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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 734
DEPARTMENT OF TRANSPORTATION
HIGHWAY DIVISION

FILED

08/29/2023 3:00 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Bus Shoulder Lanes on Freeways

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/21/2023 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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

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NEED FOR THE RULE(S)

Urban freeways (e.g., I-5, I-205 in the Portland area) have recurring congestion at various times through a typical day. This congestion increases travel times and reduces reliability of transit services that travel along segments of these freeways. Bus shoulder lanes allow transit buses to use freeway shoulders to bypass congestion in certain cases, which can improve travel times and reliability of public transit services. Using bus shoulder lanes is one part of ODOT's Urban Mobility Strategy.

ORS 810.140 allows ODOT to designate lanes, by order, on its own highways that may be used exclusively by buses to conserve energy and facilitate public transportation. The proposed administrative rule is needed to establish a framework for what kinds of buses and transit agencies that ODOT may authorize to use bus shoulder lanes and under what conditions. It is also needed to establish how bus shoulder lanes are designated and used.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

- Transit Cooperative Research Program (TCRP) Report 151: A Guide for Implementing Bus on Shoulder (BOS) Systems. Available at <https://www.trb.org/Publications/Blurbs/166878.aspx>
- Manual on Uniform Traffic Control Devices, 2009 edition. Available at <https://mutcd.fhwa.dot.gov/index.htm>
- Concept of Operations documents for bus shoulder lane pilots on I-5 and I-205. Available upon request from ODOT.
- ODOT Urban Mobility Strategy. Available at <https://www.oregon.gov/odot/UMO/Documents/urban-mobility-strategy-2022-02-08.pdf>
- Portland Region 2020 Traffic Performance Report. Available at <https://www.oregon.gov/odot/Projects/Project%20Documents/TPR-2020.pdf>

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

These rules establish a process that can improve access to health care, education, and employment opportunities when implemented on transit lines that are routed on congested urban freeways and serve historically underserved communities.

FISCAL AND ECONOMIC IMPACT:

The Oregon Department of Transportation (ODOT), Oregon State Police (OSP), and public transportation service providers (PTSP) could be fiscally impacted as implementation and enforcement measures could result in adjustments to current resources and staff time. These proposed rules are not expected to result in significant changes to current costs for ODOT or OSP.

Impacts to ODOT: Proposed rules are not anticipated to result in significant fiscal changes in ODOT's costs and/or revenues. ODOT can absorb these impacts into current programs and workloads. This would set a framework for increasing freeway carrying capacity with minimal infrastructure changes. Costs to ODOT will include evaluating candidate corridors for bus shoulder lanes; design, installation, and maintenance of infrastructure for bus shoulder lanes (e.g. signs, pavement markings, adjustments to rumble strips and stormwater equipment, etc.); more frequent sweeping and repair of freeway shoulder pavement; operations monitoring for incident response; administrative costs associated with maintaining agreements with public transportation service providers; and costs related to public education campaigns for new corridors.

Impacts to OSP: Proposed rules are not anticipated to result in significant fiscal changes in OSP's costs and/or revenues. Costs could include but not be limited to monitoring corridor conditions, providing assistance in removing disabled vehicles, and responding to incidents.

Impacts to PTSP: This is a voluntary program that qualifying PTSPs can opt into through an agreement with ODOT. Costs to PTSPs could include but not be limited to training staff (bus operators, dispatchers, field supervisors, etc.); purchasing and maintaining buses that can operate in bus shoulder lanes; inter-agency communications infrastructure between the PTSP and ODOT; administrative costs associated with maintaining agreements with ODOT; and costs related to public/rider education campaigns.

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) Oregon Department of Transportation, Oregon State Police, and public transportation service providers.

(2)(a), (b) and (c) None. Small businesses are not subject to these rules.

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

ODOT shared draft rules with small business groups for comments. ODOT did not receive any replies.

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

These rules will affect ODOT, public transit agencies, and law enforcement agencies. ODOT consulted a working group to draft the rules and met with them on August 25, 2022; September 29, 2022; and December 6, 2022. The working group consisted of ODOT engineering, planning, and public transit staff, Oregon State Police, a representative from the Oregon Bicycle and Pedestrian Advisory Committee (OBPAC), and the transit agencies with pilot program experience operating on bus shoulder lanes in Oregon (South Metro Area Regional Transit (SMART) from Wilsonville, OR and C-

ADOPT: 734-020-0044

RULE SUMMARY: Establishes a process for designating bus shoulder lanes on congested freeways.

CHANGES TO RULE:

734-020-0044

Bus Shoulder Lanes on Freeways

(1) For purposes of this rule, the following definitions apply:¶

(a) "Authorized bus" means an automotive vehicle, either publicly or privately owned, that is operated by or on behalf of a public transportation service provider for the provision of public transportation services.¶

(b) "Bus shoulder lane" means a freeway shoulder designated for use by an authorized bus.¶

(c) "Department" or "ODOT" means the Oregon Department of Transportation.¶

(d) "Designated" means signed or marked as specified in section (5) of this rule.¶

(e) "Freeway" means a highway for through traffic in which access to the highway is fully controlled except as may be allowed at interchanges.¶

(f) "Indian tribe" has the meaning set forth in OAR 732-040-0005.¶

(g) "Intergovernmental entity" has the meaning set forth in OAR 732-040-0005.¶

(h) "Mass transit district" has the meaning set forth in OAR 732-040-0005.¶

(i) "Public transportation service provider" means a provider organized in this or another state that is a mass transit district, a transportation district, an Indian tribe, a city, county, special district, intergovernmental entity, or any other political subdivision or municipal or public corporation that provide public transportation services.¶

(j) "Public corporation" has the meaning set forth in OAR 732-040-0005.¶

(k) "Public transportation services" means passenger transportation service to the general public on a regular and continuing basis that is designed and advertised as shared-ride service. "Public transportation services" does not include charter, sightseeing, exclusive school bus service, or services designed to meet the needs of a specific user group.¶

(L) "Shared-ride service" means a service where neither the operator nor any passenger may refuse to permit additional passengers that are otherwise complying with the operator's rules and policies.¶

(m) "Special district" has the meaning set forth in OAR 732-040-0005.¶

(n) "Transportation district" has the meaning set forth in OAR 732-040-0005.¶

(2) The ODOT chief engineer or their designee may designate a bus shoulder lane on a freeway by order, as described in ORS 810.140, when ODOT and a public transportation service provider have signed an agreement as described in section (3) of this rule. The chief engineer or their designee, considering need and safety, may establish criteria for designating a bus shoulder lane in addition to criteria described in section (3) of this rule, as necessary.¶

(3) Upon entering an agreement with a public transportation service provider on the use and operation of the bus shoulder lane, a public transportation service provider may operate in a designated bus shoulder lane. The agreement must include, but not be limited to, the following:¶

(a) A requirement that an authorized bus must be operated by a driver who has been trained, or is being trained, in the proper use of bus shoulder lanes.¶

(b) A description of where the bus shoulder lane begins and ends.¶

(c) A description of the type of bus or buses authorized to operate in the bus shoulder lane.¶

(d) A plan for communicating the operating conditions of the bus shoulder lane between the road authority, transportation service provider, and any other public transportation service provider operating in the same bus shoulder lane. This plan may include, but is not limited to, communicating the location of obstructions in the bus shoulder lane, inclement weather, temporary closures of the bus shoulder lane, and other incidents.¶

(e) A description of the roles and responsibilities of the road authority and public transportation service provider to execute the agreement.¶

(f) Conditions for operating an authorized bus in the bus shoulder lane, including but not limited to, the following:¶

(A) Developing and executing a training plan by the public transportation service provider for bus drivers on the proper use of the bus shoulder lane.¶

(B) Operating an authorized bus in the bus shoulder lane only when traffic in the lane adjacent to the bus shoulder lane operates below a speed established in the agreement and the authorized bus is not leaving or returning to the authorized bus's garage or yard facility.¶

(C) Operating in the bus shoulder lane in accordance with the speed established in the agreement, including a speed established for traveling faster than vehicles in the adjacent lane.¶

(D) Operating in the bus shoulder lane with hazard lights on.¶

(E) Requiring an authorized bus to yield to merging, entering, and exiting traffic, and to allowable uses and other obstructions in the bus shoulder lane.¶

(4) A bus shoulder lane may be used by pedestrians, people operating bicycles, stopped vehicles, or emergency use unless otherwise prohibited in the order issued under ORS 810.140 and this administrative rule.¶

(5) Bus shoulder lanes must be established using traffic control devices that conform to the Manual on Uniform Traffic Control Devices adopted in OAR 734-020-0005.

Statutory/Other Authority: ORS 184.619, 810.140

Statutes/Other Implemented: ORS 810.140