loans to fund Transportation Projects that involve air, marine, rail or public transit. The purpose of division 35 rules is to establish the Multimodal Transportation Fund Program.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 816, OL 2005

Stats. Implemented: Ch. 816, OL 2005

731-035-0020

Definitions

For the purposes of division 35 rules, the following terms have the following definitions, unless the context clearly indicates otherwise:

- (1) "Agreement" means a legally binding contract between the Department (or Oregon Department of Aviation) and Recipient that contains the terms and conditions under which the Department is providing funds from the Multimodal Transportation Fund for an Approved Project.
- (2) "Applicant" means a Person or Public Body that applies for funds from the Multimodal Transportation Fund.
- (3) "Approved Project" means a Project that the Commission has selected to receive funding through either a grant or loan from the Multimodal Transportation Fund.
- (4) "Area Commissions on Transportation" means advisory bodies chartered by the Oregon Transportation Commission (OTC) through the Policy on Formation and Operation of Area Commissions on Transportation (ACTs) approved by the OTC on June 18, 2003.
- (5) "Aviation" is defined in ORS 836.005(5).
- (6) "Collateral" means real or personal property subject to a pledge, lien or security interest, and includes any property included in the definition of collateral in ORS 79.0102(1), and with respect to a Public Body, any real or personal property as defined in ORS 288.594.
- (7) "Commission" means the Oregon Transportation Commission.
- (8) "Department" means the Oregon Department of Transportation.
- (9) "Director" means the Director of the Oregon Department of Transportation.
- (10) "Economic and Community Development Department" means the department defined in ORS 285A.070.
- (11) "Freight Advisory Committee" means the committee created in ORS 366.212.
- (12) "Person" has the meaning given in ORS 174.100(5), limited to those Persons that are registered with the Oregon Secretary of State to conduct business within the State of Oregon.
- (13) "Program" means the Multimodal Transportation Fund Program established by division 35 rules to administer the Multimodal Transportation Fund.
- (14) "Program Funds" means the money appropriated by the Legislature to the Multimodal Transportation Fund. These funds may be used as either grants or loans to eligible projects.
- (15) "Public Body" is defined in ORS 174.109.
- (16) "Public Transit Advisory Committee" means a committee appointed by the Director and approved by the Commission to advise the Department on issues, policies and programs related to public transportation in Oregon.
- (17) "Rail Advisory Committee" means a committee appointed by the Director and approved by the Commission to advise the Department on issues, policies and programs that affect rail freight and rail passenger facilities and services in Oregon.

(18) "Recipient" means an Applicant that enters into Agreement with the Department to receive funds from the Multimodal Transportation Fund.

(19) "Recipient's Total Project Costs" means the funds received from the Multimodal Transportation Fund program plus the required 20 percent matching funds under Oregon Administrative Rule 731-035-0070 (3)(a)(B), if applicable.

(20) "State Aviation Board" means the board created in ORS 835.102.

(21) "Transportation Project" or "Project" is defined in ORS 367.010(11). A Multimodal Transportation Fund Program Project must involve one or more of the following modes of transportation: air, marine, rail or public transit. The term includes, but is not limited to, a project for capital infrastructure and other projects that facilitate the transportation of materials, animals or people.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 816, OL 2005

Stats. Implemented: Ch. 816, OL 2005

731-035-0040

Application Requirements

Applicants interested in receiving funds from the Multimodal Transportation Fund must submit a written application to the Department. The application must be in a format prescribed by the Department and contain or be accompanied by such information as the Department may require, including the expected results from the proposed Project for each of the considerations as prescribed in 731-035-0060, documented desire for and support of the Project from the businesses and entities to be served by the Project, and documentation to validate the Project schedule and costs.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 816, OL 2005

Stats. Implemented: Ch. 816, OL 2005

731-035-0050

Application Review

(1) The Department will review applications received to determine whether the application is complete, and the Applicant and the Project are eligible for Program Funds.

(2) Applicants that meet all of the following criteria are eligible:

(a) The Applicant is a Public Body or Person within the state of Oregon.

(b) The Applicant, if applicable, is current on all state and local taxes, fees and assessments.

(c) The Applicant has sufficient management and financial capacity to complete the Project including without limitation the ability to contribute 20 percent of the eligible grant Project cost.

(3) Projects that meet all of the following criteria are eligible:

(a) The project is a Transportation Project.

(b) The Project will assist in developing a multimodal transportation system that supports state and local government efforts to attract new businesses to Oregon or that keeps and encourages expansion of existing businesses.

(c) The Project is eligible for funding with lottery bond proceeds under the Oregon Constitution and laws of the State of Oregon.

(d) The Project will not require or rely upon continuing subsidies from the Department for ongoing operations.

(e) The Project is not a public road or other project that is eligible for funding from revenues described in section 3a, Article IX of the Oregon Constitution, i.e. the State Highway Trust Fund.

- (f) The Project is feasible, including the estimated cost of the Project, the expected results from the proposed Project for each of the considerations as prescribed in 731-035-0060, the Project schedule, and all applicable and required permits may be obtained within the Project schedule.
- (4) If an Applicant or Project is not eligible for Program Funds, the Department will, within 15 days of determination:
- (a) Specify the additional information the Applicant must provide to establish eligibility; or
 - (b) Notify the Applicant that the application request is ineligible.
- (5) The Department may deem an application ineligible if the Applicant fails to meet eligibility requirements of subsection (2 and 3) of this rule, or fails to provide requested information in writing by the date required by the Department, or if the application contains false or misleading information.
- (6) The Director will consider protests of the eligibility determination for the Program. Only the Applicant may protest. Protests must be submitted in writing to the Director within 30 days of the event or action that is being protested. The Director's decision is final.
- (7) The Department will make all eligible applications available for review, as applicable under OAR 731-035-0060, to the State Aviation Board, the Freight Advisory Committee, the Public Transit Advisory Committee, the Rail Advisory Committee, the Economic and Community Development Department and any other transportation stakeholder and advocate entities identified by the Commission to provide recommendations on Project funding including the Area Commissions on Transportation.
- Stat. Auth.: ORS 184.616, 184.619 & Ch. 816, OL 2005
Stats. Implemented: Ch. 816, OL 2005

731-035-0060

Project Selection

- (1) The Commission will select Projects to be funded through either a grant or loan with moneys in the Multimodal Transportation Fund.
- (2) Prior to selecting Projects to be funded with moneys in the Multimodal Transportation Fund, the Commission shall solicit recommendations from:
- (a) The State Aviation Board for Aviation Transportation Projects.
 - (b) The [*Oregon*] Freight Advisory Committee for freight Transportation Projects.
 - (c) The Public Transit Advisory Committee for public transit Transportation Projects.
 - (d) The Rail Advisory Committee for rail Transportation Projects.
 - (e) The Economic and Community Development Department for marine transportation projects.
- (3) Prior to selecting Projects to be funded with moneys in the Multimodal Transportation Fund, the Commission may solicit recommendations from transportation stakeholder and advocate entities not otherwise specified in section 2 of this rule including the Area Commissions on Transportation.
- (4) On behalf of the Commission, the Department shall solicit recommendations from the committees and entities in section 2 of this rule before soliciting recommendations from entities in section 3 of this rule. The Department shall provide the recommendations from the committees and entities in section 2 of this rule to the entities in section 3 of this rule.
- (5) The Director, in consultation with committees and entities in section 2 of this rule and the Area Commissions on Transportation, shall appoint a Final Review Committee that includes representatives from each of the committees and entities in section 2 and section 3 of this rule. Following the receipt of recommendations from the entities in section 3 of this rule, and prior to selecting Projects to be funded with moneys in the Multimodal Transportation Fund the

Commission shall solicit a Final Recommendation Report from the Final Review Committee. The Department shall provide the Final Review Committee a list of recommendations from all committees and entities in section 2 and section 3 of this rule. The list shall include the evaluation results and recommendations from each of the committees and entities in sections 2 and 3 of this rule. The Final Review Committee shall provide the Commission its Final Recommendation Report of projects to be funded with moneys in the Multimodal Transportation Fund listing in priority order eligible Projects together with a reasonable number of alternate Projects in priority order.

(6) The Department shall determine the organizational guidance for the committees' and entities' processes and protocols.

(7) The committees and entities in sections 2, 3 and 5 of this rule shall follow the organizational guidance determined by the Department in section 6 of this rule.

(8) The Commission will consider all of the following in its determination of eligible Projects to approve for receipt of funds from the Multimodal Transportation Fund:

(a) Whether a proposed Project reduces transportation costs for Oregon businesses or improves access to jobs and sources of labor.

(b) Whether a proposed transportation project results in an economic benefit to this state.

(c) Whether a proposed Project is a critical link connecting elements of Oregon's transportation system that will measurably improve utilization and efficiency of the system.

(d) How much of the cost of a proposed Project can be borne by the Applicant for the grant or loan from any source other than the Multimodal Transportation Fund.

(e) Whether a Project is ready for construction, or if the Project does not involve construction, whether the Project is ready for implementation.

(f) Whether a Project leverages other investment and public benefits from the state, other government units, or private business.

(g) Whether the Applicant proposes to contribute more than the minimum 20 percent of the eligible grant Project costs established in OAR 731-035-0070(3).

(h) Whether the Applicant is applying for a loan rather than a grant.

(9) To award funds that become available due to an approved Project that is withdrawn or is sanctioned as prescribed in 731-035-0080(5), the Commission shall select the highest priority Project that is appropriate for the funds available from the Final Recommendation Report created in section 5 of this rule.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 816, OL 2005

Stats. Implemented: Ch. 816, OL 2005

731-035-0070

Grant and Loan Awards and Match

(1) At least 10 percent of the total net proceeds of the lottery bonds will be allocated to each of the five regions as specified in Enrolled House Bill 2278 (2007 Regular Session). The regions consist of the following counties:

(a) Region one consists of Clackamas, Columbia, Hood River, Multnomah and Washington Counties;

(b) Region two consists of Benton, Clatsop, Lane, Lincoln, Linn, Marion, Polk, Tillamook and Yamhill Counties;

(c) Region three consists of Coos, Curry, Douglas, Jackson and Josephine Counties;

(d) Region four consists of Crook, Deschutes, Gilliam, Jefferson, Klamath, Lake, Sherman, Wasco and Wheeler Counties; and

(e) Region five consists of Baker, Grant, Harney, Malheur, Morrow, Umatilla, Union and Wallowa Counties.

(2) Applicants may use a combination of grant and loan funds to finance a Project.

(3) Grants and loans will be awarded only when there are sufficient funds available in the Multimodal Transportation Fund to cover the costs of the loans and grants.

(a) Grants:

(A) Awards must not exceed 80 percent of the total eligible Project costs.

(B) Applicant matching funds must be provided by the Applicant in the form of monetary outlay for elements necessary for implementation of the Project, including land, excavation, permits, engineering, payroll, special equipment purchase or rental, and cover at least 20 percent of the eligible Project costs.

(b) Loans:

(A) Loans may be for any portion of project costs, up to the full amount of the project.

(B) With the exception of the two percent payment described in section 2, subsection 2, of Chapter 859, Oregon Laws 2007 (which also applies to grants), the Department will not charge fees for processing or administering a loan to a Recipient.

(C) Loans from the Multimodal Transportation Fund may be interest free if repaid according to the terms and conditions of the Agreement between the Department and Recipient.

(D) Prior to entering into a loan Agreement, the Department will determine if an application meets reasonable underwriting standards of credit-worthiness, including whether:

(i) The Project is feasible and a reasonable risk from practical and economic standpoints.

(ii) The loan has a reasonable prospect of repayment according to its terms.

(iii) The Applicant's fiscal, managerial and operational capacity is adequate to assure the successful completion and operation of the Project.

(iv) The Applicant will provide good and sufficient Collateral to mitigate risk to the Multimodal Transportation Fund.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 816, OL 2005

Stats. Implemented: Ch. 816, OL 2005

731-035-0080

Project Administration

(1) The Department will administer all non-aviation Projects.

(2) The Department and an Applicant of an Approved Project will execute an Agreement prior to the disbursement of Program Funds for an Approved Project. The Agreement is effective on the date all required signatures are obtained or at such later date as specified in the Agreement.

(3) The Agreement will contain provisions and requirements, including but not limited to:

(a) Documentation of the projected costs for an Approved Project must be submitted to the Department prior to the disbursement of Program Funds.

(b) Only Project costs incurred on or after the effective date of the Agreement are eligible for grant or loan funds.

(c) Disbursement of Program Funds for grants and loans will be paid on a reimbursement basis and will not exceed one disbursement per month. The Director or the OTC may make exceptions to the reimbursement basis if the Department finds that the applicant would have difficulty meeting this requirement.

(d) Upon request, a Recipient must provide the Department with a copy of documents, studies, reports and materials developed during the Project, including a written report on the activities or

results of the Project and any other information that may be reasonably requested by the Department.

(e) Recipients must separately account for all moneys received from the Multimodal Transportation Fund in Project accounts in accordance with Generally Accepted Accounting Principles.

(f) Any Program Funds disbursed but not used for an Approved Project must be returned to the Department.

(g) Amendments to Agreements are required to change an Approved Project's cost, scope, objectives or timeframe.

(h) Recipients must covenant, represent and agree to use Project funds in a manner that will not adversely affect the tax-exempt status of any bonds issued under the Program.

(i) Recipients shall pay two percent of the Recipient's Total Project Costs to the Department within 90 days of the Agreement effective date. The required payment of two percent of the Recipient's Total Project Costs is a reimbursable program cost.

(4) The Department may invoke sanctions against a Recipient that fails to comply with the requirements governing the Program. The Department will not impose sanctions until the Recipient has been notified in writing of such failure to comply with the Program requirements as specified in this Rule and has been given a reasonable time to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:

(a) Work on the Approved Project has not been substantially initiated within six months of the effective date of the Agreement;

(b) State statutory requirements have not been met;

(c) There is a significant deviation from the terms and conditions of the Agreement; or

(d) The Department finds that significant corrective actions are necessary to protect the integrity of the Program Funds for the Approved Project, and those corrective actions are not, or will not be, made within a reasonable time.

(5) The Department may impose one or more of the following sanctions:

(a) Revoke an existing award.

(b) Withhold unexpended Program Funds.

(c) Require return of unexpended Program Funds or repayment of expended Program Funds.

(d) Bar the Applicant from applying for future assistance.

(e) Other remedies that may be incorporated into grant and loan Agreements.

(6) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the agreement.

(7) The Director will consider protests of the funding and Project administration decisions for the Program. Only the Applicant or Recipient may protest. Protests must be submitted in writing to the Director within 30 days of the event or action that is being protested. The Director's decision is final. Jurisdiction for review of the Director's decision is in the circuit court for Marion County pursuant to ORS 183.484.

(8) The Director may waive non-statutory requirements of this Program if it is demonstrated such a waiver would serve to further the goals and objectives of the Program.

Stat. Auth.: ORS 184.616, 184.619 & Ch. 816, OL 2005

Stats. Implemented: Ch. 816, OL 2005