

DIVISION 27

MARINE NAVIGATION IMPROVEMENT FUND

123-027-0035

Purpose

The purpose of these rules is to provide procedures, standards and criteria for operation of the Marine Navigation Improvement Fund authorized by ORS 777.262 to 777.267.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04;
Administrative correction 8-18-04

123-027-0040

Definitions

For the purposes of these rules, the following terms will have the following definitions, unless the text clearly indicates otherwise:

~~(1) "Department" means the State of Oregon Economic and Community Development Department.~~

~~(2) "Director" means the Director of the Economic and Community Development Department.~~

(3) "Federally authorized project" means a project that has been authorized or qualifies for federal funding from the United States Army Corps of Engineers.

(4) "Non-federal project" means a navigation project that is eligible under these rules but does not qualify for federal funding from the United States Army Corps of Engineers.

(5) "Fund" means the Marine Navigation Improvement Fund.

(6) "Project" means studies, necessary permits, dredging, acquisition, modification and maintenance of dredge disposal sites and construction of a new navigation improvement project that is sponsored by a port and is eligible for assistance from the Fund. A project can be either a federally authorized project or a non-federally authorized project.

(7) "Non-Federal Share" means that portion of a project cost not paid for by the United States Army Corps of Engineers.

~~(8) "Port" means a port incorporated under ORS chapter 777 or 778, and may be known as a "port authority" or "port district."~~

~~(9) "State of Oregon" means State of Oregon government departments or agencies.~~

(10) "New Navigation Improvement Project" means, for the purpose of ORS 777.267(1)(b) a water project that directly supports, or provides access to, a federally authorized navigation improvement project or a federally authorized navigation channel. To be characterized as 'new', the dredging activity must go beyond previously maintained improvements such as deeper channel depths or wider breadth of area being served. However, "New Navigational Improvement project" does not include dredging deeper than the depths of the federally authorized navigation improvement project.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 14-2002, f. & cert. ef. 6-21-02; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction 8-18-04; EDD 22-2004, f. & cert. ef. 8-19-04; EDD 24-2004, f 10-25-04, cert. ef. 11-8-04; EDD 2-2006, f. & cert. ef. 2-10-06

Federally Authorized Projects

123-027-0050

Project Eligibility, Priority and Funding

(1) To be eligible for funding, Federally Authorized Projects must meet the following criteria:

(a) The project is federally authorized;

(b) The project is listed in the Port's business or strategic plan; and

(c) The project has confirmed positive benefit/cost ratios as required by the National Economic Development Plan and has completed all federally required studies.

(2) First priority for assistance from the Fund shall be given to eligible Federally Authorized Projects.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 14-2002, f. & cert. ef. 6-21-02; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction 8-18-04; EDD 22-2004, f. & cert. ef. 8-19-04; EDD 2-2006, f. & cert. ef. 2-10-06

123-027-0056

Federally Authorized Project Application Requirements

The Port shall notify the ~~Authority~~Department of a potential federally authorized project at the time it initiates the project with the United States Army Corps of Engineers and it shall submit written documentation to the ~~Authority~~Department evidencing its participation with the United States Army Corps of Engineers. The written documentation must:

(1) Describe the nature and purpose of the project, including: proposed project scheduling; project term; estimated project cost; the Port's estimated non-federal share of the total project cost; and, the required schedule for payment of the Port's non-federal share of the total project cost;

(2) Contain federal documents that authorize the project, including Reconnaissance/Feasibility Studies; and

(3) Contain a copy of the Port's proposed Local Cost Share Agreement with the United States Army Corps of Engineers for undertaking and carrying out the project.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 22-2004, f. & cert. ef. 8-19-04; EDD 2-2006, f. & cert. ef. 2-10-06

123-027-0060

Federally Authorized Project Application Review and Approval

Based upon a review of the information described in OAR 123-027-0056, the Authority Department will determine whether the project is eligible for assistance from the Fund. If the documentation is not adequate to determine eligibility, the Authority Department will require the Port to submit additional information as may be necessary.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 14-2002, f. & cert. ef. 6-21-02; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction, 8-18-04; EDD 22-2004, f. & cert. ef. 8-19-04; EDD 2-2006, f. & cert. ef. 2-10-06

123-027-0070

Federally Authorized Project Award and Funding

(1) The Authority Department and the Port shall execute a contract prior to disbursement of moneys from the Fund. The contract shall be in a form and content as provided by the Authority Department.

(2) Payments from the Fund shall be disbursed in accordance with the executed contract.

(3) The Port must provide the Authority Department with a written report, records, and a detailed accounting of costs in the format required by the Authority Department:

(a) Within 30 days following the close of each federal fiscal year; and

(b) Within 90 days following final completion of a project.

(4) Any amount disbursed from the Fund and not used for a project must be returned to the Authority Department.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 5-1993, f. & cert. ef. 4-19-93; EDD 14-2002, f. & cert. ef. 6-21-02; EDD 7-2004(Temp), f. & cert. ef. 2-3-04 thru 8-1-04; Administrative correction 8-18-04; EDD 22-2004, f. & cert. ef. 8-19-04; EDD 24-2004, f 10-25-04, cert. ef. 11-8-04; EDD 2-2006, f. & cert. ef. 2-10-06

Non-Federal Projects

123-027-0106

Non-Federal Project Eligibility

Non-federally authorized projects that meet the following criteria are also eligible for assistance from the Fund:

- (1) The project is listed in a Port's business or strategic plan;
- (2) The project is ready to begin in the biennium for which funding is requested;
- (3) The project is a new navigation improvement project; and
- (4) The project meets the criteria of a freight project, or a commercial/recreation project, as follows:
 - (a) A freight project facilitates transportation for at least 5,000 tons of freight or cargo annually;
 - (b) A commercial/recreation project supports at least 1,000 use days annually as evidenced by information from the State Marine Board, the Ports Reporting System, the U.S. Coast Guard, or other similar source of reliable data, or it is to support the operation of at least one tour boat.
- (5) Navigation improvement projects that can't meet the criteria listed in subsection (4) may still qualify for funding if:
 - (a) The proposed improvement project is designed to facilitate usage to a level that exceeds the criteria in subsection (4); and
 - (b) Usage of the proposed improvement project is reasonably forecasted to meet the criteria in subsection (4) within the first two years of operation and exceed the minimum criteria thereafter.

Stat. Auth.: ORS 285.075(5) & 285A.110

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 14-2002, f. & cert. ef. 6-21-02; Renumbered from 123-027-0100 by EDD 22-2004, f. & cert. ef. 8-19-04; EDD 24-2004, f 10-25-04, cert. ef. 11-8-04; EDD 2-2006, f. & cert. ef. 2-10-06

123-027-0156

Non-Federal Project Application Requirements

- (1) A Port may submit an application after consulting with Authority Department staff on a preliminary determination of eligibility and otherwise following the Authority Department's procedures for submitting applications.
- (2) The application must be in the form provided by the Authority Department and must contain or be accompanied by such information as the Authority Department may require. The Authority Department will process only completed applications.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 22-2004, f. & cert. ef. 8-19-04; EDD 2-2006, f. & cert. ef. 2-10-06

123-027-0161

Non-Federal Project Application Review and Approval

To approve an application for assistance from the fund, the Authority Department must make the determinations as follows:

- (1) The project is an eligible project. If the Authority Department determines that the project is not eligible, it may reject an application or require further documentation from the Port;
- (2) The requisite need for the project has been demonstrated to the Authority Department in the application or the local planning process;
- (3) If application is for a loan, the loan security includes the pledge of revenues and/or other funds, and is sufficient, when considered with other security, to assure repayment;
- (4) The Port is willing and able to enter into a contract with the Authority Department; and
- (5) Moneys in the fund are or will be available for the project.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 22-2004, f. & cert. ef. 8-19-04; EDD 2-2006, f. & cert. ef. 2-10-06

123-027-0166

Non-Federal Project Award and Funding

- (1) The Authority Department and the Port will execute a contract prior to disbursement of moneys from the Fund. The contract will be in a form and content as provided by the Authority Department.
 - (a) Payments from the fund will be disbursed in accordance with the executed contract.
 - (b) The Port must provide the Authority Department with written reports, records, and an accounting of detailed costs for a project as described in the contract.
- (2) All eligible projects may be awarded loan funding of up to 100% of the total project cost, or for the required local match, under the following terms:
 - (a) Interest rates will be determined by Authority Department at time of award, according to Authority Department policy; and
 - (b) The loan term will not exceed 25 years.

(3) If the Authority Department determines 100% loan funding is not feasible due to the financial hardship of the port, grants may be awarded if Authority Department determines at least one of the following circumstances exists:

(a) Job creation and/or retention will be a direct result of the project;

(b) There is an urgent need for environmental remediation and the Authority Department's financial analysis determines that the Port's borrowing capacity is insufficient to finance the project;

(c) The project deals with critical public safety issues and the Authority Department's financial analysis determines that the Port's borrowing capacity is insufficient to finance the project; or

(d) There is imminent threat that the Port will lose any applicable permits and the Authority Department's financial analysis determines that the Port's borrowing capacity is insufficient to finance the project.

(e) The Authority Department's financial analysis determines that the project cannot proceed without a grant.

(4) Projects eligible due to the provisions of subsection 0106 may be awarded grant funding up to 75 percent of the project cost. A 25 percent local match is required. In-kind services from the Port may be no more than 10 percent of the total project cost.

(5) The Port must secure, and be able to provide upon request, a land use compatibility statement from the appropriate jurisdiction(s) for the project.

(6) Any amount disbursed from the Fund and not used for a project must be returned to the Authority Department.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 22-2004, f. & cert. ef. 8-19-04; EDD 24-2004, f 10-25-04, cert. ef. 11-8-04; EDD 2-2006, f. & cert. ef. 2-10-06; EDD 4-2006, f. 9-28-06, cert. ef. 10-1-06

Federal and Non-Federal Projects

123-027-0211

Federal and Non-Federal Project Appeals and Exceptions

(1) Appeals of local government decisions regarding a Project must be made at the local level.

(2) The Director will consider appeals of the Authority Department's funding decisions. Only the Port may appeal. Appeals must be submitted in writing to the Director within 30 days of the event or action that is being appealed. The Director's decision is final.

(3) 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 285A.075

Stats. Implemented: ORS 777.262 - 777.267

Hist.: EDD 14-2002, f. & cert. ef. 6-21-02; Renumbered from 123-027-0110 by EDD 22-2004, f. & cert. ef. 8-19-04; EDD 2-2006, f. & cert. ef. 2-10-06