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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 731
DEPARTMENT OF TRANSPORTATION

FILED

08/29/2024 10:42 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amends, repeals, adds new rules related to toll operations, project initiation, project authorization, and rates

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/03/2024 12:00 AM

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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HEARING(S)

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

DATE: 09/18/2024

TIME: 12:00 PM - 1:30 PM

OFFICER: Staff

REMOTE HEARING DETAILS

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

PHONE NUMBER: 1-253-215-8782

CONFERENCE ID: 82548204158

SPECIAL INSTRUCTIONS:

Passcode: 259 370

NEED FOR THE RULE(S)

The rule repeals rules, amends existing rules, and adds new rules due to legislation passed in 2017 (House Bill 2017) and 2021 (House Bill 3055), to align with state policies and plans (e.g. Oregon Highway Plan, Oregon Transportation Plan, etc.), federal toll requirements, address changes for legal clarification, and to meet current and anticipated toll industry practices to implement a modern electronic toll system. The following list includes, but is not limited to, changes that necessitated amendments or additions to the existing toll rules, which are located in OAR Chapter 731, Division 40:

ORS 383.001 was amended to provide direction about the connection between variable rate tolls and the goals of reducing congestion and supporting the state's greenhouse emissions reduction goals.

ORS 383.003 added definitions of electronic toll collection system, variable rate tolling, and tollway project revenue bonds.

ORS 383.009 changed the name of State Tollway Account to Toll Program Fund.

ORS 383.004 updated the factors for which the Department could authorize toll projects.

ORS 383.004 updated financial terms for toll funding and financing.

ORS 383.035 updated the approach to establishing civil penalties and clarified that the Department had authority to remit or reduce civil penalties, but not fees or unpaid tolls.

ORS 383.045 clarified the evidence that could be captured in an electronic toll collection system.

ORS 383.075 gave the Department authority to make rules around data collection and privacy requirements.

ORS 383.150 updated the factors that needed to be met prior to the Oregon Transportation Commission establishing a toll and provided direction on interoperability with Washington State's toll system.

Oregon Highway Plan adopted policies provided direction for the approach to set toll rates, revise toll rates, and address factors like climate, equity, safety, and congestion, which are reflected in the rules.

Oregon Innovative Partnership Programs (OIPP) rules, which are identified in OAR Chapter 731 Division 70, were updated in 2022. This update provided the need to clarify how the tolling rules and OIPP rules will apply to public-private-partnerships and unsolicited proposals.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

2021 House Bill 3055 (available from the Oregon State Legislature)

2017 House Bill 2017 (available from the Oregon State Legislature)

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

Throughout the toll rulemaking process, the Oregon Department of Transportation (ODOT) has centered its planned Toll Program operations around the needs and experiences of equity communities to ensure it is advancing equity goals. Building from the Oregon Toll Projects' Equity Framework, for direction in this rulemaking process we identified the following groups as equity communities: people experiencing low-incomes, racial and ethnic minority populations, Tribal governments, older adults, children, woman and minority-owned small businesses, persons with limited English language proficiency or who speak non-English languages, and persons living with a disability. Additionally, we were intentional about geographic diversity to reach Oregon's rural communities.

ODOT convened the Statewide Toll Rulemaking Advisory Committee (STRAC) in January 2023 to help develop Oregon Administrative Rules that determine how customers interact with the toll system and how toll rates are set, adjusted, and monitored. To ensure that the issue of racial equity was adequately addressed, the Department was intentional in the membership of the committee. This resulted in establishing a committee that includes:

Members of diverse racial, ethnic, genders, orientations, abilities, and age backgrounds.

Geographic diversity which included voices from throughout the state.

Small business owners and trucking operators, especially those who are woman- or minority-owned.

Perspectives from outside of Oregon that have a history of interacting with tolling.

A past and an active Equity & Mobility Advisory Committee (EMAC) member.

Voices from the public health and education community, who have not been traditionally included in transportation discussions.

The package of rules outlines and updates the process for initiating tollway projects, toll system operations, setting toll rates, revising toll rates, toll data privacy, and public records. This package has been reviewed and edited with a focus towards equity.

To determine the equity impacts of the toll rules, ODOT worked with the STRAC to identify the persons and groups that are subject to the rules, the groups that are likely to be most impacted by the rules initially, and the impacts the rules will have on equity. Initially, there were three planned toll projects: the I-205 Improvements Project, and the Interstate Bridge Replacement Project, and the Regional Mobility Pricing Project. These projects were located in the Portland Metropolitan area and the studies completed for these projects informed rulemaking about the groups most likely to be affected by these tolling projects. Because these projects are not advancing at this time, the rates for the proposed for these projects are not included in this package of rules.

Throughout the STRAC rulemaking process to-date, ODOT has made the following changes or commitments in our approach to the toll system:

Being interoperable with Washington's toll system on day one and pursuing agreements with other existing toll operators (e.g. E-ZPass) to simplify enrollment and payment processes for customers.

Reinforcing our commitment to state law requirements that limit access to customer data from tolling. We will not be taking and storing pictures of people. Information will only be shared with law enforcement if there is a court order.

Adding "process equity" and "outcome equity" as defined terms in the toll rules to inform how equity will be incorporated into the design, implementation, and operations of toll projects and the system.

FISCAL AND ECONOMIC IMPACT:

The rules do not establish tolling rates. This will be a future process that is identified per project and adopted into the rules.

Although the rules do not establish toll rates, the system for initiating tollway projects and toll rate setting and adjustments are identified in the rules. This is meant to provide clarity to the public on how various goals are navigated for decision-making and how tolls will be reviewed and adjusted in the future. Additionally, these rules provide guidance to ODOT to work with existing toll agencies to lessen the time needed to register for a new toll account if a customer already has one with another toll agency.

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) These rules establish statewide regulations related to toll project authorization, toll system operations, setting toll rates, revising toll rates, toll data privacy, and public records. These rules do not establish tolls on any state or federal road, highway or interstate. There are no compliance requirements on state agencies, local governments, or members of the public and therefor no economic impact of these rules.

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

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

ODOT has involved small businesses through the development of these rules. Owners and representatives of small businesses and organizations that include small businesses were included in the Statewide Toll Rulemaking Advisory Committee (STRAC), focus groups, discussion groups, and interviews.

Small businesses have been involved through multiple members on the STRAC. Some representatives were small business owners themselves or representing organizations that include small business owners. Geographic diversity which included voices from throughout the state. Perspectives from outside of Oregon that have a history of interacting with tolling.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

731-040-0010, 731-040-0020, 731-040-0030, 731-040-0031, 731-040-0039, 731-040-0041, 731-040-0050, 731-040-0051, 731-040-0052, 731-040-0053, 731-040-0054, 731-040-0055, 731-040-0056, 731-040-0057, 731-040-0058, 731-040-0059, 731-040-0061, 731-040-0065, 731-040-0075

AMEND: 731-040-0010

RULE SUMMARY: Removed reference to OIPP program.

CHANGES TO RULE:

731-040-0010

Purpose ¶

(1) ~~OAR 731-040-0010 through 731-040-0064, division 40, describe the process for initiating, evaluating, authorizing and administering tollway projects on state right of way proposed by private entities, local or regional governments and the Oregon Department of Transportation; and the establishment of tolling and toll rates. They combinations thereof. ¶~~

(2) OAR 731, division 40 includes requirements for submitting project proposals; guidelines for considering financial and other issues; and requirements for consistency with other local, state and federal policies and processes. OAR 731-040-0010 through 731-040-0064 shall be cited as the Tollway Rules.¶

(2) Public-Private Partnerships as defined in OAR 731-070-0005 and proposed under the Oregon Innovative Partnerships Program (ORS 367.800 through 367.826) are subject to rules established in chapter 731, division 70, in addition to these rules as applicable; and the establishment and adjustment of toll rates by the Oregon Transportation Commission.

Statutory/Other Authority: ~~ORS 184.616, 184.619, 383.004, 383.015~~

Statutes/Other Implemented: ORS 383

AMEND: 731-040-0020

RULE SUMMARY: Added terms used in revisions; deleted terms no longer used in the rules.

CHANGES TO RULE:

731-040-0020

Definitions ¶¶

As used in OAR ~~731-040-0020 through 731-040-0064~~, division 40 rules:¶¶

(1) "Commission" means the Oregon Transportation Commission.¶¶

(2) "Department" means the Department of Transportation.¶¶

(3) "Director" means the Director of the Oregon Department of Transportation or the designee thereof.¶¶

(4) "Interstate bridge" means a bridge over both a waterway that contains a boundary line with another state and the boundary line.¶¶

(5) ~~"Private entity" has the meaning given in ORS 383.003.¶¶~~

~~(6) "Related facility" means a public-private partnership under the Oregon Innovative Partnership Program, as defined in OAR 731-070-0010.¶¶~~

(6) "Outcome equity" means acknowledging existing inequities and striving to prevent historically excluded and underserved communities identified at the project-level from bearing a disproportionate burden of negative effects that directly result from the project, and seeking to improve transportation accessibility, options for travel, and affordability for the identified community or communities.¶¶

~~(7) "Private entity" has the meaning given in ORS 383.003.¶¶~~

(78) "State Tollway Account Process equity plan" means a plan for implementing a Tollway Project, from design to post-implementation monitoring and evaluation, that encourages the meaningful participation of individuals and groups from historically excluded and underserved communities, as identified for the Tollway Project.¶¶

~~(9) "Related facility" has the meaning given in ORS 383.003.¶¶~~

~~(810) "Toll" has the meaning given in ORS 383.003.¶¶~~

~~(911) "Tollway operator" has the meaning given in ORS 383.003.¶¶~~

~~(102) "Tollway project" has the meaning given in ORS 383.003.¶¶~~

(113) "Toll-rate" means either a specific amount charged for the use of a tollway by a specific category of vehicle, or the specific formula for calculating an amount charged for the use of a tollway by a specific category of vehicle; way Concept Proposal" or "TCP" means an unsolicited preliminary proposal for a tollway project that is used to investigate the project's feasibility and potential impacts and benefits.¶¶

~~(124) "Unit of government" has the meaning given in ORS 383.003.¶¶~~

~~[Publications: Publications referenced are available from the agency.]~~

~~Statutory/Other Authority: ORS 184.616, 184.619, 383.003, 383.004, 383.014, 383.015~~

~~Statutes/Other Implemented: ORS 383~~

AMEND: 731-040-0030

RULE SUMMARY: Amended rule title, amended rule text to reflect new process and fee for resubmitting proposals.

CHANGES TO RULE:

731-040-0030

Initiation by Public and Private Entities and Administrative Fee ¶

~~(1) A private entity, individual or unit of government may propose a tollway project at any time. The department shall not assess an administrative fee to evaluate proposals from a unit of government. ¶~~

~~(2) Private entities may propose tollway projects at any time. The department shall charge submit an application for review of an unsolicited Tollway Concept Proposal at any time. A private entity or individual must pay an administrative fee of \$405,000 to review tollway projects proposed by private entities. ¶~~

~~(3) The department shall consider and authorize tthe Department for the Department's review of an unsolicited TCP. The fee to submit a revised Tollway projeeConcept pProposals according to the criteria in OAR 731-040-0050. ¶~~

~~(4) F for Department review is \$2,500. Administrative fees charged for review of proposals will be deposited in the State Tollway Account. ¶~~

~~(5) Fare due and payable at the time of application submission. Applications submitted without the fee will not be reviewed by the dDepartment may utilize a competitive process in soliciting or evaluating proposals from private entities. / A unit of government is not required to pay an administrative fee for the review of an unsolicited TCP.~~

Statutory/Other Authority: ~~ORS 184.616~~, 184.619, 383.015

Statutes/Other Implemented: ORS 383

ADOPT: 731-040-0031

RULE SUMMARY: Defines process and criteria for submission of unsolicited proposals for tollway projects.

CHANGES TO RULE:

731-040-0031

Initiation Process for Unsolicited Tollway Concept Proposals

(1) This rule applies to unsolicited TCPs from private entities, individuals and units of government, pursuant to ORS 383.015.¶

(2) Any administrative fees described in OAR 731-040-0030 must accompany the application. The Department will publish the requirements for content and format of a TCP application on the Department's website. Requirements include but are not limited to:¶

(a) Information about the applicant entity or consortium of entities (private, public or a combination) including financial information, experience in transportation infrastructure development, public-private partnerships, or federal-aid highway construction.¶

(b) A description of the proposed Tollway Project scope, location, and all proposed interconnections with other transportation facilities; the key risks and assumptions associated with the Project.¶

(c) A description of any work completed to develop the Tollway Project, including planning, environmental analysis, or preliminary engineering.¶

(d) A discussion of support or opposition from local governments and communities impacted by the project, the significant social and economic benefits and burdens of the project.¶

(e) A discussion of project financing, including secured or pledged funds, and their source, anticipated public funding, including funds sought from the Department.¶

(2) The Department will review the TCP and make a recommendation to the Commission based on the criteria in ORS 383.015. ¶

(3) Based on the agency recommendation, the Commission may: ¶

(a) Approve the proposed concept for further development into a full tollway project through a competitive solicitation for an OIPP project or a Department-initiated tollway project; or¶

(b) Reject the proposal.¶

(4) A Tollway Concept Proposal may be revised and re-submitted by the proposer for Department reconsideration and recommendation to the Commission once, unless otherwise directed by the Commission or Department. The resubmittal fee described in 731-040-0030 must accompany the resubmitted proposal.

Statutory/Other Authority: ORS 184.619, 383.015

Statutes/Other Implemented: ORS 383.015

ADOPT: 731-040-0039

RULE SUMMARY: Clarifies and streamlines the process for authorization of tollway projects; addresses resubmission of proposals.

CHANGES TO RULE:

731-040-0039

Authorization of tollway projects

(1) This rule applies to all proposed tollway projects. ¶

(2) The Department will evaluate a proposed tollway project and provide findings and a recommendation to the Commission. The Department may not recommend authorization of a tollway project unless the Department makes one of the findings described in ORS 383.015(3). ¶

(3) The Commission will review the proposed tollway project, the Department's findings and recommendations, the factors identified in ORS 383.015(2), and consider the following: ¶

(a) How the proposed tollway project will coordinate tolling with existing and potential new transportation services or investments to address congestion on the tollway. ¶

(b) How the proposed tollway project will incorporate process equity and outcome equity into the project's design, implementation, and operations. ¶

(4) Upon review of the proposed tollway project, the Commission will authorize, authorize with conditions, or reject the proposal. A Commission decision is issued in writing. ¶

(5) A proposal may be revised and re-submitted by the proposer for Department reconsideration and recommendation to the Commission once, unless otherwise directed by the Commission or Department.

Statutory/Other Authority: ORS 184.619, 383.015

Statutes/Other Implemented: ORS 383

ADOPT: 731-040-0041

RULE SUMMARY: Defines new process and criteria to authorize tollway on interstate bridges; addresses resubmission of proposals.

CHANGES TO RULE:

731-040-0041

Authorization of Tollway Projects on Interstate Bridges

(1) This rule applies to all proposed tollway projects to establish tolls on an interstate bridge that is or will be a state highway under the Department's jurisdiction, including proposals submitted by the Department and proposals submitted jointly with the Department under the authority of ORS 381.010 (Columbia River bridges) or ORS 381.098 (Snake River bridges). These tollway projects are also subject to the requirements of OAR 731-040-0039.

(2) The Department will consider the factors identified in OAR 731-040-0039 in evaluating the proposal and provide findings and a recommendation to the Commission. The Department may not recommend authorization of a tollway project unless the Department makes one of the findings described in ORS 383.015(3).

(3) The Commission will consider the tollway project proposal, the Department's findings and recommendations, and all of the following:

(a) Whether another state has any authority over the bridge.

(b) Whether the proposal has been authorized, or is expected to be authorized, by the governing body with jurisdiction over the proposal in the other state linked to Oregon by the bridge.

(c) Whether the proposal is consistent with any conditions imposed by the governing body with jurisdiction over the proposal in the other state, if any.

(d) Whether the proposer has legal authority to implement the project in the other state, and if not, the level of coordination between the proposer and the entity having such authority.

(4) The Commission will authorize, authorize with conditions, or reject the proposal. A Commission decision is issued in writing.

(5) A proposal may be revised and re-submitted by the proposer for Department reconsideration and recommendation to the Commission once, unless otherwise directed by the Commission or Department.

Statutory/Other Authority: ORS 184.619, 383.004, 383.015, 383.075

Statutes/Other Implemented: ORS 383

RULE SUMMARY: Amended rule title; amended rule text to clarify processes; addressed resubmission of proposals.

CHANGES TO RULE:

731-040-0050

Evaluation and Authorization ¶

(1) Tollway project proposals submitted for consideration under the Oregon Innovative Partnerships Program (ORS 367.800–367.826) are not subject to OAR 731-040-0050.¶

(2) When reviewing a proposal from private entities, local or regional governments, the department, or other units of government having an interest in the installation of a tollway to this rule applies to all proposals to approve initial toll rates on an authorize ad tollway project, the commission will consider:¶

(a) The opinions and interests of units of government encompassing or adjacent to the path of the proposed tollway project in having the tollway installed; including proposals submitted jointly with the Department under an OIPP agreement. ¶

(b) The probable impact of the proposed tollway project on local environmental, aesthetic and economic conditions and on the economy of the state in general, considered in a manner similar to the way these factors are considered for other highway projects;¶

(c) The extent to which funding other than state funding is available for the proposed tollway project, considered in a manner similar to the way other funds are considered for other highway projects;¶

(d) The likelihood that the estimated use of the tollway project will provide sufficient revenues to independently finance the costs related to the construction and future maintenance, repair and reconstruction of the tollway project, including the repayment of any loans to be made from moneys in the State Tollway Account;¶

(e) With respect to tollway projects, any portion of which will be financed with state funds or department loans or grants:¶

(A) The relative importance of the proposed tollway project compared to other proposed tollways; and¶

(B) Traffic congestion and economic cooperator must create a process equity plan prior to submitting a proposal for initial rates and the rate proposal must include feedback on the proposed rate obtained by engaging with communities identified in the process equity plan. ¶

(3) The toll rate proposal must include an evaluation of how outcome equity has informed the design of the proposal and plans for how it will inform the implementation and operation of the tolled facility.¶

(4) The Department will evaluate the toll rate proposal and provide a recommendations in the communities that will be affected by competing tollway projects, and the extent to which these conditions are diminished or improved; to the Commission. ¶

(5) When effects of tollway implementation on community and local street traffic, their magnitude, and expected impacts on community livability as estimated by establishing initial toll rates, the Commission must consider the dDepartment;¶

(g) The purpose and goals of the proposal and their consistency with the other factors considered here;¶

(h) The use of toll revenue in addition to toll revenue used to pay tollway costs, including but not limited to debt service and costs connected with the issuance or administration of bonds or other financial oblig's recommendations and the factors described in ORS 383.004 and set rates to address the following: ¶

(a) The cost of toll operations, acquisition, design, construction, reconstruction, improvement, installation, maintenance, opnd improvements, preservation, and repair; consistent with Oregon statutes and the Oregon Constitution;¶

(i) The extent of business and public support;¶

(j) Whether the tollway facility can be operated as proposed;¶

(k) Whether the proposal is well enough developed to be included in the current or a future Statewide Transportation Improvement Program;¶

(L) The effect on funding for other projects in the current or a future Statewide Transportation Improvement Program; and¶

(m) Whether implementation of the proposal would violate Federal rules or statutes.¶

(3) Proposers shall address all of the above criteria in each proposal. Proposals shall be submaintenance of the tollway project, tollway, and related facilities, including paying any debt service issued to finance tollway projects.¶

(b) Management of congestion to desired thresholds, as established for the tollway, including but not limited to, the department, and the department will review each proposal to determine if the proposal is complete. Within 45 days from when the department determines that the proposal is complete, the director will submit the proposal and department comments, if any, to the commission for review.¶

(4) No tollway project shall be authorized unless the commission finds that either:¶¶

(a) Based on the department's estimate of present and future traffic patterns, the revenues generated by the tollway project will be sufficient, after payment of all obligations incurred, to ensure that the tollway project will meet the following criteria: reasonable travel times, speeds, reliability, increasing accessibility, reducing greenhouse gas emissions, and avoiding, to the extent practicable, the reduction of existing service levels on the tollway.¶¶

(6) In addition to the factors described in connection with the acquisition, construction and operation of such tollway project, to ensure the continued maintenance, repair and reconstruction of the tollway project without the contribution of additional public funds; or¶¶

(b) The revenues generated by the tollway project will be at least sufficient to pay its operational expenses and a portion of the costs of its construction, maintenance, repair and reconstruction, and the importance (5) of this rule, the Commission may consider:¶¶

(a) Authorizing toll reductions or exemptions. The reduction or exemption may be limited and directly related to the needs for operation, maintenance, safety, person-carrying capacity of the tollway project to the welfare or economy of the state is great enough, as determined by the commission, to justify the use of public funding for a portion of its construction, maintenance, repair and reconstruction.¶¶

(5) After consideration of all of the above factors, roadway, or for emergency response.¶¶

(b) Simplifying the rate structure to help with the commission, in a duly noticed meeting, may authorize a proposed tollway project for further study, may authorize a proposal for further study subject to conditions that must be met by the proposal, or may refuse to authorize the proposal. The commission's authorization for further study shall not include an application of the state land use goals and shall not be a land use decision.¶¶

(6) For a tollway project proposal authorized for further study by the commission under this section, the commission may conduct or cause to be conducted any geological, environmental, land use, engineering or other studies required by law as a condition of construction. f different rates, limiting rate changes throughout the day, or rounding rates to the closest 5 cent increment.¶¶

(c) Determining how or if to apply toll rates for overnight and non-congested periods.¶¶

(7d) The commission shall not consider authorizing a proposed tollway project for construction until the tollway project has been included as a tollway in the local or regional transportation system plan of jurisdictions in which the project would be located. In addition, the commission must find the proposed project to be consistent with the policies and actions adopted in the Oregon Transportation Plan and the Oregon Highway Plan as of July 19, 2012.¶¶

(8) After consideration of the results of any studies undertaken under OAR 731-040-0050(5) and (6) as well as the other factors listed in this rule, the commission, in a duly noticed meeting, may authorize the proposed tollway project for construction, may conditionally authorize the proposed tollway project for construction, or may refuse to authorize the proposed tollway project for construction. After a tollway project is authorized or conditionally authorized for construction, it will be added to the Statewide Transportation Improvement Program vehicle classification, in accordance with requirements for fairness and proportionality between classes of vehicles, as provided in Article IX, section 3a(3), of the Oregon Constitution.¶¶

(9) The commission may refer the proposal or specific components of the proposal to the department for analysis and recommendations at any time before it issues findings;¶¶

(10) The commission will issue findings to support its decision to authorize, conditionally authorize or not authorize a tollway project for either further study or construction. will approve, conditionally approve, or disapprove a proposal to establish initial toll rates. A Commission decision is issued in writing.

Statutory/Other Authority: ORS 184.616, 184.619, 383.015

Statutes/Other Implemented: ORS 383

ADOPT: 731-040-0051

RULE SUMMARY: Revises process for proposing initial rates and criteria for approval; addresses resubmission of proposals.

CHANGES TO RULE:

731-040-0051

Process for Approving Initial Rates on Tollways on Interstate Bridges

(1) This rule applies to a proposal to approve initial toll rates on an interstate bridge that is or will be a state highway under the Department's jurisdiction, including proposals submitted by the Department, or jointly with the Department under ORS 381.010 (Columbia River bridges), or ORS 381.098 (Snake River bridges). Approval of tolls on interstate bridges is also subject to the requirements of OAR 731-040-0050.

(2) The proposal must be submitted to the Department for review. The Department will consider the factors identified in OAR 731-040-0050 in evaluating the initial toll rate proposal and provide a recommendation to the Commission.

(3) The Commission will consider the Department's recommendation, the factors identified in OAR 731-040-0050, and all the following:

(a) Whether another state has any authority over the bridge.

(b) Whether the proposal has been authorized, or is expected to be authorized, by the governing body with jurisdiction over the proposal in the other state linked to Oregon by the bridge.

(c) Whether the proposal is consistent with any conditions imposed by the governing body with jurisdiction over the proposal in the other state, if any.

(d) Whether the proposer has legal authority to implement the project in the other state, and if not, the level of coordination between the proposer and the entity having such authority.

(4) The Commission will approve, conditionally approve, or disapprove a proposal to establish initial toll rates. A Commission decision is issued in writing.

Statutory/Other Authority: ORS 184.619, 383.004, 383.015, 383.075

Statutes/Other Implemented: ORS 383

REPEAL: 731-040-0052

RULE SUMMARY: Relevant content can be found in OAR 731-040-0040, 731-040-0050.

CHANGES TO RULE:

731-040-0052

~~Process for Reviewing and Approving the Establishment of Tolling and Toll Rates; Generally~~

~~(1) When reviewing a proposal from private entities, local or regional governments, or the department to establish tolls and set toll rates on either a project authorized under OAR 731-40-0050, including tolls on an existing non-tolled state transportation facility; or a project that has a detailed proposal approved by the commission under OAR 731-070-0170; the commission will consider:¶¶~~

~~(a) The amount and classification of the traffic using, or anticipated to use, the tollway;¶¶~~

~~(b) The amount of the toll proposed to be established for each class or category of tollway user and, if applicable, the different amounts of the toll depending on time and day of use;¶¶~~

~~(c) The extent of the tollway, including improvements necessary for tollway operation and improvements necessary to support the flow of traffic onto or off of the tollway;¶¶~~

~~(d) The location of toll plazas or toll collection devices to collect the toll for the tollway;¶¶~~

~~(e) The cost of constructing, reconstructing, improving, installing, maintaining, repairing and operating the tollway;¶¶~~

~~(f) The amount of indebtedness incurred for the construction of the tollway and debt service requirements, if any;¶¶~~

~~(g) The value of assets, equipment and services required for the operation of the tollway;¶¶~~

~~(h) The period of time during which the toll will be in effect;¶¶~~

~~(i) The process for altering the amount of the toll during the period of operation of the tollway;¶¶~~

~~(j) The methods of collecting the toll;¶¶~~

~~(k) The rate of return that would be fair and reasonable for a private equity holder, if any, in the tollway;¶¶~~

~~(L) Whether the department concurs that the tollway can be operated as proposed;¶¶~~

~~(m) The purpose and goals of the proposal, and their consistency with the other factors considered here;¶¶~~

~~(n) The use of tollway revenue;¶¶~~

~~(o) Consistency with Oregon statutes and the Oregon Constitution; and¶¶~~

~~(p) Whether implementation of the proposal would violate Federal rules or statutes.¶¶~~

~~(2) The commission may approve, conditionally approve, or disapprove proposals, and the proposals may be revised and re-submitted for consideration. Commission decisions and findings will be issued in writing.¶¶~~

~~(3) This rule applies to all proposals to establish tolls on a state highway or highways, including those submitted by the department and those submitted jointly with the department under ORS 367.800-367.826.~~

~~Statutory/Other Authority: ORS 184.616, 184.619, 383.004~~

~~Statutes/Other Implemented: ORS 383~~

REPEAL: 731-040-0053

RULE SUMMARY: Relevant content can be found in OAR 731-040-0050.

CHANGES TO RULE:

~~731-040-0053~~

~~Proposals for Establishment of Tolling under OAR 731-040-0052~~

~~(1) Proposers shall address all of the criteria in OAR 731-040-0052 in each proposal. Proposals shall be submitted to the director, and the department will review the proposal to determine if the proposal is complete.¶¶~~

~~(2) Within 45 days from when the department determines that the proposal is complete, the director will submit the proposal, any accompanying documents, and department comments, if any, to the commission for review.~~

~~Statutory/Other Authority: ORS 184.616, 184.619, 383.004~~

~~Statutes/Other Implemented: ORS 383~~

REPEAL: 731-040-0054

RULE SUMMARY: Relevant content can be found at OAR 731-040-0041, 731-040-0051.

CHANGES TO RULE:

~~731-040-0054~~

~~Additional Process for Reviewing and Approving the Establishment of Tolling and Toll Rates on Interstate Bridges~~

~~(1) When reviewing a proposal to establish tolling and set toll rates on an interstate bridge that is or will be a state highway, the commission will consider:¶¶~~

~~(a) Each of the considerations established in OAR 731-40-0052;¶¶~~

~~(b) Whether another state has any authority over the bridge;¶¶~~

~~(c) Whether the proposal has been authorized or is expected to be authorized, by the governing body with jurisdiction over the proposal in the other state linked to Oregon by the bridge;¶¶~~

~~(d) Whether the proposal is consistent with conditions imposed by the governing body with jurisdiction over the proposal in the other state, if any;¶¶~~

~~(e) Whether the proposer has legal authority to implement the project in the other state, and if not, the level of coordination between the proposer and the entity having such authority; and¶¶~~

~~(f) Existing bi-state agreements on tolls and tollway projects.¶¶~~

~~(2) The commission may approve, conditionally approve, or disapprove proposals, and the proposals may be revised and re-submitted for consideration. Commission decisions and findings will be issued in writing.¶¶~~

~~(3) This rule applies to all proposals to establish tolls on an interstate bridge that is or will be a state highway, including those submitted by the department, those submitted jointly with the department under the authority of ORS 381.010 or ORS 381.098, and those submitted jointly with the department under ORS 367.800–367.826.~~

~~Statutory/Other Authority: ORS 184.616, 184.619, 381.010, 381.098, 383.004~~

~~Statutes/Other Implemented: ORS 383~~

REPEAL: 731-040-0055

RULE SUMMARY: Relevant content can be found at OAR 731-040-0041, 731-040-0051.

CHANGES TO RULE:

~~731-040-0055~~

~~Proposals for OAR 731-040-0054, Interstate Bridges~~

~~(1) Proposers shall address all of the criteria in OAR 731-040-0052 and 731-040-0054. Proposals shall be submitted to the director and the department will review the proposal to determine if the proposal is complete.¶¶~~

~~(2) Within 45 days from when the department determines that the proposal is complete, the director will submit the proposal, any accompanying documents, and department comments, if any, to the commission for review.¶¶~~

~~(3) If a proposal is submitted under this section, no proposal needs to be submitted under OAR 731-040-0053.~~

~~Statutory/Other Authority: ORS 184.616, 184.619, 381.010, 381.098, 383.004~~

~~Statutes/Other Implemented: ORS 383~~

AMEND: 731-040-0056

RULE SUMMARY: Updates the process, modifies text for clarity.

CHANGES TO RULE:

731-040-0056

Process for Reviewing and Approving Revised Toll Rates, Generally ¶

(1) Toll rates previously approved through the process in OAR 731-040-0052 or OAR 731-0040-0054, including anticipated formulaic changes in rates, are not subject to this rule. ¶

(2) When reviewing a proposal from private entities, local or regional governments, public-private partnership created pursuant to ORS 367.806, or the department to revise toll rates on existing tollways, the commission will consider: ¶

(a) The amount and classification of the traffic using, or anticipated to use, his rule applies to a tollway operator, including a tollway operator operating jointly with the Department under an OIPP agreement. ¶

(2) Proposals to revise toll rates shall include analysis and documentation of the tollway; owing: ¶

(ba) The amount of the toll proposed to be established for each class or category of tollway user and, if applicable, the different amounts of the toll depending on time and day of use; How the proposed toll rate revisions account for the factors in OAR 731-040-0050. ¶

(eb) The location of toll plazas or toll collection devices to collect the toll for the tollway; ¶

(d) The cost of reconstructing, improving, maintaining, repairing and operat Feedback gained from engagement with communities identified ing the tollway; ¶

(e) The amount of indebtedness incurred for the construction of the tollway and debt service requirements, if any; process equity plan on the revised toll rates. ¶

(fc) The value of assets, equipment and services required for the operation of the tollway; ¶

(g) The period of time during which the toll will be in effect; How outcome equity will be impacted by the revised toll rates; and ¶

(hd) The process for altering the amount of the toll during the period of operation of the tollway; ¶

(i) The methods of collecting the toll; ¶

(j) The rate of return that would be fair and reasonable for a private equity holder, if any, in the tollway; Explaining revisions to the toll rates, toll exemptions, reductions, or toll rates for different vehicle classifications. ¶

(k3) The purpose and goals of the proposal, and their consistency with the other fac Department will consider the operator's considered here; ¶

(L) The use of tollway revenue; ¶

(m) The characteristics and status of the financial plan for the project, and the consistency of performance review(s), described in OAR 731-040-0065, evaluate the proposed, new toll schedule with the financial plan; ¶

(n) The financial condition of the project; ¶

(o) Department estimates of the effects traffic diverted as a result of the new toll schedule, if any, will have on other highways and communities; ¶

(p) Consistency with Oregon statutes and the Oregon Constitution; and rate revisions and provide a recommendation to the Commission. ¶

(q4) Whether implementation of the proposal would violate Federal rules or statutes. ¶

(3) The commiss The Commission will review the Department's recommendation may and approve, conditionally approve, or disapprove proposals, and the a proposals may be revised and re-submitted for consideration. Commission decisions and findings will be issued in writing. ¶

(4) This rule applies to all proposals to revise toll rates on a state highway or highways, including those submitted by the department and those submitted by a public-private partnership created pursuant to ORS 367.806 jointly with the department to revise toll rates. A Commission decision is issued in writing.

Statutory/Other Authority: ORS 184.616, 184.619, 383.004

Statutes/Other Implemented: ORS 383

REPEAL: 731-040-0057

RULE SUMMARY: Relevant content can be found at OAR 731-040-0060.

CHANGES TO RULE:

~~731-040-0057~~

~~Proposals for OAR 731-040-0056, Revised Toll Rates~~

~~(1) Proposers shall address all of the criteria in OAR 731-040-0056. Proposals shall be submitted to the director, and the department will review the proposal to determine if the proposal is complete.¶~~

~~(2) Within 45 days from when the department determines that the proposal is complete, the director will submit the proposal, any accompanying documents, and department comments, if any, to the commission for review.~~

~~Statutory/Other Authority: ORS 184.616, 184.619, 383.004~~

~~Statutes/Other Implemented: ORS 383~~

REPEAL: 731-040-0058

RULE SUMMARY: Relevant content can be found at OAR 731-040-0061.

CHANGES TO RULE:

731-040-0058

Additional Process for Reviewing and Approving Revised Toll Rates on Interstate Bridges

- (1) Toll rates previously approved through the process in OAR 731-040-0052 or OAR 731-040-0054, including anticipated formulaic changes in rates, are not subject to this rule.¶¶
- (2) When reviewing a proposal to revise toll rates on an interstate bridge that is or will be a state highway, the commission will consider:¶¶
 - (a) All of the considerations established in OAR 731-040-0056;¶¶
 - (b) Whether another state has any authority over the bridge;¶¶
 - (c) Whether the proposed toll schedule has been authorized or is expected to be authorized by the governing body with jurisdiction over the project in the other state linked to Oregon by the bridge;¶¶
 - (d) Whether the proposal is consistent with conditions imposed by the governing body with jurisdiction over the proposed toll schedule in the other state, if any;¶¶
 - (e) Whether the proposer has legal authority to approve the toll schedule in the other state, and if not, the level of coordination between the proposer and the entity having such authority; and¶¶
 - (f) Existing bi-state agreements on tollway projects.¶¶
- (3) The commission may approve, conditionally approve, or disapprove proposals, and the proposals may be revised and re-submitted for consideration. Commission decisions and findings will be issued in writing.¶¶
- (4) This rule applies to all proposals to revise toll rates on an interstate bridge that is or will be a state highway, including those submitted by the department, those submitted jointly with the department under the authority of ORS 381.010 or ORS 381.098, and those submitted jointly with the department under ORS 367.800 through 367.824.

Statutory/Other Authority: ORS 184.616, 184.619, 381.010, 381.098, 383.004

Statutes/Other Implemented: ORS 383

REPEAL: 731-040-0059

RULE SUMMARY: Relevant content can be found at OAR 731-040-0061.

CHANGES TO RULE:

~~731-040-0059~~

~~Proposals for OAR 731-040-0058, Revised Toll Rates for Interstate Bridges~~

~~(1) Proposers shall address all of the criteria in OAR 731-040-0056 and 731-040-0058. Proposals shall be submitted to the director, and the department will review the proposal to determine if the proposal is complete.¶~~

~~(2) Within 45 days from when the department determines that the proposal is complete, the director will submit the proposal, any accompanying documents, and department comments, if any, to the commission for review.¶~~

~~(3) If a proposal is submitted under this section, no proposal needs to be submitted under OAR 731-040-0057.~~

~~Statutory/Other Authority: ORS 184.616, 184.619, 381.010, 381.098, 383.004~~

~~Statutes/Other Implemented: ORS 383~~

ADOPT: 731-040-0061

RULE SUMMARY: Defines process and criteria for approval of revised rates on interstate bridges; addresses resubmission of proposals.

CHANGES TO RULE:

731-040-0061

Process for Approving Revised Rates on Interstate Bridges

(1) This rule applies to a tollway operator's proposal to revise the tolls on a tollway on an interstate bridge that is or will be a state highway under the Department's jurisdiction, including proposals submitted by the department, or jointly with the department under ORS 381.010 (Columbia River bridges) or ORS 381.098 (Snake River bridges). Approval of revised toll rates on these interstate bridges is also subject to the requirements of OAR 731-040-0061.

(2) The Department will consider the operator's performance review(s), described in OAR 731-040-0065, evaluate the proposed revisions and provide a recommendation to the Commission.

(3) The Commission will consider the Department's recommendation, and all of the following:

(a) Whether another state has any authority over the bridge.

(b) Whether the proposed toll schedule has been authorized, or is expected to be authorized, by the governing body with jurisdiction over the project in the other state linked to Oregon by the bridge.

(c) Whether the proposal is consistent with any conditions imposed by the governing body with jurisdiction over the proposed toll schedule in the other state, if any.

(d) Whether the proposer has legal authority to approve the toll schedule in the other state, and if not, the level of coordination between the proposer and the entity having such authority.

(4) The Commission will approve, conditionally approve, or disapprove a proposal to revise toll rates. A Commission decision is issued in writing.

Statutory/Other Authority: ORS 184.619, 383.004, 383.015, 383.075

Statutes/Other Implemented: ORS 383

ADOPT: 731-040-0065

RULE SUMMARY: Defines new requirement for performance review of toll facility operator.

CHANGES TO RULE:

731-040-0065

Tollway Operator Performance Review

(1) This rule applies to tollway operators, including those operating jointly with the Department under an OIPP agreement.¶

(2) A tollway operator shall provide a written annual performance review of the tollway to the Department and Commission no later than one year from the date of commencing operations. Subsequent annual reviews shall cover a state fiscal year and be due after the end of the fiscal year. If the tollway operator intends to propose revised toll rates in the coming fiscal year, the tollway operator shall include the analysis and documentation described in OAR 731-040-0060(2) in the review.¶

(3) The written annual performance review must include the following: ¶

(a) Revenue and administration costs for the tollway project and tollway.¶

(b) Status of tollway project investments, financing requirements, and needs for maintenance, operations, preservation, and rehabilitation. ¶

(c) A report on mobility and safety of the tollway and adjacent roadways included in the tollway project footprint and any changes to travel patterns associated with imposing tolls.¶

(d) Overall amount of tolls collected, and tolls collected, including tolls owed, by vehicle classification.¶

(e) Information on transportation mobility and air quality, where monitoring data is available, that would inform the Department's pursuit of state greenhouse gas emissions reduction and air quality goals. ¶

(f) Number and classification of vehicles receiving reductions and exemptions, the impact of reductions and exemptions to revenue and administration costs. ¶

(g) If a low-income toll program applies to the tollway, the number of vehicles enrolled in a low-income toll program as a percentage of the estimated number of potentially qualifying customers for that tollway, the impact to revenue and administration costs, and a report on the aggregate travel patterns of vehicles participating in a low-income toll program.

Statutory/Other Authority: ORS 184.619, 381.010, 381.098, 383.004

Statutes/Other Implemented: ORS 383

ADOPT: 731-040-0075

RULE SUMMARY: Describes how the agency will handle toll customer data.

CHANGES TO RULE:

731-040-0075

Customer Data

(1) Customer records and information used to collect and enforce tolls follow the disclosure requirements specified in ORS 383.075. ¶

(2) Public records request fees and requirements for the Department are described in OAR 731-001-0025. ¶

(3) An individual requesting customer records or data must submit a request in writing as prescribed by the Department, which is identified on the Department's webpage. The request must include: ¶

(a) Government issued identification to verify the identity of the requestor. ¶

(b) Information demonstrating that the requester is one of authorized individuals or entities that may access driver records and information used to collect and enforce tolls, as is identified in ORS 383.075(2) and (3). ¶

(c) A description of the requester's intended use of the information and how that intended use will conform to the requirements in ORS 383.075. ¶

(4) The Department may disclose the requested records if the Department is satisfied that requester has provided reasonable assurances that the requester's identity, uses of the information, and any applicable permissions comply with the requirements of this rule and ORS 383.075.

Statutory/Other Authority: ORS 183.413, 183.470, 183.745, 184.619, 192.324

Statutes/Other Implemented: ORS 383