

2-28

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form.

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on [2/28/2012] by the
Date prior to or same as filing date
Department of Aviation 738

Agency and Division Administrative Rules Chapter Number
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Rules Coordinator Address Telephone

to become effective [2/28/2012] through [8/26/2012]
Date upon filing or later A maximum of 180 days including the effective date.

AVIA 1-2012 (T)

RULE CAPTION

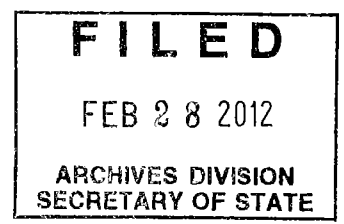
Necessary clarification of non-commercial tie down fees and a fee change for commercial ties-downs.

RULEMAKING ACTION

ADOPT:

AMEND: OAR 738-010-0025 Types of Rates, Charges and Fees

SUSPEND:



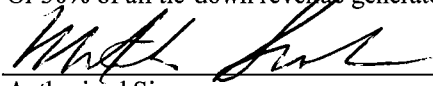
Stat. Auth.: ORS 835.035, ORS 835.040, ORS 835.112

Other Auth.:

Stats. Implemented: ORS 835, ORS 183.335, ORS 183.341

RULE SUMMARY

OAR 738-010-0025(4)(a) currently states Non-commercial tie down fees at a monthly rate. Language "per tie-down" will be added to clarify that these fees apply for each tie-down.
OAR 738-010-0025(4)(b) currently states ODA shall collect 30% of all tie-down revenue generated from FBO's. There shall be no flat fee per tie-down.
Language was removed. "ODA shall collect" and "There shall be no flat fee per tie-down."
Fees will be changed to be consistent with non-commercial tie-down fees.
The fee shall be the greater of:
Category II Airports -- \$20 per month, per tie-down.
Category III and IV Airports -- \$17.50 per month, per tie-down.
Category V Airports -- \$15 per month, per tie-down.
Or 30% of all tie-down revenue generated.


Authorized Signer Mitch Swecker 2/28/2012
Printed name Date

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. ARC 940-2005

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Aviation
Agency and Division

738
Administrative Rules Chapter Number

In the Matter of: Amendment of OAR Chapter 738, Division 010-0025, Relating to Types of Rates, Charges and Fees

Rule Caption: Necessary clarification of non-commercial tie down fees and a fee change for commercial ties-downs.

Statutory Authority: ORS 835.035, ORS 835.040, ORS 835.112

Other Authority:

Stats. Implemented: ORS 835, ORS 183.335, ORS 183.341

Need for the Temporary Rule(s):

The current commercial tie down rule is difficult to enforce and track by the Department of Aviation. The FBO's rarely provide the required monthly accounting to the department. It would be costly for the department to enforce and track these for each FBO. By changing the fee to the greater of a set monthly fee, per tie-down, or a percentage of revenue generated these fees will become consistent with non-commercial tie-downs. These fees will become traceable, enforceable and eliminate inequality, and will consequently provide more revenue to the Department of Aviation. Language was added to the current non-commercial tie-down rule to clarify how the fees are calculated.


Documents Relied Upon, and where they are available:

Oregon Revised Statutes (ORS) 183, ORS 835; Oregon Administrative Rule (OAR) 738-010-0025.

ORS and OAR are available at the web site of the Oregon Legislature at http://www.leg.state.or.us/bills_home.htm

Justification of Temporary Rule(s):

There is not adequate time to go through normal rule making proceedings to provide an opportunity for affected FBO's to adjust their fees paid to the Department of Aviation before the new fee structure is in effect. Providing temporary rules allows time for the FBO's to adjust their accounting system in accordance with the new fees for commercial tie downs.


Authorized Signer

Mitch Swecker

Printed name

2/28/2012

Date

738-010-0025

Types of Rates, Charges and Fees

Each user of an Oregon State-owned airport shall be charged one or more of the following types of rates, charges and fees for the use of the premises and the rights granted by the Department:

(1) All leases of improved or unimproved state-owned land at state-owned airports shall include rent assessed at an annual rate per square foot. All rents and other charges for a lease of Department property shall reflect fair market rent as determined by first considering the fair market value established by the most recent appraisal of the property, if available, adjusted, if necessary, to reflect current lease market conditions as reflected in a market rent analysis conducted by a licensed real estate broker or a similar analysis conducted by Department staff experienced in such analysis. The market rent or similar analysis shall consider relevant circumstances including but not limited to whether the land is buildable and the restrictions, if any, that apply to the land. Lessees shall also pay all real property taxes and other taxes, if any, imposed on the leased property.

(a) Rent shall be paid to the Department as follows:

(A) Annually in full, with the first annual payment on or before the date the lease begins and subsequent payments on the anniversary date;

(B) Monthly in equal installments, payable at the beginning of each month; or

(C) By the terms of a payment-in-kind agreement that may constitute partial payment or full payment. The Department will determine and assign a value to payments in kind based upon a determination of the value of the goods, improvements or services actually received or to be provided. In kind payments are subject to rent escalation clauses. The determination of value will be based on an objective process which compares estimates obtained by the Department, the lessee or the proposed lessee from service providers for like services, goods or improvements. A payment-in-kind agreement and all documents used to determine payment-in-kind value must be retained in the lease file. Acceptance of an in kind payment offering requires documentation of an affirmative finding by the Department that the value of the in kind offering primarily benefits the airport generally rather than the individual lessee or the business of the individual lessee. Any payment-in-kind provision contained in an agreement executed before the effective date of this rule will be deemed valid.

(b) In new or renewed leases where all or part of the capital improvements are constructed at the Department's expense, the Department reserves the right to amortize all or part of the construction costs of the capital improvements, plus a reasonable rate of return as part of the rent, during the term of the lease.

(2) A fuel flowage fee, not to exceed \$0.12 per gallon, shall be assessed to each FBO for all types of fuel received from a commercial distributor. Fuel flowage fees shall be calculated from the FBO's fuel flowage delivery report and shall be paid in full not later than two working days after the conclusion of the reporting period.

(3) Each user with an agreement to access the State-owned airport property shall pay an access fee according to a published fee schedule. To ensure equity among all users, the schedule shall be based on the quantity and individual weight of user's aircraft that will access the airport.

(a) Each commercial operator shall pay a fee to the Department, either annually on the agreement anniversary date or monthly on or before the 25th, for the month then in process.

(A) The fee shall be the greater of:

(i) A fee for each aircraft based on the adjacent property, based on aircraft maximum gross landing weight as shown below; or

(ii) A minimum guaranteed amount determined by Airport Category, as follows:

\$275.00 -- Per month per Category II Airport.

\$175.00 -- Per month per Category III and IV Airports.

\$75.00 -- Per month per Category V Airport.

(B) For multiple aircraft, payment shall be accompanied by a report listing each based aircraft showing aircraft class, N-number, aircraft type and the hangar or tie-down number where the aircraft is stored.

(b) Each non-commercial operator shall pay a fee for each aircraft based on the adjacent property, based on aircraft's maximum gross landing weight as set forth in Table 1 below. Payment is due either:

(A) Annually on the anniversary date of the agreement; or

(B) Monthly on or before the 25th, for the month then in process.

(c) At residential airparks, access fees as set forth below shall be assessed for each developed lot with airport access, whether or not the access is being utilized.

PER AIRCRAFT WEIGHT-BASED FEE FOR ALL STATE-OWNED AIRPORTS

Aircraft Weight Class -- Weight Range -- Monthly Fee Per Aircraft.

Class 1 -- Up to 5,000 lbs - \$15 per month.

Class 2 -- 5,001 to 10,000 lbs -- \$24 per month.

Class 3 -- 10,001 to 20,000 lbs -- \$44 per month.

Class 4 -- 20,001 to 30,000 lbs -- \$66 per month.

Class 5 -- 30,001 to 40,000 lbs -- \$88 per month.

Class 6 -- 40,001 lbs. and over -- \$120 per month.

(4) The Department shall offer tie-down facilities to based and transient aircraft at specific State-owned airports where there are no FBO-provided tiedowns. Based aircraft operators leasing an available tiedown shall pay rent for an entire year in full beginning at lease commencement and subsequently on each anniversary date of the lease, according to rates set forth below.

(a) NON-COMMERCIAL TIE-DOWN FEES:

Category II Airports -- \$20 per month, per tie-down.

Category III and IV Airports -- \$17.50 per month, per tie-down.

Category V Airports -- \$15 per month, per tie-down.

[(b) COMMERCIAL TIE-DOWN FEES: ODA shall rent tie-down facilities to FBOs wherever possible.

The fee shall be the greater of:

Category II Airports -- \$20 per month, per tie-down.

Category III and IV Airports -- \$17.50 per month, per tie-down.

Category V Airports -- \$15 per month, per tie-down.

Or

[ODA shall collect] 30% of all tie-down revenue generated. ***[There shall be no flat fee per tie-down.]*** FBOs shall be responsible for providing a monthly accounting of all tie-down revenue received.

(5) The Department may negotiate individual fee and rent agreements at each State-owned airport, recognizing the diversity of services performed by the caretakers of different airports. These agreements shall be based on the specific services provided by the caretaker and the Department shall ensure that all the financial terms of those agreements are consistent among the same category of airport.

(6) The Director, or the Director's designee, may negotiate a unique rent or fee structure and enter into a special use agreement to benefit the general public, the local community or the State, for such activities as fire protection facilities, sports complexes, farming rights, weather equipment site leases and concession storage areas. All rental rates and charges applicable to special use agreements shall be determined through an analysis of similar activities, rates and charges at comparable airports in addition to consideration of overall benefit to the general public and the State aviation system.

(7) Each commercial operator conducting any type of agricultural-related aeronautical activity at a State-owned airport shall be required to lease property from the Department to store materials and equipment applicable to such operation. The rental rate shall be determined as of the day of occupancy.

(8) Each Mobile Service Provider (MSP) is required to obtain an annually renewable permit from the Department and pay the appropriate fee as represented below.

Category II Airports -- \$25 per month or \$250 annually.

Category III and IV Airports -- \$20.00 per month or \$200 annually.

Category V Airports -- \$15 per month or \$150 annually.

(9) The Director, or the Director's designee, may negotiate a specific rate or fee to support the Department's mission of developing and promoting aviation in the State of Oregon. Any such negotiated fee agreement will contain a fair and equitable rate structure, will not be used routinely and will only be considered for the most unique circumstances.

(10) The Director, or the Director's designee, may waive certain fees for government aircraft, in order to comply with Federal Airport improvement grant assurances. The Director, or the Director's designee, may also waive certain fees for an organization or person engaged in a non-profit aeronautical program or activity that benefits a charitable organization or community.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

Stats. Implemented: ORS 835.035, 835.040, 835.112 & 836.055

Hist.: 1AD 2-1981, f. & ef. 4-20-81; AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02; AVIA 2-2003, f. & cert. ef. 4-3-03; AVIA 1-2010(Temp), f. & cert. ef. 1-7-10 thru 7-6-10; AVIA 2-2010, f. 6-9-10, cert. ef. 7-7-10