

OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE  
SECRETARY OF STATE

CHERYL MYERS  
DEPUTY SECRETARY OF STATE  
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK  
DIRECTOR

800 SUMMER STREET NE  
SALEM, OR 97310  
503-373-0701

**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 741  
DEPARTMENT OF TRANSPORTATION  
RAIL DIVISION

**FILED**

07/01/2024 2:33 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Standards to Determine Project Eligibility and Application Procedures for the State Rail Rehabilitation Fund

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/21/2024 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.*

*A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.*

CONTACT: Cary Goodman  
971-332-0928  
cary.goodman@odot.oregon.gov

555 13th Street NE, Suite 3  
Salem, OR 97301

Filed By:  
Lauri Kunze  
Rules Coordinator

NEED FOR THE RULE(S)

ODOT is establishing these rules in compliance with 2023 Legislature's Senate Bill 16.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

The 2023 Legislation (SB 16) and existing ORS (824.016), which can be found on the [oregonlegislature.gov](http://oregonlegislature.gov) and [sos.oregon.gov](http://sos.oregon.gov) website, respectively.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The establishment of these rules is not anticipated to affect racial equity in this state.

FISCAL AND ECONOMIC IMPACT:

See statements below.

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).*

(1) This could impact ODOT, railroads, and local governments by providing a potential match source for Federal grant funds for projects with the purpose of financing investments in passenger and freight rail in Oregon. However, at this time there have been no funds allocated to the State Rail Rehabilitation Fund by the legislature.

(2)(a), (b) and (c) None

---

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

These rules do not impact small business and therefore, small businesses were not involved in their development.

---

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

ODOT staff discussed the matter with the Rail Advisory Committee (RAC). Once funds are added to the State Rehabilitation Fund, ODOT will be required to revise the rules and will look to the RAC to review and provide input on the revised rule.

---

RULES PROPOSED:

741-015-0010, 741-015-0020, 741-015-0025, 741-015-0030, 741-015-0040, 741-015-0050, 741-015-0060, 741-015-0070, 741-015-0080

ADOPT: 741-015-0010

RULE SUMMARY: ORS 824.016 establishes the State Rail Rehabilitation Fund for the purpose of financing investments in passenger and freight rail in Oregon. The purpose of these Chapter 741, Division 15, administrative rules is to establish the State Rail Rehabilitation Program for the distribution of the funds and the procedures, standards and criteria for the program's operation.

CHANGES TO RULE:

#### 741-015-0010

##### Purpose

ORS 824.016 establishes the State Rail Rehabilitation Fund for the purpose of financing investments in passenger and freight rail in Oregon. The purpose of these Chapter 741, Division 15, administrative rules is to establish the State Rail Rehabilitation Program for the distribution of the funds and the procedures, standards and criteria for the program's operation.

Statutory/Other Authority: ORS 814.619, 824.016

Statutes/Other Implemented: ORS 824.016

ADOPT: 741-015-0020

RULE SUMMARY: ORS 824.016 establishes the State Rail Rehabilitation Fund for the purpose of financing investments in passenger and freight rail in Oregon. The purpose of these Chapter 741, Division 15, administrative rules is to establish the State Rail Rehabilitation Program for the distribution of the funds and the procedures, standards and criteria for the program's operation.

CHANGES TO RULE:

741-015-0020

Definitions

For the purposes of these Division 15 rules, the following terms shall have the following definitions:¶

(1) "Applicant" means:¶

(a) A railroad doing business within the state of Oregon;¶

(b) A public body as defined in ORS 174.109; or¶

(c) A foreign or domestic company incorporated or registered with the Oregon Secretary of State to do business within the state of Oregon.¶

(2) "Approved Project" means a Project that the Department has determined will receive funding through the State Rail Rehabilitation Fund.¶

(3) "Department" is as defined in ORS 184.610(2).¶

(4) "Director" is as defined in ORS 184.610(3).¶

(5) "Program" means the State Rail Rehabilitation Fund Program as authorized by ORS 824.016 and these OAR 741, Division 15, implementing administrative rules.¶

(6) "Program Funds" means the money appropriated by the Oregon Legislature to the State Rail Rehabilitation Fund for the purpose of paying for projects or using as match to leverage federal discretionary grant funding for rail projects.¶

(7) "Rail Needs Inventory" means a project database and overarching decision framework to guide investment and programming decisions, as described in the Oregon State Rail Plan Implementation Plan (<https://www.oregon.gov/odot/rptd/pages/oregon-state-rail-plan-implementation.aspx>).¶

(8) "Rail Project" means any or all of the expenditures for which moneys in the State Rail Rehabilitation Fund are appropriated, as described in ORS 824.016(1).¶

(9) "Railroad" is as defined in ORS 824.020.

Statutory/Other Authority: ORS 814.619, 824.016

Statutes/Other Implemented: ORS 824.016

ADOPT: 741-015-0025

RULE SUMMARY: ORS 824.016 establishes the State Rail Rehabilitation Fund for the purpose of financing investments in passenger and freight rail in Oregon. The purpose of these Chapter 741, Division 15, administrative rules is to establish the State Rail Rehabilitation Program for the distribution of the funds and the procedures, standards and criteria for the program's operation.

CHANGES TO RULE:

741-015-0025

Application Submission Periods

(1) The Department will announce periods for submitting applications for funding from the State Rail Rehabilitation Fund, as funding is made available.¶

(2) The Department reviews Project applications for compliance with the requirements in OAR 741-015-0040 and as prescribed in OAR 741-015-0050.¶

(3) If a Project is not funded, the Applicant may resubmit the Project during subsequent application submission periods prescribed by the Department.

Statutory/Other Authority: ORS 814.619, 824.016

Statutes/Other Implemented: ORS 824.016

ADOPT: 741-015-0030

RULE SUMMARY: ORS 824.016 establishes the State Rail Rehabilitation Fund for the purpose of financing investments in passenger and freight rail in Oregon. The purpose of these Chapter 741, Division 15, administrative rules is to establish the State Rail Rehabilitation Program for the distribution of the funds and the procedures, standards and criteria for the program's operation.

CHANGES TO RULE:

741-015-0030

Application Requirements

Applicants interested in receiving funds from the State Rail Rehabilitation Fund may submit to the Department an application. The application shall be in a format prescribed by the Department and shall contain or be accompanied by such information as the Department may require. If the applicant intends to use the funds as a match for a federal grant, they must clearly state that in their application.

Statutory/Other Authority: ORS 814.619, 824.016

Statutes/Other Implemented: ORS 824.016

ADOPT: 741-015-0040

RULE SUMMARY: ORS 824.016 establishes the State Rail Rehabilitation Fund for the purpose of financing investments in passenger and freight rail in Oregon. The purpose of these Chapter 741, Division 15, administrative rules is to establish the State Rail Rehabilitation Program for the distribution of the funds and the procedures, standards and criteria for the program's operation.

CHANGES TO RULE:

741-015-0040

Application Review and Approval

(1) If the proposed project is not already on the Rail Needs Inventory (RNI), the applicant must complete and submit the RNI Intake Form (insert hyperlink to the Intake Form). The Department shall review the Project to determine if the Project will be added to the RNI.

(2) Upon receipt of an application, the Department shall determine whether the Project is eligible for Program Funds. To be eligible, the Applicant and Project must meet the following criteria:

(a) The Project applicant is a railroad doing business within the state of Oregon; a public jurisdiction within the state of Oregon; or a company, foreign or domestic, incorporated or registered with the Oregon Secretary of State to do business within the state of Oregon.

(b) The Project will assist in developing or rehabilitating railroad infrastructure that:

(A) Supports state and local government efforts to attract new industries to Oregon, or

(B) Keeps and encourages expansion of existing industries or improves the functional utility of the state's railroad network by increasing capacity, enhancing safety, or reducing greenhouse gases.

(c) The Project will serve the public good and would benefit from the provision of public assistance.

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

(e) The Project is consistent with the goals of the Oregon State Rail Plan, and

(f) The applicant is current on all state and local taxes, fees, and assessments.

(3) If the Project is not eligible, the Department shall, within 60 days:

(a) Reject the application; or

(b) Request additional information the applicant must provide to establish eligibility.

Statutory/Other Authority: ORS 814.619, 824.016

Statutes/Other Implemented: ORS 824.016

ADOPT: 741-015-0050

RULE SUMMARY: ORS 824.016 establishes the State Rail Rehabilitation Fund for the purpose of financing investments in passenger and freight rail in Oregon. The purpose of these Chapter 741, Division 15, administrative rules is to establish the State Rail Rehabilitation Program for the distribution of the funds and the procedures, standards and criteria for the program's operation.

CHANGES TO RULE:

741-015-0050

Project Funding Priorities

- (1) The Department shall prioritize a Project for funding that demonstrates one or more of the following:¶  
(a) The Project will use Program Funds or other funding sources to leverage federal discretionary grant funding.¶  
(b) Whether the Project leverages other development efforts by the state or other government units.¶  
(c) Whether the Project advances the goals for the Oregon rail system as outlined by the Oregon Department of Transportation in the Oregon State Rail Plan.¶  
(2) The methodology for analyzing and prioritizing Projects is described in Appendix C of the Oregon State Rail Plan - Implementation Plan (<https://www.oregon.gov/odot/rptd/pages/oregon-state-rail-plan-implementation.aspx>).

Statutory/Other Authority: ORS 814.619, 824.016

Statutes/Other Implemented: ORS 824.016

ADOPT: 741-015-0060

RULE SUMMARY: ORS 824.016 establishes the State Rail Rehabilitation Fund for the purpose of financing investments in passenger and freight rail in Oregon. The purpose of these Chapter 741, Division 15, administrative rules is to establish the State Rail Rehabilitation Program for the distribution of the funds and the procedures, standards and criteria for the program's operation.

CHANGES TO RULE:

741-015-0060

Program Expenditures

(1) Project funds, when available and approved, may be awarded for all or for a portion of a Project's cost depending upon applicant's ability to access other funds to invest in the Project.¶¶

(2) Any single Project may not receive more than 50% of the funds available to the Program during any single application period.¶¶

(3) An applicant's share of Project costs may be cash, or a combination of cash and in-kind services.¶¶

(4) When the applicant intends to use Approved Project funding as match for obtaining a federal discretionary grant, the Department will reserve the approved amount in the program's account pending outcome of the federal grant application process. If the federal grant is awarded, the reserved state match funds will be released in accordance with procedures in OAR 741-015-0070. If the federal grant application is unsuccessful, the Department will rescind approval of Project funding and the reserved match money will be returned to the State Rail Rehabilitation Fund general account.

Statutory/Other Authority: ORS 814.619, 824.016

Statutes/Other Implemented: ORS 824.016



ADOPT: 741-015-0070

RULE SUMMARY: ORS 824.016 establishes the State Rail Rehabilitation Fund for the purpose of financing investments in passenger and freight rail in Oregon. The purpose of these Chapter 741, Division 15, administrative rules is to establish the State Rail Rehabilitation Program for the distribution of the funds and the procedures, standards and criteria for the program's operation.

CHANGES TO RULE:

741-015-0070

Project Administration

(1) The Department and the successful applicant shall execute a contract prior to the disbursement of Program Funds for an Approved Project.

(2) The successful applicant shall submit documentation of the projected costs for an Approved Project to the Department prior to the disbursement of Program Funds.

(3) Disbursement of Program Funds may not exceed one disbursement per month.

(4) Disbursement of Program Funds for an Approved Project that is match for a federal grant will be proportional to the overall project and may not exceed one disbursement per month.

(5) Upon request, the successful applicant must provide the Department a written report on the activities or results of the Project and any other information that may be reasonably requested by the Department.

(6) An amendment to an Approved Project contract is required to change a Project's cost, scope, objectives, or timeframe. Any amendment to an approved Project contract must conform to the requirements of these OAR 741, Division 15 rules.

Statutory/Other Authority: ORS 814.619, 824.016

Statutes/Other Implemented: ORS 824.016

ADOPT: 741-015-0080

RULE SUMMARY: ORS 824.016 establishes the State Rail Rehabilitation Fund for the purpose of financing investments in passenger and freight rail in Oregon. The purpose of these Chapter 741, Division 15, administrative rules is to establish the State Rail Rehabilitation Program for the distribution of the funds and the procedures, standards and criteria for the program's operation.

CHANGES TO RULE:

741-015-0080

Sanctions, Exceptions and Appeals

(1) The Department may impose sanctions against a successful applicant that fails to comply with the requirements governing the Program. The Department may not impose sanctions until the applicant has been notified in writing of deficiencies and has been given a reasonable time to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:¶

(a) Activities for Projects not funded as a match for federal grants have not begun within six months of notification of the award of money from the State Rail Rehabilitation Fund;¶

(b) For Projects funded as a match for federal grants, the successful applicant fails to notify the Department within 30 days of federal grant decision;¶

(c) The successful applicant fails to meet state statutory requirements;¶

(d) There is a significant deviation in the Project from the Approved Project contract; or¶

(e) 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.¶

(2) One or more of the following sanctions may be imposed by the Department:¶

(a) Revoke an existing award.¶

(b) Withhold undisbursed Program Funds.¶

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

(d) Bar the applicant from applying for future assistance under this Program.¶

(e) Any other sanction that may be incorporated into a contract related to the Project.¶

(3) The sanctions set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and sanctions provided by law or under the contract.¶

(4) The Director or the Director's designee will consider an appeal of the Department's funding decision. Only an applicant may appeal. An appeal must be submitted in writing to the Director or the Director's designee within 30 days of the event or action that is being appealed.

Statutory/Other Authority: ORS 814.619, 824.016

Statutes/Other Implemented: ORS 824.016