



NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 734
DEPARTMENT OF TRANSPORTATION
DELIVERY AND OPERATIONS DIVISION

FILED

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ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Adopt rules to allow broadband providers to place infrastructure into some STIP projects

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/21/2025 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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HEARING(S)

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

DATE: 10/15/2025

TIME: 9:00 AM

OFFICER: David Soloos

REMOTE HEARING DETAILS

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

PHONE NUMBER: 1-971-277-1965

SPECIAL INSTRUCTIONS:

Meeting ID: 248 901 805 013 4

Passcode: 7Eh77x82

Phone conference ID: 835 724 122#

NEED FOR THE RULE(S)

ODOT needs to adopt rules to describe how ODOT will notify and coordinate with broadband providers when there are STIP projects that may have conduit trenches that could accommodate a provider's broadband infrastructure. ODOT is creating these rules because of the passage of federal and state laws, specifically 23 CFR 645.301-645.307 and HB 2411 Enrolled (2021), now codified as ORS 184.911-184.925.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

HB 2411 (2021) Enrolled -

<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB2411/Enrolled>.

The federal Consolidated Appropriations Act, 2018, Public Law 115-141, Division P, Title VII ("MOBILE NOW Act") creating 47 USC 1504, Broadband Infrastructure Deployment is online at <https://www.govinfo.gov/content/pkg/PLAW-115publ141/pdf/PLAW-115publ141.pdf> (see PDF pages 758-759).

47 USC 1504, Broadband Infrastructure Deployment, is online at <https://www.govinfo.gov/content/pkg/USCODE-2023-title47/pdf/USCODE-2023-title47-chap14-sec1504.pdf>.

The Federal Highway Administration's (FHWA) Notice of Proposed Rulemaking to implement 47 USC 1504 is online at <https://www.govinfo.gov/content/pkg/FR-2020-08-13/pdf/2020-17525.pdf>.

The FHWA's Final Rule to implement 47 USC 1504 is online at <https://www.federalregister.gov/documents/2021/12/03/2021-26231/broadband-infrastructure-deployment>.

The FHWA's Final Rule is codified in the Code of Federal Regulations at 23 CFR 645.301-645.307 and it is online at <https://www.ecfr.gov/current/title-23/chapter-I/subchapter-G/part-645>.

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

These rules are not anticipated to have any impact on racial equity in the state.

FISCAL AND ECONOMIC IMPACT:

Adoption of these rules will not create an automatic fiscal or economic impact. A broadband provider who receives notice of a STIP project may voluntarily choose to respond to the notice and submit to a department process for adding the provider's infrastructure to the STIP project. All costs incurred by the provider are a direct result of the provider's voluntary participation in the program created by these rules.

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) The rules are not anticipated to have any economic effect on other state agencies, units of local government or members of the public. The rules only apply to the department and to broadband providers.

ODOT may have to amend internal process manuals to address how the coordination will occur when a broadband provider is allowed to install its broadband infrastructure into an ODOT trench in a STIP project.

(2) The rules are not expected to have any effects on small businesses other than broadband providers. The rules create a process to allow broadband providers to install their broadband infrastructure into an ODOT trench in a STIP project.

(2)(a) No small businesses will be subject to the rules unless they are a broadband provider and they want to add broadband infrastructure into an ODOT trench that is part of a STIP project. ODOT estimates that there are 200-300 broadband providers that have infrastructure in the ODOT right-of-way; that 50-100 of these providers will register to be notified of STIP projects with trenches that might accommodate their broadband infrastructure; and that 6-8 providers per year might ask ODOT to add their broadband infrastructure into a trench in a STIP project.

(2)(b) Reporting: The rules do not create any new reporting requirements for small businesses or broadband providers.

Recordkeeping: The rules do not create new recordkeeping requirements. There may be existing recordkeeping requirements when a broadband provider or anyone else places infrastructure in the ODOT right-of-way. These rules do not alter any other recordkeeping requirements.

Administrative activities: The rules do not create new administrative activities. Broadband providers that wish to be

notified of opportunities to install broadband infrastructure into ODOT trenches will need to sign up once to receive notice of those projects. There will be a portal to sign up. It will request basic contact information and take five minutes or less to complete. If a broadband provider wants to install broadband infrastructure in an ODOT trench it will likely need to perform the same or similar administrative activities that it performs when it builds infrastructure in ODOT right-of-way on its own and by itself.

Costs of compliance: The rules create a business opportunity for broadband providers and do not set forth a licensing, permitting or other regulatory function. Accordingly, there is no required compliance. Any provider that is approved pursuant to the process set out in these rules may be required to obtain a permit pursuant to an already existing process set forth in in OAR Chapter 734, Division 55. These rules do not create any additional compliance requirements.

(2)(c) The rules do not create any new costs for professional services, equipment, supplies, labor or administration. If a provider wishes to install broadband infrastructure into an ODOT trench, it will need to pay all its own costs to do so. ODOT estimates that these costs would be the same or similar to the costs a provider would incur if it built broadband infrastructure in the ODOT right-of-way on its own and by itself. Because every project and every company is unique, ODOT is unable to estimate a provider's costs.

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

On June 24, 2025, ODOT sent a Notice of Potential Economic Impact to a list of small business representatives supplied by the ODOT Administrative Rules Program staff. ODOT did not receive any responses to the Notice from small businesses. The Notice was also sent to the Oregon Broadband Association, formerly known as the Oregon Telecommunications Association (OBA), and the Oregon Cable Television Association (OCTA), both are associations known to represent small and large businesses. The OCTA did not respond. The OBA asked if the enabling legislation or these rules allow ODOT to seek compensation, and if so, does the language contain any constraints or parameters on ODOT's ability to seek compensation. Neither the enabling legislation nor these rules affect ODOT's ability or inability to seek compensation; the status quo in that regard is unaffected.

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

In lieu of convening an Administrative Rule Advisory Committee, ODOT worked directly with broadband providers and their associations to consult and gather input for the rules. ODOT had multiple meetings, telephone calls and email exchanges with the Oregon Broadband Association and its members, and its predecessor the Oregon Telecommunications Association and its members. ODOT also consulted directly with some companies such as Verizon and Zply Fiber. ODOT also presented the rules and requested input at industry conferences and events such as the Oregon Connections Telecommunications Conference, the Oregon Tribal Broadband Summit, and the Willamette Valley Broadband Conference. ODOT also presented the concept to government agencies in the Greater Portland Metropolitan Area through the Cooperative Telecommunications Infrastructure Committee (an ORS 190 organization of many government agencies in the region), and in the Eugene-Springfield-Lane County area through the Public Agency Network (an ORS 190 organization of many agencies in Lane County).

RULES PROPOSED:

734-054-0005, 734-054-0010, 734-054-0015, 734-054-0020, 734-054-0025, 734-054-0030, 734-054-0035

ADOPT: 734-054-0005

RULE SUMMARY: Adopt rules to allow broadband providers to place infrastructure into some STIP projects.

CHANGES TO RULE:

734-054-0005

Purpose

The purpose of Oregon Administrative Rules 734-054-0005 through 734-054-0035 is to identify the criteria by which the Oregon Department of Transportation will select STIP projects that may accommodate a broadband facility of a third party; the process by which the department will select a broadband facility that may be added to a STIP project; and other requirements that may apply to the broadband facility as part of its installation in the state highway.

Statutory/Other Authority: ORS 184.619, 184.920(2), 184.925

Statutes/Other Implemented: ORS 184.911-184.925, 23 CFR 645.301-645.309

ADOPT: 734-054-0010

RULE SUMMARY: Adopt rules to allow broadband providers to place infrastructure into some STIP projects.

CHANGES TO RULE:

734-054-0010

Definitions

As used in these rules, unless otherwise required by context:¶

(1) "Broadband" means wide bandwidth transmissions over optical fiber, with an ability to simultaneously transport multiple signals and traffic types at a minimum transmission speed of 25 megabits per second for downloads and three megabits per second for uploads.¶

(2) "Broadband coordinator" means the Systems Operations & Intelligent Transportation Systems Manager of the Department or a designee.¶

(3) "Broadband facility" means infrastructure used to transmit broadband, including but not limited to underground fiber optic cable.¶

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

(5) "Interstate highway" means Interstate 5, Interstate 82, Interstate 84, Interstate 105, Interstate 205, Interstate 405, and other interstates as they may be designated in the future.¶

(6) "Longitudinal" means trenching in a direction that is generally parallel to the centerline of the state highway.¶

(7) "Provider" means any entity or person identified on the registry maintained by the Oregon Business Development Department, Oregon Broadband Office as required by ORS 184.916.¶

(8) "State highway" means any road or highway designated as such by law or by the Oregon Transportation Commission pursuant to law and includes both primary and secondary state highways.¶

(9) "STIP" means the Statewide Transportation Improvement Program developed by the department for statewide transportation projects.¶

(10) "Trench" or "Trenching" means open trenching, horizontal direction drilling, jacking or plowing.

Statutory/Other Authority: ORS 184.619, 184.920(2), 184.925

Statutes/Other Implemented: ORS 184.911-184.925, 23 CFR 645.301-645.309

ADOPT: 734-054-0015

RULE SUMMARY: Adopt rules to allow broadband providers to place infrastructure into some STIP projects.

CHANGES TO RULE:

734-054-0015

Identification of STIP Projects for Broadband Coordination and Notice

(1) On at least an annual basis, the department will identify STIP projects that may accommodate a broadband facility based on the following criteria:¶

(a) A STIP project that is for the construction, modification or improvement of a state highway and that;¶

(b) Involves a minimum of 2,500 feet of continuous longitudinal trenching, as long as the trenching is not for culverts or other drainage facilities;¶

(c) Is not for a project on an interstate highway; and¶

(d) That may reasonably contain broadband facilities.¶

(2) The department will give notice to all providers and, at the department's discretion, any other interested person or business, when it identifies a STIP project pursuant to this rule. The notice will contain a list of the identified STIP projects, a statement of interest form and instructions as to how to complete the form and submit it to the department.¶

(3) The department will provide notice by:¶

(a) Issuing a mass group email to providers at the email address identified by the Oregon Broadband Office;¶

(b) By posting the selected STIP projects on the website maintained by the department; and,¶

(c) By any other means as determined by the department.

Statutory/Other Authority: ORS 184.619, 184.920(2), 184.925

Statutes/Other Implemented: ORS 184.911-184.925, 23 CFR 645.301-645.309

ADOPT: 734-054-0020

RULE SUMMARY: Adopt rules to allow broadband providers to place infrastructure into some STIP projects.

CHANGES TO RULE:

734-054-0020

Review of Statement of Interest and Selection Criteria

(1) Upon receipt of a completed statement of interest, the broadband coordinator shall notify the applicant that review of the statement of interest has been initiated. The broadband coordinator may request additional information from the applicant or facilitate one or more meetings with the applicant to determine whether accommodation of the applicant's broadband facility is appropriate for the STIP project.

(2) The department will not select an applicant if installation of its broadband facility may:

(a) Increase the cost of the STIP project;

(b) Cause a change or delay to the STIP project schedule;

(c) Modify the scope of the STIP project;

(d) Require additional coordination, concurrence or permitting by a local agency, federal agency or other state agency;

(e) Conflict with another existing or planned transportation facility;

(f) Create any safety hazard; or

(g) Create additional impediments to traffic.

(3) If multiple applicants qualify, the department may select more than one applicant and more than one broadband facility for installation in a state highway based on the location of the STIP project, the need for multiple broadband facilities, the space available and other factors that are specific to the STIP project.

(4) An applicant's failure to submit a statement of interest form within the time required by the department, or an applicant's failure to provide sufficient information on the statement of interest form or in response to a request by the department for additional information may be grounds for the department to refuse to review the statement of interest.

Statutory/Other Authority: ORS 184.619, 184.920(2), 184.925

Statutes/Other Implemented: ORS 184.911-184.925, 23 CFR 645.301-645.309

ADOPT: 734-054-0025

RULE SUMMARY: Adopt rules to allow broadband providers to place infrastructure into some STIP projects.

CHANGES TO RULE:

734-054-0025

Final Determination on Statement of Interest and Protest Procedures

(1) The department will make a final determination of whether a broadband facility is selected to be added to a STIP project.¶

(2) The final determination will be made based on the criteria set forth in OAR 734-054-0020.¶

(3) An applicant may protest the department's final determination by submitting a request to the department to review its decision. The request must be submitted to the broadband coordinator by certified mail within 14 days from date the department issues its final determination. The request will be considered timely if it is sent by the 14th day as shown by the date of the postmark.¶

(4) The request for review must state the reason the applicant believes the denial was made in error in sufficient detail for the department to respond to the applicant's request.¶

(5) The department will consider all of the information previously submitted and any new information the applicant provides with its request and provide a final written decision.

Statutory/Other Authority: ORS 184.619, 184.920(2), 184.925

Statutes/Other Implemented: ORS 184.911-184.925, 23 CFR 645.301-645.309

ADOPT: 734-054-0030

RULE SUMMARY: Adopt rules to allow broadband providers to place infrastructure into some STIP projects.

CHANGES TO RULE:

734-054-0030

Limitations and Conditions

(1) The department will accommodate a broadband facility in a STIP project only as determined appropriate by the department in accordance with the criteria and procedures set forth in these rules, Oregon Administrative Rule Chapter 734, Division 55; and, as permitted by state and federal law.¶

(2) An applicant selected to install its broadband facilities will be responsible for all costs required to integrate its broadband facility into the STIP project.¶

(3) Accommodating a broadband facility in the department's STIP project shall not increase the cost of the STIP project or cause a delay to the STIP project schedule, or otherwise result in any added cost to the department. If the selected applicant is unable to install its broadband facility without causing additional costs or delays, the department may take any necessary action to ensure the project is complete, including, but not limited to, completion of the installation at the selected applicant's cost, cancellation the applicant's agreement or permit to install its broadband facilities, and, removal of the applicant's equipment at the applicant's cost.¶

(4) When the department authorizes access to a STIP project for construction and installation of a broadband facility, the department may specify the location the broadband facility may be installed and may require the selected applicant to coordinate its planning and work with the department's STIP project contractor.

Statutory/Other Authority: ORS 184.619, 184.920(2), 184.925

Statutes/Other Implemented: ORS 184.911-184.925, 23 CFR 645.301-645.309

ADOPT: 734-054-0035

RULE SUMMARY: Adopt rules to allow broadband providers to place infrastructure into some STIP projects.

CHANGES TO RULE:

734-054-0035

Permits and Agreements

(1) A selected applicant will be required to apply for and receive a permit to operate on the state highway pursuant to OAR 734, division 55.¶

(2) The department may also require a selected applicant to enter into an agreement with the department to set the compensation for the selected applicant's use of the state highway, insurance and bonding requirements and any other provisions that may be necessary to accommodate the broadband facility in the state highway. An agreement made pursuant to this rule shall control as between OAR 734, division 55 in the event of a conflict.

Statutory/Other Authority: ORS 184.619, 184.920(2), 184.925

Statutes/Other Implemented: ORS 184.911-184.925, 23 CFR 645.301-645.309