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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 734
DEPARTMENT OF TRANSPORTATION
DELIVERY AND OPERATIONS DIVISION

FILED

09/23/2024 1:00 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Establishes grant program for environmental product declarations of specified construction materials.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/21/2024 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.

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Filed By:
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Rules Coordinator

HEARING(S)

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

DATE: 10/15/2024

TIME: 3:00 PM

OFFICER: Staff

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-719-359-4580

CONFERENCE ID: 83525511937

SPECIAL INSTRUCTIONS:

Passcode: 437185

NEED FOR THE RULE(S)

ODOT proposes to adopt OAR 734, Division 023, to establish the Environmental Product Declaration (EPD) Support Fund and a grant program for environmental product declarations, as required by ORS 184.879. The proposed rules establish the grant program as follows:

- Establish the grant program's purpose to offer financial support to bidders or proposers on an ODOT invitation to bid or request for proposal and must provide an EPD (OAR 734-023-0005);
- Define key words and acronyms applicable to the grant program, including the scope of materials covered by the program (concrete, asphalt paving mixtures and steel, as defined in ORS 184.879) (OAR 734-023-0015);
- Describe grant application procedures and application submission periods, including when ODOT will announce the period for submitting applications (OAR 734-023-0030);
- Set out eligibility requirements for applicants (Bidders and Proposers as defined in ORS 279A.010); including the requirement that eligible applicants may not have previously received external funding to develop an EPD for materials subject ORS 184.879) (OAR 734-023-0040);

- Describes activities eligible for a reimbursement grant (education costs for employees and general fees related to the preparation and publication of relevant EPDs) (OAR 734-023-0050); and
- Describes grant application requirements (OAR 734-023-0060), the Department's grant application review processes, including limiting grant eligibility to those EPDs that have not previously received funding to offset costs of preparation the EPD (OAR 734-023-0070), and award amount specifications, including a limit on reimbursements, which may not exceed \$7,000 or 80% of total costs associated with eligible activities per applicant, whichever is less. (OAR 734-023-0080).

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

House Bill 4139 - <https://olis.oregonlegislature.gov/liz/2022R1/Downloads/MeasureDocument/HB4139/Enrolled>

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

The adoption of the proposed rules for the HB 4139 grant program is designed to support smaller businesses, which inherently promotes racial equity by providing opportunities to a diverse range of business owners. Since smaller businesses often include those owned by individuals from underrepresented racial groups, the rules are expected to have a neutral to positive impact on racial equity. It is important to note the primary goal of these rules is to ensure fair access and distribution of resources without disproportionately favoring or disadvantaging any particular group, including any particular racial group.

FISCAL AND ECONOMIC IMPACT:

The fiscal and economic impact of the grant program designed to offset costs for developing EPDs is expected to be positive. No entity is required to participate in the grant program. By doing so, the applicant acknowledges there is a cost to the applicant to develop an EPD and to prepare and submit grant application materials. The Department does not have an estimate for the cost of applying for an EPD grant.

From what Department staff have learned, it may be up to \$10,000 of administrative effort (staff time) and additional costs of either a professional services (Life Cycle Assessment Consultant or subscription to an online EPD tool) to initially get the first material supplier's facility ready to generate an EPD. Once this first facility can generate EPDs, the time and effort are reduced dramatically. These costs for an initial EPD vary from approximately \$5,000 to \$50,000 based on the type of covered material.

By reimbursing up to \$7,000, or 80% of total costs of developing an EPD, whichever is less, the program significantly reduces the financial burden on bidders or proposers who participate in the grant program.

Although the grant program will incur additional costs to ODOT through program administration, the exact amount is currently undetermined. It is estimated that 0.1 – 0.2 FTE will be required to set-up and administer the grant program. The long-term economic benefits, such as enhanced market competitiveness and the promotion of lower-carbon products, are likely to outweigh these initial expenditures. The program's support for sustainable development also aligns with broader economic goals of reducing environmental impact and fostering innovation in the materials sector.

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) ODOT is the only known state agency that will be impacted by administration of the HB 4139 grant program. It is estimated 0.1 – 0.2 FTE will be required to set-up and administer the grant program. There are no anticipated economic

impacts to local governments because the EPD requirement and the related grant program do not involve local government agency projects. Members of the public are not impacted by these proposed rules because they are ineligible for grants under these proposed rules, unless they qualify as a bidder or proposer for purposes of submitting or preparing an EPD. Bidders or proposers on procurements that require EPDs will have some cost associated with developing a grant application, but the cost is estimated to be minimal.

(2) Because the grant program targets small businesses, offsetting costs associated with developing EPDs, the Department anticipates a positive effect on small businesses who are bidders or proposers on Department procurements subject to the EPD requirement. If the small business chooses to apply, there will be costs associated with preparing and submitting the application. The program rules are drafted to offer a low bar for entry in terms of being awarded grant funding for reimbursement of EPD creation. Staff – in consultation with industry associations – anticipate ten entities will seek reimbursement from the grant program. It is also understood that an EPD can be created under \$7,000, which is the maximum award amount for the grant. All other small businesses will not be impacted from the adoption of the grant program’s administrative rules.

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

Small business representatives are part of the Technical Advisory Committee / Rules Advisory Committee that ORS 184.882 established. Members include National Association of Minority Contractors, Association of General Contractors, Oregon Concrete and Aggregate Producers Association, Asphalt Pavement Association of Oregon, and others.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

734-023-0005, 734-023-0015, 734-023-0030, 734-023-0040, 734-023-0050, 734-023-0060, 734-023-0070, 734-023-0080

ADOPT: 734-023-0005

RULE SUMMARY: Establishes the grant program’s purpose to offer financial support to bidders or proposers who must provide an EPD in order to respond to an ODOT invitation to bid or request for proposal.

CHANGES TO RULE:

734-023-0005

Purpose of the Rules

(1) ORS 184.879 requires an environmental product declaration of covered materials to be submitted to the Department to facilitate the Department’s development of strategies to reduce greenhouse gas emissions from the Department’s purchase and use of Covered Materials.¶

(2) The purpose of these rules, OAR 734, Division 23, is for the Department to establish the Environmental Product Declaration Support Fund as the account required by ORS 184.879 and provide grants to bidders and proposers that require financial assistance to prepare environmental product declarations.

Statutory/Other Authority: ORS 184.619, 184.879

Statutes/Other Implemented: ORS 184.879

ADOPT: 734-023-0015

RULE SUMMARY: Defines key words and acronyms applicable to the grant program, including the scope of materials covered by the program (concrete, asphalt paving mixtures and steel) as defined in ORS 184.879.

CHANGES TO RULE:

734-023-0015

Definitions and Acronyms

For the purposes of these OAR 734, Division 23 rules, the definitions in ORS 184.879 and the following terms apply:¶

(1) "Applicant" means a "bidder" or "proposer," as those terms are defined in ORS 279A.010, that applies for funds from the Environmental Product Declaration Support Fund.¶

(2) "Covered materials" means:¶

(a) Concrete, including ready mix concrete, shotcrete, precast concrete and concrete masonry units;¶

(b) Asphalt paving mixtures; and¶

(c) Steel, including rebar, reinforcing steel and structural steel, hot-rolled sections, hollow sections, plate steel and cold-formed steel.¶

(3) "Department" means the Oregon Department of Transportation.¶

(4) "Director" means the Director of the Oregon Department of Transportation or the Director's designee.¶

(5) "Environmental product declaration" has the meaning given in ORS 184.879. ¶

(6) "Material supplier" means a company that produces or supplies a covered material to the Department.¶

(7) "Program" means the Environmental Product Declaration Support Fund Program established by these OAR 734, Division 23, rules to administer the Environmental Product Declaration Support Fund.¶

(8) "Program funds" means the money appropriated by the Legislature to the Environmental Product Declaration Support Fund.¶

(9) "Recipient" means an applicant that is awarded grant funds by the Department from the Environmental Product Declaration Support Fund.

Statutory/Other Authority: ORS 184.619, 184.879

Statutes/Other Implemented: ORS 184.879

ADOPT: 734-023-0030

RULE SUMMARY: Describes grant application procedures and application submission periods, including when ODOT will announce the period for submitting applications.

CHANGES TO RULE:

734-023-0030

Grant Application Procedure and Application Submission Periods

(1) The Department will announce the period for submitting applications for funding from the Environmental Product Declaration Support Fund no later than December 31, 2026.¶

(2) The Environmental Product Declaration Support Fund operates on a first-come, first-served basis. Applications are reviewed for compliance with the requirements set forth in OAR 734-023-0040 through 734-023-0060. The Department will award funding for applications that meet the requirements so long as there are remaining funds available.¶

(3) Applications are deemed complete upon receipt of all required documentation as described in OAR 734-023-0060.¶

(4) Subject to the availability of funds in the Environmental Product Declaration Support Fund, the Department will award grants to completed applications that it finds meet all eligibility criteria.¶

(5) The Environmental Product Declaration Support Fund will close once the Department has awarded all available funds.

Statutory/Other Authority: ORS 184.619, 184.879

Statutes/Other Implemented: ORS 184.879

ADOPT: 734-023-0040

RULE SUMMARY: Sets out eligibility requirements for applicants (Bidders and Proposers as defined in ORS 279A.010); including the requirement that eligible applicants may not have previously received external funding to develop an EPD for materials subject ORS 184.879).

CHANGES TO RULE:

734-023-0040

Who May Apply for Environmental Product Declaration Support Fund Grants

(1) An eligible applicant for the Environmental Product Declaration Support Fund is a Bidder or Proposer, as defined in ORS 279A.010.¶

(2) An eligible applicant, if applicable, must also be current on all state and local taxes, fees and assessments.¶

(3) At the time of applying to the Environmental Product Declaration Support Fund for a grant, an eligible applicant may not have previously received external funding to develop an environmental product declaration for a covered material.

Statutory/Other Authority: ORS 184.619, 184.879

Statutes/Other Implemented: ORS 184.879

ADOPT: 734-023-0050

RULE SUMMARY: Describes activities eligible for a reimbursement grant (education costs for employees and general fees related to the preparation and publication of relevant EPDs).

CHANGES TO RULE:

734-023-0050

Eligible Activities for Environmental Product Declaration Support Fund Grants

An eligible applicant, as described in OAR 734-023-0040, may apply for reimbursement for activities related to the publication of a third party verified environmental product declaration that complies with ISO 14025 for a covered material that is subject to ORS 184.879. Eligible activities include:

- (1) Education costs for employees related to the preparation of an environmental product declaration; and
- (2) Fees directly related to the preparation and publication of a relevant environmental product declaration.

Statutory/Other Authority: ORS 184.619, 184.879

Statutes/Other Implemented: ORS 184.879

ADOPT: 734-023-0060

RULE SUMMARY: Describes grant application requirements.

CHANGES TO RULE:

734-023-0060

Grant Application Requirements

(1) An applicant interested in receiving a grant from the Environmental Product Declaration Support Fund must submit an application to the Department in conjunction with a response to a Department invitation to bid or request for proposal that includes the procurement of covered materials. The application must be in a format prescribed by the Department and contain or be accompanied by such information required by the Department, including:

(a) A formal bid or proposal to contract with the Department, submitted to the Department within the last 12 months from the date of applying for grant funding, or other documentation deemed appropriate by the Department to prove compliance with the eligibility requirement of OAR 734-023-0040(1);

(b) A web link to the published third party verified environmental product declaration that complies with ISO 14025;

(c) An invoice that details all expenses related to the preparation and publication of the environmental product declaration;

(d) Copies of receipts from qualified expenses; and

(e) Identification of the business or entity that is providing the covered material to the bidder or proposer for which an environmental product declaration is required by the Department.

(2) Incomplete applications will be deemed ineligible by the Department.

Statutory/Other Authority: ORS 184.619, 184.879

Statutes/Other Implemented: ORS 184.879

ADOPT: 734-023-0070

RULE SUMMARY: Describes the Department's grant application review processes, including limiting grant eligibility to those EPDs that have not previously received funding to offset costs of preparation the EPD.

CHANGES TO RULE:

734-023-0070

Application Review

(1) The Department reviews applications it receives to determine:¶

(a) Whether the application is complete, in accordance with the requirements of OAR 734-023-0060; ¶

(b) Whether the applicant and the project are eligible for program funds, in accordance with the requirements of OAR 734-023-0040 and 734-023-0050; and¶

(c) Whether the application for reimbursement is for a new environmental product declaration of a covered material that has not previously received funding from the Environmental Product Declaration Support Fund or other known external funding source intended to offset costs associated with preparing environmental product declarations.¶

(2) If, pursuant to section (1) of this rule, the Department determines that an application is not complete, the applicant or project is not eligible for program funds, or the application or reimbursement is for an environmental product declaration of a covered material that has previously received funding, the Department will notify the applicant that the application request is incomplete or ineligible. The Department may also determine that an application is ineligible or incomplete as follows:¶

(a) An application is ineligible if the applicant fails to meet the eligibility requirements in OAR 734-023-0040 and 734-023-0050 or if the application contains false or misleading information.¶

(b) An application is incomplete if it is not in the format prescribed by the Department or is not accompanied by information required by the Department.¶

(3) The Department will consider protests of the eligibility or completeness determination for the project. Only the applicant may protest. An applicant must submit a protest in writing to the Department within 15 days of the event or action that is being protested. The Department's Director, or the Director's designee, will make a final determination of an applicant's protest.¶

(4) The Department will make all eligible applications available to the House Bill 4139 Technical Advisory Committee.

Statutory/Other Authority: ORS 184.619, 184.879

Statutes/Other Implemented: ORS 184.879

ADOPT: 734-023-0080

RULE SUMMARY: States award amount specifications, including a limit on reimbursements, which may not exceed \$7,000 or 80% of total costs associated with eligible activities per applicant, whichever is less.

CHANGES TO RULE:

734-023-0080

Grant Awards and Match

(1) Once an application is reviewed by the Department under OAR 734-023-0070, and deemed eligible by the Department under OAR 734-023-0040 through 734-023-0060, the amount of monies identified by the Department is considered allocated from the Environmental Product Declaration Support Fund to a recipient based on their application.¶

(2) Grants are awarded only when there are sufficient funds available in the Environmental Product Declaration Support Fund to cover the costs of the grants.¶

(3) Reimbursement per applicant may not exceed \$7,000 or 80% of total costs associated with eligible activities described in OAR 734-023-0050, whichever is less.

Statutory/Other Authority: ORS 184.619, 184.879

Statutes/Other Implemented: ORS 184.879