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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 737
DEPARTMENT OF TRANSPORTATION
TRANSPORTATION SAFETY DIVISION

FILED

08/17/2020 2:13 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Safe Routes to School Fund rule update

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/21/2020 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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Filed By:

Lauri Kunze

Rules Coordinator

HEARING(S)

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

DATE: 09/15/2020

TIME: 4:30 PM - 5:30 PM

OFFICER: LeeAnne Ferguson

ADDRESS:

Virtual Hearing

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Join Zoom Meeting

<https://zoom.us/j/96574091278?pwd=-b1Vick5VdXNNVDhnTjRQL2RkTDFlvQT09>

Meeting ID: 965 7409 1278

Passcode: 092140

One tap mobile

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(Houston)

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Meeting ID: 965 7409 1278

Find your local number:

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NEED FOR THE RULE(S):

The proposed amendments incorporate changes suggested by the Safe Routes to School Advisory Committee and changes made due to the delegation of some OTC authority to the ODOT Director after ODOT adopted these rules.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None

FISCAL AND ECONOMIC IMPACT:

This rule change has no known financial impact on other agencies or business, including small business, or members of the public.

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).

None

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

The proposed rulemaking has no impact on small businesses and therefore small businesses were not involved in the development of the rule amendments.

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

A separate Rule Advisory Committee was not necessary. The Safe Routes to School Advisory Committee provided all necessary input.

RULES PROPOSED:

737-025-0010, 737-025-0012, 737-025-0091, 737-025-0093

AMEND: 737-025-0010

RULE SUMMARY: Adding language in 737-025-0010, section (4) to create flexibility in how we define cash match for small and low-income communities or for projects on a street with high crash risk factors.

CHANGES TO RULE:

737-025-0010

Definitions and Acronyms ¶

(1) "Applicant" means an entity that qualifies under OAR 737-025-0030 and OAR 737-025-0091.¶

(2) "Application" means the form, prescribed by ODOT, and all supplemental attachments, exhibits or other supporting papers.¶

(3) "Bicycling" includes, but is not limited to, use of bicycles.¶

(4) "Cash Match" ~~is actual means funds provided~~ means funds provided by the applicant that are reasonable, necessary and directly related to the ~~Project and funded by the applicant.~~ construction project identified in the Application. Cash Match does not include In Kind Match, including education and outreach efforts at the school. Past ODOT Safe Routes to School grants are not eligible as a qualifying Cash Match and project expenditures can only be used as cash match once. Expenditures eligible as Cash Match shall ~~may~~ include Project expenditures made within 24 months prior to the application deadline. ~~Education and outreach efforts at the school do not constitute cash match and may be extended up to 120 months by the Safe Routes to School Advisory Committee when one or more of the below conditions apply.~~ ¶

(a) The school is located in a city with a population of 5,000 or fewer. ¶

(b) The project reduces hazards within a Priority Safety Corridor; or ¶

(c) The school site qualifies as a Title I School. ¶

(5) "Education" means public-awareness and encouragement campaigns, outreach to press and community leaders, bicycle and pedestrian safety programs and activities, traffic education, training, and the evaluation of such activities. ¶

(6) "Endorsement" means support and approval as required in OAR 737-025-0030. ¶

(7) "Enforcement" means law enforcement operations and equipment relating to school zones, crosswalks, speed; crossing guard activities and supplies; and evaluation of such activities. ¶

(8) "Engineering" means planning, design, construction, and evaluation of infrastructure-related projects. ¶

(9) "In kind match" is time, services, or any other portion of the program or project not covered by grant funding or cash match provisions. ¶

(10) "Infrastructure" means public improvement to transportation facilities and systems. Examples include but are not limited to sidewalks, street crossings, and bicycle lanes. ¶

(11) "Letter of support" means a letter from the governing body (or bodies) or the school or school district, stating their willingness to participate in the project, as well as their endorsement of the project. ¶

(12) "Letter of Interest" means the preliminary letter, in a format prescribed by ODOT. ¶

(13) "Non-infrastructure" means parts of Safe Routes to School program that is not public improvement to transportation facilities. Examples include but not limited to education, outreach, and training. ¶

(14) "Non-Profit" means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code; or is organized not for profit, pursuant to ORS Chapter 65, or any predecessor of ORS Chapter 65: or is otherwise organized and operated under section 501(c) of the Internal Revenue Code. ¶

(15) "OBPAC" means the Oregon Bicycle and Pedestrian Advisory Committee, the Governor-appointed committee that advises ODOT as defined in ORS 366.112. ¶

(16) "ODOT" means the Oregon Department of Transportation and its divisions. ¶

(17) "OTC" means the Oregon Transportation Commission, the Governor-appointed and legislatively confirmed committee that oversees ODOT as defined in ORS 184.612. ¶

(18) "OTSC" means the Oregon Transportation Safety Committee, the Governor-appointed committee that advises ODOT as defined in ORS 802.300. ¶

(19) "Priority Safety Corridor" is a project in an area with high-risk factors that are known to impact safety and have not been mitigated. ¶

(a) A project qualifies where the project boundaries include the following high-risk safety conditions: ¶

(A) Either the posted or 85th percentile speed is 40 miles per hour or greater; or ¶

(B) Two or more of the following exist: ¶

(i) Speed limit 30 miles per hour or greater; ¶

(ii) More than two lanes or a crossing distance greater than 30 feet; ¶

(iii) 12,000 or greater annual average daily traffic; ¶

(C) Has a demonstrated history of crashes related to school traffic. ¶

(b) Projects that do not meet these criteria may qualify for an exception if the applicant can demonstrate a significant safety risk through data or research. "Priority Safety Corridor" is separate and distinct from "Safety

- Corridor" defined in ORS 811.483 and is not a designation or certification made by ODOT, OTSC, or OTC.¶
- (20) "Public School" means a public agency or school district defined in OAR 581-022-0102.¶
- (21) "Qualifying School" is intended for Non-Infrastructure grants and means a public, private, parochial, charter or alternative educational program offering instruction at levels kindergarten through eighth grade, or any part thereof.¶
- (22) "Safe Routes to School Action Plan" means the plan developed to fulfill the requirements of ORS 195.115, OAR 737-025-0050 (3), and OAR 737-025-0060 (1).¶
- (23) "Safe Routes to School Infrastructure Plan" means the plan developed to fulfill the requirements of ORS 195.115 and OAR 737-025-0060 (2).¶
- (24) "School district" means:¶
- (a) A school district as defined in ORS 330.003.¶
 - (b) The Oregon State School for the Blind.¶
 - (c) The Oregon State School for the Deaf.¶
 - (d) An educational program under the Youth Corrections Education Program.¶
 - (e) A public charter school as defined in ORS 338.005.¶
 - (f) An education service district.¶
- (25) "SRTS" means Safe Routes to School.¶
- (26) "SRTS Fund" means the Safe Routes to School Fund established under ORS 184.740.¶
- (27) "TDD" means the Transportation Development Division, a division of the Oregon Department of Transportation.¶
- (28) "Title I School" refers to a school in which children from low income families, identified within the Oregon Department of Education school report cards, make up at least 40 percent of enrollment, according to Chapter I of Title I of the federal Elementary and Secondary Education Act of 1965.¶
- (29) "Transportation safety committee" means a local government advisory body charged with transportation safety. Alternately, a local non-profit, such as neighborhood association, which specifically includes traffic or transportation safety in their charter or charge from one or more government bodies can fulfill this role in the absence of a committee.¶
- (30) "TSD" means the Transportation Safety Division, a division of the Oregon Department of Transportation.¶
- (31) "Walking" means use of human-powered forms of transportation, including, but not limited to travel to your destination by foot, scooter, skateboard, rollerblades, skates, use of wheelchairs or other mobility device.
- Statutory/Other Authority: ORS 184.619, 184.740, 184.741, 184.742
- Statutes/Other Implemented: ORS 184.741, 184.742

AMEND: 737-025-0012

RULE SUMMARY: Added language in section (4) to allow the OTC to delegate the authority to select Rapid Response Projects to the ODOT Director.

CHANGES TO RULE:

737-025-0012

Safe Routes to School Advisory Committee

A Safe Routes to School Advisory Committee is formed to guide the Safe Routes to School Infrastructure and Non-Infrastructure programs. The committee is advisory to the Oregon Department of Transportation (ODOT) and the Oregon Transportation Commission (OTC), in consultation with the Oregon Transportation Safety Committee (OTSC).¶¶

(1) The 10-15 member committee is composed of volunteer members representing interests including but not limited to: the OTSC, OBPAC, safe routes to school practitioners, school districts, eligible entities, and equity and safety representatives.¶¶

(2) Committee members are appointed by the ODOT Director.¶¶

(3) Committee members will serve a four-year term and a maximum of two terms.¶¶

(4) The Committee will be responsible for setting project selection criteria and making project selection recommendations. Project selection recommendations go to the OTC for infrastructure projects in the Competitive Program, to the ODOT Director for Rapid Response Program, and to the OTSC prior to the OTC for non-infrastructure.¶¶

(5) The OTSC and OBPAC will provide input on policy direction and guidance to the Safe Routes to School Advisory Committee.

Statutory/Other Authority: ORS 184.619, 184.740, 184.741, 184.742

Statutes/Other Implemented: ORS 184.741, 184.742

AMEND: 737-025-0091

RULE SUMMARY: Added language in paragraph (1)(b)(G) to allow the OTC to delegate the authority to reduce the cash match requirement. Added paragraph (1)(b) (H) to allow a greater ability of low-income and small communities as well as projects on a street with high crash risk factors to meet the local cash match requirement.

CHANGES TO RULE:

737-025-0091

Eligible Entities, Projects, and Activities for Infrastructure Grants

(1) For the Rapid Response and Competitive Grant Programs:¶¶

(a) Eligible entities include: ODOT, cities, counties, transit district, tribes and any eligible road authority as defined under ORS 810.010.¶¶

(b) Eligible projects must:¶¶

(A) Be within one mile of a public school.¶¶

(B) Provide safety improvements that reduce barriers and hazards to children walking or bicycling to and from school including but not limited to: creation of or improvements to sidewalks or bikeways, reductions in vehicle speeds, and improvements to pedestrian and bicycle crossings.¶¶

(C) Fit within in a plan developed pursuant to ORS 195.115. Plans may include but are not limited to: a Safe Route to School Action Plan or Safe Route to School Infrastructure Plan (OAR 737-025-0060), Transportation System Plan, or other locally adopted plan.¶¶

(D) Be approved by the roadway authority (governing body).¶¶

(E) Include, in the application materials, a letter of support from the school district or impacted school.¶¶

(F) Provide a cash match of at least 40 percent of the total project's costs; or¶¶

(G) ~~The OTC may reduce an applicant's~~For the Competitive Program the OTC may reduce the Cash Match requirement to at least 20 percent of the total project's costs and for the Rapid Response Program the ODOT Director may reduce the Cash Match toof at least 20 percent of the total project's costs when one or more of the following conditions apply:¶¶

(i) The school is located in a city with a population of 5,000 or fewer;¶¶

(ii) The project reduces hazards within a Priority Safety Corridor; or¶¶

(iii) The school site qualifies as a Title I School.¶¶

(H) Project built with funds received from a past ODOT Safe Routes to School grant may not be considered Cash Match and project expenditures can only be used as Cash Match once. The Safe Routes to School Advisory Committee may increase ability of applicants to claim project expenditures as Cash Match up to 120 months before the application is submitted when one or more of the following conditions apply.¶¶

(i) The school is located in a city with a population of 5,000 or fewer;¶¶

(ii) The project reduces hazards within a Priority Safety Corridor; or¶¶

(iii) The school site qualifies as a Title I School.¶¶

(2) For the Project Identification Grant Program:¶¶

(a) Eligible entities include ODOT.¶¶

(b) ODOT must provide a cash match of at least 40 percent of the total grant award.¶¶

(c) ODOT or its consultants must use the grant award to provide technical assistance to cities, counties, tribes, school districts, or any public-funded agency in support of identifying infrastructure projects that reduce barriers and hazards of children biking or walking to school.

Statutory/Other Authority: ORS 184.619, 184.740, 184.741, 184.742

Statutes/Other Implemented: ORS 184.741, 184.742

AMEND: 737-025-0093

RULE SUMMARY: Added language in sections (2) and (3) to allow the OTC to delegate authority to select projects to the ODOT Director for the Rapid Response Program.

CHANGES TO RULE:

737-025-0093

Award of Infrastructure Grants

(1) ODOT will review letters of intent and applications to determine if:¶

(a) The Applicant and the project are eligible for an infrastructure grant,¶

(b) The Applicant proposal complies with the appropriate standards or practices for the work described, and¶

(c) The grant application is complete.¶

(2) The Safe Routes to School Advisory Committee will evaluate eligible applications and submit funding recommendations to the Oregon Transportation Commission for the Competitive Program grants and to the ODOT Director for the Rapid Response Program grants. When reviewing applications for Rapid Response and Project Identification Program grants, a sub-committee of SRTS Advisory Committee may convene in order to make recommendations.¶

(3) The Safe Routes to School Advisory Committee or sub-committee recommendations will be forwarded to the Oregon Transportation Commission for the Competitive Program grants and to the ODOT Director for the Rapid Response grants for consideration of approval of grants for funding.¶

(4) Project Awardees shall enter into a Grant Agreement with TDD prior to release of any grant funds.¶

(5) Project Awardees are responsible for any cost overages that occur during project delivery.

Statutory/Other Authority: ORS 184.619, 184.740, 184.741, 184.742

Statutes/Other Implemented: ORS 184.741, 184.742