

Draft Rule for Connect Oregon RAC Mtg #5

SECTION 1

Department of Transportation

Chapter 731

Division 35 STANDARDS TO DETERMINE PROJECT ELIGIBILITY AND APPLICATION PROCEDURES FOR GRANTS UNDER THE CONNECT OREGON FUND PROGRAM

731-035-0010

Purpose

ORS 367.080 to 367.08~~69~~ creates the Connect Oregon Fund, allowing for the issuance of lottery bonds for the purpose of financing grants to fund Transportation Projects that involve air, marine, rail, ~~public transit~~, or bicycle and pedestrian modes. The purpose of division 35 rules is to establish the Connect Oregon Fund Program.

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 and Recipient that contains the terms and conditions under which the Department is providing funds from the Connect Oregon Fund for an Approved Project.
- (2) "Applicant" means a Person or Public Body that applies for funds from the Connect Oregon Fund.
- (3) "Approved Project" means a ~~p~~PProject that the Commission has selected to receive funding through either a grant ~~or loan~~ from the Connect Oregon Fund.

SECTION 1 includes:

- Program purpose
- Definitions
- Application submission periods
- Application requirements
- Application review

Changes to existing rule:
Primarily clean-up changes

(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) "Bicycle" has the meaning given in ORS 801.150.

~~(7) "Oregon Bicycle and Pedestrian Advisory Committee" means the committee created in ORS 366.112.~~

~~(8) "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.~~

~~(78) "Critical Link" means linkages between modes of transportation that provide industrial or employment connections. _____~~

~~(89) "Commission" means the Oregon Transportation Commission.~~

~~(409) "Dedicated Project" means a project listed in HB 2017 Section 71f.~~

~~(1044) "Department" means the Oregon Department of Transportation.~~

~~(1142) "Director" means the Director of the Oregon Department of Transportation.~~

~~(132) "Department of Aviation" means the Oregon Department of Aviation (ODA).~~

~~(13) "Final Project Acceptance" means the department's written acceptance of a transportation project as complete following an on-site review of the completed project.~~

~~(1514) "Freight Advisory Committee" means the committee created in ORS 366.212.~~

~~(1615) "Limited land use decision" has the meaning given in ORS 197.015(12).~~

~~(1716) "Land use decision" has the meaning given in ORS 197.015(10).~~

~~(4417) "Oregon Business Development Department" means the department defined in ORS 285A.070 doing business as Business Oregon.~~

~~(187) "Oregon Bicycle and Pedestrian Advisory Committee" means the committee created in ORS 366.112.~~

~~(196)~~ “Part 1 programs” or “Connect Oregon Part One” has the meaning given in ORS 367.084(4) and consists of transportation projects that involve one or more of the following modes of transportation: air, marine, rail, and bicycle and pedestrian.

~~(20)~~ “Part 2 programs” or “Connect Oregon Part Two” has the meaning given in ORS 367.084(5) and consists of transportation projects that are transportation projects of statewide significance and enhance or maintain one or more of the following modes of transportation: air, marine, Class I railroads, Class II railroads, or Class III railroads.

~~(4621)~~ “Person” has the meaning given in ORS 174.100(~~56~~), limited to those Persons that are registered with the Oregon Secretary of State to conduct business within the State of Oregon.

~~(4722)~~ “Program” means the Connect Oregon Fund Program established by division 35 rules to administer the Connect Oregon Fund.

~~(4823)~~ “Program Funds” means the money appropriated by the Legislature to the Connect Oregon Fund. These funds may be used as either grants ~~or loans~~ to eligible projects.

~~(19)~~ “Private Entity” is defined in the Oregon Legal Glossary as any entity that is not a unit of government, including but not limited to a corporation, partnership, company, nonprofit organization or other legal entity or a natural person.

~~(2024)~~ “Project Sponsor” means a person, public body or private entity seeking funds to develop and implement a dedicated project.

~~(2125)~~ “Public Body” is defined in ORS 174.109.

~~(22)~~ “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.

~~(2326)~~ “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.

~~(2427)~~ “Recipient” means a public body or private entity ~~Applicant~~ that enters into Agreement with the Department to receive funds from the Connect Oregon Fund.

~~(2528)~~ “Recipient’s Total Project Costs” means the funds received from the Connect Oregon Fund program plus the matching funds required under Oregon Administrative Rule 731-035-0070(3)(a)(B) and any additional funds, if applicable.

~~(2629)~~ “Receive Federal Grants” means execution of a grant agreement with any agency of the United States.

~~(2730)~~ “Regional Solutions Team” means the teams created in ORS 284.754.

~~(2831)~~ “State Aviation Board” means the board created in ORS 835.102.

~~(2932)~~ “Transportation Project” ~~or “project”~~ is defined in ORS 367.080(1)(~~be~~). ~~A Connect Oregon Program Project must involve one or more of the following modes of transportation: air, marine, rail, public transit or bicycle and pedestrian. 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. A transportation project does not include costs associated with operating expenses or the purchase of bicycles.~~

731-035-0030

Application Submission Periods

- (1) The Department will announce periods for submitting applications for funding from the Connect Oregon Fund.
- (2) Project applications will be reviewed for compliance with the requirements in OAR 731-035-0040 and as prescribed in 731-035-0050.
- (3) Applications not funded may be resubmitted during subsequent application submission periods announced by the Department.

731-035-0040

Application Requirements

Applicants interested in receiving funds from the Connect Oregon Fund must submit an ~~un~~-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.

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 30 percent of the Recipient's Total Project Cost.

~~(d) The Applicant is not a railroad owner that operates a railroad wholly within the boundaries of Benton and Linn counties that:~~

~~(A) Charges landowners a fee for an easement to cross a railroad that is necessary for the landowner to access the landowner's property; and~~

~~(B) Has imposed or collected fees for such an easement on or after January 1, 2013.~~

(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 subsections (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~~Project. Only the Applicant may protest. Protests must be submitted in writing to the Director within 15 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 Oregon Business Development Department, the Oregon Bicycle and Pedestrian Advisory Committee, and any other transportation stakeholder and advocate entities identified by the Commission to provide recommendations on Project funding including the Area Commissions on Transportation.

Section 2

Review Process

731-035-0060 **Project Selection**

(1) The Commission will select Projects to be funded through a grant with moneys in the Connect Oregon Fund.

(2) Prior to selecting Projects to be funded with moneys in the Connect Oregon Fund, the Commission shall solicit recommendations from:

(a) The State Aviation Board for aviation Transportation Projects.

(b) The Freight Advisory Committee for freight Transportation Projects.

~~(c) The Public Transit Advisory Committee for public transit Transportation Projects~~

(~~c~~) The Rail Advisory Committee for rail Transportation Projects.

(~~d~~) The Oregon Business Development Department for marine transportation projects.

(~~e~~) The Oregon Bicycle and Pedestrian Advisory Committee.

(f) Area Commissions on Transportation

(g) Regional Solutions Teams

(3) Prior to selecting Projects to be funded with moneys in the Connect Oregon 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 and Regional Solutions Teams.~~

SECTION 2 includes:

Project Selection process and criteria for Part 1 and Part 2 programs.

Changes to existing rule:

- New language to implement changes made by the 2017 Legislature in HB 2017 (to address the criteria and selection of projects of statewide significance).
- Revised language to reflect changes from the RAC related to construction readiness and match.

(4) On behalf of the Commission, the Department shall solicit recommendations from the committees and entities in section (2) of this rule concurrently. ~~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.

(a) Persons are not eligible for Final Review Committee membership if the person:

(aA) represents an entity that submitted an application for a Connect Oregon Fund grant that is being considered for funding by the Final Review Committee; or

(aB) has a direct financial interest in an application that is being considered for funding by the Final Review Committee.

(b) 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 Connect Oregon 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 Connect Oregon 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 under section (6) of this rule.

PART 1/2 CONSIDERATIONS

(8) For Part 1 and Part 2 projects, ~~the~~ Commission will consider all of the following in its determination of eligible Projects to approve for receipt of funds from the Connect Oregon 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 from any source other than the Connect Oregon Fund.

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

A project will be considered ready for construction if the applicant can demonstrate evidence that may include:

(A) Completion of community engagement/outreach at application submission.

(B) Project development timeline that includes the duration of each development stage and dates of major milestones to reflect project completion within 3 years of award.

(C) Securing matching funds no later than 60 calendar days prior to the Oregon Transportation Commission's final action to select projects.

(D) Site ownership or control no later than 60 calendar days prior to the Oregon Transportation Commission's final action to select projects.

(E) Limited land use decision rendered by the appropriate local government received within six months of execution of a grant agreement. If the use is not permitted outright and/or requires a land use decision to be a legally allowable use on the site, the land use decision shall be rendered no later than 60 calendar

SECTION 2, Part 1/2

Additions from the RAC:

- Project readiness metrics in (8)(e).

days prior to the Oregon Transportation Commission's final action to select projects.

(F) Securing all permits needed for construction within nine months of execution of a grant agreement.

(f) Whether a proposed transportation project has a useful life expectancy that offers maximum benefit to the state; and

(g) Whether a proposed transportation project is located near operations conducted for mining aggregate or processing aggregate as described in ORS 215.213 (2)(d) or 215.283 (2)(b).

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PART 2 SPECIFIC CONSIDERATIONS

(9) For Part 2 projects, the Commission will consider all of the following in its determination of eligible Projects to approve for receipt of funds from the Connect Oregon Fund:

(a) Are transportation projects of statewide significance as defined by:

(A) Consistency with policies and strategies of the Oregon Transportation Plan or other applicable modal or topic plan elements of the Oregon Transportation Plan and one or more of considerations (B), (C) and (D)

(B) Being on a list of transportation projects of statewide significance that have been adopted by a statewide modal committee or applicable Area Commission on Transportation.

(C) Whether a proposed transportation project results in a measurable economic benefit outside the site's county or region as specified in OAR 731-035-0070(2) as demonstrated via the following analyses:

(i) Feasibility Analysis which includes at a minimum:

(I) An assessment of commodities and products likely to be served and their typical market destinations;

(II) An assessment of the anticipated market area the project would serve;

(III) An assessment of the market share in the area that would be impacted by the project; and

(IV) An assessment of the anticipated transportation cost savings that use of the project improvements may generate.

(ii) A Return on Investment Analysis which includes at a minimum:

(I) Number of permanent jobs as a result of the improvement;

(II) Anticipated indirect job and economic growth in the area supported by the project improvement construction and operation.

(D) Whether the proposed project has quantifiable improvements in at least one of the following:

- [\(i\) increasing system velocity or](#)
 - [\(ii\) Increasing system capacity, or](#)
 - [\(iii\) reducing system congestion or conflict](#)
- [points](#)

(b) Enhance or maintain one or more of the following modes of transportation:

- (A) Air.
- (B) Marine.
- (C) Class I railroads.
- (D) Class II railroads.
- (E) Class III railroads.

[\(Ac\)](#) For marine enhancement transportation projects consideration shall be given to projects:

- [\(aA\)](#) Located in a deep-water port.
- [\(bB\)](#) Located in a port with commercial activities where freight is transferred between water and another mode of freight transport.
- [\(cC\)](#) That improves efficiency of port operations or transportation system.
- [\(dD\)](#) That Improves accessibility, connections, safety or mobility between a port and other modes of transportation.
- [\(eE\)](#) That has a significant economic benefit to this state including but not limited to adding jobs, retaining a high number of existing jobs or supporting business expansion at a port facility.
- [\(fF\)](#) That leverage private funding.

[\(Bd\)](#) For marine maintenance transportation projects consideration shall be given to projects:

- (A) That maintains or improves channel depth or width.

SECTION 2, Part 2 Specific Considerations

- (9)(b) – (9)(g) is language directly from statute

(B) That preserves high-use or high-volume dock or pier infrastructure.

(C) That maintains connections to a port facility, including railroads or highways.

(D) That preserves critical equipment necessary to maintain port functionality including but not limited to cranes, lifts, hoists and moorings.

(Ce) For Class II or III railroad enhancement transportation projects consideration shall be given to projects:

(A) That allows a Class II or III railroad to transport a substantial volume or value of freight in relation to other Class II or III railroads.

(B) That Connect a Class II or III railroad to a deep-water port.

(C) That improves efficiency of the line.

(D) That improves capacity of the line.

(E) That connects to new or expanding businesses requiring rail service.

(F) That improve connectivity with Class I railroads.

(Df) For Class II or III railroad maintenance transportation projects consideration shall be given to projects:

(A) That maintains or increase functionality of the railroad.

(B) That maintains or improves a critical bridge, tunnel or other structure necessary to maintain rail service.

(C) That provides jobs to economically disadvantaged areas, as determined by the Oregon Business Development Department by rule.

(D) That helps protect critical rail infrastructure from seismic vulnerability.

(E) That improves railroads that serve industries that are important to this state.

(F) That increases the volume or value of freight.

(G) That improves connections to highways or intermodal terminals.

(Eg) For Class I railroad enhancement transportation projects consideration shall be given to projects:

- (A) That eliminates or improves an identified rail congestion point.
- (B) That improves the capacity or efficiency of the rail system.
- (C) That has a strong benefit to Oregon's economy.
- (D) That improves operations and efficiency of shared rail passenger service providers.
- (E) That improves accessibility to ports or other intermodal terminals.
- (F) Improves the safety or reliability of the rail system.

(f) In selecting Class I railroad maintenance transportation projects consideration shall be given to projects:

- (A) That connects to Class II or III railroads, ports, intermodal terminals or highways.
- (b) That improves seismically vulnerable portions of the railroad or bridges.

(g) A proposed aviation transportation project must benefit a category I, II, III or IV airport, as defined by the Oregon Department of Aviation by rule and the airport must be eligible for federal matching funds. Consideration shall be given to projects:

- (A) That facilitates rescue or recovery efforts following a seismic event.
- (B) Serves joint military and civilian operations or facilitates expanded commercial service, excluding the acquisition or operation of aircraft

SECTION 2, Bike/Ped Considerations

- This section is reserved to add language coming from the Rules Advisory Committee for bike/ped projects funded with Connect Oregon funds.

[\(910\)](#) To award funds that become available due to loan repayment from a previous Project, completion of an ~~A~~approved Project with less funds than the amount awarded, earnings on moneys held in the Connect Oregon Fund, withdrawal, termination as prescribed in OAR 731-035-0070(1) or sanction as prescribed in 731-035-0080(5) of an ~~A~~approved Project the Commission shall select projects for grants in accordance with ORS 367.084 solely, notwithstanding any other provision of division 35 rules.

Section 3

731-035-0065

Dedicated Projects

(1) Dedicated Projects and the maximum funds to be distributed to those Dedicated Projects are:

- (a) Mid-Willamette Valley Intermodal Facility, \$25 million;
- (b) Treasure Valley Intermodal Facility, \$26 million;
- (c) Rail expansion in East Beach Industrial Park at the Port of Morrow, \$6.55 million;
- (d) Extend Brooks rail siding, \$2.6 million.

~~(2) A Preproposal Submission for Dedicated Projects (1)(a) and (1)(b) must be submitted to ODOT no later than December 15, 2017. The purpose of the Preproposal Submission is to evaluate the adequacy of the qualifications of the Project Sponsor to deliver and operate the Dedicated Project and must include:~~

~~(a) Qualifications of Project Sponsor including but not limited to:~~

~~(A) Organizational structure of Project Sponsor and its partners associated with project proposal;~~

~~(B) Intermodal facility development and related experience of Project Sponsor;~~

~~(C) Project Sponsor's capacity to manage an intermodal facility.~~

~~(D) Written demonstration of support for the project including:~~

~~(i) Letter of interest from relevant rail entity; and~~

~~(ii) Letter(s) of support from local businesses, jurisdictions, or organizations~~

~~(b) General project business case including general location of the facility, rationale for the location, expected types of customers and commodities, and preliminary cost estimate for the facility.~~

SECTION 3 includes:

HB 2017 Dedicated project rules

Changes to existing rule:

- Retains language adopted by the OTC to award grants for dedicated projects.
- Removes obsolete language related to pre-proposals.

~~(3) Preproposal Submission for Dedicated Projects (1)(a) and (1)(b) will be reviewed by the Department to determine completeness. Those Preproposal submissions deemed complete by the Department will be reviewed by the Department and Oregon Business Development Department (OBDD) to evaluate the adequacy of the qualifications of the Project Sponsors.~~

~~(a) Only those Preproposal Submissions that are found to be qualified by staffs of the Department and OBDD are eligible for funds to develop a Project Plan.~~

~~(b) The Department shall enter into an Agreement with each Project Sponsor deemed eligible in subsection (3)(a) that submitted a qualified Preproposal Submission. The Agreement shall identify the amount of the funding available to complete the Project Plan and the terms, expectations and schedule to complete the Project Plan. The Department shall administer each Project Plan Agreement consistent with OAR 731-035-0080 except that OAR 731-035-0080 3(d) and OAR 731-035-0080 4(f) shall not apply.~~

~~(c) If the Department receives more than one qualified Preproposal Submission for a single Dedicated Project then the funds to develop the Project Plan for that Dedicated Project will be divided equally among the eligible Project Sponsors. Total funding for development of the Project Plans shall be limited to the amount identified in the Agreement(s). Under no circumstances will the total Plan development costs in the Agreements exceed 5% of the Project funding shown in Section (1).~~

(4) The Department will enter into an Agreement with Project Sponsors for Dedicated Projects (1)(c) and (1)(d) prior to the Project Sponsor beginning work on the Project Plan. The Agreement shall identify the terms, expectations, schedule and maximum funding available to complete the Project Plan.

(5) Project Sponsors must prepare and submit a Project Plan to the Department ~~no later than the date specified in the agreements referenced in subsection (3)(b) or subsection (4)~~ in order to be considered for funding to develop a Dedicated Project.

(a) A Project Plan for Dedicated Projects (1)(a) and (1)(b) shall include:

(A) Detailed site location selection analysis;

(B) Project scope of work, purpose and need;

(C) Evidence of necessary site ownership or control;

(D) Feasibility Analysis which includes at a minimum:

(i) An assessment of commodities and products likely to be served and their typical market destinations;

(ii) An assessment of the anticipated market area the facility would serve;

(iii) An assessment of the market share in the area that would use the facility;

(iv) An assessment of the anticipated transportation cost savings that use of the proposed facility may generate, such as project savings realized by shipping freight via rail in lieu of trucking;

(v) An assessment of the size and scale of the buildings, equipment, and storage areas, etc. necessary to support operation of the facility;

(vi) Documentation sufficient to perform a financial review of the Project Sponsor's ability to deliver project, cover project construction costs until reimbursements are made, and ability to support continuous operation of the facility. Documentation necessary to conduct a financial review includes, but not limited to:

(I) Tax filings;

(II) CPA compiled or reviewed financial statements;

(III) Interim financial statements;

(IV) Debt schedule;

(V) Pro formas with assumptions;

(VI) Sources and uses of capital sufficient to fund the Project.

(E) An estimate of the design and capital construction costs necessary to build the facility necessary to support its operation;

(F) A Return on Investment Analysis which must include the following:

(i) Anticipated annual revenue from operating the facility;

(ii) Number of jobs anticipated to operate the facility;

(iii) Anticipated indirect job and economic growth in the area supported by facility construction and operation.

(G) Written concurrence from an authorized agent from the relevant rail entity(s) indicating agreement with the Project Plan and Proposal associated with its concurrence;

(H) Identify anticipated and/or potential impacts the proposed project may have to nearby transportation facilities and any anticipated needed transportation investments required to support its successful operation;

(I) Expected useful life of the project;

(J) Project schedule including design and construction, acquisition of necessary permits and other key milestones, including how the Project Sponsor will be able to begin construction no later than January 1, 2020.

(K) Written demonstration of project support from public agencies that must approve the project.

(b) A Project Plan for Dedicated Projects (1)(c) and (1)(d) shall include:

(A) Project scope of work, purpose and need;

(B) Anticipated Project benefits including transportation connections;

(C) Description of area and entities expected to be served by the facility;

(D) Project schedule including design and construction, acquisition of necessary permits and other key milestones, including how the Project Sponsor will be able to begin construction no later than January 1, 2020;

(E) Expected useful life of the project;

(F) An estimate of the design and capital construction costs necessary to build the facility necessary to support its operation;

(G) Written concurrence from an authorized agent from the relevant rail entity(s) indicating agreement with the Project Plan and Proposal associated with its concurrence;

(H) Evidence of necessary site ownership or control.

(6) The Department will reimburse Project Sponsors of Dedicated Projects for the eligible costs for preparing a Project Plan upon receipt of invoices documented in the manner agreed to in the Agreement.

(7) In the event a Project Sponsor wishes to submit a Project Plan for any of the Dedicated Projects listed under subsection (1) without seeking reimbursement, they must submit a written letter to the Department no later than December 15, 2017 of their intent to submit a Project Plan. A Project Sponsor who submits a Project Plan without seeking reimbursement must comply with the requirements of 5(a) or 5(b), as appropriate, as well as any schedule conditions as directed by the Department.

(8) The Department will begin the review of Project Plans once all Project Sponsors who have signed Agreements to prepare Project Plans for one of the Dedicated Projects, or who have notified the Department of their intent to submit a Project Plan not eligible for reimbursement have submitted complete Project Plans. Review will begin no later than 60 calendar days from the receipt of the first complete Plan with total review period not to exceed 120 calendar days from the receipt of the last Plan. Project Plans shall be reviewed by the Department in the following manner:

(a) The Department shall review each Project Plan for completeness within 30 calendar days of initial submission. If Department determines Plan materials are not complete, Department may request additional information from Project Sponsor.

(b) Complete Project Plans for projects 1(a) and 1(b) shall be submitted to a neutral third party entity(s) hired by the Department with economic analysis expertise and other relevant experience deemed necessary. Neutral third party entity(s) may request additional information from Project Sponsor within 14 calendar days of neutral party entity(s) acceptance of Plans and Project Sponsor response time will not count towards the 120-day review period. This third party entity(s) shall provide an independent review and evaluation of Project Plans for projects 1(a) and 1(b) and make available to the Department the following:

(A) Summary report on each Project Plan of any key findings, merits, issues, gaps, or concerns they find in the Project Plan;

(B) If more than one Project Plan is received for any individual Dedicated Project, a ranking of those Project Plans;

(C) Recommendation for which, if any, Project Plan(s) the OTC should consider entering into a funding agreement.

(c) The Department shall forward the Project Plans and neutral third party entity(s) summary report(s) (if applicable) to a Dedicated Project Review Committee of individuals with freight and economic development expertise and no direct or indirect conflicts of interest in any of the Dedicated Projects. The Dedicated Project Review Committee shall review and evaluate the Project Plans. Where more than one Project Plan is submitted for a Dedicated Project, the Dedicated Project Review Committee will rank the Plan proposals.

(d) The Department shall forward the Project Plans, neutral third party entity(s) summary report(s), rankings, and recommendations (if applicable), and Dedicated Project Review Committee rankings to the Director of OBDD. The Director of OBDD shall review and evaluate the Project Plans. Where there is more than one Project Plan for an individual Dedicated Project, the Director of OBDD will rank the Project Plans. The Director of OBDD shall provide a letter to the OTC recommending which Project Sponsor the OTC should enter into a funding agreement, if any.

(e) The Department shall forward the Project Plans and neutral third party entity(s) summary report(s), rankings, and recommendations (if applicable), and Dedicated Project Review Committee rankings to the Department Director. The Director shall review and evaluate the Project Plans. Where there is more than one Project Plan for an individual Dedicated Project, the Director will rank the Project Plans. The Director shall provide a letter to the OTC recommending which Project Sponsor the OTC should enter into a funding agreement, if any.

(f) The Department shall present the Project Plans, products from neutral third party entity(s) (if applicable), recommendations and ranking of Dedicated Project Review Committee, and letters of recommendation from Department and OBDD directors to the Oregon Transportation Commission for consideration.

(9) For Project Plans approved by the Oregon Transportation Commission, the Department shall enter into an Agreement with the Project Sponsor prior to the disbursement of Connect Oregon Funds and shall include change management expectations related to the Dedicated Project scope, schedule and budget. Entering into this Agreement does not preclude Project Sponsor from complying with any required federal, state and local permits, requirements or approvals. The Project Sponsor will not be reimbursed for any project costs expended prior to the execution of the Agreement. Reimbursement of Project costs will occur only when there are sufficient funds available in the Connect Oregon Fund to cover the project costs. Total reimbursable Project costs for each Dedicated Project shall not exceed amount included in the Agreement unless Agreement is revised by the Department. At no time will the total reimbursable project costs including Plan reimbursement costs exceed the amount identified in Section 1.

(10) The Department shall administer each Dedicated Project consistent with OAR 731-035-0080. Dedicated Projects are expressly exempt from all match requirements in OAR 731-035-

Section 4

Readiness/Validation Steps

SECTION 4 includes:

New language added to existing rule:

- Validation steps to ensure that projects going before OTC are ready
- Validation step also speeds up the post-award process

731-035-00??

Program Administration

- (1) After the final review committee makes its recommendation to the Oregon Transportation Commission, the department shall validate project information that meets program funding criteria in each project application that will be used in a grant funding agreement for up to 150% of available funding.
- (2) Project applicants shall be required to provide the information requested by the department within five business days of the request.
- (3) Validation shall include:

 - a. Evidence of matching funds available for the project
 - b. Evidence of site ownership or control, or evidence of a land sales agreement or governing body resolution of condemnation action
 - c. Confirmed project delivery schedule that meets program requirements
 - d. Other information identified by the department to complete a grant funding agreement
- (4) The department shall identify those projects that do not meet program criteria and, therefore are, not eligible for funding, prior to the commission's final action to select projects.

Section 5

731-035-0070

Grant Awards and Match

(1) Once a project is selected by the Commission under 731-035-0060 the amount of monies identified by the Commission is considered allocated from ~~the Program Funds~~ to a Recipient for an Awarded Project. If an Agreement with a Recipient has not been executed within 180 days from ~~such date, the commission's selection of the project, the grant is deemed terminated~~ allocation is withdrawn, and the funds may be reassigned by the Commission as prescribed in 731-035-0060(9).

(2) To the extent that proposed Projects meet the qualifications established in OAR 731-035-0050 and 731-035-0060, 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 Chapter 624, OL 2011. The regions consist of the following counties:

- (a) Region one consists of Clackamas, Hood River, Multnomah and Washington Counties;
- (b) Region two consists of Benton, Clatsop, Columbia, 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.

SECTION 5 includes:

- Grant award and match requirements
- Rules covering administration of grants

Changes to existing rule:

- Clean-up changes
- Changes made by RAC to address match

Match

(3) Grants will be awarded only when there are sufficient funds available in the Connect Oregon Fund to cover the costs of the grants.

(a) Grant awards ~~must~~may not exceed 70 percent of the total eligible Project costs or for Class I railroads, 50 percent of the total eligible Project costs.

~~(b)~~ Applicant matching funds must be provided by the Applicant in the form of cash on hand, or through monetary outlay for eligible capital project costs that are reasonable, necessary and directly related to the project. Eligible costs may include costs to acquire, construct, or improve property (land, buildings, and fixed equipment)or to adapt the property to a new or different use consistent with the improvements described in the Awarded Project.~~elements necessary for implementation of the Project, including land, excavation, permits, engineering, payroll, special equipment purchase or rental, and cover at least 30 percent of the eligible Project costs.~~

(A) Monetary outlays for (c) above must have been made within ten years of the application deadline for Connect Oregon grant fund submittals in order to qualify as eligible matching funds.

(B) The acquisition cost of land may only be counted as match toward 15% of the eligible project costs.

(C) Except for Federal Aviation Administration grants other grants or contingent external funding sources must be identified at the time of application submittal and must be awarded or secured in accordance with the timelines identified in OAR 731-035-0060(8)(e).

(i) Federal Aviation Administration grants must be received within one year of the Oregon Transportation Commission final decision on awarded projects.

SECTION 5, Match:

Changes to existing rule:

- Language was added to the rule by the RAC to address match requirements
- Cap on amount of land that may be used as match
- Clarification of eligible costs

Administration

731-035-0080

Project Administration

- (1) The Department will administer all ~~P~~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. ~~Applicant will not be reimbursed for any funds expended prior to the execution of the Agreement except for a Director granted waiver for emergency situations.~~
- (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) ~~Except as identified in subsection (2) of this rule, only~~Only Project costs incurred on or after the effective date of the Agreement are eligible for grant 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) Five percent (5%) of funds received from the Connect Oregon Fund will be withheld from each reimbursement request and shall be released to grant ~~R~~recipient as the following conditions ~~s~~-are met:
 - (A) Eighty percent (80%) of funds withheld shall be released to ~~R~~recipient upon final project acceptance by the Department.
 - (B) Twenty percent (20%) of funds withheld shall be released upon receipt and approval by the Department of a ~~project~~ report that, at a minimum, describes project performance measures and jobs retained or created as a result of the project within 18 months of project acceptance by the Department.
 - (e) 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.

(f) Recipients must separately account for all moneys received from the Connect Oregon Fund in Project accounts in accordance with Generally Accepted Accounting Principles.

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

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

(i) 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.

(j) Recipients, if applicable, must covenant, represent and agree to remain current on all state and local taxes, fees and assessments for the useful life of the Project as prescribed in the Agreement.

(4) The Department may invoke sanctions against a Recipient that fails to comply with the requirements governing the Program as specified in this rule, statute or program guidelines. 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.

~~(e) The Department finds that a railroad operating wholly within Benton and Linn counties has charged landowners an easement fee on or after January 1, 2013 to access a landowner's property.~~

(f) Applicant fails to submit a project report as described in OAR 731-035-0080(3)(~~ee~~)(B).

(g) The Department finds that a Recipient is not current on all applicable state and local taxes, fees and assessments during the term of the Agreement.

(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 or repayment of ~~un~~expended Program Funds ~~or repayment of expended Program Funds~~.
- (d) Bar the Applicant from applying for future ~~assistance~~ Connect Oregon funds.
- (e) Other remedies that may be incorporated into grant 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 15 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.