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I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on 10/27/2016 by the

<u>Oregon Department of Aviation</u>	<u>738</u>
Agency and Division	Administrative Rules Chapter Number
<u>Lauri Kunze</u>	<u>(503) 986-3171</u>
Rules Coordinator	Telephone
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To become effective Upon filing, Rulemaking Notice was published in the June 2016 Oregon Bulletin.

RULE CAPTION

Rules to Establish the Aviation System Action Program (ASAP) Fund

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

738-124-0010, 738-124-0015, 738-124-0020, 738-124-0025, 738-124-0030, 738-124-0035, 738-124-0040, 738-124-0045

AMEND:

REPEAL:

738-124-0010(T), 738-124-0015(T), 738-124-0020(T), 738-124-0025(T), 738-124-0030(T), 738-124-0035(T), 738-124-0040(T), 738-124-0045(T)

RENUMBER:

AMEND AND RENUMBER:

Statutory Authority:

ORS 835.035, 835.040, 835.112, OL 2015 c.700, section 7(2)

Other Authority:

None

Statutes Implemented:

ORS 835.015, 835.025, 836.015, 836.070, 319.020, OL 2015 c. 700, sections 7 and 8

RULE SUMMARY

HB 2075 (2015) mandates the Department of Aviation to adopt rules in order to administer financial assistance programs for aviation-related purposes throughout the state of Oregon funded by the fuels tax revenue derived from the Aviation System Action Program (ASAP) Fund. This rulemaking replaces the temporary rules ODA had in place to guide the overall program until permanent administrative rules could be adopted.

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PERMANENT ADMINISTRATIVE RULES

Oregon Department of Aviation	738
Agency and Division	Administrative Rules Chapter Number
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3040 25th St. SE, Salem, OR 97302-1125	503-986-3171
Address	Telephone
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RENUMBER:

AMEND & RENUMBER:

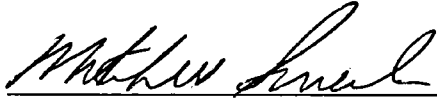
Stat. Auth.: ORS 835.035, 835.040, 835.112, OL 2015 c.700, section 7(2)

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Mitch Swecker

10/31/2016

Authorized Signer

Printed Name

Date

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738-124-0010

Purpose

OL 2015 c.700 Section 7 creates the Aviation System Action Program Fund, allowing for the distribution of fuel tax revenues for the purpose of financing grants to fund Aviation and Airport Projects that involve:

- (1) Providing assistance for federal grant match support, airport safety and emergency preparedness enhancements, services critical and essential to aviation, aviation-related business development, and airport development for local economic benefit;
- (2) Rural commercial air service development; and
- (3) Safety improvements and infrastructure projects at State owned airports. The purpose of division 124 rules is to establish the Aviation System Action Program Fund.

Stat. Auth.: ORS 835.035, 835.040, 835.112, OL 2015 c.700 Section 7

Stats. Implemented: ORS 835.015, 835.025, 836.015, 836.070, 319.020

738-124-0015

Definitions

For the purposes of division 124 rules, the following terms have the following definitions, unless the context clearly indicates otherwise:

- (1) "Agreement" means a legally binding contract between the Department and Recipient that contains the terms and conditions under which the Department is providing funds from the Aviation System Action Program Fund for an Approved Project.
- (2) "Applicant" means a Person or Public Body that applies for funds from the Aviation System Action Program Fund.
- (3) "Approved Project" means a Project that the Board has selected to receive funding through a grant or Selection Process from the Aviation System Action Program Fund.
- (4) "ARC" means the Aviation Review Committee established in accordance with OL 2015 c.700 Section 7 (3).
- (5) "Area Commissions on Transportation" means advisory bodies chartered by the Oregon Transportation Commission (OTC) through the Policy on Formation and Operation of Area Commissions on Transportation (ACTs) approved by the OTC on June 18, 2003.
- (6) "Aviation" is defined in ORS 836.005(5).
- (7) "Aviation Project" or "project" includes but is not limited to airport safety and emergency preparedness, enhancements, rural air service development, capital improvement and maintenance projects critical and essential to airports statewide connectivity.
- (8) "Board" means the State Aviation Board created in ORS 835.102.
- (9) "COAR" or Critical Oregon Airport Relief Program grants means grant funding described in OL 2015 c.700 Section 7 (5).
- (10) "Department" or "Department of Aviation" means the Oregon Department of Aviation or ODA.
- (11) "Director" means the Director of the Oregon Department of Aviation.
- (12) "FAM" or Financial Aid to Municipalities Grant Program means the grant funding program described in OAR Chapter 738, Division 125.
- (13) "Freight Advisory Committee" means the committee created in ORS 366.212.
- (14) "Municipality" as defined by ORS 836.005, refers to the applicant or airport sponsor.
- (15) "Oregon Business Development Department" means the department defined in ORS 285A.070.
- (16) "Person" has the meaning given in ORS 174.100(6), limited to those Persons that are registered with the Oregon Secretary of State to conduct business within the State of Oregon.
- (17) "Program" means the Aviation System Action Program established by division 124 rules to administer the Aviation System Action Program Fund.
- (18) "Public Body" is defined in ORS 174.109.
- (19) "Receive Federal Grants" means execution of a grant agreement with any agency of the United States.

(20) "Recipient" means an Applicant that enters into Agreement with the Department to receive funds from the Aviation System Action Program Fund.

(21) "Recipient's Total Project Costs" means the funds received from the Aviation System Action Program Fund program plus the Recipient's matching funds, and any additional funds, if applicable.

(22) "ROAR" or Rural Oregon Aviation Relief Program grants means grant funding for the sole purpose of assisting commercial air service to rural Oregon as described in OL 2015 c.700 Section 7 (6).

(23) "Rural Airport" means an airport that principally serves a city or metropolitan statistical area with a population of 500,000 or fewer.

(24) "SOAR" or State Owned Airport Reserve Program means funding described in OL 2015 c.700 Section 7 (7).

Stat. Auth.: ORS 835.035, 835.040, 835.112, OL 2015 c.700 Section 7

Stats. Implemented: ORS 835.015, 835.025, 836.015, 836.070, 319.020

738-124-0020

Application Submission Periods

(1) The Department will announce periods for submitting applications for funding from the Aviation System Action Program Fund.

(2) Project applications will be reviewed for compliance with the requirements as prescribed in division 124 rules.

(3) Applications not funded may be resubmitted during subsequent application submission periods announced by the Department.

Stat. Auth.: ORS 835.035, 835.040, 835.112, OL 2015 c.700 Section 7

Stats. Implemented: ORS 835.015, 835.025, 836.015, 836.070, 319.020

738-124-0025

Application Requirements

(1) Applicants interested in receiving funds from the Aviation System Action Program Fund must submit an application to the Department per the Department's current program Policy as established for the COAR Grant Program and the ROAR Program.

(2) Applications may not be submitted for projects already completed by the application deadline.

(3) Applications for funding must be in a format prescribed by the Department and contain or be accompanied by such information as the Department may require, including:

(a) The expected results from the proposed Project for each of the considerations as prescribed in OAR 738-125-0035;

(b) Documented desire for and support of the Project from the businesses and entities to be served by the Project; and

(c) Documentation to validate the Project schedule and costs.

(4) Applications submitted for the purpose of receiving funding to assist commercial air service to rural Oregon will follow the ROAR Program guidelines set forth in the Department's current program Policy.

(5) Only state-owned airports are eligible to receive funding from the SOAR Program following the SOAR Program guidelines set forth in the Board's policy.

Stat. Auth.: ORS 835.035, 835.040, 835.112, OL 2015 c.700 Section 7

Stats. Implemented: ORS 835.015, 835.025, 836.015, 836.070, 319.020

738-124-0030

Eligibility and Application Review

(1) The Department will review applications received to determine whether the application is complete and the Applicant and the Project are eligible for Program Funds.

(a) COAR Grant Applications shall be reviewed using Department Policy guidelines as established by OAR 738-125-0035, in accordance with OL 2015 c.700 Section 7 (3) and ORS 836.015.

- (b) ROAR Applications shall be reviewed using Department Policy guidelines and submitted directly to the Board for final review and approval per OL 2015 c.700 Section 7 (6).
- (c) SOAR Projects submitted by the Oregon Department of Aviation for state airport improvements shall be reviewed and approved by the Board independently in accordance with ORS 835.060.
- (2) Applicant Eligibility. Applicants that meet [of] the following criteria are eligible:
 - (a) The Applicant is a Public Body or Person within the State of Oregon.
 - (b) The Applicant has sufficient management and financial capacity to complete the Project including without constraint the ability to contribute match in accordance with OAR 738-125-0030.
- (3) Project Eligibility. Projects that meet all of the following criteria are eligible:
 - (a) For the COAR Grant Program, the project is an Aviation Project described in 738-124-0035 (8).
 - (b) For the ROAR Program, applications will be reviewed in accordance with adopted policy for the purpose of assisting commercial air service to rural Oregon.
 - (c) The Project will not require or rely upon continuing subsidies from the Department for ongoing operations.
 - (d) The Project is not a public road or other project that is eligible for funding from revenues described in section 3a, Article IX of the Oregon Constitution, i.e. the State Highway Trust Fund.
 - (e) The Project is feasible, including the estimated cost of the Project, the expected results from the proposed Project for each of the considerations as prescribed by OAR 738-125-0035(2), the Project schedule, and all applicable and required permits that shall be obtained within the Project schedule.
- (4) If an Applicant or Application for funding is incomplete and/or not eligible for Program Funds, the Department will, within 15 business days of making such determination:
 - (a) Specify the additional information the Applicant must provide to establish eligibility; or
 - (b) Notify the Applicant that the application request is ineligible.
- (5) The Department may deem an application ineligible if the Applicant fails to meet eligibility requirements of subsections (2) and (3) of this rule, or fails to provide requested information in writing by the date required by the Department, or if the application contains false or misleading information.
- (6) The Director will consider protests of the eligibility determination for the Program. Only the Applicant may protest. Protests must be submitted in writing to the Director within 15 business days of the event or action that is being protested. The Director's written decision is final.
- (7) The Department will make all eligible applications available for review, as applicable under OL 2015 c.700 Section 7 to the designated Review committee and to the Board for final review and approval. If applicable, the Freight Advisory Committee, and the Oregon Business Development Department will provide additional comments to the Board.

Stat. Auth.: ORS 835.035, 835.040, 835.112, OL 2015 c.700 Section 7
 Stats. Implemented: ORS 835.015, 835.025, 836.015, 836.070, 319.020

738-124-0035

Project Selection

- (1) The Board will select Projects to be funded through a grant with monies in the Aviation System Action Program Fund.
- (2) Prior to selecting Projects to be funded with monies in the Aviation System Action Program Fund, the Board shall solicit recommendations when applicable from:
 - (a) The Aviation Review Committee (ARC).
 - (b) The Freight Advisory Committee for freight Transportation Projects when applicable.
 - (c) The Oregon Business Development Department for aviation transportation projects when applicable.
- (3) Prior to selecting Projects to be funded with monies in the Aviation System Action Program Fund, the Board may solicit recommendations from transportation stakeholder and advocate entities not otherwise specified in section (2) of this rule including the Area Commissions on Transportation. Business Oregon and Regional Solutions Teams will provide comments to the designated aviation representative of the Area Commissions on Transportation.

(4) On behalf of the Board, the Department shall solicit recommendations from the committees and entities in section (2) of this rule before soliciting recommendations from entities in section (3) of this rule. The Department shall provide the recommendations from the committees and entities in section (2) of this rule to the entities in section (3) of this rule.

(5) The Director, in consultation with Department staff, shall provide the Board a list of recommendations from the review committees and entities in section (2) and section (3) of this rule. The list shall include the evaluation results and recommendations from each of the committees and entities in sections (2) and (3) of this rule. The Board shall provide its final recommendations in a report of projects to be funded with monies in the Aviation System Action Program Fund listing in priority order eligible Projects together with a reasonable number of alternate Projects in priority order.

(6) The Department shall determine the organizational guidance for the committees' and entities' processes and protocols.

(7) The committees and entities in sections (2), (3) and (5) of this rule shall follow the organizational guidance determined by the Department under section (6) of this rule.

(8) The Board will consider all of the following in its determination of eligible Projects to approve for receipt of funds from the Aviation System Action Program Fund through the COAR Grant Program. The ARC committee shall recommend applications to the State Aviation Board, which shall select applications with priority in accordance with OAR 738-125-0035 (3):

(a) Fifty percent of the Aviation System Action Program Fund amounts described in subsection OL 2015 c.700 Section 7 (4)(b) shall be prioritized in the following manner and distributed for the following purposes under the COAR Grant Program:

(A) First priority is to assist airports in Oregon with match requirements for Federal Aviation Administration Airport Improvement Program grants;

(B) Second priority is to make grants for emergency preparedness and infrastructure projects, in accordance with the Oregon Resilience Plan, including grants for emergency management plan development, seismic studies and emergency generators and similar equipment;

(C) Third priority is to make grants for:

(i) Services critical or essential to aviation, including, but not limited to, fuel, sewer, water and weather equipment.

(ii) Aviation-related business development, including, but not limited to, hangars, parking for business aircraft and related facilities.

(iii) Airport development for local economic benefit, including, but not limited to, signs and marketing.

(b) Priority in distributing grants shall be given to projects for which applicants demonstrate a commitment to contribute the greatest amounts toward the costs of the projects to which the applications relate. Priorities will be in accordance with the corresponding OAR as they relate to COAR Grants and ROAR.

Stat. Auth.: ORS 835.035, 835.040, 835.112, OL 2015 c.700 Section 7

Stats. Implemented: ORS 835.015, 835.025, 836.015, 836.070, 319.020

738-124-0040

Grant Awards and Match

(1) Once a project is selected by the Board under this rule the amount of monies identified by the Board is considered allocated from the Fund to a Recipient. If an Agreement with a Recipient has not been executed within 180 days from the date of selection, the grant is deemed terminated, and the funds may be reassigned by the Board.

(2) Grants will be awarded only when there are sufficient funds available in the Aviation System Action Program Fund to cover the costs of the grants.

(a) Recipient matching funds must be provided by the Recipient in the form of monetary outlay for elements necessary for implementation of the Project, including land, excavation, permits, engineering, payroll, special equipment purchase or rental, and cover a percentage of the eligible Project costs required

by OAR 738-125-0030 and/or Board approval. The match requirement is not applicable to the SOAR Program.

(b) Board has the sole authority to amend required match responsibility of the Recipient if Recipient cannot meet OAR 738-125-0030(4) match requirement. These requirements are not applicable to the SOAR Program. Board at its sole discretion may determine no match is required if the Recipient can demonstrate economic distress by submitting supporting documentation, including but not limited to:

(A) Copies of current budget;

(B) Letters of support.

Stat. Auth.: ORS 835.035, 835.040, 835.112, OL 2015 c.700 Section 7

Stats. Implemented: ORS 835.015, 835.025, 836.015, 836.070, 319.020

738-124-0045

Project Administration

(1) The Department will administer all Grants.

(2) The Department and Recipient will execute an Agreement prior to the disbursement of Program Funds for an Approved Project. The Agreement is effective on the date all required signatures are obtained or at such later date as specified in the Agreement. Agreements shall follow Board approved Department Policy and Procedures document and manual.

(3) The Agreement will contain provisions and requirements, including but not limited to:

(a) Documentation of the projected costs for an Approved Project must be submitted to the Department prior to the disbursement of Program Funds.

(b) Only Project costs incurred on or after the effective date of the Agreement are eligible for grant funds.

(c) Disbursement of Program Funds for grants will be paid on a reimbursement basis and will not exceed one disbursement per month; this is not applicable to the SOAR Program. The Director or the Board may make exceptions to the reimbursement basis if the Department finds that the Recipient would have difficulty meeting requirements.

(d) Except under the SOAR Program, five percent of funds received from the Aviation System Action Program Fund will be withheld from each reimbursement request and shall be released to Recipient as the conditions established by the Department are met. The Department will determine retainage limits in accordance with ORS 835.112. Funds withheld shall be released to Recipient upon final project acceptance by the Department.

(e) Upon request, a Recipient must provide the Department with a copy of documents, studies, reports and materials developed during the Project, including a written report on the activities or results of the Project and any other information that may be reasonably requested by the Department.

(f) Recipients must separately account for all monies received from the Aviation System Action Program Fund in Project accounts in accordance with Generally Accepted Accounting Principles.

(g) Any Program Funds disbursed but not used for an Approved Project must be returned to the Department.

(h) Amendments to Agreements are required to change an Approved Project's cost, scope, objectives or timeframe.

(i) Recipients must covenant, represent and agree to use Project funds in a manner that will not adversely affect the tax-exempt status of any bonds issued under the Program.

(j) Recipients, if applicable, must covenant, represent and agree to remain current on all state and local taxes, fees and assessments for the useful life of the Project as prescribed in the Agreement.

(4) The Department may invoke sanctions against a Recipient that fails to comply with the requirements governing the Program. The Department will not impose sanctions until the Recipient has been notified in writing of such failure to comply with the Program requirements as specified in this Rule and has been given a reasonable time to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:

(a) Work on the Approved Project has not been substantially initiated within six months of the effective date of the Agreement;

- (b) State statutory requirements have not been met;
 - (c) There is a significant deviation from the terms and conditions of the Agreement; or
 - (d) The Department finds that significant corrective actions are necessary to protect the integrity of the Program Funds for the Approved Project and those corrective actions are not, or will not be, made within a reasonable time.
- (5) The Department may impose one or more of the following sanctions:
- (a) Revoke an existing award.
 - (b) Withhold unexpended Program Funds.
 - (c) Require return of unexpended Program Funds or repayment of expended Program Funds.
 - (d) Bar the Recipient from applying for future assistance.
 - (e) Other remedies that may be incorporated into grant Agreements.
- (6) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the agreement.
- (7) The Director will consider protests of the funding and Project administration decisions for the Program. Only the Recipient may protest. Protests must be submitted in writing to the Director within 15 business days of the event or action that is being protested. The Director's decision is final. Jurisdiction for review of the Director's decision is in the circuit court for Marion County pursuant to ORS 183.484.
- (8) The Director may waive non-statutory requirements of this Program if it is demonstrated such a waiver would serve to further the goals and objectives of the Program.
- Stat. Auth.: ORS 835.035, 835.040, 835.112, OL 2015 c.700 Section 7
Stats. Implemented: ORS 835.015, 835.025, 836.015, 836.070, 319.020