

Department of Transportation
Chapter 731
Division 40
TOLLWAY PROJECTS

731-040-0010

Purpose

- (1) OAR 731, division 40, describes the process for initiating, evaluating, authorizing and administering Tollway Projects on state right of ways proposed by private entities, local or regional governments, the Oregon Department of Transportation, and combinations thereof.
- (2) OAR 731, division 40, includes requirements for submitting project proposals; guidelines for considering financial and other issues; requirements for consistency with other state and federal policies and processes; and the establishment and adjustment of toll rates by the Oregon Transportation Commission.

Statutory/Other Authority: ORS 184.619, 383.004 & 383.015

Statutes/Other Implemented: ORS 383

History:

DOT 5-2012, f. & cert. ef. 7-19-12

DOT 3-1997, f. & cert. ef. 12-29-97

731-040-0020

Definitions

As used in these OAR 731, division 40, rules:

- (1) "Commission" means the Oregon Transportation Commission.
- (2) "Department" means the Oregon Department of Transportation.
- (3) "Director" means the Director of the Oregon Department of Transportation, or the Director's designee.
- (4) "Interstate bridge" means a bridge over both a waterway that contains a boundary line with another state and the boundary line.

- (5) "OIPP Partnership Agreement" 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.
- (8) "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.
- (10) "Toll" has the meaning given in ORS 383.003.
- (11) "Tollway operator" has the meaning given in ORS 383.003.
- (12) "Tollway project" has the meaning given in ORS 383.003.
- (13) "Tollway 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.
- (14) "Unit of government" has the meaning given in ORS 383.003.

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

Statutes/Other Implemented: ORS 383

History:

DOT 5-2012, f. & cert. ef. 7-19-12

DOT 3-1997, f. & cert. ef. 12-29-97

731-040-0030

Administrative Fees for Unsolicited Tollway Concept Proposals

- (1) A private entity, individual or unit of government may 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 \$5,000 to the Department for the Department's review of an unsolicited TCP. The fee to submit a revised Tollway

Concept Proposal for Department review is \$2,500. Administrative fees are due and payable at the time of application submission. Applications submitted without the fee will not be reviewed by the Department. A unit of government is not required to pay an administrative fee for the review of an unsolicited TCP.

Statutory/Other Authority: ORS 184.619 & 383.015

Statutes/Other Implemented: ORS 383

History:

DOT 5-2012, f. & cert. ef. 7-19-12

DOT 3-1997, f. & cert. ef. 12-29-97

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

History:

731-040-0040

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

History:

DOT 5-2012, f. & cert. ef. 7-19-12

DOT 3-1997, f. & cert. ef. 12-29-97

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 731-040-0040.
- (2) The Department will consider the factors identified in OAR 731-040-0040 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 & 383.015

Statutes/Other Implemented: ORS 383

History:

DOT 5-2012, f. & cert. ef. 7-19-12

DOT 3-1997, f. & cert. ef. 12-29-97

731-040-0050

Process for Approving Initial Rates on Tollways

- (1) This rule applies to all proposals to approve initial toll rates on an authorized tollway project, including proposals submitted jointly with the Department under an OIPP agreement.
- (2) The operator 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 recommendation to the Commission.
- (5) When establishing initial toll rates, the Commission must consider the Department's recommendations and the factors described in ORS 383.004 and set rates to address the following:
 - (a) The cost of toll operations and improvements, preservation, and maintenance 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, 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 section (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 roadway, or for emergency response.
 - (b) Simplifying the rate structure to help with communication and public understanding, which may include minimizing the number of 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.
 - (d) Structuring rates to encourage users to shift trips to less busy times of day, telecommute, or use other modes of transportation, such as public transportation, carpools, biking, and walking.
 - (e) Setting rates based on vehicle classification, in accordance with requirements for fairness and proportionality between classes of vehicles, as provided in Article IX, section 3 a (3), of the Oregon Constitution.
- (7) 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
Statutes/Other Implemented: ORS 383.004, 383.035
History:
DOT 5-2012, f. & cert. ef. 7-19-12

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.
- (6) 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, 381.010, 381.098 & 383.004

Statutes/Other Implemented: ORS 383

History:

DOT 5-2012, f. & cert. ef. 7-19-12

731-040-0060

Process for Approving Revised Rates

- (1) This 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 following:
 - (a) How the proposed toll rate revisions account for the factors in OAR 731-040-0050(5) and (6).
 - (b) Feedback gained from engagement with communities identified in the process equity plan on the revised toll rates.
 - (c) How outcome equity will be impacted by the revised toll rates; and

- (d) Explaining revisions to the toll rates, toll exemptions, reductions, or toll rates for different vehicle classifications.
- (3) The Department will consider the operator's performance review(s), described in OAR 731-040-0059, evaluate the proposed toll rate revisions and provide a recommendation to the Commission.
- (4) The Commission will review the Department's recommendation and 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

Statutes/Other Implemented: ORS 383

History:

DOT 5-2012, f. & cert. ef. 7-19-12

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 731-040-0060.
- (2) The Department will consider the operator's performance review(s), described in OAR 731-040-0059, 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, 381.010, 381.098 & 383.004

Statutes/Other Implemented: ORS 383

History:

DOT 5-2012, f. & cert. ef. 7-19-12

OAR 731-040-0062

Tolling System Compatibility with the State of Washington

Toll collection and enforcement systems used on tollways in Oregon shall be interoperable with toll collection and enforcement systems used in the State of Washington to the extent technology permits.

Statutory/Other Authority: ORS 383.014

Statutes/Other Implemented: ORS 383

History:.

OAR 731-040-0064

Civil Penalties for Failure to Pay a Toll

(1) In addition to any other penalty or sanction provided by law, a person who is required to pay a toll as described in ORS 383.035 and fails to pay a toll established pursuant to ORS 383.004, shall pay to the department, for each unpaid toll:

- (a) The amount of the toll;
- (b) For the first unpaid toll, a civil penalty of \$15; and,
- (c) For each subsequent unpaid toll: The limit provided in ORS 383.035;

(2) Each time a bill is sent to a person for an unpaid toll, an administrative fee of \$2 shall be assessed as reimbursement for labor, materials, printing and postage expenses.

(3) An unpaid toll will be considered a subsequent unpaid toll if the person was assessed a civil penalty for an unpaid toll within three years of the unpaid toll under consideration.

(4) Civil penalties and administrative fees assessed under this rule shall be collected as provided in ORS 183.745 and according to the procedures in OAR 137-003-0501 to 137-003-0700.

(5) The department shall refuse to renew the motor vehicle registration of the motor vehicle owned by a person who at the time of application for registration has unpaid tolls, civil penalties or any administrative fees charged under this section.

Statutory/Other Authority: ORS 184.616, 184.619, 802.010, 383.035, 383.055

Statutes/Other Implemented: ORS 383.035, 383.055

History: DOT 5-2012, f. & cert. ef. 7-19-12

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
Statutes/Other Implemented: ORS 383
History:

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 383.075, 192.324, 183.413 to 183.470, 183.745

Statutes/Other Implemented:

History: