

Chapter 738 Oregon Department of Aviation

DIVISION 1

PROCEDURAL RULES

738-001-0001	Notice of Proposed Rules
738-001-0006	Model Rules of Procedure
738-001-0035	Public Records Access and Fees

DIVISION 5

GENERAL DEFINITIONS

738-005-0010	Definitions
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DIVISION 10

RATES AND CHARGES FOR STATE-OWNED AIRPORTS

738-010-0010	Purpose of Rule and Statutory Authority
738-010-0015	Revenue Disbursement
738-010-0020	Establishment of Rates and Charges
738-010-0025	Types of Rates, Charges and Fees
738-010-0030	Adjustments of Fuel Flowage, Access, Tiedown, Mobile Service and Special Use Fees
738-010-0035	Fair Market Value Cost of Construction — Adjustments of Unimproved Land, Improved Land and Facility Rents
738-010-0040	Appraisal/Market Rent Analysis Standards
738-010-0045	Appraisal/Market Rent Analysis Methodology
738-010-0050	Rate of Return
738-010-0055	Highest and Best Use of State-Owned Aeronautical Property
738-010-0060	Penalties

DIVISION 14

THROUGH THE FENCE PILOT PROGRAM

738-014-0010	Through the Fence Pilot Program: Purpose and Policy
738-014-0020	Definitions
738-014-0030	Selection of Volunteer Pilot Sites
738-014-0035	Pilot Program Evaluation Process
738-014-0040	Revisions to Airport Facility Plans to Accommodate New Through the Fence Operations at Pilot Sites
738-014-0050	Standards and Guidelines for Through the Fence Operations
738-014-0060	Airport-related Economic Development for the Community

DIVISION 15

LEASING FOR AERONAUTICAL ACTIVITIES AT STATE-OWNED AIRPORTS

738-015-0005	Leasing Application for Commercial Aeronautical Activities
738-015-0010	Commercial Aeronautical Lease Applicant's Financial Responsibility and Experience
738-015-0015	ODA Review of Application for Commercial Aeronautical Lease
738-015-0020	Commercial Aeronautical Lease Provisions
738-015-0025	Commercial Aeronautical Lease Renewal Options
738-015-0030	Termination of Commercial Aeronautical Lease for Default or Airport Development
738-015-0035	Sale of Improvements, Assignment of Commercial Leases, Subleases
738-015-0040	Commercial Lease Insurance Requirements
738-015-0045	Exclusive Rights
738-015-0050	Competitive Proposal Process for Commercial Aeronautical Activity
738-015-0055	Access Permits

738-015-0060	Leasing Application for Non-Commercial Aeronautical Activities
738-015-0065	Hangar Occupancy Under Leases for Noncommercial Aeronautical Activity
738-015-0070	Non-Commercial Aeronautical Lease Applicant's Financial Responsibility
738-015-0075	ODA Review of Application for Non-Commercial Aeronautical Activities
738-015-0080	Non-Commercial Aeronautical Lease Provisions
738-015-0085	Non-Commercial Aeronautical Lease Renewal Options
738-015-0090	Termination of Non-Commercial Aeronautical Lease for Default or Airport Development
738-015-0095	Sale of Improvements, Assignment of Non-Commercial Leases, Subleases
738-015-0100	Non-Commercial Lease Insurance Requirements

DIVISION 20

MINIMUM STANDARDS FOR AIRPORTS

738-020-0010	Purpose and Statutory Authority
738-020-0020	Designation of Minimum Standards
738-020-0025	Application for Site Approval
738-020-0030	Application for License
738-020-0035	Approval of Site: Issuance of License
738-020-0040	Revocation of Site Approval or License
738-020-0045	Hearings

DIVISION 25

AIRPORT FUEL FACILITIES

738-025-0001	Purpose of Rule
738-025-0010	Permit process

DIVISION 35

OPERATING MINIMUM STANDARDS FOR COMMERCIAL AERONAUTICAL ACTIVITY AT STATE-OWNED AIRPORTS

738-035-0005	Purpose and Overview
738-035-0010	Application of Operating Minimum Standards
738-035-0015	Authorization for Commercial Activity on State-Owned Airport Property
738-035-0020	Waiver or Modification of Operating Minimum Standards
738-035-0025	Review, Revisions and Amendments to Operating Minimum Standards
738-035-0030	Enforcement
738-035-0035	Commercial Business Employee Conduct at State-Owned Airports
738-035-0040	Minimum Standards for Fixed Base Operators (FBOs) at State-Owned Airports
738-035-0045	Primary FBO Services Required at State-Owned Airports
738-035-0050	Secondary FBO Services at State-Owned Airports
738-035-0055	Minimum Standards for Specialized Aviation Service Operations (SASO) at State-Owned Airports
738-035-0060	Minimum Standards for Mobile Service Providers (MSPs) at State-Owned Airports
738-035-0065	Minimum Standards for Commercial Self-Fueling Services at State-Owned Airports
738-035-0070	Compliance with Operating Minimum Standards by Through-The-Fence Operators at State-Owned Airports
738-035-0075	Exemption from Operating Minimum Standards for Flying Clubs at State-Owned Airports

Chapter 738 Oregon Department of Aviation

DIVISION 40

738-070-0260

Rules of Practice for Hearings

SEAPLANE OPERATION

738-040-0010	Purpose and Statutory Authority
738-040-0016	General Provisions
738-040-0018	Waters Closed to Seaplane Operation
738-040-0020	Interagency Coordination
738-040-0025	Equipment
738-040-0030	Operation
738-040-0040	Application for Special Regulations

DIVISION 50

AURORA STATE AIRPORT AIRCRAFT OPERATION REGULATIONS

738-050-0010	Taxiing
738-050-0020	Landing and Take-Off
738-050-0030	Airport Traffic Patterns
738-050-0040	Helicopters
738-050-0050	Gliders
738-050-0060	Balloons, Parachutists
738-050-0070	Ultralight Aircraft
738-050-0080	Agricultural Application
738-050-0090	Miscellaneous

DIVISION 60

AIRCRAFT DEALER'S LICENSE

738-060-0020	General Requirements
738-060-0030	Application and Fee
738-060-0040	Licensing Procedures
738-060-0050	Dealer Responsibilities
738-060-0060	Individual Registration
738-060-0070	Penalties

DIVISION 70

PHYSICAL HAZARDS TO AIR NAVIGATION

738-070-0010	General Information
738-070-0020	Scope of Rule
738-070-0040	Standards
738-070-0050	Kind of Objects Affected
738-070-0060	Notice of Construction or Alteration
738-070-0070	Construction or Alteration Requiring Notice
738-070-0080	Form and Time of Notice
738-070-0090	Acknowledgment of Notice
738-070-0100	Obstruction Standards
738-070-0110	Standards for Determining Obstructions
738-070-0120	Civilian Airport Imaginary Surfaces
738-070-0130	Airport Imaginary Surfaces for Heliports
738-070-0140	Effect of Proposed Construction on Navigable Airspace
738-070-0150	Initiation of Studies
738-070-0160	Aeronautical Studies
738-070-0170	Administrative Appeal
738-070-0180	Effective Period of Determination of No Hazard
738-070-0190	Establishment of Antenna Farm Areas
738-070-0200	General Provisions of Antenna Farm Area
738-070-0210	Marking and Lighting of Obstructions to Air Navigation
738-070-0220	Standards for Marking and Lighting of Obstructions to Air Navigation
738-070-0230	Objects and Structures to Be Marked and Lighted
738-070-0240	Determination of Responsibility for Installation and Maintenance of Marking and Lighting Objects and Structures that Constitute Hazards to Air Navigation
738-070-0250	Penalties

DIVISION 80

AIRCRAFT REGISTRATION

738-080-0010	Purpose and Statutory Authority
738-080-0020	Exemption from Aircraft Registration Fee
738-080-0030	Temporary Exemption from Registration
738-080-0040	Placement of Registration Decal (Number Plate) on Aircraft

DIVISION 90

AIRPORT LISTINGS

738-090-0010	Purpose
738-090-0030	Airport Listings
738-090-0040	Procedure for Adding an Airport to Listings
738-090-0050	Information to be Considered in Determining Airport Listings
738-090-0060	Removing an Airport from Listings

DIVISION 100

NOTICE TO AIRPORT OWNERS ON PUBLIC HEARING ON REQUEST FOR LAND-USE PERMIT OR ZONE CHANGE

738-100-0010	Purpose
738-100-0020	Interagency Coordination
738-100-0030	Notice
738-100-0035	Advisory

DIVISION 125

FINANCIAL AID TO MUNICIPALITIES (FAM) GRANT PROGRAM

738-125-0010	Purpose
738-125-0015	General Provisions
738-125-0020	Applicant Eligibility
738-125-0025	FAM Grant Application Criteria
738-125-0030	Matching Requirements
738-125-0035	Project Eligibility and Prioritization
738-125-0040	Application Process
738-125-0045	Project Selection and Fund Allocation
738-125-0050	Grant Agreements
738-125-0055	Waivers and Exceptions

DIVISION 130

STATE AGENCY COORDINATION PROGRAM

738-130-0005	Purpose
738-130-0015	Definitions
738-130-0025	Applicability
738-130-0035	Activities Which Significantly Affect Land Use
738-130-0045	Coordination Procedures for Adopting Final Oregon Aviation Plan
738-130-0055	Coordination Procedures for Adopting Final Master Plans
738-130-0065	Coordination Procedures for Adopting Plans for Class 1 and 3 Projects
738-130-0075	Coordination Procedures for Adopting Plans for Class 2 Projects Determined to Significantly Affect Land Use
738-130-0085	Coordination Procedures for Operations, Maintenance and Modernization Activities
738-130-0095	Coordination Procedures for the Disposal of Airport Land
738-130-0105	Permit Program Procedures
738-130-0115	Referral of Compatibility Disputes to the Land Conservation and Development Commission

738-130-0125 Statewide Goal Compliance and Acknowledged Plan Compatibility for New or Amended Rules and Programs Significantly Affecting Land Use

DIVISION 1

PROCEDURAL RULES

738-001-0001

Notice of Proposed Rules

In accordance with ORS 183.341, to provide a reasonable opportunity for interested persons to be notified of proposed actions, prior to the adoption, amendment or repeal of any rule, the Oregon Department of Aviation shall give notice of the proposed adoption, amendment or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 and in accordance with 183.335.

(2) By mailing a copy of the notice to persons on the Oregon Department of Aviation mailing lists for specific interest areas established pursuant to ORS 183.335(8).

(3) By mailing a copy of the notice to legislators as provided in ORS 183.335(15).

(4) By mailing a copy of the notice to the following:

- (a) Associated Press;
- (b) Northwest Labor Press;
- (c) Associated Oregon Industries;
- (d) Capitol Press Room; and
- (e) Statesman-Journal newspaper.

Stat. Auth.: ORS 835.112

Stats. Implemented: ORS 183.335 & 183.341

Hist.: AVIA 1-2000, f. & cert. ef. 12-26-00; AVIA 1-2004, f. & cert. ef. 2-17-04

738-001-0006

Uniform and Model Rules of Procedure

(1) Pursuant to ORS 183.341(2), the Oregon Department of Aviation adopts the Attorney General's Model Rules of Procedure under the Administrative Procedures Act, OAR chapter 137, divisions 1 through 5 to govern its rulemaking and contested cases or equivalent proceedings.

(2) Pursuant to ORS 183.341, the Oregon Department of Aviation adopts the Attorney General's Model Rules of Procedure under the Administrative Procedures Act, OAR chapter 137, divisions 46 through 49 to govern its procurement and public contracting.

(3) Sections (1) and (2) above adopt the Model Rules in effect on the date this rule is filed with the Secretary of State.

Stat. Auth.: ORS 835.035 & 835.112

Stats. Implemented: ORS 183.341 & 279A.050

Hist.: AVIA 1-2000, f. & cert. ef. 12-26-00; AVIA 1-2004, f. & cert. ef. 2-17-04; AVIA 1-2015, f. & cert. ef. 7-1-15

738-001-0035

Public Records Access and Fees

All information in the custody of the Director of the Oregon Department of Aviation shall be disclosed or protected from disclosure in accordance with Chapter 192 of the Oregon Revised Statutes.

(1) Requests for records may be verbal; however, the Oregon Department of Aviation may require the request to:

- (a) Be in writing;
- (b) Be dated;
- (c) Be signed;
- (d) Adequately describe the records being requested; and
- (e) Indicate the date the records are needed.

(2) A reasonable period of time, as determined by the department, shall be allowed for the records custodian to locate and assemble the requested records.

(3) Unless otherwise provided by statute or other administrative rule, the fees shall be calculated as follows:

- (a) \$0.20 per page for photocopies;

(b) Actual cost for use of material and equipment for producing copies of non-standard records. "Non-standard" records include, but are not limited to:

- (A) Audio tapes;
- (B) Video tapes;
- (C) Oversize maps; and
- (D) Machine readable formats such as computer hard drives, diskettes and magnetic tape.

(c) Costs for labor, which includes locating, compiling, editing or otherwise processing information and records. There shall be no charge for the first 30 minutes of staff time. The labor rate assessed thereafter shall be \$15 per hour;

(d) The actual cost for delivery of records such as postage, FAX costs and courier fees; and

(e) \$5 for each true copy certification.

(4) Estimated payment or deposit may be requested in advance.

(5) An individual or entity may subscribe to receive copies of State Aviation Board and Board Committee agendas and meeting materials. A fee will be charged to obtain advance paper copies of the meeting materials, to cover the agency's cost for copying and mailing the materials. If the individual or entity receives the meeting materials electronically, there is no charge.

(a) To obtain the paper copies of meeting materials, the individual or entity shall provide a name, contact person (if different), mailing address and daytime telephone number. The subscriber shall pay \$120 for twelve mailings (Agendas, meeting materials and any related committee meeting materials). The subscriber will receive the complete board meeting packet and board committee materials. No refund is available after the first mailing has been sent.

(b) An individual or entity that chooses to receive meeting agendas and materials electronically may subscribe by sending an email request to aviation.mail@state.or.us. The email shall include a contact name, the email address of the individual or organization and a daytime telephone number for the contact person. An email subscription continues until cancelled by the subscriber. There is no charge to subscribe electronically.

Stat. Auth.: ORS 835.112, 192.430 & 192.440

Stats. Implemented: ORS 192.410 - 192.505

Hist.: AVIA 1-2000, f. & cert. ef. 12-26-00; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02; AVIA 2-2005, f. & cert. ef. 9-23-05

DIVISION 5

GENERAL DEFINITIONS

738-005-0010

Definitions

Definitions contained in this division apply throughout OAR chapter 738 to rules governing the Oregon Department of Aviation (Department or ODA).

(1) "Access agreement" is an agreement granted by the Department to a person for the right to access the State-owned airport property for a fee. (Also referred to as ingress/egress agreement or through-the-fence agreement.)

(2) "Aerial applicator" refers to any person engaged in aerial application activities.

(3) "Aeronautical activity" means any activity or service conducted at a State-owned airport that involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations. (These activities include but are not limited to: on-demand or air charter operations, aircraft fueling, aircraft storage, flight training, aircraft rental, aircraft sales, aircraft repair and maintenance, aerial photography, aerial field spraying, aerial advertising, aerial surveying, skydiving, sale of aviation petroleum products, and any other activities, which — because of their similar relationship to the operation of aircraft — can appropriately be regarded as an "Aeronautical Activity.")

(4) "Aeronautical use" refers to any activity that involves, makes possible, or is required for the safety or operation of an aircraft.

(5) “Agreement” means the written contract between the Department and an Operator specifying the terms and conditions under which the Operator may conduct aeronautical activities or access the airport operations area through-the-fence.

(6) “Agricultural Airstrip” (Agstrip) refers to an area designated by the user solely for the purpose of providing for temporary or occasional landings and take-offs by aircraft engaged in aerial application of chemicals, fertilizers, or other substances to agricultural or forest lands. Such agstrips shall be exempt from all licensing and registration requirements. Establishment of and responsibility for the restricted landing area rests solely with the user who shall insure compliance with the following:

(a) Use for any aeronautical purpose other than agricultural or forest aerial application is prohibited;

(b) Prior permission from the property owner must be obtained;

(c) The strip must be of sufficient size to accommodate an aircraft whose published manufacturer’s specifications state that an aircraft of that type can operate safely from a strip of that dimension;

(d) Safety of persons and property on the ground must be assured;

(e) Conflict with traffic patterns of an existing airport must be avoided or coordinated and resolved; and

(f) If an agstrip is to be established on a public highway or other public grounds, specific permission must be obtained from the authorities in charge thereof, as required by ORS 837.090.

(7) “Air cargo” refers to transport of goods by air and includes freight (including general, heavy and special), express deliveries (documents, parcels and door-to-door), and mail.

(8) “Aircraft” means any contrivance used or designed for navigation of or flight in the air. Examples include, but are not limited to, airplane or rotorcraft (helicopter, gyrocopter or autogyro). Aircraft specifically does not mean a one-person motorless glider that is launched from the earth’s surface solely by the operator’s power.

(9) “Aircraft Dealer” refers to any person within the State of Oregon who solicits aircraft for sale to the general public or holds a lease to conduct a business that includes aircraft sales or brokering of aircraft as an authorized activity. It should be noted that a person who sells an aircraft owned by that person, whether for personal or company business, is not considered to be an “Aircraft Dealer” provided the aircraft is registered with both the Oregon Department of Aviation and the Federal Aviation Administration in the name of that person.

(10) “Aircraft Fuel” means all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating an internal combustion, jet, or turbine engine in an aircraft.

(11) “Aircraft Operation” means an aircraft arrival at or departure from the airport.

(12) “Aircraft Owner” means a person holding legal title to an aircraft, or any person having exclusive possession of an aircraft.

(13) “Aircraft Parking and Storage Areas” means those hangar and apron locations of the State-owned airport designated by the ODA Director or State Airports Manager for the parking and storage of aircraft.

(14) “Aircraft Rental” means the commercial operation of renting or leasing aircraft to the public for compensation.

(15) “Aircraft Sales” means the sale of new or used aircraft through brokerage, ownership, franchise, distributorship, or licensed dealership.

(16) “Airframe and Power Plant Maintenance” means the commercial operation of providing airframe and power plant services, which includes the repair, maintenance, inspection, constructing, and making of modifications and alterations to aircraft, aircraft engines, propellers and appliances including the removal of engines for major overhaul. This category of service also includes the sale of aircraft parts and accessories.

(17) “Airpark” means a development or area not located on, but lying adjacent to, and with access to the Airport Operations

Area. Said area may include permanent residences, structures, and taxilanes.

(18) “Airport” means any area of land or water, within or without this state, that is used or intended for use for the landing and take-off of aircraft, and includes any appurtenant areas that are used or intended for use for airport buildings, or other airport facilities or rights-of-way, together with all airport buildings and facilities. Generally, the Airport Layout Plan indicates the extent of the area considered to be the “Airport.”

(19) “Airport Categories” refer to the five categories of airports as identified in the Oregon Aviation Plan, whose significant functions are as follows: [Table not included. See ED. NOTE.]

(20) “Airport Layout Plan” (ALP) refers to a major product of airport master planning. The ALP is a set of drawings that may include: an airport layout drawing, an obstruction clearance and approach profile drawing, a land use plan drawing, a terminal area drawing (if a terminal exists), a ground access drawing, and a property drawing. All airport development carried out at federally obligated airports must be done in accordance with an FAA-approved ALP. The functional components of an ALP extend from the airport entrance to the airspace around the airport. The master planning process then considers these various components in their entirety. Reciprocally, the ALP seeks to take the data from the master plan as well as other studies and show them in graphic form.

(21) “Airport Manager” means a designated individual or duly authorized individual or individuals appointed by the ODA Director to administer and manage all operations of the State-owned airports and State-owned airport facilities, and to supervise all State-owned airport projects.

(22) “Airport Operations Area” (AOA) means the area of the State-owned airport used for aircraft landing, takeoff, or surface maneuvering including the associated hangars, navigation, and communication facilities.

(23) “Airport Sponsor” means a public agency with control of a publicly-owned airport or the private owner of a privately-owned airport.

(24) “Airworthy condition” means that the aircraft is physically capable of safe operation and flight, that all repairs have been made (such as flat tires, broken windows or other required short-term maintenance items), and that the FAA inspection is current.

(25) “ALP” means Airport Layout Plan.

(26) “AOA” refers to Airport Operations Area.

(27) “Appraisal” is the valuation process conducted by a certified appraiser to estimate the current fair market value or fair market rent of State-owned airport property or facilities for rate setting or adjustment purposes.

(28) “Approach and Departure Zone” is a trapezoidal area at the end of each runway to assure obstruction-free approaches and departures for each runway. The dimensions of an approach-departure zone depend on the category of the airport, as categorized in the Oregon Aviation Plan.

(29) “Approach Surface” means a trapezoidal plane longitudinally centered on the extended runway centerline and extending outward and upward from a point starting 200 feet from each end of the runway. The area below the approach surface must be protected from obstructions. The dimension and slope of these approach surfaces are as follows:

(a) For a visual airport — 250 feet wide expanding to a width of 1,250 feet at a length of 5,000 feet, with a slope of 20:1;

(b) For an instrument airport — 1,000 feet wide expanding to a width of 4,000 feet at a length of 10,000 feet, with a slope of 34:1 for non-precision approach and a slope of 50:1 for precision approach.

(30) “Approved Secondary Activities” include airframe and power plant maintenance, flight training, aircraft rental, avionics maintenance and sales, on-demand operations and aircraft storage/hangars.

(31) “Avionics” refers to the development and production of electrical and electronic devices for use in aviation, missilery and astronautics, as well as the devices and systems so developed.

(32) “Avionics Sales and Maintenance” means the commercial operation of providing for the repair and maintenance of aircraft radios, instruments and accessories. Such operation may include the sale of new or used aircraft radios, instruments and accessories.

(33) “Base Term” is the specified initial term of a lease, excluding any specified renewal options.

(34) “Based Aircraft” means an aircraft that the owner physically locates at the airport for an undetermined period and, whenever absent from the airport, the owner intends to return the aircraft to that same airport for long-term storage. A based aircraft is required to be registered with the Department in accordance with ORS 836.040.

(35) “Board” refers to the State Aviation Board.

(36) “Boat” means every description of watercraft, including a seaplane on the water and not in flight, used or capable of being used as a means of transportation on the water, but does not include boathouses, floating homes, air mattresses, beach and water toys or single inner tubes.

(37) “Building Restriction Line” is a designated, but not necessarily marked, boundary that provides lateral clearance between the landing strip and buildings or other permanent structures.

(38) “Business or High Activity General Aviation Airport” means an airport with 30,000 or more annual operations, of which:

(a) A minimum of 500 are business related (turbine) aircraft; and

(b) Whose significant function is to accommodate corporate aviation activity, including business jets, helicopters, and other general aviation activities. Includes heliports that accommodate predominantly turbine-powered aircraft. (See also Airport Categories, Category II.)

(39) “Caretaker” means a person providing services under written agreement with the Department to oversee, inspect, and maintain specific airport facilities and operations.

(40) “Commercial Aeronautical Activity” means the conduct of aeronautical activity by means of business, concession, operation, or agency in order to provide goods or services to any person for compensation or hire. An activity for compensation or hire is considered a commercial activity regardless of whether the business is for-profit, nonprofit, charitable, or tax-exempt.

(41) “Commercial Operator” means a person, firm, corporation, or other entity conducting commercial aeronautical activities for compensation or hire.

(42) “Commercial Self-Service Fueling” means fueling of an aircraft by the pilot using commercial fuel pumps installed for that purpose. The fueling facility may or may not be attended by the vendor, which may be a fixed base operator of an airport sponsor/operator that is exercising its right to sell fuel.

(43) “Commercial Service Airport” means an airport with scheduled major/national or regional/commuter commercial air carrier service. (See also Airport Categories, Category I.)

(44) “Community General Aviation Airport” refers to an airport with either:

(a) 2,500 or more annual operations; or

(b) More than ten Based aircraft, whose significant function is to accommodate general aviation users and local business activities. (See also Airport Categories, Category IV.)

(45) “Compensation” means payment or exchange of anything of value for services or goods.

(46) “Consumer Price Index” (CPI) is a measure or indicator of inflation established and published by the United States Bureau of Labor Statistics for cost-of-living and economic purposes. ODA uses the Portland-area CPI to determine periodic adjustments for airport user rates and charges.

(47) “Control” when used in reference to runway approach-departure zones refers to ownership through fee or easement or existence of appropriate zoning.

(48) “Controlled,” when used in reference to a personal use airport, means that the airport is supervised or regulated by the airport owner in such a manner as to limit public use of the airport, as well as to (a) reasonably minimize disturbance, by aircraft operations, to persons and property in the vicinity of the airport, and (b)

reasonably ensure that all users are fully aware of conditions, limitations, and possible hazards which may exist at the airport.

(49) “Department” means the Oregon Department of Aviation.

(50) “Dimensional and Layout Minimum Standards” are specific criteria that must exist in order for an airport to qualify as a public use airport.

(51) “Director” refers to the duly appointed Oregon Department of Aviation Director or the Director’s designee.

(52) “Economic importance” refers to those airports that support the community and local economy in a manner that extends well beyond the immediate economic benefit of the airport owner/sponsor and its employees.

(53) “Essential safety or emergency services” for airports include search and rescue; emergency landing; medevac, fire patrol or suppression; and law enforcement operations or training.

(54) “Exclusive Right” means a power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right.

(55) “FAA” means the Federal Aviation Administration.

(56) “Fair Market Rent” means the most probable rental rate that a property should bring, in a competitive and open rental market, specific to the property’s geographic vicinity.

(57) “Fair Market Value” is the most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale. This includes the assumptions that the buyer and seller each act prudently and knowledgeably, and the price is not affected by undue stimulus.

(58) “FAR” means the Federal Aviation Regulations, as published by the FAA.

(59) “Fixed Base Operator” (FBO) refers to a full service commercial operator who engages in the primary activity of aircraft refueling and additionally conducts a specified number of approved secondary commercial activities. The required number is based on the category of State-owned airport at which the FBO is located, as specified in the Oregon Aviation Plan.

(60) “Flight Training” means the commercial operation of instructing pilots in dual and solo flight, in fixed or rotary wing aircraft, and related ground school instruction as necessary to complete a FAA written pilot’s examination and flight check ride for various categories of pilots licenses and ratings.

(61) “Flying Club” means a non-commercial and nonprofit entity organized for the purpose of providing its members with any number of aircraft for their personal use and enjoyment. The flying club shall be the aircraft owner, and the club may not derive greater revenue from the use of the aircraft than the cost to operate, maintain, and replace or enhance the aircraft or fleet of aircraft.

(62) “Fuel Flowage Fee” is a fee payable by each entity dispensing fuel for each gallon of aviation fuel used, sold, or transferred at an airport.

(63) “Fuel Storage Area” means any portion of the airport designated temporarily or permanently by ODA as an area in which aircraft fuel or any other type of fuel may be stored or loaded.

(64) “Fueling” or “Fuel Handling” means the transportation, sale, delivery, dispensing, or draining of fuel or fuel waste products to or from aircraft.

(65) “General Aviation” means all phases of aviation other than aircraft manufacturing, military aviation, and scheduled or non-scheduled commercial air carrier operations.

(66) “Government aircraft” includes any aircraft owned or operated by the United States Government or any of its agencies.

(67) “Hangar” or “Hangar Structure” is a covered, and usually enclosed, area for housing and repairing aircraft.

(68) “Hazardous Material” means any substance, waste, or material which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous, and is regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of Oregon, or any political subdivision thereof, and the presence of which requires investigation, removal and/or remediation.

(69) “Heliport” refers to an area of land, water, or structure designated for the landing and take-off of helicopters or other rotorcraft.

(70) “Important Links” refers to those airports that provide a meaningful or significant connection in Oregon’s air traffic network.

(71) “In flight,” when used in reference to seaplanes, refers to the moment a seaplane starts its takeoff run until the end of a normal power-off landing run, and constitutes the criteria for determining when a seaplane becomes boat and — in turn — its priority on the water.

(72) “Instrument airport” means an airport which currently has an approach using electronic aids or has such an approach planned for the future. The instrument approach may be non-precision or precision.

(73) “Landing Strip” means that portion of the airport on which an aircraft can land or take off without damage to the aircraft or injury to its occupants.

(74) “Lease” means the written contract between the Department and a Lessee, specifying the terms and conditions under which Lessee may occupy and operate from certain State-owned airport facilities and/or property.

(75) “Lease Premises” means the defined parcel of land and any improvements thereon, which is leased by the Department to a Lessee for Lessee’s exclusive aeronautical use.

(76) “Lease Renewals” are those renewal options granted by an existing Lease, which may be exercised by the Lessee upon scheduled expiration of the base term of the Lease.

(77) “Lessee” refers to any person with a Lease to occupy space and engage in commercial or non-commercial aeronautical activities at the State-owned airport.

(78) “Lighting and Marking of Hazards to Air Navigation” refers to installation of appropriate lighting fixtures, applying appropriate painted markings or attaching other appropriate devices to such objects or structures that constitute hazards to air navigation.

(79) “Local government” means any city, county or metropolitan service district formed under ORS Chapter 268 or an association of local governments performing land use planning functions under ORS 195.025.

(80) “Low Activity General Aviation Airport” means an airport with (a) less than 2,500 annual operations, and (b) ten or fewer based aircraft whose significant function is to accommodate limited general aviation use, including emergency and recreational use, in smaller communities and remote areas of Oregon. (See also Airport Categories, Category V.)

(81) “Medevac Services” refers to any variety of air ambulance or medical evacuation services.

(82) “Metes and Bounds Legal Description” means the boundaries or limits of a tract of land, especially as described by reference to lines and distances between points on the land.

(83) “Minimum Standards” is a term that references two distinct and different categories of standards, qualification or criteria, as follows:

(a) “Operating” Minimum Standards refer to those minimum requirements established by the Department that must be met by all commercial operators for the right to conduct activities at a State-owned airport.

(b) “Dimensional and Layout” Minimum Standards are specific criteria that must exist in order for an airport qualify as a public use airport.

(84) “Mobile Service Provider” (MSP) means a person or entity who provides commercial aeronautical activities pursuant to a permit, but does not operate from owned or leased property at the airport. Mobile Service Providers (MSPs) are persons or entities that provide commercial aeronautical services but do not operate out of owned or leased property on the airport. Examples of MSPs include, but are not limited to, mobile mechanics, flight instructors, aircraft detailers, and mobile oil recyclers.

(85) “Non-Commercial Aeronautical Activity” means aeronautical activity, including use of leased land to construct and use a hangar to store a personal aircraft, that is conducted personally by

the lessee and does not involve the exchange of compensation with any party other than ODA.

(86) “Non-Precision Instrument Approach” means an approach that uses air navigation facilities with only horizontal guidance or area-type navigation equipment for which an approach has been approved or planned.

(87) “Non-Precision Instrument Runway” is a runway having an existing instrument approach procedure, utilizing air navigation facilities with only horizontal guidance or area type navigation equipment, for which a nonprecision instrument approach procedure has been approved or planned, and for which no precision approach facilities are planned, or indicated on an FAA or state planning document or military service military Airport planning document.

(88) “Nonretail Facility” or “Nonretail Fuel Facility” means an unattended facility where Class 1 flammable liquids are dispensed through a card or key activated fuel dispensing device to nonretail customers.

(89) “Notification area” refers to that area surrounding a public-use airport that is within 5,000 feet of the sides or ends of any runway of a visual airport, or within 10,000 feet of the sides or ends of any runway of an instrument airport.

(90) “OAR” means Oregon Administrative Rules.

(91) “Occasional” means infrequent, irregular, or from time-to-time — as specifically determined by the Director of the Department. In making this determination, the Director shall consider compatibility with the existing uses of the surrounding area.

(92) “Occupancy” refers to the fact or condition of holding, possessing, or residing in or on something; or the fact of taking or having possession to acquire ownership.

(93) “ODA” refers to the Oregon Department of Aviation.

(94) “On-Demand Operation” (Air Charter) means any operation for compensation or hire as defined in FAR Part 119.

(95) “Operating Minimum Standards” refer to those minimum requirements established by ODA that must be met by all commercial operators for the right to conduct those activities at a State-owned airport.

(96) “Operation of an Airport” refers to any person, municipality, or officer or employee thereof who offers for use, or permits use of an aircraft landing area under its control for landing or take-off of aircraft (other than on an occasional basis, as determined by the ODA Director). In addition, any person who uses such an area for aircraft landing or take-off, with or without permission of the owner, shall be deemed to be “operating” an airport within the meaning of ORS 836.120. Presence or storage of aircraft and associated structures shall not alone be construed as constituting operation of an airport.

(97) “Oregon Department of Aviation” (Department or ODA) is the State agency responsible for maintaining and operating State-owned airports across Oregon, as well as advocating for the growth, improvement and safe operation of aviation in Oregon. Once the Aeronautics Division of the Oregon Department of Transportation, ODA was established as a separate agency by the 1999 Oregon State Legislature effective July 1, 2000.

(98) “ORS” refers to Oregon Revised Statutes.

(99) “Parachuting” (Skydiving) means any activity which furthers, assists, engages in, promotes or relates to parachute jumps (as the term “parachute jump” is defined by FAR 105a(b)), including, but not limited to, training, maintenance, sales and airlift activities.

(100) “Permit” means an administrative approval issued in writing by the Oregon Department of Aviation to a person to provide commercial aeronautical services to based and transient aircraft, only from facilities and locations where such services are authorized.

(101) “Person” means an individual or entity, whether a domestic or foreign corporation, a firm, partnership, an association, an organization, a joint stock company, any unincorporated organization as defined in ORS 92.305, or any other group acting as an entity to conduct business on the airport. “Person” includes a trustee, receiver, assignee or similar representative acting for or in place of that individual or entity or group acting as an entity.

(102) "Personal Use Airport" means a landing strip that is restricted, except for aircraft emergencies, only to:

- (a) Use by the owner; and
- (b) On an infrequent and occasional basis to the owner's invited guests; and
- (c) Commercial activities in connection with agricultural operations only. No aircraft may be based on a personal use airport other than those owned or controlled by the owner of the airport. Exceptions may be granted in writing through waiver action by the Director of the Department in appropriate circumstances.

(103) "Point of Ingress/Egress" refers to that area where aircraft access the State-owned portion of the airport from an adjoining property.

(104) "Precision Approach" means an instrument approach which utilizes a facility that provides both horizontal and vertical guidance equipment, such as an instrument landing system (ILS), a microwave landing system (MLS), or a precision approach radar (PAR), for which an approach has been approved or planned.

(105) "Precision Instrument Runway" refers to a runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS), Microwave Landing System (MLS), or Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated by an FAA approved airport layout plan; a military service approved military airport layout plan; any other FAA or state planning document, or military service military airport planning document.

(106) "Preventive Aircraft Maintenance" means maintenance that is not considered a major aircraft alteration or repair and does not involve complex assembly operations as listed in FAR Part 43, except for Item 22 in the Regulation (which involves the replacement of prefabricated fuel lines, and shall, for purposes of those regulations, be considered a major aircraft repair).

(107) "Privately-Owned Airport" means an airport owned by a person.

(108) "Property Line" is a designated, but not necessarily marked, boundary that outlines the area of land to be controlled by the airport owner.

(109) "Proponent" is any person who proposes to erect or construct any object or structure that exceeds certain minimum altitudes contained in OAR 738-070, that may be a potential hazard to air navigation and who may be responsible for lighting and marking such object or structure.

(110) "Public Use Airport" means an airport that is open to the flying public, considering performance and weight of the aircraft being used. May or may not be attended or have services available.

(111) "Publicly-Owned Airport" means an airport that is owned, leased or operated by the Federal government, a state, county, city, public authority, special district or other political subdivision or public corporation.

(112) "Regional General Aviation Airport" means an airport generally having less than 30,000 operations that:

- (a) Is located in areas with low population density, large geographic service areas, and a surface travel time of more than 90 minutes from the nearest Category I Airport;
- (b) Provides regional access to business aviation, charter, small air cargo, and medevac services; and
- (c) Provides all-weather access to the airport. (See also Airport Categories, Category III.)

(113) "Roadway" means any street or road whether improved or unimproved, within the boundaries of the airport and designated for use by ground vehicles.

(114) "Runway" is the center portion of the landing strip that is designed and constructed for take-off and landing of aircraft.

(115) "SASO" refers to Specialized Aviation Service Operation.

(116) "Seaplane" means any aircraft capable of landing, taking off or otherwise operating on water.

(117) "Seaplane Base" refers to any area of water, within or without this state, which is used or intended for use for the landing and take-off of seaplanes, and any appurtenant areas which are used or intended for use for seaplane base buildings or other

seaplane facilities or rights-of-way, together with all seaplane base buildings and facilities located thereon.

(118) "Self-Fueling" or "Self-Service" means the fueling or servicing of an aircraft by the owner of the aircraft or the owner's employee. Self-fueling means using fuel obtained by the aircraft owner from the source of his/her preference. Self-service includes activities such as adjusting, repairing, cleaning, and otherwise providing service to an aircraft, provided the service is performed by the aircraft owner or his/her employees with resources supplied by the aircraft owner.

(119) "Shall" is always used to refer to something mandatory, not merely directive.

(120) "Skydiver" means a person who descends to the surface from an aircraft in flight when such person intends to use or uses a parachute during all or part of the descent.

(121) "Soliciting Business" means the activity of holding oneself out for the purpose of attracting customers or making oneself available to enter into any transaction or agreement for the transfer of goods or performance of any service, immediately or in the future, in exchange for compensation or anything of value.

(122) "Specialized Aviation Service Operation" (SASO) means a commercial aeronautical activity that offers a single or limited service according to established Minimum Standards. Examples include but are not limited to: flight training, aircraft maintenance, on-demand operation, aircraft sales, avionics maintenance and sales, and aircraft storage.

(123) "State-Owned Airport" refers to any airport owned and operated by the State of Oregon Department of Aviation.

(124) "State waters" means those waters entirely within the confines of the State of Oregon which have not been declared navigable waters of the United States.

(125) "Sublease" means the written agreement stating the terms and conditions under which a third-party leases space from a lessee at a State-owned airport for the purpose of providing commercial aeronautical activities at the airport.

(126) "Taxilane" means the portion of the airport apron area, or any other area used for access between taxiways and aircraft parking or storage areas.

(127) "Taxiway" means a defined path established for the taxiing of aircraft from one part of the airport to another.

(128) "Through-the-Fence Commercial Operation" means a commercial aeronautical activity that is developed or located on the airport, but off airport sponsor-owned property.

(129) "Tie-Down Area" refers to the State-owned airport property, either pavement or turf, which is designated for parking based or transient aircraft.

(130) "Tie-Down Restriction Line" means a designated, but not necessarily marked, boundary that provides lateral clearance between the landing strip and the tie-down area.

(131) "Transient Aircraft" is an aircraft that is visiting and not permanently based at an airport (i.e., less than 30 days).

(132) "UNICOM" means a two-way communication system operated by a non-governmental entity that provides airport advisory information to the flying public. Locations and frequencies are shown on aeronautical charts and publications.

(133) "Utility Runway" means a runway that is constructed for and intended to be used by propeller-driven aircraft of 12,500 pounds maximum gross weight and less.

(134) "Vehicle Parking Area" means any portion of the airport designated and made available temporarily or permanently for the parking of ground vehicles.

(135) "Visual Runway" or "Visual Airport" is a runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an FAA or state approved airport layout plan, a military service approved military airport layout plan, or by any planning document submitted to the FAA or ODA.

(136) "Waters of this state" means all waters within the territorial limits of Oregon, the marginal sea adjacent to Oregon, and the high seas when navigated as part of a journey or ride to or from the shore of Oregon.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 835.035, 835.040 & 835.112

Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055
Hist.: AVIA 2-2002, f. & cert. ef. 9-3-02

DIVISION 10

**RATES AND CHARGES FOR
STATE-OWNED AIRPORTS**

738-010-0010

Purpose of Rule and Statutory Authority

The purpose of this rule is to establish fair, reasonable and nondiscriminatory rates and charges for all users of Oregon State-owned airports.

Stat. Auth.: ORS 835.035, 835.040 & 835.112
Stats. Implemented: ORS 835.035, 835.040, 835.112 & 836.055
Hist.: IAD 2-1981, f. & ef. 4-20-81; AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02

738-010-0015

Revenue Disbursement

All revenue generated from State-owned airport activities and services shall be expended by the Department only for State-owned airport operations, maintenance and capital improvements.

Stat. Auth.: ORS 835.035, 835.040 & 835.112
Stats. Implemented: ORS 835.035, 835.040, 835.112 & 836.055
Hist.: IAD 2-1981, f. & ef. 4-20-81; AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02

738-010-0020

Establishment of Rates and Charges

(1) The Department may use various methods to memorialize State-owned airport user rates or charges and fees assessed for the public use or tenancy of State-owned airport property and facilities, including but not limited to contract, agreement, permit or direct assessment.

(2) The payment structure for any lease shall be determined by the Department and may consist of:

(a) A fixed rent for a defined land parcel, hangar or other facility it occupies; or

(b) A variable payment (related to fuel flowage, volume of business, aircraft operations, etc.) for the use of the airport property by its own aircraft or those of its customers.

Stat. Auth.: ORS 835.035, 835.040 & 835.112
Stats. Implemented: ORS 835.035, 835.040, 835.112 & 836.055
Hist.: IAD 2-1981, f. & ef. 4-20-81; AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02

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.
Category III and IV Airports — \$17.50 per month.
Category V Airports — \$15 per month.

(b) **COMMERCIAL TIE-DOWN FEES:** ODA shall rent tie-down facilities to FBOs wherever possible. 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.: IAD 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; AVIA 1-2012(Temp), f. & cert. ef. 2-28-12 thru 8-26-12; Administrative correction 9-20-12

738-010-0030

Adjustments of Fuel Flowage, Access, Tiedown, Mobile Service and Special Use Fees

The Department shall regularly review the rate and charges for State-owned airports and compare them to rates in effect at non-State-owned airports.

(1) The Department shall review and may adjust rates and charges for fuel flowage, access, tiedown, mobile service and special use fees at least every two years.

(2) The Department shall provide 60 days' advance written notice of any adjustment to any affected lessee.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: IAD 2-1981, f. & ef. 4-20-81; AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02

738-010-0035

Fair Market Value Cost of Construction — Adjustments of Unimproved Land, Improved Land and Facility Rents

All rents set forth in agreements for rental of improved or unimproved land, or for any facility or structure, may be adjusted by the Department as follows:

(1) Adjustments shall be made at intervals not to exceed every two years;

(2) Adjustments shall be based on the Consumer Price Index-Urban of the State of Oregon, provided that no adjustment shall exceed three percent (3%) of the rent for the previous year;

(3) Except as provided in subsection (4), at intervals of not less than five (5) years, the Department may engage a certified appraiser or equally qualified aviation consultant, at its sole expense, to determine by either appraisal or market rent analysis, the current fair market value or rent for any property subject to a rental agreement.

(4) The minimum five (5) year interval described in subsection (3) may be waived by the Department when the Department finds it necessary to meet a legitimate business need arising prior to conclusion of the five-year period.

(5) The Department shall be responsible for the engagement of an appraiser or aviation consultant. All expenses for the appraisal or market rent analysis shall be borne by the Department.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02; 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

738-010-0040

Appraisal/Market Rent Analysis Standards

(1) Any appraisal of property for the purpose of sale, exchange or lease shall be performed by an appraiser who is certified by a recognized appraisal organization.

(2) In addition, any appraiser considered for an appraisal contract with the Department must comply with the following criteria:

(a) Any Oregon appraiser must be a state certified general appraiser.

(b) Any out-of-state appraiser must hold all appropriate licenses or certificates required for any general appraiser legally conducting services in Oregon.

(c) The appraiser must conform to all applicable ODA requirements and to any city, county, State or Federal requirements that apply at the time of undertaking the appraisal.

(d) The appraiser shall have working knowledge of the aviation industry (to include both fixed base operations and other aeronautical activities) and demonstrate familiarity with FAA and ODA rules, regulations and policies affecting airport properties.

(e) The appraiser shall have completed a minimum of five (5) appraisals of aeronautical property within the past five (5) years and shall provide a list to ODA that identifies the location and type of appraisal conducted. Appraisals performed on real property not located on an airport or not then in use for aeronautical purposes shall not satisfy this requirement.

(3) In those circumstances where the Department determines that an appraisal is not required, the Department retains the right to utilize a qualified aviation consultant to complete a Market Rent Analysis (i.e., to establish market rents and fees other than for sale or exchange of airport property). Aviation consultants must comply with the following criteria:

(a) Must possess qualifications and experience commensurate to the assigned task;

(b) Must demonstrate the education, skill, learning and experience necessary for the specific Market Rent Analysis task;

(c) Must be independent; and

(d) Must execute a statement that he or she does not have any conflicts of interest with the Department or any existing or prospective lessee.

(4) Determination of sufficient qualifications and experience shall be at the sole discretion of the Director, or the Director's designee, but shall be generally consistent with those required for a qualified and experienced appraiser.

Stat. Auth.: ORS 835.035, 835.040 & 835.112
 Stats. Implemented: ORS 835.035, 835.040, 835.112 & 836.055
 Hist.: AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02

738-010-0045

Appraisal/Market Rent Analysis Methodology

Appraisals and market rent analyses performed on all aeronautical properties, including either land only or land and improvements, shall meet the following minimum requirements:

(1) An income analysis must be employed, through evaluating rental rates, fees and charges of similar aeronautical land and improvements at comparable airports.

(2) All appraisals and analyses shall utilize current methods appropriate to valuation of aeronautical properties and facilities.

(3) Survey data compiled by recognized aviation organizations may be used as ancillary support for rental rates and fees used in the process; however, all survey data used in the analysis shall be made available to lessor or lessee in the transaction.

(4) Rates of return utilized in the income analysis shall be obtained through reasonable and acceptable methods and must be adequately discussed within the report.

Stat. Auth.: ORS 835.035, 835.040 & 835.112
 Stats. Implemented: ORS 835.035, 835.040, 835.112 & 836.055
 Hist.: AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02

738-010-0050

Rate of Return

(1) If the appraisal is to determine the value of unimproved land only, then the value conclusion shall assume a "target" rate of return of not less than ten percent (10%), in order to yield the appropriate annual ground rental rate. The rate of return applied shall be commensurate with the term of the lease and capital improvements to be completed on the property.

(2) If there are any improvements situated on the property (including, but not limited to, paved ramp/apron, office facilities, hangars and terminal buildings), the value conclusion shall assume a "target" rate of return of not less than ten percent (10%), in order to yield the appropriate annual rental rate. The rate of return utilized shall be commensurate with the term of the lease and capital improvements to be completed on the property.

(3) If an appraisal is performed, the appropriate rental rate shall be derived by multiplying the rate of return by the final value conclusion.

Stat. Auth.: ORS 835.035, 835.040 & 835.112
 Stats. Implemented: ORS 835.035, 835.040, 835.112 & 836.055
 Hist.: AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02

738-010-0055

Highest and Best Use of State-Owned Aeronautical Property

An appraisal or market rent analysis conducted pursuant to sections 738-010-0035 through 738-010-0050 shall assume that the highest and best use of the property is for aviation-related activities, and shall further assume:

(1) That the property under analysis will continue to be part of an operating public use airport; and

(2) That access to the infrastructure and amenities of the airport will continue to be available to the public.

Stat. Auth.: ORS 835.035, 835.040 & 835.112
 Stats. Implemented: ORS 835.035, 835.040, 835.112 & 836.055
 Hist.: AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02

738-010-0060

Penalties

(1) All lease agreements shall provide that the lessee shall pay a penalty for late or delinquent payments. Such penalty shall not exceed ten percent (10%) of the delinquent payment for each month, prorated according to the actual date of receipt by the Department.

(2) Whenever a bank-issued check is presented for payment of any State-owned airport fee, and said check is returned to the ODA due to insufficient funds, closed account, or other similar reason, the Department shall charge the lessee presenting such check an additional fee of \$50, plus any and all related collection fees. If the initial charges and returned check fees are not paid within 14 days after notification to lessee, ODA may suspend, revoke or place in

default all of lessee's permits, agreements or leases in force at that time, according to the terms specified in such contract.

Stat. Auth.: ORS 835.035, 835.040 & 835.112
 Stats. Implemented: ORS 835.035, 835.040, 835.112 & 836.055
 Hist.: AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02

DIVISION 14

THROUGH THE FENCE PILOT PROGRAM

738-014-0010

Through the Fence Pilot Program: Purpose and Policy

OAR 738-014-0010 through 738-014-0060 implement ORS 836.640 and 836.642 (Or Laws 2005, ch 820). The policy of the State of Oregon is to encourage and support the continued operation and vitality of Oregon's airports. These rules establish a pilot program at up to three rural airports to encourage development of through the fence operations designed to promote economic development by creating family wage jobs, by increasing local tax bases and by increasing financial support for rural airports.

Stat. Auth.: ORS 835.035, 836.642, sec. 4, ch. 820, OL 2005
 Stats. Implemented: ORS 836.640, 836.642 & ch. 820, OL 2005.
 Hist.: AVIA 3-2006, f. 6-27-2006, cert. ef. 7-1-06

738-014-0020

Definitions

In addition to the terms defined in OAR 738-005-0010, for purposes of OAR 738-014-0010 through 738-014-0050, the following definitions apply:

(1) "Airport boundary" is the geographical line around the airport as indicated in the airport layout plan. The areas that may be included in the airport are described in OAR 660-013-0040(1).

(2) "Customary and usual aviation-related activity" includes activities described in ORS 836.616(2) and includes activities that a local government may authorize pursuant to ORS 836.616(3).

(3) "Facility site plan" means a plan showing the boundary of a proposed through the fence operation, and indicating infrastructure requirements, building layout and operational plans.

(4) "Pilot site" means a rural airport selected to participate in the pilot program pursuant to OAR 660-014-0030 and the Aurora State Airport.

(5) "Rural airport" means an airport described in ORS 836.610(1) that principally serves a city or standard metropolitan statistical area with a population of 75,000 or fewer.

(6) "Through the fence operation" means a customary and usual aviation-related activity that:

(a) Is conducted by a commercial or industrial user of property, not owned by the airport sponsor, within an airport boundary; and

(b) Relies, for business purposes, on the ability to taxi aircraft directly from the property employed for the commercial or industrial use to an airport runway.

Stat. Auth.: ORS 835.035, 836.642 & sec. 4, ch. 820, OL 2005
 Stats. Implemented: ORS 836.640, 836.642 & ch. 820, OL 2005
 Hist.: AVIA 3-2006, f. 6-27-2006, cert. ef. 7-1-06

738-014-0030

Selection of Volunteer Pilot Sites

(1) Airport sponsors interested in participating in the pilot program must make written application to ODA. ODA will establish the application form and deadline for applications.

(2) The application shall include:

(a) a letter from the governing body of the county in which each rural airport is located. The letter shall state the governing body concurs with the sponsor's request to be a pilot site and is prepared to assist in the amendment of comprehensive plans and land use regulations, if necessary, as required by ORS 836.642 and OAR 660, division 13 (Department of Land Conservation and Development rules governing airport planning);

(b) a description of how the airport sponsor intends to encourage through the fence operations at the rural airport;

(c) a complete narrative description of public-private partnerships the sponsor intends to pursue, and how the partnerships would promote:

(1) Innovative and creative technologies for increasing airport usability and safety;

(2) Innovative and creative performance of aviation services to make the services more competitive and useful for the public;

(3) Development of the pilot site as a setting for customary and usual aviation-related activities to develop and thrive; and

(4) Shared responsibility for:

(A) Establishing and meeting the fiscal needs of the pilot site;

(B) Maintaining safety of operations; and

(C) Maintaining positive community relations and compatibility with existing uses.

(D) a description, to the extent practicable, of the types of innovative airport infrastructure and operations funding that will be sought to support the pilot airport; and

(E) a statement of the sponsor's willingness to participate in the pilot program evaluation process described in OAR 738-014-0035.

(3) ODA will review all applications submitted by the deadline, and rank the applications that meet the minimum requirements of these rules according to their ability to meet the goals of this pilot program and the quality of the application. ODA will submit its list of eligible airports in ranked order to the State Aviation Board.

(4) The State Aviation Board will review the applications and may select up to two airports for inclusion in this pilot program.

(5) Aurora State Airport is included in the pilot program as provided in ORS 836.642(2)(a).

Stat. Auth.: ORS 835.035, 836.642 & sec. 4, ch. 820, OL 2005

Stats. Implemented: ORS 836.640, 836.642 & sec. 4, ch. 820, OL 2005

Hist.: AVIA 3-2006, f. 6-27-06, cert. ef. 7-1-06

738-014-0035

Pilot Program Evaluation Process

(1) The pilot program implemented by these rules is intended to support Oregon's economic development through encouragement of through the fence operations at certain pilot airports. The ODA will prepare annual written evaluations of the program and present its evaluation to the State Aviation Board and other interested persons at the first State Aviation Board meeting after July 1, beginning July 1, 2007. Airport sponsors of pilot sites will cooperate with the evaluation and provide the information needed to complete the evaluation.

(2) The evaluation shall include, but need not be limited to, the following information:

(a) Identify and describe the new through-the-fence operations located at the pilot site and the number of jobs at each business. Describe the origin of each new business (start-up, relocated from another location in Oregon, relocated from a location outside Oregon) and the net change in employment from the previous location, if applicable. Describe other economic benefits of each through-the-fence operation, if applicable.

(b) Describe efforts by the airport sponsor to plan for and encourage airport development. Include a review of the sponsor's efforts to obtain innovative sources of financing for infrastructure and operations, as described in ORS 836.642(6).

(c) Describe efforts by the local community, including the jurisdiction responsible for land use planning for the pilot site and local economic development agencies, to plan for and encourage airport development.

(d) Analyze ODA's costs for the pilot program during the evaluation period, including both costs associated with the Aurora State Airport as a pilot site and the general costs associated with the pilot program.

(e) Evaluate ODA expenditures at pilot site airports compared to other public airports.

(f) Report on the local planning and land use issues that arose with respect to the pilot program.

(g) Evaluate the impact of the pilot program on the efficiency of airport management and operations at each pilot site.

(h) Evaluate the impact of the pilot program on security for each pilot airport.

(3) ODA may also solicit written comments from the Federal Aviation Administration (FAA) and the Transportation Security Administration (TSA) and shall include those comments in the evaluation if received. ODA shall invite public comment on the pilot program and include the public comment in the final evaluation presented to the State Aviation Board.

Stat. Auth.: ORS 835.035, 836.642 & sec. 4, ch. 820, OL 2005

Stats. Implemented: ORS 836.640, 836.642 & ch. 820, OL 2005

Hist.: AVIA 3-2006, f. 6-27-2006, cert. ef. 7-1-06

738-014-0040

Revisions to Airport Facility Plans to Accommodate New Through the Fence Operations at Pilot Sites

(1) Each pilot site sponsor shall work with the appropriate local government to amend its Airport Layout Plan as necessary to address proposed new through the fence operations. Amendments must conform to ORS 836.610(1) and OAR chapter 660, division 13 (Airport Planning).

(2) The Oregon Department of Aviation may assist the pilot site airport sponsor in the development of the Airport Layout Plan by providing aviation planning advice, and by assisting in the coordination of involvement with the appropriate local government, state and federal agencies, including the Department of Land Conservation and Development, and the Economic and Community Development Department.

(3) Upon submittal of the appropriate land use applications, the county and city (if any) within whose jurisdiction a pilot site is located shall consider amendments to comprehensive plans and land use regulations, including zoning classifications pursuant to ORS 836.600 to 836.630, if necessary, to accommodate the pilot site through the fence operations.

Stat. Auth.: ORS 835.035, 836.642 & sec. 4, ch. 820, OL 2005

Stats. Implemented: ORS 836.640, 836.642 & ch. 820, OL 2005

Hist.: AVIA 3-2006, f. 6-27-06, cert. ef. 7-1-06

738-014-0050

Standards and Guidelines for Through the Fence Operations

The airport sponsor of a pilot site shall create a "Through the Fence Operations" operating plan for their airport, to accompany the Airport Layout Plan. The "Through the Fence Operations" operating plan shall include the following:

(1) Identify current operating costs and revenues for the pilot site airport. Describe how the through the fence operations will provide financial support to the pilot sites in compliance with FAA regulations.

(2) Require each through the fence operation to submit a facility site plan for its own property to the airport sponsor. The through the fence operation, in cooperation with the airport sponsor, then may proceed to seek any necessary land use approval from the appropriate local government. Any such approval must be made in compliance with statewide land use planning requirements. If the facility site plan is approved by the appropriate local government in compliance with applicable statewide land use planning requirements, the facility site plan shall be incorporated into the local government's airport plan and airport boundary.

(3) Require that each through the fence facility only be permitted to operate through a written contract with the airport sponsor that includes:

(a) Financial charges, including fuel flowage fees if applicable, that provide equitable and uniform treatment of all airport tenants and users at pilot sites.

(b) An approved development plan for the through the fence property.

(c) Aviation safety rules for the airport, and rules that facilitate the orderly management of the pilot sites.

(d) Identify the airport's role in Oregon's emergency response system, and the through the fence facility's role (if any) in assisting in maintaining these characteristics;

(e) Identify investments in pilot sites and the level of service provided by pilot sites, and the through the fence facility's role (if any) in assisting in maintaining these characteristics.

(f) Facilitate and foster good relations with the communities surrounding the pilot sites, including, for example, adhering to established airport noise abatement procedures, and adjusting operations as needed to cooperate with public community events which may occur at the airport from time to time.

Stat. Auth.: ORS 835.035, 836.642 & sec. 4, ch. 820, OL 2005

Stats. Implemented: ORS 836.640, 836.642 & ch. 820, OL 2005

Hist.: AVIA 3-2006, f. 6-27-06, cert. ef. 7-1-06

738-014-0060

Airport-related Economic Development for the Community

(1) The pilot site airport sponsor shall coordinate with its county (and city if applicable) economic development departments to advance local economic development through qualified customary and usual aviation related activities within the airport boundaries of pilot sites. The development shall encourage well-ordered economic development within the airport boundaries of the pilot sites.

(2) Airport sponsors shall encourage, to the extent practical, the use of innovative funding and economic development programs at the airport to assist in developing financial self-sufficiency of the airport, including but not limited to the programs described in ORS 836.642(6).

(3) The Economic and Community Development Department shall assist the pilot sites to:

(a) Identify, qualify for and apply for funding from appropriate grant and loan programs; and

(b) Develop innovative short-term and long-term funding opportunities.

Stat. Auth.: ORS 835.035, 836.642 & Section 4, ch. 820, OL 2005

Stats. Implemented: ORS 836.640, 836.642 & ch. 820, OL 2005

Hist.: AVIA 3-2006, f. 6-27-06, cert. ef. 7-1-06

DIVISION 15

**LEASING FOR AERONAUTICAL ACTIVITIES
AT STATE-OWNED AIRPORTS**

738-015-0005

Leasing Application for Commercial Aeronautical Activities

(1) To obtain an initial commercial lease at a State-owned airport, a person shall submit a written application to Oregon Department of Aviation (the Department or ODA) for review, in the form specified by ODA. As a prerequisite to initially granting commercial aeronautical activity privileges or occupancy at a State-owned airport, the prospective Lessee must submit a specific, detailed description of the scope of the intended commercial aeronautical activities, as well as the means and methods to be employed to accomplish the contemplated activities. Applications for the renewal of existing leases or applications for additional initial leases submitted by current lessees may require a written application at the discretion of the Department.

(2) Required information that must accompany an application for commercial lease shall include:

(a) The legal name of the person applying as prospective Lessee, and its business name if different;

(b) The name(s), address(es), and telephone number(s) of the person and the name of the primary contact individual;

(c) The names, addresses, and telephone numbers of all owners of five percent (5%) or more equity interest, management control, or debt in the entity;

(d) The proposed date for commencement of the intended activities and proposed base lease term for conducting these activities;

(e) A comprehensive listing of all activities proposed to be offered, along with copies of all applicable Federal, State, or local operating certificates and licenses held;

(f) For proposed agreements to lease existing structures or improvements, a description of the size, location, and proposed utilization of office, hangar, tiedown area(s), and vehicle parking area(s) to be utilized;

(g) For proposed agreements to lease unimproved State-owned airport areas, a layout (to scale) of the size, configuration,

and location of the property proposed for occupancy, and preliminary drawing(s) of the building(s) and improvements to be constructed, together with identification of vehicle parking areas. Drawings shall be legible and reproducible with clearly defined dimensions. Each drawing shall be not less than 8.5 inches by 11 inches in size and be drawn in permanent media;

(h) The number of persons to be employed, including the name and qualifications of each management/supervisory person, and specifications as to whether the employees will be full-time, part-time, or seasonal;

(i) The number of aircraft to be utilized in connection with the proposed commercial aeronautical activities and, as soon as known, the make, model, passenger seating capacity, cargo capacity, aircraft registration number, and copies of applicable operating certificates for each aircraft; and

(j) A comprehensive list of the equipment, vehicles, and inventory proposed to be utilized in connection with the intended activities.

(3) The prospective lessee is responsible for providing any required infrastructure to support their proposed use of the site, at the lessee's expense. The prospective lessee shall provide to ODA prior to any construction, occupancy or use of the site written confirmation that all required services have been or will be installed (power, water, fire suppression, sewer, etc). Services must comply with local government and ODA requirements.

(4) At its option, the Department may:

(a) Request to review a written business plan; and

(b) Request a metes and bounds legal description of lease property boundaries.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055

Hist.: AVIA 1-2002, f. & cert. ef. 9-3-02; AVIA 1-2006, f. & cert. ef. 1-27-06;

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

738-015-0010

Commercial Aeronautical Lease Applicant's Financial Responsibility and Experience

(1) All persons applying for a lease for commercial aeronautical activity at a State-owned airport must demonstrate the financial capability and responsibility to:

(a) Initiate proposed commercial aeronautical activities;

(b) Construct proposed improvements; and

(c) Provide working capital to perform proposed activities for the lease term.

(2) The demonstration of financial capability shall include:

(a) Projected cash flow and profit-and-loss calculations for the first five (5) years of the proposed operation;

(b) A three-year historical profit-and-loss statement (if applicable); and

(c) A current (within 90 days) balance sheet.

(3) A prospective Lessee who will be constructing lease property improvements shall provide the Department evidence of financial capacity in one of the following forms:

(a) A performance bond in the amount equal to the cost for constructing the proposed improvements, which may be supplied by a contractor;

(b) An irrevocable letter of credit guaranteeing funds to complete the project;

(c) An escrow agreement administered by a title and escrow company; or

(d) A trust administered by a commercial bank.

(4) The prospective Lessee shall furnish the Department with a statement of its past experience in providing the specified commercial aeronautical service for which the application is being made, including:

(a) Résumés of management individuals who will be directly responsible for the proposed commercial operation; and

(b) Business, financial and managerial references.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055

Hist.: AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0015

ODA Review of Application for Commercial Aeronautical Lease

(1) The Department shall review the lease application for commercial aeronautical activities of the prospective Lessee and the financial responsibility documentation, and determine whether to approve or deny the application. The decision shall be conveyed in writing to the prospective Lessee.

(2) The Department may deny any prospective Lessee's application if it is determined that:

(a) The proposed commercial aeronautical activities, operation, and/or construction would create a safety hazard at the airport or surrounding community;

(b) The prospective Lessee, for any reason, does not fully meet the qualifications, standards, and requirements of the Airport Operating Minimum Standards;

(c) The granting of the lease application will require the Department to expend funds, or supply labor or materials in connection with the proposed activity and/or construction, that the Department is unwilling or unable to spend, or the proposed activity and/or construction will result in a financial loss or hardship to the airport;

(d) No adequate space is available or no buildings exist at the State-owned airport that would accommodate the proposed commercial operation at the time of the application, nor is such contemplated within a reasonable time frame;

(e) The proposed operation, development, and/or construction does not comply with the Airport Master Plan and/or the Airport Layout Plan in effect at that time, or those plans anticipated to be in effect within the time frame proposed by the prospective Lessee;

(f) The development or use of the area requested by the prospective Lessee is likely to result in congestion of aircraft or airport buildings, or will unduly interfere with operations or activities of any present Lessee at the airport, or will prevent adequate access to the assigned Lease area of any present Lessee;

(g) The prospective Lessee has failed to make full disclosure or has misrepresented or omitted material facts in its application or in supporting documents;

(h) The prospective Lessee, or a principal of the prospective Lessee, has a record of violating the rules, regulations, statutes, ordinances, laws, or orders of any airport, or any civil air regulations, FAA regulations, or any other rules, regulations, statutes, ordinances, laws, or orders applicable to airports;

(i) The prospective Lessee, or a principal of the prospective Lessee, has defaulted at any time in the performance of any other agreement with the State;

(j) On the basis of current financial information, the prospective Lessee does not, in the discretion of ODA, exhibit adequate financial responsibility or capability to undertake the proposed operation and activities;

(k) The prospective Lessee cannot or will not provide a performance bond or applicable insurance in the amounts and type required the Department for the proposed commercial aeronautical activity; or

(l) It is determined that the prospective Lessee's activities or operations could be detrimental in any way whatsoever to the State-owned airport.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055

Hist.: AVIA 1-2002, f. & cert. ef. 9-3-02; AVIA 1-2004, f. & cert. ef. 2-17-04

738-015-0020

Commercial Aeronautical Lease Provisions

(1) The prospective Lessee shall be provided a draft commercial lease for review only after the Department has approved the lease application. Before entering into the lease with ODA, the prospective Lessee shall review the applicable:

- (a) Operating Minimum Standards;
- (b) Airport Rules and Regulations;
- (c) Rates and Charges Policy; and
- (d) Leasing Policy for Commercial Aeronautical Activities.

(2) The draft commercial lease shall include, but not be limited to, the following elements:

- (a) Description of lease property;
- (b) Term of lease;
- (c) Names and addresses of all responsible parties;
- (d) All fees and charges associated with occupying and operating on the lease property;
- (e) Insurance requirements;
- (f) Information on all taxes, liens and utilities;
- (g) Payment procedures relating to all fees and charges;
- (h) Approved commercial aeronautical activities;
- (i) Prohibited commercial aeronautical activities;
- (j) Compliance with FAA regulations and pertinent laws;
- (k) State aircraft and pilot registration requirements;
- (l) ODA entry onto lease property;
- (m) Access to lease property;
- (n) Fire prevention;
- (o) Maintenance requirements;
- (p) Landscaping;
- (q) Construction or alteration procedures;
- (r) Restrictions on hazardous substances;
- (s) Default and penalty provisions;
- (t) Remedies on default;
- (u) Bankruptcy;
- (v) Termination for airport development;
- (w) Transfer of airport ownership;
- (x) Sale of improvements;
- (y) Lease renewal options;
- (z) Subleasing provisions;
- (aa) Procedures for vacating the lease property; and
- (bb) Termination of lease provisions.

(3) The base term for commercial aeronautical leases shall be no longer than twenty-five (25) years.

(4) If Lessee requests a renewal, the Department may agree to renew the lease, consistent with this rule, for one (1) five-year period, provided the total lease term does not exceed thirty (30) years.

(5) At the expiration of the base term and any renewals, Lessee may make application for a new lease. The new lease application will be reviewed under the standards of OAR 738-015-0015, ODA Review of Application for Commercial Aeronautical Lease. The Department may negotiate a new lease if it determines that:

- (a) The existing lease is not in default;
- (b) The lease property is not required for other State-owned airport uses;
- (c) Lessee has met its obligations under the terms of the preceding lease;
- (d) Any improvements to the lease property are structurally sound and capable of safe and legal occupancy for the new lease term; and
- (e) The Department otherwise finds that a new lease is appropriate.

(6) The duration of the new lease shall be at the Department's option.

(7) Each lease renewal or each new lease that follows the base-term lease, shall incorporate all current terms and conditions for leases and any special terms the Department deems necessary based on the particular circumstances of the Lessee and lease property.

(8) If the Department determines that a lease renewal or proposed new lease will not be offered to Lessee, the Department may require Lessee to remove any structures on the lease property, at Lessee's expense, at the expiration of the current lease between Lessee and ODA.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055

Hist.: AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0025

Commercial Aeronautical Lease Renewal Options

(1) In accordance with OAR 738-015-0020, Commercial Aeronautical Lease Provisions, Lessee shall have the option to

renew its lease beyond the base term, subject to the satisfaction of all of the following conditions:

- (a) The existing lease is not in default;
 - (b) Any improvements to the lease property are structurally sound and capable of safe and legal occupancy for the remaining term of the renewal period; and
 - (c) Lessee files a notice with ODA, in the form specified by ODA, stating that Lessee has complied with (a) and (b) above and intends to exercise its renewal option. The notice must be filed no later than 120 days prior to the expiration of the base term lease.
- (2) The Department shall inspect Lessee's improvements for condition and appearance in accordance with ODA's standards for maintaining clean, safe and attractive facilities at the airport.
- (a) Items considered shall include, but not be limited to:
 - (A) Siding and exterior finish;
 - (B) Roofing;
 - (C) Doors; and
 - (D) Structural framing.
 - (b) If the Department determines from its inspection that the improvements may not be structurally sound, the Department may require Lessee to obtain an inspection by a certified inspector, at Lessee's expense, to verify the condition of the structure.

(c) The Department may require Lessee to correct any deficiencies noted by ODA's inspection, or may require further structural inspection as described in paragraph (b) above, as a condition of Lessee's renewal.

(d) If corrections cannot be completed prior to the expiration of the current lease term, Lessee may request in writing that the Department approve additional time to make such corrections; the Department shall not unreasonably withhold approval of the request. The Department and Lessee may enter into the lease renewal or new lease, subject to the written commitment of Lessee to complete the repairs within a specified period. Failure to make such repairs within the period agreed upon may be cause for immediate termination of the renewal term or new lease.

(3) The length of the term of a new lease following a base term lease, and any renewal, shall be at the Department's discretion.

Stat. Auth.: ORS 835.035, 835.040 & 835.112
Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055
Hist.: AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0030

Termination of Commercial Aeronautical Lease for Default or Airport Development

(1) In the event of termination of a commercial lease by the Department for default by Lessee, Lessee has two options, either of which must be completed within 120 days of the date of written notice of lease termination:

(a) Lessee may sell the lease improvements to a qualified buyer who is able to enter into a lease with the Department, under the criteria set forth in OAR 738-015-0005 through 738-015-0015; or

(b) Within that same period, Lessee may remove the improvements, at Lessee's expense, and restore the lease property to its original condition.

(2) In the event of termination for default by Lessee, Lessee shall pay basic rent for any post-termination occupancy until a new Lessee has entered into a lease agreement with the Department, or until the lease property is restored to their original condition.

(3) If the Department makes a determination, in accordance with the Airport Master Plan and FAA-approved Airport Layout Plan, that the lease property is required for airport development, it shall offer to Lessee an alternative site, if such other suitable space is available on airport property.

(4) If no suitable alternative site is available, or if Lessee chooses not to relocate, either party may terminate the lease.

(5) Upon termination, Lessee shall vacate the lease property within 120 days following ODA's termination notice.

(6) If Lessee's lease was a base term lease, the Department shall offer to buy out the remaining base term of the lease. If Lessee's lease is not a base term lease, then the Department shall not pay compensation for lease termination.

(7) The base term lease buy-out amount shall be determined by amortizing the construction cost of any improvements on the lease property over the base term of the lease, factoring in straight-line depreciation and adjusting for inflation based on the Department's periodic rental increases. The Department shall purchase each remaining year of the base term of the lease according to the amortization/depreciation schedule.

(8) Upon termination, Lessee shall continue to own all improvements on the lease property, including hangars. The improvements are personal property of the Lessee and must be removed when the Lessee vacates the lease property pursuant to paragraph (5) of this rule.

Stat. Auth.: ORS 835.035, 835.040 & 835.112
Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055
Hist.: AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0035

Sale of Improvements, Assignment of Commercial Leases, Subleases

(1) The Department shall not allow assignment of any lease for commercial aeronautical activity.

(2) If Lessee desires to sell the improvements, the Department shall consider entering into a new lease with the buyer of the improvements.

(a) The prospective Lessee (the buyer of the improvements) must meet all requirements imposed on any lessee under the terms of a lease with the Department for commercial aeronautical activity at a State-owned airport.

(b) If the prospective Lessee (the buyer of the improvements) qualifies to obtain a lease, the Department shall offer a lease with the terms, conditions and rates then in effect. The term of the new lease shall be determined by the Department, consistent with OAR 738-015-0005 through 738-015-0015.

(3) The original Lessee's lease shall remain in full force and effect until the Department and the new Lessee (the buyer of the improvements) have entered into a new lease. The original Lessee must comply with all terms and conditions of the lease until the new lease is executed and in effect.

(4) Upon execution of the new lease, the original lease is automatically terminated by mutual agreement of the parties.

(5) Subleasing of a commercial aeronautical activity lease is allowed with prior written approval by the Department.

Stat. Auth.: ORS 835.035, 835.040 & 835.112
Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055
Hist.: AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0040

Commercial Lease Insurance Requirements

Each Lessee shall meet all State of Oregon insurance requirements and shall maintain the types of insurance specified in the lease, in the amounts specified.

Stat. Auth.: ORS 835.035, 835.040 & 835.112
Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055
Hist.: AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0045

Exclusive Rights

(1) The Department shall not grant an exclusive right aeronautical activity agreement to any single commercial operator or service provider, since such an agreement would create a the absence of competitive enterprise or a local monopoly at a State-owned Airport.

(2) The Department does not regard a State-owned airport with one single commercial operator to constitute an "exclusive right" or monopoly to that operator by ODA.

Stat. Auth.: ORS 835.035, 835.040 & 835.112
Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055
Hist.: AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0050

Competitive Proposal Process for Commercial Aeronautical Activity

(1) In order for the State to determine the level of market demand, the Department may, at its discretion, seek competitive

proposals for leases for commercial aeronautical activity at all State-owned airports.

(a) The proposal process will include public notices and posting of information and proposal documents on the Department website.

(b) All Requests for Proposals will be consistent with any and all applicable State policies.

(c) A fair and objective evaluation process will be utilized to select the proposals that best meet the interests of the State, as defined within the proposal documents.

(2) Current Lessees will not be excluded from submitting a competitive proposal at any State-owned airport.

(3) Each Request for Proposals will contain specific information regarding the state-owned airport property currently being considered.

(4) All proposals will include requirements for detailed information from the respondents regarding:

- (a) Qualifications;
- (b) Capital investment proposed;
- (c) Experience in services being offered;
- (d) Experience of management personnel;
- (e) Proposed services and products; and
- (f) Financial ability.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055

Hist.: AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0055

Access Permits

Effective August 15, 2001, the date of approval of the Leasing Policy for Commercial Property by the State Aviation Board, the Department shall not issue any new access permits until all State-owned airport property has been developed, except at those airports where access permits already exist.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055

Hist.: AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0060

Leasing Application for Non-Commercial Aeronautical Activities

(1) To obtain a non-commercial lease at a State-owned airport, a person shall submit an application to the Department for review, in a form specified by ODA.

(2) The application for non-commercial lease shall include:

(a) A detailed description of the scope of the proposed development;

(b) A description of the means to be employed to accomplish the construction;

(c) The legal name of the person applying as prospective Lessee and its business name (if different), as well as address(es) and telephone number(s);

(d) The names, addresses, and telephone numbers of all owners, officers and directors;

(e) The proposed dates for commencement and completion of the proposed development;

(f) Verification that pilot(s) and aircraft comply with State of Oregon Department of Aviation registration requirements (pursuant to ORS 837.020-070);

(g) A listing of all applicable FAA Certificates;

(h) The number of initial projected aircraft to be stored in the proposed structure; and

(i) A layout (to scale) of the size, configuration, and location of the property proposed for occupancy and preliminary drawing(s) of the building(s) and improvements to be constructed, together with identification of vehicle parking areas. Drawings shall be legible and reproducible with clearly defined dimensions. Each drawing shall be not less than 8.5 inches by 11 inches in size and be drawn in permanent media.

(3) The Department may request a metes and bounds legal description of lease property boundaries.

(4) For proposed agreements to lease existing structures and improvements, application shall include a description of the site, based on ODA records.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055

Hist.: AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0065

Hangar Occupancy Under Leases for Noncommercial Aeronautical Activity

(1) All hangars, whether constructed by the Lessee or leased from the Department, shall be used as a base for at least one aircraft registered with the State of Oregon Department of Aviation, or at least one aircraft currently being repaired, modified or constructed.

(2) These conditions are met only if:

(a) Any aircraft being repaired, modified or constructed shows progress towards an airworthy condition over a twelve-month period; or

(b) Lessee does not exceed a period of 180 days without having an aircraft based in the hangar.

(3) Upon the above conditions not being met, the Lessee shall:

(a) Make arrangements to vacate the lease property; or

(b) Transfer ownership to a qualified Lessee who has been approved by the Department, within thirty (30) days of written notice of noncompliance by the Department.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055

Hist.: AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0070

Non-Commercial Aeronautical Lease Applicant's Financial Responsibility

(1) All persons applying for a lease for non-commercial aeronautical activity at a State-owned airport who will be constructing improvements to the lease property shall provide the Department evidence, in a form acceptable to ODA, of the applicant's financial capability and responsibility to complete the project, in one of the following forms:

(a) A performance bond in the amount equal to the cost for constructing the proposed improvements, which may be supplied by a contractor;

(b) An irrevocable letter of credit guaranteeing funds to complete the project;

(c) An escrow agreement administered by a title and escrow company; or

(d) A trust administered by a commercial bank.

(2) At its option, the Department may require the prospective Lessee to obtain one or more of the above documents as proof of financial responsibility to complete the project.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055

Hist.: AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0075

ODA Review of Application for Non-Commercial Aeronautical Activities

(1) The Department shall review the application for lease for non-commercial aeronautical activities at a State-owned airport, as well as the financial responsibility documentation, and determine whether to approve or deny the application. The decision shall be made in writing to the prospective Lessee.

(2) The Department may deny any prospective Lessee's application if it is determined that:

(a) The proposed construction would create a safety hazard at the airport or the surrounding community;

(b) The prospective Lessee, for any reason, does not meet the qualifications, standards, and requirements of the Department or exhibit adequate financial responsibility or capability to undertake and complete the proposed construction (the burden of proof shall be on the applicant and the standard of proof shall be by clear and convincing evidence);

(c) The granting of the lease application will require the Department to expend funds, or supply labor or materials in con-

nection with the proposed activity and/or construction, or will result in a financial loss (or hardship) for the airport;

(d) No appropriate, adequate, or available site or building(s) exist(s) to accommodate the needs of the prospective Lessee as presented in the lease application, nor is such contemplated within a reasonable time frame;

(e) The proposed development does not comply with the Airport Master Plan and/or Airport Layout Plan in effect at that time, or those plans anticipated to be in effect within the time frame proposed by the prospective Lessee;

(f) The development or use of the area requested by the prospective Lessee is likely to result in congestion of aircraft or airport buildings, or will unduly interfere with operations or activities of any present Lessee on the airport, and/or will prevent adequate access to the assigned lease area of any present Lessee;

(g) The prospective Lessee has failed to make full disclosure, or has misrepresented or omitted material facts in the application or in supporting documents;

(h) The prospective Lessee, or a principal of the prospective Lessee, has a record of violating the rules, regulations, statutes, ordinances, laws or orders of any airport, or any civil air regulations, FAA regulations or any other rules, regulations, statutes, ordinances, laws or orders applicable to airports;

(i) The prospective Lessee, or a principal of the prospective Lessee, has defaulted in the performance of any other agreement with the State;

(j) The prospective Lessee cannot or will not provide a performance bond or applicable insurance in the amounts and type required by the Department for the proposed development; or

(k) It is determined that the prospective Lessee's proposed development, activities and/or operations could be detrimental in any way whatsoever to the airport.

(3) The prospective lessee is responsible for providing any required infrastructure to support their proposed use of the site, at the lessee's expense. The prospective lessee shall provide to ODA, prior to any construction, occupancy or use of the site written confirmation that all required services have been or will be installed (power, water, fire suppression, sewer, etc). Services must comply with local government and ODA requirements.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055

Hist.: AVIA 1-2002, f. & cert. ef. 9-3-02; AVIA 2-2006, f. & cert. ef. 1-27-06

738-015-0080

Non-Commercial Aeronautical Lease Provisions

(1) The prospective Lessee shall be provided a draft non-commercial lease for review only after the Department has approved the lease application. Before entering into the lease with ODA, the prospective Lessee shall review the applicable:

- (a) Operating Minimum Standards;
- (b) Airport Rules and Regulations;
- (c) Rates and Charges Policy; and
- (d) Leasing Policy for Non-Commercial Aeronautical Activities.

(2) The draft non-commercial lease shall include, but not be limited to, the following elements:

(a) Description of the lease property, as provided from ODA records;

- (b) Term of lease;
- (c) Names and addresses of responsible parties;
- (d) All fees and charges associated with occupying and operating on the lease property;
- (e) Insurance requirements;
- (f) Information on all taxes, liens and utilities;
- (g) Payment procedures relating to all fees and charges;
- (h) Approved non-commercial activities;
- (i) Prohibited non-commercial activities;
- (j) Compliance with FAA regulations and pertinent laws;
- (k) State aircraft and pilot registration requirements;
- (l) ODA entry onto lease property;
- (m) Access to lease property;
- (n) Fire prevention;
- (o) Maintenance requirements;

- (p) Landscaping;
- (q) Construction or alteration procedures;
- (r) Restrictions on hazardous substances;
- (s) Default and penalty provisions;
- (t) Remedies on default;
- (u) Bankruptcy;
- (v) Termination for airport development;
- (w) Transfer of airport ownership;
- (x) Sale of improvements;
- (y) Lease renewal options;
- (z) Procedures for vacating the lease property; and
- (aa) Termination of lease provisions.

(3) The base term for non-commercial aeronautical leases shall be no longer than twenty-five (25) years.

(4) If the Lessee requests a renewal, the Department may agree to renew the lease, consistent with OAR 738-015-0080, Non-Commercial Aeronautical Lease Renewal Options, for one (1) five-year period, provided the total lease term does not exceed thirty (30) years.

(5) At the expiration of the base term and any renewals, Lessee may request a new Lease. The Department may negotiate a new lease if the Department determines that:

- (a) The existing lease is not in default;
- (b) The lease property is not required for other airport uses;
- (c) Lessee has met its obligations under the terms of the preceding lease;
- (d) Any improvements to the lease property are structurally sound and capable of safe and legal occupancy for the new lease term; and
- (e) The Department otherwise finds that a new lease is appropriate.

(6) The duration of the new lease shall be at the Department's option.

(7) Each renewal or new lease following the base term lease shall incorporate all current terms and conditions for leases and any special terms the Department deems necessary based on the particular circumstances of the Lessee and lease property.

(8) If the Department determines that a renewal or new lease will not be offered to Lessee, the Department may require Lessee to remove any structures on the lease property, at Lessee's expense, at the expiration of the current lease between Lessee and the Department.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055

Hist.: AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0085

Non-Commercial Aeronautical Lease Renewal Options

(1) In accordance with OAR 738-015-0080, Non-Commercial Aeronautical Lease Provisions, Lessee shall have the option to renew its lease with the Department beyond the base term, subject to the satisfaction of all of the following conditions:

- (a) The existing lease is not in default;
- (b) Any improvements to the lease property are structurally sound and capable of safe and legal occupancy for the remaining term of the renewal period; and

(c) Lessee files a notice with ODA, in the form specified by ODA, stating that Lessee has complied with (a) and (b) above and intends to exercise its renewal option. The notice must be filed not later than 120 days prior to the expiration of the base term lease.

(2) The Department shall inspect Lessee's improvements for condition and appearance in accordance with ODA's standards for maintaining clean, safe and attractive facilities at the airport.

(a) Items considered will include, but not be limited to:

- (A) Siding and exterior finish;
- (B) Roofing;
- (C) Doors; and
- (D) Structural framing.

(b) If the Department determines from its inspection that the improvements may not be structurally sound, the Department may require Lessee to obtain an inspection by a certified inspector, at Lessee's expense, to verify the condition of the structure.

(c) The Department may require Lessee to correct any deficiencies noted by ODA's inspection or further structural inspection as a condition of Lessee's renewal.

(d) If corrections cannot be completed prior to the expiration of the current lease term, Lessee may request in writing that the Department approve additional time to make the corrections; the Department shall not unreasonably withhold approval of the request. The Department and Lessee may enter into the lease renewal or new lease, subject to the written commitment of Lessee to complete the repairs within a specified period. Failure to make the repairs within the period agreed upon may be cause for immediate termination of the renewal term.

(3) The length of the term of a new lease following a base term lease and any renewal shall be at the Department's discretion.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055

Hist.: AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0090

Termination of Non-Commercial Aeronautical Lease for Default or Airport Development

(1) In the event of termination of a non-commercial lease for default by Lessee, Lessee has two options, either of which must be completed within 120 days of the date of written notice of lease termination:

(a) Lessee may sell the lease improvements to a qualified buyer who is able to enter into a lease with the Department under OAR 738-015-0055 through 738-015-0075; or

(b) Within that same period, Lessee may remove the improvements, at Lessee's expense, and restore the lease property to their original condition.

(2) In the event of termination by the Department for default by Lessee, Lessee shall pay basic rent for any post-termination occupancy, until another Lessee has entered into a lease with the Department or until the lease property are restored to their original condition.

(3) If the Department makes a determination, in accordance with the Airport Master Plan and FAA-approved Airport Layout Plan, that the lease property are required for airport development, it shall offer to Lessee an alternative site, if such other suitable space is available on airport property.

(4) If no suitable alternative site is available, or Lessee chooses not to relocate, the lease may be terminated by either party.

(5) Upon termination, Lessee shall vacate the lease property upon 120 days written notice by the Department to buy out the remaining base term of the lease.

(6) If Lessee's lease is not a base term lease, the Department shall not pay compensation for lease termination. If Lessee's lease was a base term lease, then the Department shall offer to buy out the remaining base term of the lease.

(7) The base term buy-out will be determined by amortizing the construction cost of the hangar (or other improvements) over the base term of the lease, factoring in straight-line depreciation and adjusting for inflation based on ODA'S periodic rental increases. The Department shall purchase each remaining year of the base term according to the amortization/depreciation schedule.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055

Hist.: AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0095

Sale of Improvements, Assignment of Non-Commercial Leases, Subleases

(1) The Department shall not allow assignment or sublease of any non-commercial lease.

(2) If Lessee desires to sell the improvements, the Department shall consider entering into a new lease with the buyer of the improvements, provided said prospective new Lessee is qualified under criteria set forth in OAR 738-015-0060, Leasing Application for Non-Commercial Aeronautical Activities, 738-015-0065, Hangar Occupancy Under Leases for Non-Commercial Aeronautical Activities, 738-015-0070, Non-Commercial Aeronautical Lease Applicant's

Financial Responsibility, and 738-015-0075, ODA Review of Application for Non-Commercial Aeronautical Activities.

(a) The prospective Lessee (the buyer of the improvements) must meet all requirements imposed on any Lessee with a non-commercial aeronautical lease.

(b) If the prospective Lessee (the buyer of the improvements) qualifies to obtain a lease, the Department shall offer a lease with the terms, conditions and rates then in effect. The term of the new lease shall be determined by the Department, consistent with OAR 738-015-0080.

(3) The original Lessee's lease shall remain in full force and effect until the Department and the buyer of the improvements have entered into a new lease. The original Lessee must comply with all terms and conditions of the original lease until the new lease is executed and in effect.

(4) Upon execution of the new lease, the original lease is automatically terminated by mutual agreement of the parties.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055

Hist.: AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0100

Non-Commercial Lease Insurance Requirements

Each Lessee shall meet all State of Oregon insurance requirements and shall maintain the types of insurance specified in the lease, in the amounts specified.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

Stats. Implemented: ORS 935.035, 935.040, 835.112 & 836.055

Hist.: AVIA 1-2002, f. & cert. ef. 9-3-02

DIVISION 20

MINIMUM STANDARDS FOR AIRPORTS

738-020-0010

Purpose and Statutory Authority

To prescribe minimum dimensional and layout standards for airports, including heliports; to prescribe procedures for site approval, licensing, or registering pursuant to the following:

(1) ORS 835.035 pertaining to the general public interest, safety, and the development and promotion of aeronautics.

(2) ORS 836.025(1) pertaining to the regulations, protection, and policing of airports by the Oregon Department of Aviation (the Department).

(3) ORS 836.080 to 836.120 pertaining to site approval and licensing of airports.

Stat. Auth.: ORS 835 & 836

Stats. Implemented: ORS 836.080 - 836.120

Hist.: 1 OTC 46, f. 11-29-74, ef. 12-25-74; 1 OTC 81, f. & ef. 5-3-77; AERO 2-1989, f. & cert. ef. 9-20-89

738-020-0020

Designation of Minimum Standards

(1) Airports other than heliports:

(a) An airport that is open to the public shall conform as a minimum to the design and dimensions of General Aviation Airports shown on the drawing "Minimum Standards for General Aviation Airports," attached as **Exhibit 1** hereto. Airports for personal, recreational or emergency use, if not so conforming, may be approved if runway and approaches are adequate for the published operating characteristics and limitations of the aircraft to be accommodated;

(b) Sponsors of public-use airports shall have control of approach-departure zones with dimensions appropriate to the purpose and usage of the airport, but in no case extending less than 1,100 feet from end of the runway. Public-use airports which are exempted under ORS 836.080, or which held a license prior to December 25, 1974, are exempt from this requirement;

(c) If an airport having dimensions which meet state minimum standards but is deemed by the Director to be inadequate based on the amount and nature of air traffic, the type of aircraft to be accommodated, and the size and operational category of the airport, the design and dimensions of such airport shall conform as

nearly as practicable to the applicable standards prescribed by the Federal Aviation Administration (FAA).

(2) Heliports:

(a) The landing and take-off area of a rectangular heliport at elevations not over 1,000 feet above sea level shall be not less in length and width than 1-1/2 times the overall length of the helicopter to be accommodated;

(b) A circular heliport shall have a minimum diameter equal to 1-1/2 times the overall length of the largest helicopter to be accommodated;

(c) For elevations over 1,000 feet above sea level, the above dimensions shall be increased by 15 percent for each 1,000 feet of elevation above the first 1,000 feet;

(d) The obstruction-free approach surface shall extend upward and outward from the edge of the landing and take-off area to the enroute altitude at the ratio of eight feet horizontally to one foot vertically (8:1) for a horizontal distance of 4,000 feet where the approach surface is 500 feet wide. The obstruction-free transitional surface or side slope shall extend upward and outward from the edge of the landing and take-off area at the ratio of two feet horizontally to one foot vertically (2:1) for a distance of 250' measured horizontally from the centerline of the landing and take-off area.

(3) The Department may waive any requirements contained in this rule as to any particular airport or heliport if it finds, following a documented review, such action to be consistent with safety and public interest.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 835 & 836

Stats. Implemented: ORS 836.090

Hist.: 1 OTC 46, f. 11-29-74, ef. 12-25-74; 1 OTC 81, f. & ef. 5-3-77; AERO 2-1989, f. & cert. ef. 9-20-89; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-020-0025

Application for Site Approval

(1) Except as provided in ORS 836.080, OAR 738-020-0030 or as approved by the FAA after a site selection study, no municipality or officer or employee thereof, nor any person, shall construct or establish an airport or heliport without first having obtained an approval from the Department for the proposed site.

(2) The provisions of this rule apply equally to establishment of new airports or heliports or substantial modification of existing facilities. Substantial modification is construed to mean any significant change of physical dimensions, as determined by the Director, or any change of physical conditions which causes the airport or heliport to become either unsafe or unusable for the aeronautical purposes for which the original license was issued. Substantial modification of existing facilities may be exempt from the provisions of this section if those modifications are constructed as a result of an FAA airport improvement project. To keep the Department informed as to the modifications made to an airport, a copy of the FAA approved Airport Layout Plan and the final "as constructed" plans shall be furnished to the Department.

(3) Written application for site approval shall set forth, on a form provided by the Department, the proposed use of the airport or heliport, a map, plan, or sketch depicting location, layout, dimensions, topographic features, obstructions, and relationship to all other aeronautical facilities within five miles. Payment of a non-refundable fee of \$75, together with \$300 for the cost of inspecting an airport site for potential approval, as established by ORS 836.085(1), shall accompany the application.

(4) Within a reasonable time after receiving such application, the Director will render a finding as to whether the proposed airport is compatible with the State Aviation System Plan. If found to be compatible, an the Department inspector will then make a physical site investigation to evaluate certain aspects of the proposed site, including, but not limited to:

(a) All real property devoted to or to be used in connection with any aeronautical activity at the proposed airport;

(b) The location of the airport in relation to any surrounding topography, trees or structures that could affect the safety of the airport;

(c) The location and configuration of the proposed airport's runways and operation areas in relation to those of existing and approved airports or airport sites in the vicinity that could affect the safety of aircraft operating from the proposed airport, or from other airports.

(5) If satisfied that the site will meet aeronautical safety standards for the proposed use of the airport or heliport, as well as safety of adjoining property, the Department will issue a provisional site approval. If not satisfied, the Department will deny site approval or may make suggestions as to how the site can meet the standards.

(6) The Department shall forward provisional site approval to the proponent of the airport or heliport and also provide a copy of the approval to the appropriate local planning/zoning bodies for review and comment. If no significant adverse comment is received within thirty days, and upon receipt of evidence that the proponent has notified the FAA, on the appropriate form, of this intent to establish an airport or heliport, the Department shall issue final site approval.

(7) If the proposed airport site is found not to be compatible with the State Aviation System Plan as provided in section (4) of this rule, or is for any other reason not inspected, the refundable inspection fee shall be returned to the applicant.

Stat. Auth.: ORS 184.616, 184.619, 835.035 & 836.085

Stats. Implemented: ORS 836.085 & 836.095

Hist.: 1 OTC 46, f. 11-29-74, ef. 12-25-74; 1 OTC 81, f. & ef. 5-3-77; 1AD 3-1984, f. & ef. 7-31-84; AERO 2-1989, f. & cert. ef. 9-20-89; AERO 1-1998, f. & cert. ef. 2-25-98; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02; AVIA 1-2005, f. & cert. ef. 5-23-05

738-020-0030

Application for License

(1) Except as provided in ORS 836.080, and except for those airports holding a certificate in compliance with Federal Aviation Regulation Part 139, no person, municipality, or officer or employee thereof shall operate a public-use airport without a license duly issued by the Oregon Department of Aviation. The fee for such license shall be as determined by statute and that fee shall be paid in full for the initial calendar year or portion thereof, and for each annual renewal. Application for license and renewal shall be in writing on a form provided by the Department and shall be accompanied by the prescribed fee. Application for initial license shall be accompanied by a drawing or sketch depicting the airport "as built." Sketches depicting any changes to the "as built" sketch submitted when the airport was first licensed, or as subsequently revised, shall accompany any application for renewal of license.

(2) Personal-use airports are exempt from licensing, but sponsors will be required to register such airports annually with the Department. There shall be no fee for registration, but the owner shall register the airport prior to February 1 of each year on a form furnished by the Department. New airports shall be registered within thirty days of completion of the airport in accordance with plans submitted for site approval and approved by the Department. These airports may be approved for use by aircraft whose published manufacturer's specifications state they can be operated from an airport of a size less than the state minimum standards.

(3) Agstrips need not be licensed, registered, or have site approval if the use of that strip is to be of an occasional nature only. However, the use of an agstrip shall be the sole responsibility of the person operating it. He shall be responsible not only for his own safety, but for the safety of persons and property on the ground. Conflict with traffic patterns of an existing airport must be avoided or coordinated and resolved. Such strip shall not be used by aircraft not under the agstrip operator's control.

Stat. Auth.: ORS 825 & 826

Stats. Implemented: ORS 836.105

Hist.: 1 OTC 46, f. 11-29-74, ef. 12-25-74; 1 OTC 81, f. & ef. 5-3-77; 1AD 3-1984, f. & ef. 7-31-84; AERO 2-1989, f. & cert. ef. 9-20-89; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-020-0035

Approval of Site: Issuance of License

(1) Within a reasonable time after receipt of application, the Department shall grant approval of the site under the provisions of OAR 738-020-0025 or shall issue a license, as the case may be, if it is satisfied that:

(a) The airport meets, or will meet, the minimum standards prescribed by OAR 738-020-0020;

(b) Safe air traffic patterns can be worked out for such airport and all existing or approved airports in its vicinity;

(c) Due notice has been given the FAA, by the applicant on an appropriate FAA form and an FAA determination has been made in any case where such notice is required, regarding any proposed construction;

(d) The airport has been constructed in accordance with plans as submitted to the Department with either the application for site approval or for a license; and

(e) The airport substantially meets land use and zoning requirements of the local governmental entity having jurisdiction.

(2) The Department, in approving a site or in issuing a license, may impose such conditions as it may deem reasonably necessary or appropriate to accomplish the intent of ORS 836.085 to 836.120.

(3) In certain cases, the Department may issue a temporary airport license for a specific reason and for a specific date or limited period of time, not to exceed thirty days.

(4) The Department at its discretion may hold a hearing prior to approving a site or issuing a license. Due notice shall be given and opportunity for hearing shall be provided prior to the denial of any such site approval or license.

Stat. Auth.: ORS 184.616, 184.619, 835.035, 836.095 & 836.105

Stats. Implemented: ORS 836.095 & 836.105

Hist.: 1 OTC 46, f. 11-29-74, ef. 12-25-74; 1 OTC 81, f. & ef. 5-3-77; 1AD 3-1984, f. & ef. 7-31-84; AERO 2-1989, f. & cert. ef. 9-20-89; AERO 1-1998, f. & cert. ef. 2-25-98

738-020-0040

Revocation of Site Approval or License

(1) The Department may, after notice and opportunity for hearing, revoke a site approval upon determining (ORS 836.100):

(a) That there has been an abandonment of the site as an airport site; or

(b) That there has been a failure within the time prescribed, or if no time was prescribed, within two years' time, to develop the site as an airport or to comply with the conditions of the approval; or

(c) That control of necessary approach and departure zones has not been obtained within a specified time or obstructions exist at the end of the runway so as to create a hazard to aircraft.

(2) The Department may, after notice and opportunity for hearing, revoke a license or refuse renewal thereof upon determining (ORS 836.110):

(a) That there has been an abandonment of the airport as such; or

(b) That there has been a failure to comply with the conditions of the license or renewal thereof; or

(c) That because of change of physical or legal conditions or circumstances the airport has become either unsafe or unusable for the aeronautical purposes for which the license or renewal was issued;

(d) When an airport is no longer used as an airport, it shall be appropriately marked as a closed airport for a period of at least six months following closure.

Stat. Auth.: ORS 835 & 836

Stats. Implemented: ORS 836.100 & 836.110

Hist.: 1 OTC 46, f. 11-29-74, ef. 12-25-74; 1 OTC 81, f. & ef. 5-3-77; AERO 2-1989, f. & cert. ef. 9-20-89; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-020-0045

Hearings

The procedure for hearings and appeals in connection with the grant, denial, or revocation of a site approval or license shall be as provided in The Attorney General's Model Rules of Practice and

Procedure under the Administrative Procedure Act, and ORS Chapter 183.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the Office of the Attorney general or the Department of Aviation.]

Stat. Auth.: ORS 184.616, 184.619, 835.035, 836.100, 836.110 & 836.115

Stats. Implemented: ORS 183.430, 183.435, 836.100, 836.110 & 836.115

Hist.: 1 OTC 46, f. 11-29-74, ef. 12-25-74; 1 OTC 81, f. & ef. 5-3-77; 1AD 1-1984, f. & ef. 1-5-84; 1AD 1-1986, f. & ef. 4-28-86; AERO 1-1988, f. & cert. ef. 8-22-88; AERO 2-1989, f. & cert. ef. 9-20-89; AERO 4-1990, f. & cert. ef. 8-14-90; AERO 1-1992, f. & cert. ef. 5-12-92; AERO 1-1998, f. & cert. ef. 2-25-98; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

DIVISION 25

AIRPORT FUEL FACILITIES

738-025-0001

Purpose of Rule

The purpose of this rule is to establish a procedure for permitting nonretail facilities that dispense aviation fuels at airports.

Stat. Auth.: ORS 835.112 & 480.390

Stats. Implemented: ORS 480.390

Hist: AVIA 1-2001(Temp), f. & cert. ef. 6-5-01 thru 11-30-01; AVIA 2-2001, f. & cert. ef. 10-24-01; AVIA 1-2004, f. & cert. ef. 2-17-04

738-025-0010

Permit Process

(1) Before starting construction or installation of a nonretail (cardlock) facility to dispense aviation fuels at an airport the owner or operator of the proposed facility shall submit to the Department an application for a facility permit.

(a) The Department shall specify the form of the application.

(b) The airport owner shall sign the application.

(c) The Department shall consider the airport owner's signature on the application as proof that the airport owner has permitted the construction or installation of the facility.

(2) Following receipt of the signed application the Department shall issue a permit to the owner or operator of the proposed facility:

(a) The permit shall state that the airport owner has given permission for the construction or installation of the facility;

(b) The Director of the Department shall sign the permit; and

(c) The signed permit shall be returned to the applicant.

(3) The application and permit specified in (1) and (2) of this rule are in addition to any other applications, permits or other requirements of additional federal, state or local authorities with jurisdiction over such facilities.

Stat. Auth.: ORS 835.112

Stats. Implemented: SB 106, eff. 06-04-01

Hist: AVIA 1-2001(Temp), f. & cert. ef. 6-5-01 thru 11-30-01; AVIA 2-2001, f. & cert. ef. 10-24-01; AVIA 1-2004, f. & cert. ef. 2-17-04

DIVISION 35

OPERATING MINIMUM STANDARDS FOR COMMERCIAL AERONAUTICAL ACTIVITY AT STATE-OWNED AIRPORTS

738-035-0005

Purpose and Overview

(1) Minimum operating standards are established at Oregon's State-owned airports so that:

(a) Any person or entity proposing to use or access State-airport property or facilities for commercial aeronautical activity compensates the Department for use of State property at fair market rent for such use and privilege.

(b) The Department consistently applies uniform requirements to all commercial operators at State-owned airports;

(c) Application of fair market rental rates creates parity between State-owned facilities and other public airports, ensuring that no person or entity receives a competitive advantage by using State facilities;

(d) State-owned airport public areas, roads, taxiways, runways and aprons remain available and open for public aeronautical use;

(e) Development of airport facilities and commercial aeronautical services at all State-owned airports is orderly and efficient;

(f) The environment at State-owned airports fosters high quality commercial aeronautical services for the airport users and tenants; and

(g) The Department, as airport sponsor for all State-owned airports, complies fully with federal grant assurances.

(2) The Department shall require all activities of commercial operators at State-owned airports to comply with the Operating Minimum Standards set forth in OAR 738-035, whether the commercial activity occurs:

(a) On the State-owned portion of the airport;

(b) On portions of the airport held in private ownership; or

(c) Where a private property owner accesses the State-owned land for landing and takeoff of aircraft through an access agreement with the Department.

(3) The specific minimum standards for each State-owned airport are based upon the airport category as set forth in the Oregon Aviation Plan, as well as unique conditions at the individual State-owned airport, including:

(a) Existing and planned facilities at the airport; and

(b) The current and anticipated future role of the airport in the State aviation system.

(4) Operating minimum standards provide threshold entry requirements for any person or entity proposing to enter into an agreement with the Department to provide public commercial aeronautical services to the public at a State-owned airport to ensure that services and facilities of service providers meet the needs of airport users.

(5) Operators are encouraged to exceed these minimum operating standards whenever possible.

(6) Each commercial operator shall agree to offer the specified minimum level of services to obtain an agreement with the Department granting permission to operate at the State-owned airport.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 1-2003, f. 2-24-03, cert. ef. 3-1-03

738-035-0010

Application of Operating Minimum Standards

(1) Existing operators with current agreements executed prior to February 1, 2003, shall not be required to conform to these minimum standards until renewal of their agreement with the Department; however, any exempt operator may voluntarily elect to comply with these operating minimum standards in advance of their renewal date.

(2) Existing operators who are unable to meet the requirements of these minimum standards at the time of their agreement renewal shall submit a written plan outlining a specific timeline for their full compliance with the minimum standards. The Director, or the Director's designee, must approve the compliance plan prior to renewal of the agreement.

(3) These operating minimum standards are deemed to be part of each commercial operator's agreement with the Department, whether or not expressly set forth in their written agreement, with the exception of those specific instances when provisions are expressly waived or modified in writing by the Director or the Director's designee. The omission of a specific reference to any particular minimum standard in an operator's written agreement with the Department shall not constitute a waiver or modification of these operating minimum standards.

(4) If a commercial operator conducts multiple aeronautical activities under a single written agreement with the Department, that operator shall comply with the minimum standards established for each separate activity or SASO. If the minimum standards for one aeronautical activity are inconsistent with the minimum standards for another, then the stricter or higher standard shall apply to all aeronautical activities of that operator.

(5) Activities with no specific minimum standards in these rules shall be addressed by the Department on a case-by-base basis

in the commercial operator's written lease, license, permit or agreement.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 1-2003, f. 2-24-03, cert. ef. 3-1-03

738-035-0015

Authorization for Commercial Activity on State-Owned Airport Property

(1) The Oregon Department of Aviation has authority to authorize commercial aeronautical activity on State-owned airport property.

(2) When the Department determines that a person or entity is engaged in, or proposes to engage in, commercial activity at a State-owned airport, the Department may grant that person or entity permission to do so, may issue that person or entity a permit with restrictions or conditions, may require the person or entity to enter a lease or agreement with the Department, or may deny such permission.

(3) The Department shall consider the following criteria in determining if an operator shall be authorized to conduct business:

(a) The terms and conditions of any pre-existing commercial operators at the airport providing comparable services;

(b) The impact of the proposed new commercial activity on public safety and convenience;

(c) The amount of available space at the airport;

(d) The customary uses of the airport;

(e) Compatibility of the proposed new commercial activity with present and planned development at the airport; and

(f) Compliance of the proposed activity with all federal, state and local laws and regulations, including land use regulations.

(4) The Department may impose any conditions or restrictions necessary to ensure safety in the air and on the ground at the State-owned airport, including preservation of unobstructed traffic patterns and runway approaches.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 1-2003, f. 2-24-03, cert. ef. 3-1-03

738-035-0020

Waiver or Modification of Operating Minimum Standards

(1) The Director, or the Director's designee, may waive or modify any portion of these operating minimum standards for the benefit of:

(a) A government agency performing nonprofit public services;

or

(b) Fire protection or emergency response operations.

(2) The Director, or the Director's designee, may waive or modify any portion of these operating minimum standards for any person or entity when it is determined that such waiver is in the best interest of the public and will not result in unjust discrimination against other commercial aeronautical operators at the airport.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 1-2003, f. 2-24-03, cert. ef. 3-1-03

738-035-0025

Review, Revisions and Amendments to Operating Minimum Standards

The Department shall review these operating minimum standards at least once every two (2) years to determine whether changes in either the airport business or the regulatory environment necessitate amendment of these standards.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 1-2003, f. 2-24-03, cert. ef. 3-1-03

738-035-0030

Enforcement

The Department shall provide consistent, uniform, and fair enforcement of these minimum standards to accomplish the Department's goals and promote successful commercial business operations at all State-owned airports. The Department may, therefore, provide

in its written agreements any appropriate provisions to assist the Department in enforcing these operating minimum standards.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 1-2003, f. 2-24-03, cert. ef. 3-1-03

738-035-0035

Commercial Business Employee Conduct at State-Owned Airports

(1) All commercial operators at State-owned airports shall diligently provide consistently high quality, responsive and professional services that meet or exceed the needs of airport users.

(2) Each commercial operator shall employ the quantity of trained, on-duty management and personnel necessary to ensure compliance with its obligations to provide courteous, efficient and safe services to all customers.

(3) All personnel employed by any commercial operator shall meet all federal, state and local training requirements, and shall hold all appropriate certifications required for their duties.

(4) No commercial operator shall do, or permit to be done, anything that may interfere with the effectiveness or accessibility of any:

- (a) Airport system;
- (b) Public utility system;
- (c) Drainage system;
- (d) Sewer system;
- (e) Fire protection system;
- (f) Sprinkler system;
- (g) Alarm system; or
- (h) Fire hydrant.

(5) If any commercial operator discovers an event has occurred or a situation exists that interferes with the effectiveness or accessibility of any service described in paragraph (4) above, the commercial operator, or an employee of the operator, shall immediately notify the Department, and the local fire department or utility company or such other municipal or community services as are appropriate to effectively and immediately resolve the situation.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 1-2003, f. 2-24-03, cert. ef. 3-1-03

738-035-0040

Minimum Standards for Fixed Base Operators (FBOs) at State-Owned Airports

(1) An FBO is the only commercial operator permitted by the Department to provide fueling services and facilities at any category of State-owned airport.

(2) In addition to the mandatory primary operation of aircraft fueling, an FBO operating at a Category II, Category III or Category IV State-owned airport shall provide a minimum of two (2) of the following secondary services:

- (a) Flight training;
- (b) Airframe and power plant maintenance;
- (c) Aircraft rental;
- (d) Avionics maintenance and sales; or
- (e) Aircraft storage.

(3) An FBO operating at a Category V State-owned airport may provide secondary services as the market demands, but shall be permitted to provide only fueling services facilities if an insufficient secondary market exists.

(4) Each FBO may subcontract or use third-party operators to provide any primary or secondary service. Subcontractors and third-party operators shall meet all minimum standards requirements.

(5) Each FBO shall conduct its business, and perform activities on and from the business premises, in a professional manner, consistent with the degree of care and skill exercised by experienced FBOs providing comparable products, services and activities from similar airports in like markets, and consistent with this section.

(6) Every FBO operating on State-owned airport shall comply with the following airport public building requirements:

(a) **Category II Airport:** The FBO shall provide on the property a public use terminal building with floor space for:

- (A) Customer lobby;
- (B) Office;
- (C) Pilot's lounge;
- (D) Flight planning and weather briefing area;
- (E) Public rest rooms; and
- (F) Additional facilities and services as listed in paragraphs (7), (8) and (9) below.

(b) **Category III or IV Airports:** The FBO shall lease or construct on the property, a public use terminal building capable of meeting business demand, as approved by the Director or the Director's designee.

(c) **Category V Airport:** The FBO is not required to lease or construct a public use terminal building on the property; however, if the FBO chooses to lease or construct a public use terminal building, the building must be capable of meeting business demand, as approved by the Director or the Director's designee.

(7) Each FBO shall provide adequate vehicle parking on the property to meet the needs of customers and employees, in accordance with local building codes, but in no event fewer than:

- (a) **Category II Airport:** five (5) paved parking spaces;
- (b) **Category III or IV Airports:** three (3) paved parking spaces;
- (c) **Category V Airport:** two (2) paved or gravel parking spaces.

(8) Every FBO operating on a State-owned airport shall provide adequate property for its aircraft operating area (ramp), independent of any building area, vehicle parking area and fuel storage area. The aircraft operating area shall provide transient aircraft parking and tie-down areas for no fewer than:

- (a) **Category II Airport:** five (5) aircraft;
- (b) **Category III or IV Airports:** three (3) aircraft;
- (c) **Category V Airport:** two (2) aircraft.

(9) Each tie-down ramp area on a State-owned airport shall be adequate to support all the activities of the FBO and all approved subtenants. The FBO shall maintain the ramp area and keep it clean and free of foreign object debris (FOD).

(10) Each FBO shall be open for business on a regular schedule and shall provide aircraft fueling and line services to adequately serve the airport category. Business hours, including holiday closures, shall be recorded with the Department in advance and regularly updated for accuracy:

(a) **Category II Airport:** Each FBO shall be open for business and provide aircraft fueling and line services seven (7) days per week, during appropriate business hours. In addition, each FBO shall:

(A) Be on call twenty-four (24) hours each day to provide after-hours fuel service within two (2) hours of a customer request; or

(B) Develop and record with the Department a shared on-call schedule, at those airports where multiple FBOs are located who mutually agree upon shared responsibilities, to provide after-hours fuel services; and

(C) Provide adequate notice to the public of the communication mode with a designated on-call employee to ensure that after-hours on-call fueling services are readily accessible and timely provided, whether after-hours services are provided by a sole FBO or shared between multiple FBOs.

(b) **Category III and IV Airports:** Each FBO shall be open for business and provide aircraft fueling and line services a minimum of five (5) days per week, during appropriate business hours. In addition, each FBO shall:

(A) Be on call twenty-four (24) hours each day to provide after-hours fuel service within two (2) hours of a customer request; or

(B) Develop and record with the Department a shared on-call schedule, at those airports where multiple FBOs are located who mutually agree upon shared responsibilities, to provide after-hours fuel services; and

(C) Provide adequate notice to the public of the communication mode with a designated on-call employee to ensure that after-hours on-call fueling services are readily accessible and timely provided, whether after-hours services are provided by a sole FBO or shared between multiple FBOs.

(c) Category V Airport: If the FBO provides a self-fueling station, it must be readily accessible to customers and illuminated for nighttime operations.

(11) Each FBO operating on a Category II, Category III or Category IV airport shall have on duty, during all required hours of operation, a minimum of one (1) employee and such additional personnel as needed to adequately meet the operating minimum standards for each specific aeronautical service offered by the FBO. Multiple responsibilities may be assigned to qualified employees, where feasible.

(12) Each FBO operating at a State-owned airport shall provide the Department with a current and accurate roster consisting of names, addresses and contact information for all persons responsible for the both management and operation of the FBO, even if the FBO is an unstaffed self-fueling operation sited at a Category V airport.

(13) Each FBO shall provide the Department with points of contact and appropriate telephone numbers to enable contact in any emergency situation.

(14) Each FBO shall obtain, and shall keep current at all times, any and all required fueling certifications and permits necessary for storing, handling and dispensing aircraft fuel storage. Each FBO shall train its management and fuel handling personnel to ensure safe and proper handling, dispensing and storage of aviation fuels. Periodic refresher training shall be provided as necessary.

(15) Each FBO shall develop and maintain Standard Operating Procedures (SOPs) for refueling and ground handling operations that comply with all Uniform Fire Code and FAA standards and requirements. The SOPs shall be submitted to the Department no later than thirty (30) days prior to the FBO commencing fueling activities and shall specifically address:

- (a) Bonding protection;
- (b) Fire protection;
- (c) Public protection;
- (d) Control of access to fuel storage areas; and
- (e) Marking and labeling of fuel storage tanks and fuel dispensing equipment.

(16) Each FBO shall comply with all FAA regulations pertaining to aircraft fuel storage, handling and dispensing on airports, to all airport rules and regulations, and to any other applicable laws related to aircraft fuel handling, dispensing and storage.

(17) Each FBO shall meet all State of Oregon insurance requirements and shall maintain, at a minimum, the specific types and amounts of insurance specified in their agreement with the Department.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 1-2003, f. 2-24-03, cert. ef. 3-1-03

738-035-0045

Primary FBO Services Required at State-Owned Airports

(1) The following requirements apply to every FBO operating on a State-owned airport, regardless of airport category. Each FBO shall:

(a) Provide the sale and into-plane delivery of ASTM rated aviation fuels (to include either 100 LL octane avgas, Jet A fuel, or both), lubricants and other aviation petroleum products.

(b) Ensure that all equipment used for storing and dispensing petroleum products meets all applicable federal, state and local safety standards, codes and regulations.

(c) Provide a stationary fuel storage system design meets all applicable federal, state and local regulations and standards. The system shall be designed and operated to meet Air Transport Association (ATA) 103 requirements and the requirements of AC150/5230-4, as well as Environmental Protection Agency (EPA) standards that include proper fuel spill prevention features and containment capabilities.

(d) Provide filter-equipped fuel dispensers, with separate dispensing pumps and meter systems for each grade of fuel supplied.

(e) Ensure that all metering devices are inspected, checked and certified annually by appropriate local and state agencies.

(f) Monitor fuel inventories in accordance with current Environmental Protection Agency (EPA) standards and provide copies of fuel inventories to the Department upon request.

(g) Maintain a written plan for fuel spill prevention, countermeasures and control, and shall provide a current copy of the plan to the Director or the Director's designee.

(h) Receive prior written permission from the Director or the Director's designee before providing commercial self-service fueling equipment (cardlock) equipment. All cardlock equipment must comply with all state and local building codes, as well as the requirements of OAR 738-035-0070.

(i) Conduct the lawful, sanitary and timely handling and disposal of all solid waste, regulated waste and other materials, including but not limited to:

- (A) Sump fuel;
- (B) Used oils;
- (C) Solvents; and
- (D) Other regulated waste.

(j) Ensure that no crates, boxes, barrels, containers, refuse or other surplus property is piled or stored anywhere on the lease property.

(k) Provide an adequate supply of the proper type and size of operable fire extinguishers in all proper locations, in accordance with the Uniform Fire Code. All fire extinguisher certifications shall be kept current at all times.

(l) Meet all State of Oregon insurance requirements and maintain the type and amounts of insurance specified in their agreement with the Department.

(2) The following additional requirements shall apply to FBOs operating at **Category II airports**. Each FBO shall provide:

(a) Fuel storage tanks with a minimum capacity of eight thousand (8,000) gallons each.

(b) Mobile or stationary dispensing equipment.

(c) One (1) or more personnel to serve the fuel demand at the airport.

(d) Aircraft line services, including necessary equipment, supplies and trained personnel for aircraft parking and tie down areas.

(e) The following services and concessions inside their main building, unless otherwise approved by the Department:

(A) Customer service counter stocked with basic pilots supplies;

(B) Public lounge and waiting area;

(C) Flight planning work area, with Flight Service Station and weather service communication links;

(D) Public telephones;

(E) Snack food and beverage machines;

(F) Local ground transportation contacts; and

(G) Public indoor restrooms.

(3) The following additional requirements shall apply to FBOs operating on **Category III or IV airports**. The FBO shall provide:

(a) Fuel storage tanks with a minimum capacity of eight thousand (8,000) gallons each.

(b) Mobile or stationary dispensing equipment.

(c) One (1) or more personnel to serve the fuel demand at the airport.

(d) Aircraft line services, including necessary equipment, supplies and trained personnel for aircraft, parking and tie down areas.

(e) The following services and concessions inside their main building, unless otherwise approved by the Department:

(A) Customer service counter;

(B) Public lounge and waiting area;

(C) Public indoor restrooms;

(D) Public telephones; and

(E) Local ground transportation contacts.

(4) The following requirements shall apply only to FBOs operating on Category V airports. The FBO shall provide:

- (a) Fuel storage tanks with a minimum capacity of five hundred (500) gallons each.
- (b) Mobile or stationary dispensing equipment.
- (c) The FBO is not required to provide aircraft line services.
- (d) Although the FBO is not required to lease or construct a building at a State-owned airport, they may choose to do so. In that event, the FBO may provide services and concessions similar to (3)(E) above.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 1-2003, f. 2-24-03, cert. ef. 3-1-03

738-035-0050

Secondary FBO Services at State-Owned Airports

- (1) An FBO providing flight training services shall:
 - (a) Make available a minimum of one (1) FAA-certified and currently qualified flight instructor, registered with the Department in compliance with Oregon pilot registration laws and as many additional instructors as are necessary to adequately meet the flight training demand and schedule requirements;
 - (b) Provide one or more properly maintained and equipped aircraft, registered with the Department in compliance with Oregon aircraft registration laws, to conduct the services offered; and
 - (c) Ensure that all student pilots are registered with the Department in compliance with Oregon pilot registration laws.
- (2) An FBO providing airframe or power plant maintenance services may provide either or both of the following: major and minor airframe maintenance and repair, engine, and accessory overhaul repair services on single and multi-engine piston driven propeller aircraft. Turbine and jet aircraft maintenance services are optional. An airframe and power plant maintenance operator shall:
 - (a) Operate the service from a ventilated shop space capable of accommodating at least one (1) aircraft within the FBO property;
 - (b) Have in their employ a minimum of one (1) FAA-certified technician who possesses an airframe and/or power plant certificate, with inspection authorization, or conduct operations as a certified repair station pursuant to 14 CFR Part 145;
 - (c) Keep the premises open and services available as follows:
 - (A) **Category II Airport:** during appropriate business hours, five (5) days a week, excluding holidays;
 - (B) **Category III or IV Airports:** an on-demand operator shall be available;
 - (C) **Category V Airport:** services shall be available to meet market demand.
 - (d) Provide equipment, supplies and parts required for general aircraft airframe and power plant inspection, maintenance and repair.
- (3) An FBO providing on-demand air transportation services shall:
 - (a) Make available at least one (1) person who is appropriately certified and currently qualified, and registered with the Department in compliance with Oregon pilot registration laws, to conduct the flight activity offered by the Operator;
 - (b) Provide at least one (1) properly maintained and equipped aircraft, registered with the Department in compliance with Oregon aircraft registration laws, to accomplish the services offered; and
 - (c) Hold and display a current 14 CFR Part 135 Certificate.
- (4) An FBO providing aircraft rental services shall:
 - (a) Have at least one (1) person available to meet customer needs;
 - (b) Keep the premises open and services available as follows:
 - (A) **Category II Airports:** during appropriate business hours, six (6) days a week, excluding holidays;
 - (B) **Category III and IV Airports:** during appropriate business hours, five (5) days a week, excluding holidays;
 - (C) **Category V Airports:** to meet market demand.
 - (c) Have available for rental a minimum of one (1) owned or leased certified and airworthy aircraft that is registered with the Department in compliance with Oregon aircraft registration; and
 - (d) Ensure that all aircraft renters are in compliance with Oregon pilot registration laws.

- (5) Any FBO providing avionics maintenance service shall:
 - (a) Operate the service in a heated and ventilated shop space to accommodate at least one (1) aircraft within the FBO property;
 - (b) Have at least one (1) trained, currently qualified FAA-certified technician;
 - (c) Keep the premises open and services available as follows:
 - (A) **Category II, III and IV Airports:** appropriate business hours, five (5) days a week, excluding holidays;
 - (B) **Category V Airports:** to meet market demand.
 - (d) Hold all appropriate FAA repair station certificates for the types of equipment the operator plans to install, service or repair.
 - (6) Any FBO providing aircraft storage and hangar services shall:
 - (a) Lease and rent hangars, multiple T-hangars, and/or shade hangars to aircraft owners or operators solely for aircraft storage purposes;
 - (b) Make available the necessary amount of land to accommodate the proper quantity and size of hangars for the quantity of stored aircraft;
 - (c) Post an informational sign for prospective customers, displaying:
 - (A) Contact names and numbers for all hangar operators; and
 - (B) Where to obtain information on hangar availability and rental rates.
 - (d) Ensure that each based aircraft stored within the operator's hangar facilities is registered with the Department in compliance with Oregon aircraft registration laws;
 - (e) Ensure that all hangar tenants are fully informed regarding what constitutes legal activities within the hangar property, including the following information:
 - (A) Only preventive aircraft maintenance as described in 14 CFR Part 43 may be performed by the aircraft owner on the leased or rented hangar property. All other aircraft maintenance services must be performed by an appropriately permitted FBO, SASO, MSP or by the operator in accordance with 14 CFR Part 43.3(d);
 - (B) Experimental aircraft construction and maintenance is allowed in accordance with 14 CFR Parts 21 and 65;
 - (C) Painting and welding activities, and storage of any hazardous or combustible materials, shall be permitted within the hangar property only as permitted by the Uniform Fire Code;
 - (D) The piling and storage of crates, boxes, barrels, containers, refuse, and surplus property shall not be permitted outside the hangar; and
 - (E) All maintenance activity shall be in accordance with the requirements of the Uniform Fire Code.
- Stat. Auth.: ORS 835.035, 835.040 & 835.112
Stats. Implemented: ORS 835.035, 835.040, 835.112 & 836.055
Hist.: AVIA 1-2003, f. 2-24-03, cert. ef. 3-1-03

738-035-0055

Minimum Standards for Specialized Aviation Service Operations (SASO) at State-Owned Airports

- (1) SASOs that provide the same or similar services shall comply equally with all applicable Minimum Standards; however, the Department will not require, without adequate justification, that a SASO meet all the criteria for a full-service FBO for the type of operation conducted.
- (2) Each SASO shall operate out of a building located on the airport. The building shall be of an appropriate size to accommodate the services being offered, be accessible to the public, and shall be marked with appropriate external signage.
- (3) Each SASO shall provide automobile parking area appropriate for the needs of the business. Parking areas on Category II, III and IV Airports shall be paved; parking areas on Category V Airports may be paved or gravel.
- (4) Each SASO shall keep current and provide to the Department a written statement of names, addresses and contact information for all personnel responsible for the operation and management of the SASO.
- (5) Each SASO shall meet all State of Oregon insurance requirements and shall maintain the types and amounts of insurance as specified in the agreement with the Department.

(6) Each SASO providing aircraft dual and solo ground and flight instruction, necessary to complete the written examination and flight check for any category of pilot certificate or rating, shall meet the following minimum requirements:

(a) Provide at least one (1) currently qualified FAA-certified flight instructor, registered with the Department in compliance with Oregon pilot registration laws, and additional qualified instructors as necessary to meet the flight training demand and schedule requirements;

(b) Provide at least one (1) properly maintained and equipped aircraft, registered with the Department in compliance with Oregon aircraft registration laws, to accomplish the services offered; and

(c) Ensure that all student pilots are registered in compliance with Department pilot registration laws.

(7) Each SASO providing aircraft airframe and power plant maintenance, which includes either major or minor airframe maintenance or engine and accessory overhaul repair services on single or multi-engine piston driven propeller aircraft, shall meet the following minimum standards:

(a) Operate the service from a ventilated shop space able to accommodate at least one (1) aircraft on the airport.

(b) Provide one (1) FAA-certified technician with an airframe and/or power plant, with inspection authorization, or possess and conduct operations pursuant to a repair station certificate pursuant to 14 CFR Part 145.

(c) Keep premises open and services available as follows:

(A) **Category II, III and IV Airports:** appropriate business hours, five (5) days a week, excluding holidays;

(B) **Category V Airports:** to meet market demand.

(d) Provide equipment, supplies and parts required for general aircraft airframe and power plant inspection, maintenance and repair.

(8) Each SASO providing on-demand air transportation of persons or property to the general public for hire shall:

(a) Provide at least one (1) currently qualified FAA-certified person, registered with the Department in compliance with Oregon pilot registration laws, to permit the flight activity offered by the operator.

(b) Provide at least one (1) properly maintained and equipped aircraft, registered with the Department in compliance with Oregon aircraft registration laws, to accomplish the services offered.

(c) Hold and display a current 14 CFR Part 135 Certificate.

(9) Each SASO providing aircraft rental services to the general public shall:

(a) Have at least one (1) person available to meet customer needs;

(b) Keep the operation open and services available as follows:

(A) **Category II Airports:** during appropriate business hours, six (6) days a week, excluding holidays;

(B) **Category III and IV Airports:** during appropriate business hours, five (5) days a week, excluding holidays;

(C) **Category V Airports:** to meet market demand.

(c) Have available for rental a minimum of one (1) owned or leased certified and airworthy aircraft, registered with the Department in compliance with Oregon aircraft registration laws; and

(d) Ensure that all aircraft renters are registered with the Department in compliance with Oregon pilot registration laws.

(10) Each SASO providing avionics maintenance and sales services shall:

(a) Operate the service in a heated and ventilated office or shop space able to accommodate at least one (1) aircraft on the airport;

(b) Provide at least one (1) trained and FAA certified technician;

(c) Keep premises open and services available as follows:

(A) **Category II, III and IV Airports:** during appropriate business hours, five (5) days a week, excluding holidays.

(B) **Category V Airports:** to meet market demand.

(d) Hold the appropriate FAA certificates required for the types of services offered.

(11) Each SASO providing aircraft storage and hangar services shall:

(a) Ensure that all hangars, multiple T-hangars, and/or shade hangars are used solely for aircraft storage purposes;

(b) Make available the necessary amount of land to accommodate the proper quantity and size of hangars for the quantity of stored aircraft;

(c) Post an informational sign for prospective customers, displaying:

(A) Contact names and numbers for all hangar operators; and

(B) Where to obtain information on hangar availability and rental rates.

(d) Ensure that each based aircraft stored within the operator's hangar facility(ies) is registered with the Department in compliance with Oregon aircraft registration laws;

(e) Ensure that all hangar tenants are fully informed of what constitutes legal activities within the hangar property, including the following information:

(A) Only preventive aircraft maintenance as described in 14 CFR Part 43 may be performed on the leased or rented hangar property;

(B) All other aircraft maintenance services must be performed by an appropriately permitted FBO, SASO, MSP or by the operator in accordance with 14 CFR Part 43.3(d);

(C) Experimental aircraft construction and maintenance is allowed in accordance with 14 CFR Parts 21 and 65;

(D) Painting and welding activities, and storage of any hazardous or combustible materials, shall be permitted within the hangar property only as permitted by the Uniform Fire Code;

(E) The piling and storage of crates, boxes, barrels, containers, refuse, and surplus property shall not be permitted outside the hangar; and

(F) All maintenance activity shall be in accordance with the requirements of the Uniform Fire Code.

(12) Each SASO providing new and/or used aircraft sales and aircraft brokerage services shall:

(a) Provide at least one (1) qualified aircraft salesperson that has a current commercial pilot certificate, with appropriate aircraft type ratings, and registered with the Department in compliance with Oregon aircraft registration laws;

(b) Keep premises open and services available as follows:

(A) **Category II, III and IV Airports:** during established business hours as recorded with the ODA.

(B) **Category V Airports:** to meet market demand.

(c) Be registered with the Department as an aircraft dealer.

(13) Each SASO providing restoration, painting or refurbishing services for aircraft structures, propellers, accessories, interiors, exteriors, and components shall:

(a) Provide at least one (1) qualified person who possesses certificates appropriate for the work performed;

(b) Keep the operation open and services available as follows:

(A) **Category II, III and IV Airports:** during appropriate business hours, five (5) days a week, excluding holidays.

(B) **Category V Airports:** to meet market demand.

(c) Meet all requirements of the Uniform Fire Code.

(14) Each SASO providing specialized commercial flying services, such as, but not limited to, non-stop sightseeing tours, aerial photography or surveying, power line or pipeline patrol, firefighting or fire patrol, air ambulance, airborne mineral exploration, banner towing, and other air transportation operations specifically excluded from 14 CFR Part 135, shall:

(a) Provide at least one (1) qualified person who holds a current FAA appropriate pilot certificate and medical certificate, with ratings appropriate for the operator's aircraft, and registered as an Oregon pilot in compliance with the Department's registration laws;

(b) Keep the operation open and services available as follows:

(A) **Category II, III and IV Airports:** during appropriate business hours, five (5) days a week, excluding holidays.

(B) **Category V Airports:** to meet market demand.

(c) Own or lease at least one (1) airworthy aircraft, appropriately registered in compliance with the Department's aircraft registration laws; and

(d) Maintain up-to-date copies of Material Safety Data Sheets (MSDS).

(15) Any SASO engaging in the transportation of persons for commercial parachuting, instruction in parachuting, and rental and sales of parachuting equipment shall:

(a) Provide at least one (1) properly certificated, airworthy aircraft, either owned or under lease, that has been registered with the Department in compliance with Oregon aircraft registration laws;

(b) Meet or exceed the Basic Safety Requirements (BSR) of the United States Parachute Association (USPA), 14 CFR Part 105, and related FAA Advisory Circulars; and

(c) Provide at least one (1) jump plane pilot who holds an appropriate pilot certificate, appropriately rated for the aircraft being operated, and registered with the Department in compliance with Oregon pilot registration laws.

(16) Any SASO engaging in aerial agricultural spraying or seeding shall:

(a) Provide at least one (1) person who holds a current FAA appropriate pilot certificate with ratings appropriate for the operator's aircraft and is registered with the Department in compliance with Oregon pilot registration laws;

(b) Own or lease at least one (1) properly certificated, airworthy aircraft that has been registered with the Department in compliance with Oregon aircraft registration laws;

(c) Provide a centrally drained and paved area of not less than ten thousand (10,000) square feet that meets all current requirements of state, federal and local agencies for purposes of aircraft loading, washing and servicing;

(d) Maintain complete compliance at all times with OAR 340-109-0010, Pesticide Residue Waste Management, and all applicable OARs contained within division 57, Pesticide Control, Oregon Department of Agriculture;

(e) Employ specific safeguards and safe operating practices to prevent spillage, including:

(A) Clean-up and removal of all containers at the end of each day's activities;

(B) Maintenance of all loading and mixing facilities in good condition;

(C) Use of dry break devices or equivalent couplings to the aircraft-loading receptacle to prevent leaks of all materials.

(f) Position all aircraft and loading equipment as to not interfere with normal aircraft operations at the airport;

(g) Immediately remove contaminated surface materials from the lease property in the event of a small pesticide or pesticide solution spill, and treat the area of the spill with SuperBugs or an equivalent product;

(h) Immediately contain all material in the event of a reportable amount of spilled pesticide, and contact those agencies required to receive notification under Department of Environmental Quality (DEQ) regulations;

(i) Keep an appropriate spill kit on site, in a known and easily accessible location; and

(j) Store all chemicals on airport in accordance with the Material Safety Data Sheet (MSDS) requirements for that chemical, and provide current MSDS sheets available to Department upon request.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 1-2003, f. 2-24-03, cert. ef. 3-1-03

738-035-0060

Minimum Standards for Mobile Service Providers (MSPs) at State-Owned Airports

(1) Each MSP shall maintain a current Airport Operating Permit (AOP) issued by the Department. All AOPs must be renewed annually and accompanied by the fee designated in OAR 738-010, the Rates and Charges rule.

(2) Each MSP shall maintain a current written statement of names, addresses and contact information for all personnel responsible for the operation and management of the MSP, and shall provide the Department with updated copies.

(3) Each MSP shall meet all State of Oregon insurance requirements and shall maintain the specific types and amounts of insurance as specified in their agreement with the Department.

(4) Each MSP shall employ a sufficient number of qualified personnel to meet these Minimum Standards for each aeronautical service provided; however, multiple responsibilities may be assigned to any qualified employee, where feasible.

(5) Each MSP that operates aircraft shall ensure that all aircraft and pilots are registered with the Department in compliance with Oregon aircraft and pilot registration laws.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 1-2003, f. 2-24-03, cert. ef. 3-1-03

738-035-0065

Minimum Standards for Commercial Self-Fueling Services at State-Owned Airports

(1) All commercial self-fueling operators situated on any State-owned airport must be an FBO, as defined in OAR 738-035-0035. All commercial self-fueling operators shall apply to the Department and receive written approval before commencing operations. The Department reserves the right to grant or deny authorization for a commercial self-fueling operation at a State-owned airport.

(2) Each commercial self-fueling operator shall provide, at a minimum, 100LL aviation gasoline.

(3) All commercial self-fueling products, dispensing equipment and fuel storage shall meet all applicable federal, state and local regulations and requirements regarding safety, testing, filtering, inventory management and quality assurance.

(4) Only those locations on the airport that have been designated by the Department as temporary or permanent fuel storage areas shall be used for storing aviation fuels.

(5) Each commercial self-fueling operator shall comply with all federal, state and local environmental laws, ordinances and regulations.

(6) Each commercial self-fueling operator shall provide the Department with a copy of its current fuel spill prevention, countermeasures and control plan, which must include methods and procedures to prevent, control and clean up a fuel spill on airport property.

(7) Each FBO authorized to install and maintain self-fueling equipment shall provide monthly fuel inventory reconciliation reports to the Department, listing the total amounts of fuel dispensed to all aircraft.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 1-2003, f. 2-24-03, cert. ef. 3-1-03

738-035-0070

Compliance with Operating Minimum Standards by Through-The-Fence Operators at State-Owned Airports

(1) The Department is obligated, on behalf of the aviation system of Oregon and the State-owned airports held in the state inventory, to regulate all aeronautical activities on property that accesses the State-owned land for landing and takeoff of aircraft. Therefore, the Department shall require any person or entity conducting commercial aeronautical activities at a State-owned airport by an access or through-the-fence agreement to comply fully with these operating minimum standards.

(2) If a person or entity has an existing access agreement with the Department, already in effect on February 1, 2003, that person or entity is not subject to these operating minimum standards during the remaining period of the agreement; however, the minimum standards shall apply at the time that agreement is renewed and shall be clearly incorporated in any new agreement.

(3) If a person or entity is performing through-the-fence commercial aeronautical activities without a current access agreement with the Department, that person or entity shall either:

- (a) Obtain an access agreement within thirty (30) calendar days of notification by the Department; or
- (b) Cease their access of State-owned airport property by the 30th day following notification by the Department.
- (4) Each application for a new access agreement on a State-owned airport shall include:
 - (a) Proof of appropriate level of insurance;
 - (b) A written plan indicating compliance with all laws and regulations; and
 - (c) The identity and contact information for the individual who will be responsible for all aeronautical activities proposed in the proposed access agreement.
- (5) The Department shall consider and evaluate a new development application on a case-by-case basis, with consideration to airport safety and operating efficiency factors.
- (6) The Department retains the right to restrict or deny any access agreement if airport safety or efficiency is compromised by the existence of the proposed service or activity.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 1-2003, f. 2-24-03, cert. ef. 3-1-03

738-035-0075

Exemption from Operating Minimum Standards for Flying Clubs at State-Owned Airports

- (1) All aircraft owned by a flying club must be vested in the name of the club or in its owners on a pro-rata basis.
- (2) The flying club shall not derive greater revenue from the use of the aircraft than the cost to operate, maintain, and replace or enhance the aircraft or fleet of aircraft.
- (3) A flying club has the right to fuel and maintain the club aircraft with its members, since it qualifies as an individual under the FAA grant assurances.
- (4) The regulation of flying clubs is not governed through these minimum standards, since flying clubs are not commercial aeronautical activities.
- (5) The Department may require a flying club to furnish documents, such as insurance policies, by-laws, meeting minutes and notifications, and a current roster of members, to ensure that the club remains a non-commercial and non-profit organization.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 1-2003, f. 2-24-03, cert. ef. 3-1-03

DIVISION 40

SEAPLANE OPERATION

738-040-0010

Purpose and Statutory Authority

To regulate seaplane operations on certain waters of this state to ensure the safe operation of such aircraft in relation to marine craft and persons using the same waters:

- (1) ORS 184.619 pertaining to rulemaking authority.
- (2) ORS 835.035 pertaining to the general public interest, safety and the development and promotion of aeronautics.
- (3) ORS 835.080 directing the State Aviation Board to adopt rules governing seaplane safety and operations on state waters.

Stat. Auth.: ORS 184.619, 835.035 & 835.080

Stats. Implemented: ORS 835.035, 835.080 & 835.085

Hist.: IAD 3-1981, f. 7-23-81, ef. 8-1-81; IAD 5-1981, f. & ef. 11-18-81; AERO 1-1997, f. & cert. ef. 2-28-97; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-040-0016

General Provisions

- (1) Division 40 rules are applicable to all seaplanes on state waters and waters of this state except when inconsistent with an applicable laws or regulations of an agency of the United States.
- (2) Given due regard for the suitability of any area for take off and landing in accordance with Federal Aviation Regulation 91.103, Seaplanes may land, take off or operate on waters of this state open to motorboats, unless specifically prohibited by division 40 rules or unless inconsistent with any applicable laws or regulations of an agency of the United States. These rules establish no priority or precedence for seaplane operations. All seaplane operators must exercise due caution and consideration for the other users of the water.
- (3) A seaplane, operating on the water and not in flight, is subject to, and must comply with all boating restrictions and regulations established for the particular body of water on which it is operating.
- (4) No political subdivision of this state may enact or enforce any law or other regulation pertaining to the operation of seaplanes on waters of this state (See OAR 738-040-0040 for the application for special regulations.).

Stat. Auth.: ORS 184.619, 835.035 & 835.080

Stats. Implemented: ORS 835.035, 835.080 & 835.085

Hist.: AERO 1-1997, f. & cert. ef. 2-28-97

738-040-0018

Waters Closed to Seaplane Operation

Except in an emergency, seaplanes shall not land, takeoff or operate on the following waters:

- (1) Any body of water designated as a state or federal Wilderness or Primitive area or Wildlife refuge.
- (2) Those waters listed in ORS 830.180 and in State Marine Board rules, OAR chapter 250, division 20, where motors are prohibited or that allow electric motors only. These restrictions are summarized and published in the "Oregon Boating Regulations" booklet available from the State Marine Board.
- (3) Other bodies of water as designated by special regulations and adopted in OAR chapter 738, division 40.
- (4) Those waters under federal jurisdiction that are closed to seaplane operations by federal regulations.
- (5) Privately owned bodies of water without the permission of the owner.

Stat. Auth.: ORS 184.619, 835.035 & 835.080

Stats. Implemented: ORS 835.035, 835.080 & 835.085

Hist.: AERO 1-1997, f. & cert. ef. 2-28-97

738-040-0020

Interagency Coordination

(1) Seaplane operations on those federally navigable waters defined under 33 Code of Federal Regulations §§ 2.05-25(a)(1995), are subject to regulation by the United States Coast Guard and, for impoundments behind Corps of Engineer dams, by the Army Corps of Engineers. Seaplane operators should ascertain the federal regulations before conducting seaplane operations on these waters:

- (a) For informational purposes, a list of significant Oregon river segments that have been determined as of 1995 to be federally navigable waters is provided as section (3) to this rule. These waters are subject to Coast Guard regulation. Impoundments under Corps of Engineer jurisdiction are not listed, however, the Corps of Engineers has adopted regulations for seaplane operations at lakes under Corps of Engineer jurisdiction. These regulations and the waters effected are listed in the Corps pamphlet, "Seaplane Operations at Corps of Engineers Lakes" (1982). A copy may be obtained from the Portland District Office of the Army Corps of Engineers or from the Department.
- (b) Sources of information on federal seaplane regulations include:
 - (A) 14 Code of Federal Regulations Part 91 (1996) (FAA);
 - (B) 33 Code of Federal Regulations Part 81, Appendix A, and 33 USC § 2001-2073 (1995) (U.S. Coast Guard);
 - (C) 36 Code of Federal Regulations Part 327.4 (1995) (U.S. Army Corps of Engineers); and

(D) Advisory Circular 91-69 “Seaplane Safety” (1992) (FAA).

(2) The governing body of a political subdivision of this state wishing to apply for special regulations affecting seaplane operations on waters within the territorial limits of the political subdivision shall submit an application to the State Aviation Board through the Department, as provided for in OAR 738-040-0040. It shall be the policy of the Department to investigate and analyze each request for special regulations in a timely manner and to cooperate with such governmental agencies to develop consistent regulations necessary to promote safe seaplane operation and to adopt these regulations as part of these rules.

(3) Navigable waters of the United States where Federal Regulations apply, include but are not limited to, the significant river segments listed in subsections (a) through (v) of this section. This list of waters is meant to be informational only. Determinations of navigability are made by the U.S. Coast Guard and are subject to change. (See 33 CFR § 2.10-5 for the latest determinations and other waters not noted here.) The distance shown in the column headed “Miles” refers to the distance up-stream from the river’s entrance at the ocean, or its confluence other body of water: Name — Miles

- (a) Alsea Bay and River — 13;
- (b) Chetco River — 3.5;
- (c) Columbia River — Entire Length in Oregon;
- (d) Coos River (above Coos Bay) — 6;
- (e) Coos River (South Fork) — 9;
- (f) Coquille River — 35;
- (g) Coquille River (North Fork) — 2;
- (h) Coquille River (East Fork of North Fork) — 2;
- (i) Coquille River (South Fork) — 2;
- (j) Little Nestucca River — 2;
- (k) Millicoma River — 9;
- (l) Nehalem Bay and River — 8;
- (m) Nehalem River (North Fork) — 5;
- (n) Nehalem River (South Fork) — 5;
- (o) Nestucca Bay and River — 9;
- (p) Netarts Bay — 5;
- (q) Rogue River — 33;
- (r) Salmon River — 3;
- (s) Siletz Bay and River — 22;
- (t) Siuslaw River — 19;
- (u) Siuslaw River (North Fork) — 2;
- (v) Smith River — 20;
- (w) Smith River (North Fork) — 1;
- (x) Snake River (along boundary) — 54;
- (y) Tillamook Bay and River — 16;
- (z) Trask River — 2;
- (aa) Umpqua River — 25;
- (bb) Willamette River (to Eugene) — 185;
- (cc) Wilson River — 3;
- (dd) Yamhill River — 7;
- (ee) Yaquina Bay and River — 23;
- (ff) Youngs Bay and River — 10.

Stat. Auth.: ORS 184.619, 835.035 & 835.080

Stats. Implemented: ORS 835.035, 835.040 & 835.080

Hist.: IAD 3-1981, f. 7-23-81, ef. 8-1-81; IAD 5-1981, f. & ef. 11-18-81; AERO 1-1997, f. & cert. ef. 2-28-97; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-040-0025

Equipment

All seaplanes must be equipped as required by the regulations of the Federal Aviation Administration specifically for seaplanes that are in effect on November 1, 1996.

Stat. Auth.: ORS 184.619, 835.035 & 835.080

Stats. Implemented: ORS 835.035, 835.080 & 835.085

Hist.: IAD 3-1981, f. 7-23-81, ef. 8-1-81; IAD 5-1981, f. & ef. 11-18-81; AERO 1-1997, f. & cert. ef. 2-28-97

738-040-0030

Operation

(1) Each person operating an aircraft on the waters shall, insofar as possible, keep clear of all vessels and avoid impeding

their navigation, and shall give way to any vessel or aircraft that is given the right-of-way by any of the following provisions of this section:

(a) When aircraft, or an aircraft and a vessel, are on crossing courses, the aircraft or vessel to the other’s right has the right-of-way;

(b) When aircraft, or an aircraft and a vessel, are approaching head-on or nearly so, each shall alter its course to the right to keep well clear;

(c) Each aircraft or vessel that is being overtaken has the right-of-way, and the one overtaking shall alter course to keep well clear; and

(d) When aircraft, or an aircraft and a vessel, approach so as to involve risk of collision, such aircraft or vessel shall proceed with careful regard to existing circumstances, including the limitations of the respective craft.

(2) Each person operating an aircraft on any water in the state shall observe these additional operational restrictions:

(a) No seaplane shall be moored to any navigational aid placed by federal authority or by the State Marine Board;

(b) No seaplane shall be anchored or moored in such a position as to obstruct a charted channel or other passageway ordinarily used by other watercraft;

(c) No seaplane shall be operated in any water area that is clearly marked by buoys or other devices as a bathing or swimming area;

(d) No seaplane shall tow any person or object at speeds greater than five (5) knots without an observer on board maintaining constant direct visual contact with the person or object being towed;

(e) No person shall ride on the outside of a seaplane while the seaplane is taxiing at speeds greater than five (5) knots;

(f) No seaplane shall accomplish any portion of its take off or landing run within 200’ of a public boat launching ramp or a boat moorage listed in the “Oregon Boating Facilities Guide,” a ferry landing or a designated and marked swimming area; and

(g) No seaplane shall initiate a take off or landing run if that run can reasonably be expected to bring it within 100’ of a canoe, kayak, a water skier or a diver in the water marked by a flag.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 184.619, 835.035 & 835.080

Stats. Implemented: ORS 835.035, 835.080 & 835.085

Hist.: IAD 3-1981, f. 7-23-81, ef. 8-1-81; IAD 5-1981, f. & ef. 11-18-81; AERO 1-1997, f. & cert. ef. 2-28-97

738-040-0040

Application for Special Regulations

(1) The governing body of a political subdivision of this state may apply to the State Aviation Board for special regulations relating to the operations of seaplanes on waters within the territorial limits of the political subdivision. These regulations may include, but are not limited to, the establishment of limits on the areas of operations, hours and time of operations and the prohibition of seaplane landings and take offs.

(2) Written application for special regulations shall be made through the Department for review and processing. The application shall clearly state the nature and scope of the existing conflict that requires the restriction of seaplane operations, and the seaplane restrictions requested. A description of the use patterns, existing boating regulations and history of the body of water shall be included as part of the application.

(3) Within a reasonable time after receiving such application, the Department Director will investigate and analyze the proposal for the appropriateness and effectiveness of the proposed regulations. In evaluating the request, the Department may conduct an inspection of the site to document its physical attributes, and to collect other pertinent data. The Director will consider the following aspects (among others) of the proposal in arriving at a finding:

(a) The general suitability and safety of the body of water for seaplane use, such as the physical layout and dimensions of the body of water, surrounding obstructions and hazards;

(b) The traditional uses of the water in question; and

(c) The nature and volume of others uses and seasonal use patterns.

(4) The evaluation will be conducted in consultation with the Oregon State Marine Board.

(5) After evaluating the application, the Director shall present the application and recommendations to the Board. The Director may recommend:

(a) Denial of the application, if the proposed regulations are not justified;

(b) Consideration of the application with amendments, if the requested seaplane restrictions are excessive; or

(c) Consideration of the application as requested.

(6) If the Board determines that special regulations may be appropriate, formal rule making in accordance with ORS 183, will be initiated to amend these rules.

(7) In determining the appropriate regulations for seaplanes, the least restrictive solution consistent with safety will be sought. Outright seaplane prohibition will be reserved for only the most extreme situations of unusual and continuous congestion or the lack of physical suitability for seaplane operations. Normally, limits on the areas of operation or time or seasonal restrictions will be adequate to avoid conflict.

Stat. Auth.: ORS 814.619, 835.035 & 835.080

Stats. Implemented: ORS 835.035, 835.080 & 835.085

Hist.: AERO 1-1997, f. & cert. ef. 2-28-97; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

DIVISION 50

AURORA STATE AIRPORT AIRCRAFT OPERATION REGULATIONS

738-050-0010

Taxiing

(1) Aircraft shall be taxied at a safe and reasonable speed.

(2) Before entering onto any runway or turning for take-off, operators shall ascertain that their right-of-way is unimpaired and there is no conflicting traffic.

(3) For the purpose of engine runup, taxiing aircraft shall be stopped at the standard hold line marked by solid/broken yellow hold lines. No aircraft shall be moved onto the runway until clear and ready for take-off. (See **Figure 1**)

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 184, 835 & 836

Stats. Implemented: ORS 836.095 & 836.505

Hist.: 1AD 4-1981(Temp), f. & ef. 8-21-81; 1AD 1-1982, f. & ef. 4-20-82;

738-050-0020

Landing and Take-Off

(1) Fixed-wing traffic shall land and depart from paved runway surfaces only.

(2) Landings and take-offs shall normally be made on the runway most nearly aligned with the wind indicator. If wind is calm, runway 17 is designated as the preferred runway.

(3) Mid-point intersection take-offs are prohibited. Aircraft shall not enter the runway at any point other than the end.

(4) After landing, all aircraft shall clear the runway as soon as practical with no 180 degree turns permitted on the runway.

(5) Landings and/or take-offs from opposite ends of the runway at the same time are prohibited.

(6) Side-by-side or formation take-offs shall be considered as a special event and shall require prior approval by the Director of the Oregon Department of Aviation (Department) on a case-by-case basis.

Stat. Auth.: ORS 184, 835 & 836

Stats. Implemented: ORS 836.095 & 836.505

Hist.: 1AD 4-1981(Temp), f. & ef. 8-21-81; 1AD 1-1982, f. & ef. 4-20-82 ; AERO 1-1989(Temp), f. & cert. ef. 2-21-89; AERO 3-1989, f. & cert. ef. 9-20-89; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-050-0030

Airport Traffic Patterns

(1) Pilots shall fly the traffic pattern designated for this airport. Agricultural applicator aircraft may deviate from the traffic pattern only in accordance with **FAR 137.45, dated November 1974**, as amended, provided such deviation does not conflict with any other traffic operating at the airport.

(2) The standard traffic pattern for fixed-wing aircraft at this airport is:

(a) A standard left-hand rectangular pattern as depicted in **Figure 2**;

(b) A standard altitude of 1,000 feet above ground level on entry and downwind legs;

(c) Maintain pattern altitude until abeam approach end of the landing runway, on downwind leg;

(d) Complete turn to final approach at least 1/4 mile from the approach end of the runway;

(e) On take-off, continue straight ahead until beyond departure end of runway:

(A) If remaining in the traffic pattern, commence turn to crosswind leg beyond the departure end of the runway, within 300 feet of the pattern altitude (900 feet MSL);

(B) If departing the traffic pattern, exit with a 45 degree left turn beyond the departure end of the runway after reaching pattern altitude. Straight out departures to the south are permitted.

(3) All aircraft approaching to determine airport conditions shall remain at least 500 feet above pattern altitude (1,700 feet MSL).

(4) Helicopters shall operate 500 feet below (700 feet MSL) and perpendicular to pattern prescribed for fixed-wing aircraft.

(5) Straight-in or non-prescribed turns to final are discouraged.

(6) Pilots of approaching aircraft with two-way radio communication shall contact UNICOM on 122.7 mhz prior to entering the traffic area, and monitor that frequency throughout the approach:

(a) If unable to contact UNICOM or otherwise determine the flow of traffic, pilots shall overfly the field to determine the active runway;

(b) If unable to communicate with UNICOM operator, pilots of radio-equipped aircraft shall blind-broadcast position and intentions at appropriate points.

(7) Runway 35 is the designated calm-wind runway.

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 184, 835 & 836

Stats. Implemented: ORS 836.095 & 836.505

Hist.: 1AD 4-1981(Temp), f. & ef. 8-21-81; 1AD 1-1982, f. & ef. 4-20-82

738-050-0040

Helicopters

(1) Approaches and departures shall not exceed 700' MSL.

(2) Land and take-off only in areas designated for helicopter use. Training activities may be conducted on runway using fixed-wing traffic pattern provided that no conflict with fixed-wing traffic is generated.

(3) Avoid hovering near fixed-wing aircraft.

(4) Remain clear of persons, vehicles and buildings so as not to endanger or interfere with persons or property.

Stat. Auth.: ORS 184, 835 & 836

Stats. Implemented: ORS 836.095 & 836.505

Hist.: 1AD 4-1981(Temp), f. & ef. 8-21-81; 1AD 1-1982, f. & ef. 4-20-82

738-050-0050

Glider

Comply with standard traffic pattern when not on tow.

Stat. Auth.: ORS 184, 835 & 836

Stats. Implemented: ORS 836.095 & 836.505

Hist.: 1AD 4-1981(Temp), f. & ef. 8-21-81; 1AD 1-1982, f. & ef. 4-20-82

738-050-0060

Balloons, Parachutists

Because of normal air traffic density and congestion, balloon and parachuting activities generally are prohibited on or above the airport. Such operations may be permitted as part of special events,

such as Air Fairs with prior approval of the Director of the Depart-

ment.

Stat. Auth.: ORS 184, 835 & 836

Stats. Implemented: ORS 836.095 & 836.505

Hist.: 1AD 4-1981(Temp), f. & ef. 8-21-81; 1AD 1-1982, f. & ef. 4-20-82;

AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-050-0070

Ultralight Aircraft

(1) An ultralight aircraft is any of that class of lightweight aircraft either not currently certificated by the Federal Aviation Administration or, if certificated, having an empty weight of less than 220 pounds; and, not otherwise exempt from registration under the laws of this state.

(2) Until further notice, operation of an ultralight aircraft at Aurora State Airport shall be considered a special event and shall require the prior approval of the Director of the Department.

(3) In determining whether ultralight operations should be allowed at the airport, the Director of the Department will consider, but is not limited to, the following criteria:

- (a) Proposed ultralight activities and schedule;
- (b) Anticipated traditional air traffic operations;
- (c) Weather conditions;
- (d) Other special events.

Stat. Auth.: ORS 184, 835 & 836

Stats. Implemented: ORS 836.095 & 836.505

Hist.: 1AD 4-1981(Temp), f. & ef. 8-21-81; 1AD 1-1982, f. & ef. 4-20-82; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-050-0080

Agricultural Application

Such operations, whether performed by fixed-wing aircraft or helicopters, shall load and service in those areas of the airport designated for that purpose.

Stat. Auth.: ORS 184, 835 & 836

Stats. Implemented: ORS 836.095 & 836.505

Hist.: 1AD 4-1981(Temp), f. & ef. 8-21-81; 1AD 1-1982, f. & ef. 4-20-82

738-050-0090

Miscellaneous

(1) Motor vehicles shall not be operated on the runway or parallel taxiway without specific prior authorization by the Director of the Department.

(2) All users of the airport are requested to report any observed act by any person which is considered to be unsafe or a violation of these rules.

(3) All lessees at the airport having contracts with the Department for commercial operations (Fixed Base Operators) shall develop procedures for dealing with emergency situations involving aircraft.

Stat. Auth.: ORS 184, 835 & 836

Stats. Implemented: ORS 836.095 & 836.505

Hist.: 1AD 1-1982, f. & ef. 4-20-82; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

DIVISION 60

AIRCRAFT DEALER'S LICENSE

738-060-0020

General Requirements

All dealers in new or used aircraft shall apply to the Oregon Department of Aviation for an Aircraft Dealer's License pursuant to ORS 837.075(1):

(1) Upon receipt of a completed application accompanied by the \$100 annual fee, the Department shall issue an Aircraft Dealer's License to the applicant.

(2) The license shall be for a calendar year or any portion thereof and shall expire on December 31. There shall be no proration of the fee for a partial period.

Stat. Auth.: ORS 184, 835 & 837

Stats. Implemented: ORS 837.075

Hist.: 1AD 1-1983, f. & ef. 2-14-83

738-060-0030

Application and Fee

(1) The license renewal application is due and the fee is payable on January 1 of each year:

(a) Either the application and fee for an aircraft dealer's license or an individual registration application for each aircraft in possession of an aircraft dealer, and kept solely for sale, must be

received by the Department prior to March 1 of each year. Failure to submit the application and fee for a dealer's license or to submit an individual application and fee for each aircraft prior to March 1 shall result in each aircraft in possession of the dealer and not registered prior to March 1, becoming subject to both the registration fee and a penalty equal to the registration fee. Both the registration fee and any penalty must be received by the Department before the aircraft can be registered. Failure to register an aircraft subjects the owner to the penalty cited in ORS 837.990(3);

(b) A person, business or corporate entity who becomes an aircraft dealer on or after March 1 of any year shall forward an application and fee for an Aircraft Dealer's License within 60 days of becoming an aircraft dealer, but in no instance may there be a sale of an aircraft before obtaining any Aircraft Dealer's License.

(2) The application for an Aircraft Dealer's License shall be on a form prescribed by the Department and shall include the following information:

(a) Name, place of business and telephone number of dealership;

(b) Name, address and telephone number of owner;

(c) Identifying number, manufacturer and name of each aircraft to be covered by the dealer's license, including:

(A) Registration number for those aircraft certificated by the Federal Aviation Administration; or

(B) Serial number for ultralight aircraft.

(d) Certification that applicant will comply with all requirements of this rule.

(3) A list of aircraft covered by the license must accompany the application.

Stat. Auth.: ORS 184, 835 & 837

Stats. Implemented: ORS 837.075

Hist.: IAD 1-1983, f. & ef. 2-14-83; AERO 3-1987, f. & ef. 12-15-87

738-060-0040

Licensing Procedures

Processing of application by the Department:

(1) The aircraft dealer shall be considered licensed as soon as the completed application and fee has been accepted by the Department.

(2) The license shall be sent to the aircraft dealer as soon as possible after acceptance of the application.

(3) Dealer stickers will accompany the license in sufficient number to attach one to each aircraft covered by the license:

(a) This sticker must be attached to the inside of a window, to be visible from the outside of the aircraft, of each aircraft covered by the license in order to clearly identify that aircraft as being for sale and covered by the license. The dealer shall write the registration number of the appropriate aircraft on the sticker before attaching it;

(b) In the case of ultralight aircraft, the serial number shall be written on the sticker and the sticker shall be attached to the ultralight kit or the assembled aircraft as appropriate.

(4) The license covers only aircraft held for sale by the dealer. These aircraft cannot be used commercially, but may only be flown to demonstrate the aircraft on a non-commercial basis. Any aircraft owned by the dealer and used commercially (i.e. instruction, rental or charter) must be individually registered with the Department.

Stat. Auth.: ORS 184, 835 & 837

Stats. Implemented: ORS 837.075

Hist.: IAD 1-1983, f. & ef. 2-14-83

738-060-0050

Dealer Responsibilities

(1) Starting the first month after receipt of the license, by the 10th of each month, the dealer shall submit a report to the Department giving the changes to those aircraft covered by the license and adding new aircraft if appropriate. This report shall include:

(a) N number and type of aircraft sold the previous month including the name, address and telephone number of the buyer;

(b) N number and type of aircraft withdrawn from the license for reasons other than sale, and including the reason for withdrawal;

(c) N number and type of aircraft added to coverage of license, including name and address of last owner.

(2) Upon the sale of any aircraft, the dealer shall:

(a) Advise the purchaser, pursuant to ORS 837.075(3), of the requirement to register aircraft with the Department in accordance with ORS 837.040 to 837.075 and furnish the purchaser with the appropriate registration application;

(b) Notify the Director of the Department, within ten days of the sale, giving the name and address of purchaser and a brief description of the aircraft sold, sufficiently detailed for identification.

Stat. Auth.: ORS 184, 835 & 837

Stats. Implemented: ORS 837.075

Hist.: IAD 1-1983, f. & ef. 2-14-83; AERO 3-1987, f. & ef. 12-15-87; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-060-0060

Individual Registration

Nothing in this rule or in ORS 837.075 prohibits the registering of a dealer's aircraft individually under ORS 837.040.

Stat. Auth.: ORS 184, 835 & 837

Stats. Implemented: ORS 837.075

Hist.: IAD 1-1983, f. & ef. 2-14-83

738-060-0070

Penalties

Violations of ORS 837.075 or this rule are subject to the penalties established under ORS 837.100 and 837.990.

Stat. Auth.: ORS 184, 835 & 837

Stats. Implemented: ORS 837.990

Hist.: IAD 1-1983, f. & ef. 2-14-83

DIVISION 70

PHYSICAL HAZARDS TO AIR NAVIGATION

738-070-0010

General Information

(1) Senate Bill 47, passed by the 1981 Legislature, became law on November 1, 1981, as Chapter 553, Oregon Laws 1981 and codified as ORS 836.530. This authorizes the Director of the Department to adopt rules defining physical hazards to air navigation within Oregon and determine whether specific types or classes of objects or structures constitute hazards. It further authorizes the establishment of standards for lighting or marking objects or structures that constitute hazards to air navigation in this state.

(2) In accordance with these rules, the Director shall:

(a) Determine whether specific objects or structures constitute a hazard to air navigation;

(b) Issue orders to require that specific objects or structures determined to be hazards to air navigation be marked or lighted;

(c) Determine responsibility for installation and maintenance of lighting or marking of specific objects or structures that constitute hazards to air navigation.

(3) In conformance with the statutory provision, these rules and standards are designed to be no more restrictive than current federal norms, including, but not limited to, regulations and circulars, pertaining to objects affecting navigable airspace.

(4) Any person or entity required to comply with an order issued under these rules may contest the order as provided under ORS 183.310 to 183.500.

(5) Failure to comply with an order issued under this rule is subject to the penalties stated in ORS 837.990.

(6) Under this rule, the Director may make an independent judgment as to whether specific objects or structures constitute a hazard to air navigation in Oregon; determine whether such objects or structures shall be marked or lighted and; determine responsibility for installation and maintenance of such marking and lighting. While the rules and standards adopted herein are "limited to and shall not be more restrictive than current federal norms,..." nothing in the law or these rules shall prohibit the Director from making an independent judgment or decision that may differ from the judgment or decision made by the Federal Aviation Administration on the same object or structure using FAA regulations, circulars or other publications as a basis for such finding.

Stat. Auth.: ORS 184, 835 & 836
 Stats. Implemented: ORS 836.530
 Hist.: IAD 2-1983, f. & ef. 2-14-83; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-070-0020

Scope of Rule

- (1) Establishes and adopts standards for determining obstructions in navigable airspace.
- (2) Sets forth the requirements for notice to the Director of certain proposed construction or alteration.
- (3) Provides for aeronautical studies of obstructions to air navigation, to determine their effect on the safe and efficient use of airspace.
- (4) Provides for public hearings on the hazardous effect of proposed construction or alteration on air navigation.
- (5) Establishes standards for determining requirements for marking and lighting of obstructions to navigable airspace.
- (6) Establishes standard methods of marking and lighting obstructions to navigable airspace.
- (7) Establishes standards for determining responsibility for installation and maintenance of marking or lighting specific objects or structures that constitute hazards to air navigation.
- (8) Sets forth penalties for failure to comply with an order issued under this rule.

Stat. Auth.: ORS 184, 835 & 836
 Stats. Implemented: ORS 836.530
 Hist.: IAD 2-1983, f. & ef. 2-14-83; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-070-0040

Standards

The standards established in this rule for determining obstructions to air navigation are used by the Director in:

- (1) Imposing requirements for notice of the construction or alteration of any structure when such structure can pose a hazard to air navigation in Oregon.
- (2) Determining if specific objects or structures constitute a hazard to air navigation.
- (3) Determining the need to light and/or mark objects or structures that may derogate safety to air navigation.
- (4) Determining responsibility for installation of lighting and/or marking of appropriate objects and structures.

Stat. Auth.: ORS 184, 835 & 836
 Stats. Implemented: ORS 836.530
 Hist.: IAD 2-1983, f. & ef. 2-14-83; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-070-0050

Kind of Objects Affected

This rule applies to:

- (1) Any object of natural growth, terrain, or permanent or temporary construction or alteration, including equipment or materials used therein, and apparatus of a permanent or temporary character; and
- (2) Alteration of any permanent or temporary existing structure by a change in its height (including appurtenances), or lateral dimensions, including equipment or materials used therein, and apparatus of a permanent or temporary character.

Stat. Auth.: ORS 184, 835 & 836
 Stats. Implemented: ORS 836.530
 Hist.: IAD 2-1983, f. & ef. 2-14-83

738-070-0060

Notice of Construction or Alteration

- (1) This rule requires each person proposing any kind of construction or alteration described in OAR 738-070-0070 to give adequate notice to the Director. It specifies the locations and dimensions of the construction or alteration for which notice is required and prescribes the form and manner of the notice. It also requires supplemental notices 48 hours before the start and upon the completion of certain construction or alteration that was the subject of a notice under OAR 738-070-0070.
- (2) Notices received under this rule provide a basis for:
 - (a) Evaluating the effect of the construction or alteration on operational procedures and proposed operational procedures;

- (b) Determinations of the possible hazardous effect of the proposed construction or alteration on air navigation;

- (c) Determinations for identifying the construction or alteration to be marked or lighted in accordance with the Federal Aviation Administration Advisory Circular AC 70/7460-1F entitled Obstruction Marking and Lighting and dated September 27, 1978;

- (d) Determining other appropriate measures to be applied for continued safety of air navigation; and

- (e) Notification to pilots of the construction or alteration.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 184, 835 & 836
 Stats. Implemented: ORS 836.530
 Hist.: IAD 2-1983, f. & ef. 2-14-83; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-070-0070

Construction or Alteration Requiring Notice

- (1) Each proponent of any of the following construction or alteration shall notify the Director in the form and manner prescribed in OAR 738-070-0080.

- (a) Any construction or alteration of more than 200 feet in height above the ground level at its site;

- (b) Any construction or alteration of greater height than an imaginary surface extending outward and upward at one of the following slopes:

- (A) 100 to 1 for a horizontal distance of 20,000 feet from the nearest point of the nearest runway of each airport specified in subsection (e) of this section with at least one runway more than 3,200 feet in actual length, excluding heliports;

- (B) 50 to 1 for a horizontal distance of 10,000 feet from the nearest point of the nearest runway of each airport specified in subsection (e) of this section with its longest runway no more than 3,200 feet in actual length, excluding heliports;

- (C) 25 to 1 for a horizontal distance of 5,000 feet from the nearest point of the nearest landing and take-off area of each heliport specified in subsection (e) of this section.

- (c) Any highway, railroad, or other traverse way for mobile objects if of greater height than the standards of subsection (a) or (b) of this section after their height has been adjusted upward by one of the following:

- (A) 17 feet for an interstate highway that is part of the National System of Military and Interstate Highways;

- (B) 15 feet for any other public roadway;

- (C) 10 feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road;

- (D) 23 feet for a railroad;

- (E) For a waterway or any other traverse way, an amount equal to the height of the highest mobile object that would normally use it.

- (d) When requested by the Department, any construction or alteration that would be in an instrument approach area (defined in the FAA standards governing instrument approach procedures) and available information indicates it might exceed a standard of OAR 738-070-0100;

- (e) Any construction or alteration on any of the following airports (including heliports):

- (A) An airport that is available for public use and is listed in the airport directory of the current **Airman's Information Manual** or in the **Oregon Aviation System Plan**;

- (B) An airport under construction, that is the subject of a notice or proposal on file with the Federal Aviation Administration, or the Department, when it is clearly indicated that that airport will be available for public use.

- (2) Each proponent of a construction or alteration that is the subject of a notice under section (1) of this rule, and is advised by the Department that a supplemental notice is required, shall submit that supplemental notice on a prescribed form to be received by the Department at least 48 hours before the start of the construction or alteration.

- (3) Each proponent who undertakes construction or alteration that is the subject of a notice under section (1) of this rule, shall, within five days after that construction or alteration reaches its

greatest height, submit a supplemental notice on a prescribed form to the Department, if:

- (a) The construction or alteration is more than 200 feet above the surface level of its site; or
- (b) The Department advises the proponent that submission of the form is required.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 184, 835 & 836

Stats. Implemented: ORS 836.530

Hist.: IAD 2-1983, f. & ef. 2-14-83; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-070-0080

Form and Time of Notice

(1) Each person who is required to notify the Director under OAR 738-070-0060 shall send one executed form set (four copies) of FAA Form 7460-1, Notice of Proposed Construction or Alteration, to the Oregon Department of Aviation. Copies of FAA Form 7460-1 may be obtained from the headquarters of the FAA and its regional offices or the Department.

(2) The notice required under OAR 738-070-0060 must be submitted at least 30 days before the earlier of the following dates:

- (a) The date the proposed construction or alteration is to begin;
- (b) The date an application for a construction permit is to be filed.

(3) A proposed structure or an alteration to an existing structure that exceeds 2,000 feet in height above the ground will be presumed to be a hazard to air navigation and to result in an inefficient utilization of airspace and the applicant has the burden of overcoming that presumption. Each notice submitted under the pertinent provisions of Federal Aviation Regulation (FAR) Part 77 proposing a structure in excess of 2,000 feet above ground, or an alteration that will make an existing structure exceed that height, must contain a detailed showing, directed to meeting this burden. Only in exceptional cases, where the Department concludes that a clear and compelling showing has been made that it would not result in an inefficient utilization of the airspace and would not result in a hazard to air navigation, will a determination of no hazard be issued.

(4) In the case of an emergency involving essential public services, public health, or public safety, that requires immediate construction or alteration, the 30 day requirement in section (2) of this rule does not apply and the notice may be sent by telephone, telegraph, or other expeditious means, with an executed FAA Form 7460-1 submitted within five days thereafter.

Stat. Auth.: ORS 184, 835 & 836

Stats. Implemented: ORS 836.530

Hist.: IAD 2-1983, f. & ef. 2-14-83; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-070-0090

Acknowledgment of Notice

(1) Within 20 working days, the Department will acknowledge receipt in writing of each notice submitted under OAR 738-070-0070.

(2) If the construction or alteration proposed in a notice is one for which lighting or marking standards are prescribed in the FAA Advisory Circular AC 70/7460-1F entitled **Obstruction Marking and Lighting**, dated September 27, 1978, the acknowledgment will contain a statement to that effect and information on how the structure should be marked and lighted in accordance with the Advisory Circular.

(3) The acknowledgment will state that an initial or preliminary aeronautical study of the proposed construction or alteration has resulted in a determination that the construction or alteration:

- (a) Would not exceed any standard of OAR 738-070-0100 and would not be a hazard to air navigation;
- (b) Would exceed a standard of OAR 738-070-0100 but would not be a hazard to air navigation; or
- (c) Would exceed a standard of OAR 738-070-0100 and further aeronautical study is necessary to determine whether it would be a hazard to air navigation, that the sponsor may request in writing within 30 days such further study, and that, pending com-

pletion of any further study, it is presumed the construction or alteration would be a hazard to air navigation.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 184, 835 & 836

Stats. Implemented: ORS 836.530

Hist.: IAD 2-1983, f. & ef. 2-14-83

738-070-0100

Obstruction Standards

(1) This rule establishes standards for determining obstructions to air navigation. It applies to existing and proposed manmade objects, objects of natural growth and terrain. The standards apply to the use of navigable airspace by aircraft and to existing air navigation facilities, such as an air navigation aid, airport, federal airway, instrument approach or departure procedure, or approved off-airway route. Additionally, they apply to a planned facility or use, or a change in an existing facility or use, if a proposal therefor is on file with the Federal Aviation Administration or the Oregon Department of Aviation.

(2) At those airports having defined runways with specially prepared hard surfaces, the primary surface for each such runway extends 200 feet beyond each end of the runway. At those airports having defined strips or pathways that are used regularly for the taking-off and landing of aircraft and have been designated by appropriate authority as runways, but do not have specially prepared hard surfaces, each end of the primary surface for each such runway shall coincide with the corresponding end of the runway. At those airports, excluding seaplane bases, having a defined landing and take-off area with no defined pathways for the landing and taking-off of aircraft, a determination shall be made as to which portions of the landing and take-off area are regularly used as landing and takeoff pathways. Those pathways so determined shall be considered runways and an appropriate primary surface as defined in OAR 738-070-0120 will be considered as being longitudinally centered on each runway so determined, and each end of that primary surface shall coincide with the corresponding end of that runway.

(3) The standards in this rule apply to the effect of construction or alteration proposals upon an airport if, at the time of filing of the notice required by OAR 738-070-0060, that airport is:

(a) Available for public use and is listed in the current Federal Airport Directory or included in the State System as shown in the Oregon Aviation System Plan; or

(b) A planned or proposed airport or an airport under construction that is the subject of a notice or proposal on file with the Federal Aviation Administration, and it is clearly indicated that that airport will be available for public use.

Stat. Auth.: ORS 184, 835 & 836

Stats. Implemented: ORS 836.530

Hist.: IAD 2-1983, f. & ef. 2-14-83; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-070-0110

Standards for Determining Obstructions

(1) An existing object, including a mobile object, is, and a future object would be, an obstruction to air navigation if it is of greater height than any of the following heights or surfaces:

(a) A height of 500 feet above ground level at the site of the object;

(b) A height that is 200 feet above ground level or above the established airport elevation, whichever is higher, within three nautical miles of the established reference point of an airport, excluding heliports, with its longest runway more than 3,200 feet in actual length, and that height increases in the proportion of 100 feet for each additional nautical mile of distance from the airport up to a maximum of 500 feet;

(c) A height within a terminal obstacle clearance area, including an initial approach segment, a departure area, and a circling approach area, which would result in the vertical distance between any point on the object and an established minimum instrument flight altitude within that area or segment to be less than the required obstacle clearance;

(d) A height within an enroute obstacle clearance area, including turn and termination areas, of a federal airway or

approved off-airway route, that would increase the minimum obstacle clearance altitude;

(e) The surface of a take-off and landing area of an airport or any imaginary surface established under OAR 738-070-0120 or 738-070-0130. However, no part of the take-off or landing area itself will be considered an obstruction.

(2) Except for traverse ways on or near an airport with an operative ground traffic control service, furnished by an air traffic control tower or by the airport management and coordinated with the Federal Aviation Administration's air traffic control service, the standards of section (1) of this rule apply to traverse ways used or to be used for the passage of mobile objects only after the heights of these traverse ways are increased by:

(a) 17 feet for an interstate highway that is part of the National System of Military and Interstate Highways, where overcrossings are designed for a minimum of 17 feet vertical distance;

(b) 15 feet for any other public roadway;

(c) 10 feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road;

(d) 23 feet for a railroad;

(e) For a waterway or any other traverse way not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it.

Stat. Auth.: ORS 184, 835 & 836

Stats. Implemented: ORS 836.530

Hist.: IAD 2-1983, f. & ef. 2-14-83

738-070-0120

Civilian Airport Imaginary Surfaces

The following civil airport imaginary surfaces are established with relation to the airport and to each runway. The size of each such imaginary surface is based on the category of each runway according to the type of approach available or planned for that runway. The slope and dimensions of the approach surface applied to each end of a runway are determined by the most precise approach existing or planned for that runway end:

(1) Horizontal surface:

(a) A horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is:

(A) 5,000 feet for all runways designated as utility or visual;

(B) 10,000 feet for all other runways.

(b) The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a 5,000-foot arc is encompassed by tangents connecting two adjacent 10,000-foot arcs, the 5,000-foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.

(2) Conical surface: A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.

(3) Primary surface: A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway; but when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of a primary surface is:

(a) 250 feet for utility runways having only visual approaches;

(b) 500 feet for utility runways having nonprecision instrument approaches;

(c) For other than utility runways the width is:

(A) 500 feet for visual runways having only visual approaches;

(B) 500 feet for nonprecision instrument runways having visibility minimums greater than three-fourths statute mile;

(C) 1,000 feet for a nonprecision instrument runway having a nonprecision instrument approach with visibility minimums as low as three-fourths of a statute mile, and for precision instrument run-

ways. The width of the primary surface of a runway will be that width prescribed in this section for the most precise approach existing or planned for either end of that runway.

(4) Approach surface: A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. An approach surface is applied to each end of each runway based upon the type of approach available or planned for that runway end.

(a) The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of:

(A) 1,250 feet for that end of a utility runway with only visual approaches;

(B) 1,500 feet for that end of a runway other than a utility runway with only visual approaches;

(C) 2,000 feet for that end of a utility runway with a nonprecision instrument approach;

(D) 3,500 feet for that end of a nonprecision instrument runway other than utility, having visibility minimums greater than three-fourths of a statute mile;

(E) 4,000 feet for that end of a nonprecision instrument runway, other than utility, having a nonprecision instrument approach with visibility minimums as low as three-fourths statute mile; and

(F) 16,000 feet for precision instrument runways.

(b) The approach surface extends for a horizontal distance of:

(A) 5,000 feet at a slope of 20 to 1 for all utility and visual runways;

(B) 10,000 feet at a slope of 34 to 1 for all nonprecision instrument runways other than utility; and

(C) 10,000 feet at a slope of 50 to 1 with an additional 40,000 feet at a slope of 40 to 1 for all precision instrument runways.

(c) The outer width of an approach surface to an end of a runway will be that width prescribed in this subsection for the most precise approach existing or planned for that runway end.

(5) Transitional surface: These surfaces extend outward and upward at right angles to the runway centerline and the runway centerline extended at a slope of 7 to 1 from the sides of the primary surface and from the sides of the approach surfaces. Transitional surfaces for those portions of the precision approach surface which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at right angles to the runway centerline.

Stat. Auth.: ORS 184, 835 & 836

Stats. Implemented: ORS 836.530

Hist.: IAD 2-1983, f. & ef. 2-14-83

738-070-0130

Airport Imaginary Surfaces for Heliports

(1) Heliport primary surface: The area of the primary surface coincides in size and shape with the designated take-off and landing area of a heliport. This surface is a horizontal plane at the elevation of the established heliport elevation.

(2) Heliport approach surface: The approach surface begins at each end of the heliport primary surface with the same width as the primary surface, and extends outward and upward for a horizontal distance of 4,000 feet where its width is 500 feet. The slope of the approach surface is 8 to 1 for civil heliports and 10 to 1 for military heliports.

(3) Heliport transitional surfaces: These surfaces extend outward and upward from the lateral boundaries of the heliport primary surface and from the approach surfaces at a slope of 2 to 1 for a distance of 250 feet measured horizontally from the centerline of the primary and approach surfaces.

Stat. Auth.: ORS 184, 835 & 836

Stats. Implemented: ORS 836.530

Hist.: IAD 2-1983, f. & ef. 2-14-83

738-070-0140

Effect of Proposed Construction on Navigable Airspace

Scope:

(1) This rule applies to the conduct of aeronautical studies of the effect of proposed construction or alteration on the use of air

navigation facilities or navigable airspace by aircraft. In the aeronautical studies, present and future IFR and VFR aeronautical operations and procedures are reviewed and any possible changes in those operations and procedures and in the construction proposal that would eliminate or alleviate the conflicting demands are ascertained.

(2) The conclusion of a study made under this rule is normally a determination as to whether the specific proposal studied would be a hazard to air navigation.

Stat. Auth.: ORS 184, 835 & 836
Stats. Implemented: ORS 836.530
Hist.: IAD 2-1983, f. & ef. 2-14-83

738-070-0150

Initiation of Studies

An aeronautical study is conducted by the Department:

(1) Upon the request of the sponsor of any construction or alteration, unless that construction or alteration would be located within an antenna farm area as discussed in OAR 738-070-0190 and 738-070-0200; or

(2) Whenever the Department determines it appropriate.

Stat. Auth.: ORS 184, 835 & 836
Stats. Implemented: ORS 836.530
Hist.: IAD 2-1983, f. & ef. 2-14-83

738-070-0160

Aeronautical Studies

(1) The Director, or designee, conducts the aeronautical study of the effect of the proposal upon the operation of air navigation facilities and the safe and efficient utilization of the navigable airspace. This study may include the physical and electromagnetic radiation effect the proposal may have on the operation of an air navigation facility.

(2) To the extent considered necessary, the Director, or designee, may take any or all of the following actions:

(a) Solicit comments from all interested persons;

(b) Explore objections to the proposal and attempt to develop recommendations for adjustment of aviation requirements that would accommodate the proposed construction or alteration;

(c) Examine possible revisions of the proposal that would eliminate the exceeding of the standards in OAR 738-070-0100; and

(d) Convene a meeting with all interested persons for the purpose of gathering all facts relevant to the effect of the proposed construction or alteration on the safe and efficient utilization of the navigable airspace.

(3) The Director, or designee, issues a determination as to whether the proposed construction or alteration would be a hazard to air navigation and sends copies to all known interested persons. This determination is final unless a petition for review is granted under OAR 738-070-0170.

(4) If the sponsor revises his proposal to eliminate exceeding of obstruction standards, or withdraws it, the Director, or designee, terminates the study and notifies all known interested persons.

(5) The FAA Handbook, **Procedures for Handling Airspace Matters**, may be used in arriving at the determination.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 184, 835 & 836
Stats. Implemented: ORS 836.530
Hist.: IAD 2-1983, f. & ef. 2-14-83; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-070-0170

Administrative Appeal

(1) The proponent of a construction or alteration or any person who stated a substantial aeronautical objection to it in an aeronautical study, or any person who has a substantial aeronautical objection to it but was not given an opportunity to state it, may petition the Director, within 30 days after issuance of the determination under OAR 738-070-0090 or 738-070-0160 or revision or extension of the determination under 738-070-0180, for a review of the determination, revision, or extension. This section does not apply to any acknowledgment issued under 738-070-0090(3)(a) that does not exceed standards and does not constitute a hazard.

(2) The petition must be in triplicate and contain a full statement of the basis upon which it is made.

(3) Except under section (4) of this rule the Director will examine each petition and decide whether a review will be made and, if so, whether it will be:

(a) A review on the basis of written materials, including a study of a report by the Department of the aeronautical study, briefs, and related submissions by any interested party, and other relevant facts. Following such review, the Director may affirm, revise, or reverse the determination issued under the provisions of this rule;

(b) A review on the basis of a hearing, conducted in accordance with the procedures prescribed in the Administrative Procedures Act for contested cases.

(4) If petitioner qualifies under section (1) of this rule and requests a contested case hearing, the review will be conducted as a contested case under the Administrative Procedures Act. (ORS Chapter 183).

Stat. Auth.: ORS 184, 835 & 836
Stats. Implemented: ORS 836.530
Hist.: IAD 2-1983, f. & ef. 2-14-83; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-070-0180

Effective Period of Determination of No Hazard

(1) Unless it is otherwise extended, revised, or terminated, each final determination of no hazard made under OAR 738-070-0060, 738-070-0140 or 738-070-0170 expires 18 months after its effective date, regardless of whether the proposed construction or alteration has been started, or on the date the proposed construction or alteration is abandoned, whichever is earlier.

(2) In any case, including a determination to which section (4) of this rule applies, where the proposed construction or alteration has not been started during the applicable period by actual structural work, such as the laying of a foundation, but not including excavation, any interested person may, at least 15 days before the date the final determination expires, petition the Director to:

(a) Revise the determination based on new facts that change the basis on which it was made; or

(b) Extend its effective period.

(3) The Director will review each petition presented under section (2) of this rule and revise, extend, or affirm the determination as indicated by his findings.

(4) In any case in which a final determination made under OAR 738-070-0060 or 738-070-0140 relates to proposed construction or alteration that may not be started unless the Federal Communications Commission (FCC) issues an appropriate construction permit, the effective period of each final determination includes:

(a) The time required to apply to the FCC for a construction permit, but not more than six months after the effective date of the determination; and

(b) The time necessary for the FCC to process the application except in a case where the Director determines a shorter effective period is required by the circumstances.

(5) If the FCC issues a construction permit, the final determination is effective until the date prescribed for completion of the construction. If the FCC refuses to issue a construction permit, the final determination expires on the date of its refusal.

Stat. Auth.: ORS 184, 835 & 836
Stats. Implemented: ORS 836.530
Hist.: IAD 2-1983, f. & ef. 2-14-83; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-070-0190

Establishment of Antenna Farm Areas

Scope:

(1) This section establishes antenna farm areas in which antenna structures may be grouped to localize their effect on the use of navigable airspace.

(2) It is the policy of the FAA and the Department to encourage the use of antenna farms and the single structure-multiple antenna concept for radio and television towers whenever possible. In considering proposals for establishing antenna farm areas, both agencies consider, as far as possible, the revision of

aeronautical procedures and operations to accommodate antenna structures that will fulfill broadcasting requirements.

Stat. Auth.: ORS 184, 835 & 836
Stats. Implemented: ORS 836.530
Hist.: 1AD 2-1983, f. & ef. 2-14-83

738-070-0200

General Provisions of Antenna Farm Area

(1) An antenna farm area consists of a specified geographical location with established dimensions of area and height, where antenna towers with a common impact on aviation may be grouped.

(2) Each proposal for an antenna farm area is evaluated on the basis of its effect on the use of navigable airspace. The views of the Federal Communications Commission are requested on the effect that each establishment of an antenna farm area would have on its statutory responsibilities. Any views submitted by it are fully considered before the antenna farm concerned is established. If the Commission advises that the establishment of any proposed antenna farm area would interfere with its statutory responsibility, the proposed area is not established.

(3) The establishment of an antenna farm area is considered whenever it is proposed by:

- (a) The FAA and/or the Department;
- (b) The Federal Communications Commission;
- (c) The sponsor of a proposed antenna tower; or
- (d) Any other person having a substantial interest in a proposed antenna tower.

Stat. Auth.: ORS 184, 835 & 836
Stats. Implemented: ORS 836.530
Hist.: 1AD 2-1983, f. & ef. 2-14-83

738-070-0210

Marking and Lighting of Obstructions to Air Navigation

(1) Certain objects and structures must be marked and/or lighted to make them more visible to pilots. ORS 836.530 states that the Director may adopt rules establishing standards for marking or lighting objects and structures that constitute hazards to air navigation.

(2) In accordance with the rules adopted under ORS 836.530, the Director shall:

(a) Issue orders to require that specific objects or structures determined to be hazards to air navigation be marked or lighted in accordance with the rules adopted;

(b) Determine responsibility for installation and maintenance of lighting or marking specific objects or structures that constitute hazards to air navigation.

Stat. Auth.: ORS 184, 835 & 836
Stats. Implemented: ORS 836.530
Hist.: 1AD 2-1983, f. & ef. 2-14-83; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-070-0220

Standards for Marking and Lighting of Obstructions to Air Navigation

Federal Aviation Administration Advisory Circular 70/7460-1F entitled, **Obstruction Marking and Lighting**, and dated September 27, 1978, shall be the standard for marking and lighting objects and structures that constitute hazards to air navigation. By reference that advisory circular is made a part of this rule.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 184, 835 & 836
Stats. Implemented: ORS 836.530
Hist.: 1AD 2-1983, f. & ef. 2-14-83

738-070-0230

Objects and Structures to Be Marked and Lighted

When the Director has determined that an object or structure is a hazard to air navigation, he shall also determine whether such hazard shall be marked and lighted and shall specify the appropriate marking and lighting in accordance with the standards included in this rule. After this determination has been made, the Director shall issue an order specifying who shall be responsible for the installation and maintenance of the marking and lighting of the

object or structure and specifying the type and quantity of marking and lighting:

(1) The Director may agree with the recommendations for marking and lighting contained in an FAA airspace determination for a specific object or structure or he may make a separate and different determination for marking and lighting of that object or structure based on his expertise and his knowledge of the situation.

(2) The type and quantity of marking and lighting for an object or structure shall be determined by the following characteristics of the object:

- (a) Location;
- (b) Size or height;
- (c) Shape;
- (d) Type (i.e. chimney, pole, tower, bridge, transmission lines, etc.);

(e) Permanence (temporary obstructions shall be marked and lighted when appropriate).

(3) The Director may deviate from the established marking and lighting standards, except that any deviation must not be more restrictive than current federal norms.

Stat. Auth.: ORS 184, 835 & 836
Stats. Implemented: ORS 836.530
Hist.: 1AD 2-1983, f. & ef. 2-14-83; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-070-0240

Determination of Responsibility for Installation and Maintenance of Marking and Lighting Objects and Structures that Constitute Hazards to Air Navigation

(1) The proponent of an object or structure that is determined to constitute a hazard to air navigation normally shall be responsible, including paying for all costs, for installation and maintenance of the prescribed marking and lighting.

(2) Under certain conditions, parties other than the proponent may be determined to be responsible for the installation and maintenance of marking and lighting, such as:

(a) After construction of an object or structure, conditions, beyond the control of the owner of the object or structure, change which in turn makes the object or structure a hazard to air navigation (i.e. approval of an airport site and subsequent construction of an airport and an object or structure becomes a hazard by virtue of its proximity to the new airport);

(b) Marking and lighting of an object or structure is for the benefit of a few rather than for the benefit of the public (i.e., for benefit of a personal use airport rather than for benefit of the public at a public use airport).

Stat. Auth.: ORS 184, 835 & 836
Stats. Implemented: ORS 836.530
Hist.: 1AD 2-1983, f. & ef. 2-14-83

738-070-0250

Penalties

Failure to comply with the provisions of these rules or failure to comply with an order issued under these rules is subject to the penalties under ORS 837.100 and 837.990.

Stat. Auth.: ORS 184, 835 & 836
Stats. Implemented: ORS 836.530
Hist.: 1AD 2-1983, f. & ef. 2-14-83

738-070-0260

Rules of Practice for Hearings

All reviews and appeals of the Department's decisions under these rules will be in accordance with the Model Rules of Procedure applicable to contested cases under the Administrative Procedure Act as authorized by ORS Chapter 183.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Department of Aviation.]
Stat. Auth.: ORS 183, 184, 835 & 836
Stats. Implemented: ORS 836.530
Hist.: 1AD 2-1983, f. & ef. 2-14-83

DIVISION 80

AIRCRAFT REGISTRATION

738-080-0010

Purpose and Statutory Authority

To regulate the registration of aircraft in Oregon:

(1) ORS 184.619 pertaining to rulemaking authority.

(2) ORS 835.035 and 837.005 pertaining to the general public

interest, safety, and the development and promotion of aeronautics.

Stat. Auth.: ORS 184 & 835

Stats. Implemented: ORS 837.015

Hist.: 1AD 2-1984, f. & ef. 7-31-84

738-080-0020

Exemption from Aircraft Registration Fee

All Civil Air Patrol aircraft controlled by the Oregon Wing, and used primarily for search and rescue training exercises or missions, shall be registered in accordance with applicable state statutes with the exception that the annual registration fee will not be required.

Stat. Auth.: ORS 835

Stats. Implemented: ORS 837.005

Hist.: 1AD 2-1984, f. & ef. 7-31-84

738-080-0030

Temporary Exemption from Registration

(1) Aircraft not physically capable of operation or flight may be temporarily exempt from the requirement of annual registration by the Oregon Department of Aviation (Department):

(a) "Not physically capable of operation and flight" means any aircraft that is not capable of:

(A) Being operated in forward motion on the ground or in flight;

(B) The need for repairs to the aircraft such as flat tires, broken windows or other short term maintenance items that are normally required are not considered adequate justification for an exemption;

(C) An aircraft that is grounded merely because it has not had appropriate inspections required by the Federal Aviation Administration is not eligible for exemption;

(D) An aircraft must be incapable of physical operation or flight for a period of time that extends beyond March 1 of each calendar year to be eligible for exemption.

(b) An aircraft that is under construction, or one that is disassembled waiting reassembly, may be exempt from registration until it is physically capable of operation or flight.

(2) The Director of the Department or the Director's designee shall make the final determination as to which aircraft may be temporarily exempt from registration:

(a) The owner of any aircraft that has been assigned a Federal Aviation Administration "N" number must complete an application for registration within the prescribed time limits. (Prior to March 1 or within 60 days of entering the state or being purchased.);

(b) An aircraft owner that believes an aircraft to be not physically capable of operation or flight shall prepare a statement giving the reasons why it should be temporarily exempted from registration. This statement shall be signed and shall accompany the application for registration:

(A) This statement must be received by the Department 30 days before the appropriate registration deadline. This will allow time for the Director of the Department or to determine the eligibility for exemption from registration;

(B) Following the Administrator's determination, the aircraft owner will be notified as to exemption status;

(C) If the exemption is denied, the aircraft owner will be notified. The owner must then submit the appropriate registration fee to the Department by the established deadline to avoid assessment of penalty and possible citation for "failure to register";

(D) An aircraft owner may request a review of the Director of the Department or the Director's designee's decision after payment of the appropriate registration fee has been submitted. Such review may include an informal discussion with the Director of the Department or the Director's designee of the aircraft's status;

(E) Receipt of an application for registration, with accompanying exemption statement, subsequent to the appropriate deadline will result in assessment of the prescribed penalty if the request for exemption is denied.

(3) A temporary exemption from registration under this section shall only be effective for the calendar year in which the exemption is granted. A new application and statement must be submitted each year within the time frame specified in paragraph (2)(b)(A) of this rule for the original statement.

Stat. Auth.: ORS 184.619, 835.035 & 837.005

Stats. Implemented: ORS 837.005

Hist.: 1AD 1-1985, f. & ef. 12-20-85; AERO 1-1991, f. & cert. ef. 5-21-91; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-080-0040

Placement of Registration Decal (Number Plate) on Aircraft

(1) The decal (number plate) signifying registration of an aircraft by the Department Division shall at all times be displayed in a conspicuous position on the aircraft so as to be readily visible.

(2) The decal (number plate) shall be placed on the fuselage of the aircraft under the left horizontal stabilizer.

(3) Any current decal (number plate) can be left in its present location on the aircraft until the aircraft is repainted, the Department issues new decals or the owner wishes to remove it.

(4) Replacement of a decal issued subsequent to the effective date of this amendment shall be at the aircraft owner's expense.

(5) Failure to display an aircraft registration decal (number plate) is a Class A Aeronautics infraction with punishment prescribed by ORS 837.100.

Stat. Auth.: ORS 184, 835 & 837

Stats. Implemented: ORS 837.066

Hist.: IAD 1-1985, f. & ef. 12-20-85

DIVISION 90

AIRPORT LISTINGS

738-090-0010

Purpose

The purpose of this division is to carry out the requirements of ORS 836.610. This division:

(1) Defines terminology used in the division;

(2) Identifies publicly owned airports registered, licensed or otherwise recognized by the Oregon Department of Aviation on or before December 31, 1994, that in 1994, were the base for three or more aircraft;

(3) Identifies privately owned public-use airports that:

(a) Provide important links in air traffic in this state;

(b) Provide essential safety or emergency services; or

(c) Are of economic importance to the county where the airport is located; and

(4) Establishes a process for adding an airport to or deleting an airport from the listings of airports established in OAR 738-090-0030.

Stat. Auth.: ORS 184.616, 184.619 & 836.610

Stats. Implemented: ORS 836.610

Hist.: AERO 1-1999, f. & cert. ef. 3-25-99

738-090-0030

Airport Listings

(1) The list of airports required by ORS 836.610(1) is as follows:

(a) Publicly owned airports registered, licensed or otherwise recognized by the Department on or before December 31, 1994, that in 1994 were the base for three or more aircraft, are as follows: [List not included. See ED. NOTE.]

(b) Privately owned, public use airports that provide important links in air traffic in this state; provide essential safety or emergency services; or are of economic importance to the county where the airport is located, are as follows: [List not included. See ED. NOTE.]

(2) Information to be considered in determining whether the criteria listed in subsection (1)(b) of this rule have been met are in OAR 738-090-0050.

(3) The Department will, at least every five years, review and update the listings of airports in this rule to add or remove airports from the listings as required by ORS 836.610(3). The Board will consider applications by airport sponsors for inclusion on the list, outside of the five-year review and update, as provided in OAR 738-090-0040.

[ED. NOTE: Lists referenced are available from the agency.]

Stat. Auth.: ORS 184.616, 184.619 & 836.610

Stats. Implemented: ORS 836.610

Hist.: AERO 1-1999, f. & cert. ef. 3-25-99; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02; AVIA 1-2004, f. & cert. ef. 2-17-04

738-090-0040

Procedure for Adding an Airport to Listings

(1) The procedure for adding a publicly owned airport to OAR 738-090-0030(1)(a) is as follows:

(a) The airport sponsor shall submit a written request to the Department, to add an airport to the list;

(b) The request shall include documentation that:

(A) The airport is publicly owned;

(B) The airport was registered, licensed or otherwise recognized by the Department on or before December 31, 1994; and

(C) The airport was the base for three or more aircraft in 1994.

(c) The Department shall submit a copy of the airport sponsor's written request to the local government(s) that may be impacted by the change and request written comments on the request. If no comments are received from a local government within 60 days of mailing of the airport sponsor's request, it will be assumed that the local government has no comments on the request. Any comments received by the Department shall be forwarded to the airport sponsor;

(d) The Department shall evaluate the airport sponsor's written request and make a recommendation to the Board whether the proposed addition should be approved or denied;

(e) Upon approval of the Board, the airport shall be added to OAR 738-090-0030(1)(a) upon filing of formal amendment to the rules; and

(f) If the Board denies the airport sponsor's application, the airport may not be considered for inclusion on the list for at least two years.

(2) The procedure for adding a privately owned airport to OAR 738-090-0030(1)(b) is as follows:

(a) The airport sponsor shall apply to the Department for site approval as a public use airport on a site approval application form, Form 802-7611, provided by the Department;

(b) The airport sponsor shall submit an application to the FAA on an **FAA Form 7480-1**, with a proposal to place the airport into a public use category. If the airport currently has a public use airport status, this step is not necessary. (FAA Part 157.5, Notice of Intent);

(c) The Department shall submit a copy of the site approval application to the local government(s) that may be impacted by this change and request written comments on the application. If no comments are received from a local government within 60 days of mailing of the airport sponsor's application, it shall be assumed that the local government has no comments on the application. Any comments received by the Department shall be forwarded to the airport sponsor;

(d) The Department shall request the addresses of all affected property owners from the local governments. "Affected property owners" are those whose property is within 500 feet of an airport boundary, within an approach corridor, or whose use of their property may be directly affected, if the proposed airport is listed, by the requirements of the Land Conservation and Development's rules, OAR 660-013. The local government shall be responsible for determining which property owners will be affected by the proposed listing of an airport. This address list shall be submitted to the Department within 21 days of a written request from the Department. Failure of the local government to provide this list within the above time lines eliminates the responsibility of the Department to provide notice under this subsection. Upon receipt of the address list, the Department shall provide notice to the affected property owners, at least 20 days but no more than 40 days before the date of the public hearing, sufficient to tell the property owners generally of the effect of including the proposed airport on the list and the opportunity for public comment. The Department shall conduct a public hearing and receive testimony in each county where an airport is located. If more than one airport in a county is proposed for listing, one hearing shall be sufficient to meet this requirement.

(e) The Department shall evaluate the proposal based upon criteria in ORS 836.610(1)(b) and comments received from the air-

port sponsor, local governments and testimony taken at a public hearing;

(f) The Department shall make a recommendation to the Board whether the proposed action should be approved or denied;

(g) Upon approval of the Board, the airport shall be added to OAR 738-090-0030(1)(b) upon filing of formal amendment to the rules; and

(h) If the Board denies the airport sponsor's application, the airport may not be considered for inclusion on the list for at least two years.

(3) The Department will comply with the administrative rule-making requirements in ORS Chapter 183 and its State Agency Coordination Program rule in OAR chapter 731, division 15 when adding airports to the lists in sections (1) and (2) of this rule.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 184.616, 184.619 & 836.610

Stats. Implemented: ORS 836.610

Hist.: AERO 1-1999, f. & cert. ef. 3-25-99; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02; AVIA 1-2004, f. & cert. ef. 2-17-04

738-090-0050

Information to be Considered in Determining Airport Listings

The Board shall consider the information listed below in determining whether an airport meets the criteria in ORS 836.610(1)(b). The Department shall provide this information to the Board.

(1) To determine whether an airport provides important links in air traffic in this state, the Board shall consider, but is not limited to, the following information:

(a) Number and type of based aircraft;

(b) Annual operations;

(c) Whether an airport is included in the National Plan of Integrated Airports System as identified by the FAA;

(d) Classification of the airport in the state aviation system plan;

(e) The location of the airport in relation to other airports in the area and whether the airport is remote due to geographic features;

(f) Whether the location of the airport is conducive to providing an efficient alternative mode of transportation and has adequate links to other modes of transportation;

(g) Whether the airport is used frequently by businesses as an origination, transfer or destination airport; and

(h) Whether the airport relieves congestion at other airports.

(2) To determine whether an airport provides essential safety or emergency services, the Board shall consider, but is not limited to, the following information:

(a) Whether the location of the airport makes it operationally feasible for efficient use as a search and rescue base and the history of its use as a search and rescue base;

(b) Whether the airport is an emergency landing location due to its geographic location;

(c) Whether the airport provides medical evacuation support due to its proximity to significant highway and transportation corridors and its geographic location;

(d) Whether the airport may be used as a location for fire patrol and suppression aircraft and activities and the history of the airport's use for such activities; and

(e) Whether the airport is a location for law enforcement operations or law enforcement training.

(3) To determine whether an airport is of economic importance to the county where the airport is located, the Board shall consider, but is not limited to, the following information:

(a) Whether the airport supports the economy of the county by providing aviation facilities for aeronautical related activities or businesses, including, but not limited to, hangars, tie downs, maintenance and training facilities;

(b) Whether the airport provides jobs;

(c) Whether the airport provides support to local business and/or governmental agencies. Examples include, but are not limited to, agricultural operations, destination resorts, forest operations, charter flights, military operations and cargo operations;

(d) Whether the airport supports a residential airport;

(e) Whether the airport provides a location for aeronautic recreation, including but not limited to, aircraft displays, parachuting, ultralights and tourism activities;

(f) Whether the airport provides location for educational opportunities, such as flight instruction; and

(g) Any comments by the county or others relating to the economic importance of the airport to the county.

Stat. Auth.: ORS 184.616, 184.619 & 836.610

Stats. Implemented: ORS 836.610

Hist.: AERO 1-1999, f. & cert. ef. 3-25-99; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-090-0060

Removing an Airport from Listings

Airports shall be removed from the listing of airports established in OAR 738-090-0030 only upon:

(1) Request of the airport owner; or

(2) Closure of the airport for a period of more than three years.

Stat. Auth.: ORS 184.616, 184.619 & 836.610

Stats. Implemented: ORS 836.610

Hist.: AERO 1-1999, f. & cert. ef. 3-25-99

DIVISION 100

NOTICE TO AIRPORT OWNERS ON PUBLIC HEARING ON REQUEST FOR LAND-USE PERMIT OR ZONE CHANGE

738-100-0010

Purpose

(1) Except as provided in section (2) of this rule, notice of a public hearing on a land-use permit or a zone change and notice of a decision on a land-use permit pursuant to ORS 215.223, 215.416 and 227.175 shall be provided to owners of public-use airports by the respective city and county planning authorities if:

(a) The name and address of the airport owner has been provided by the Oregon Department of Aviation (Department) to the appropriate city or county planning authority;

(b) The property subject to the land-use permit or zone change is:

(A) Within 5,000 feet of the sides or ends of a runway determined by the Department to be a "visual airport"; or

(B) Within 10,000 feet of the sides or ends of the runway of an airport determined by the Department to be an "instrument airport."

(2) Notice of a public hearing on a land-use permit or zone change or notice of a decision on a land-use permit need not be provided as set forth in section (1) of this rule if that land-use permit or zone change would only allow a structure of less than 35 feet in height and the property is located outside the runway "approach surface," as defined in OAR 738-070-0120, or on property controlled by the airport.

(3) The failure of an airport owner to receive notice, which was mailed, shall not invalidate any land-use permit or zone change.

(4) This rule shall define terms used in Chapter 106, Oregon Laws 1987 and specify the dimensions of the approach surfaces for the various classifications of airports.

(5) In addition to the owner of a public-use airport, a copy of any notice of a land-use action for any affected airport shall, at the same time, be sent to the Oregon Department of Aviation, 3040 25th Street S.E., Salem, OR 97302-1125.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 836.325

Hist.: AERO 4-1987, f. & ef. 12-15-87; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02; AVIA 1-2004, f. & cert. ef. 2-17-04

738-100-0020

Interagency Coordination

(1) Oregon Department of Aviation shall:

(a) Prepare and provide to the planning authority of each city and county a list of all public-use airports within that jurisdiction,

along with the name and address of the owner of each airport. These airports shall be separated into classifications such as:

- (A) Visual;
- (B) Instrument.

(b) The Department shall notify the affected cities or counties if there is any change in the information for any of the airports within the respective jurisdictions or if the dimensions or other data change for any of the airports;

(c) The Department shall prepare and provide to each city and county with an airport, a drawing showing the dimensions and slope of the approach surface for each applicable classification of airport as indicated in OAR 738-100-0015(1).

(2)(a) Each city and county planning authority shall provide, to the owner of a public-use airport, and to the Department, a notice of public hearing on a land-use permit or a zone change and a notice of a decision on a land-use permit within the notification area of any public-use airport within its jurisdiction.

(b) Notice of a public hearing on a land-use permit or a zone change or notice of a decision on a land-use permit need not be provided as set forth in section (1) of this rule if that land-use permit or zone change would only allow a structure of less than 35 feet in height and the property is located outside the runway "approach surface," as defined by this rule, or on property controlled by the airport.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 836.325

Hist.: AERO 4-1987, f. & ef. 12-15-87

738-100-0030

Notice

(1) The notice to owners of affected public-use airports shall be in the same form as provided to any property owner affected by a land-use permit or zone change as described in ORS 215.223, 215.416 and 227.175.

(2) The failure of an airport owner to receive notice, which was mailed, shall not invalidate any land-use permit or zone change.

(3) Providing notice to owners of public-use airports is for the purpose of furnishing notice only and shall not be in any way interpreted as giving an airport owner any more standing than any other landowner receiving notice in similar circumstances.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 836.325

Hist.: AERO 4-1987, f. & ef. 12-15-87

738-100-0035

Advisory

Even though notice of hearing or decision may not be required under OAR 738-100-0020(2), the proponent of any construction may still be required to submit Federal Aviation Administration Form 7460-1 to the Northwest Mountain Region, Federal Aviation Administration (FAA), Seattle, Washington, with a copy to the Oregon Department of Aviation. Form 7460-1 can be obtained from the Federal Aviation Administration or the Oregon Department of Aviation. While this does not require city and county planning authorities to advise proponents of construction of the Federal Aviation Administration requirement, it is hoped that the planning authorities can provide such information.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 836.325

Hist.: AERO 4-1987, f. & ef. 12-15-87; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

DIVISION 125

FINANCIAL AID TO MUNICIPALITIES (FAM) GRANT PROGRAM

738-125-0010

Purpose

The purpose of this rule is to establish fair, reasonable and nondiscriminatory processes and criteria to govern the Department's Financial Aid to Municipalities (FAM) Grant Program. The FAM

Grant Program fosters a statewide system of airports through dis-

cretionary award of financial assistance for airport planning, devel-

opment and capital improvement projects.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 2-2004, f. & cert. ef. 5-24-04

738-125-0015

General Provisions

The FAM Grant Program is a discretionary grant program of the Department. Program funding depends upon:

- (1) The dedicated FAM Grant Program line item amount(s) in the Department's biennial budget, as approved by the Oregon Legislature; and
- (2) Department policies and priorities, as described in these rules.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 2-2004, f. & cert. ef. 5-24-04

738-125-0020

Applicant Eligibility

(1) Only Oregon municipalities, as defined by ORS 836.005, may apply for FAM Grant Program assistance. In these rules a municipality is called "applicant" or "airport sponsor."

(2) To qualify to apply for a FAM grant, a municipality must:

(a) Own or operate a public-use airport included in the current Oregon Aviation Plan (OAP), or be building or purchasing a public-use airport;

(b) Unless the application is for developing airport zoning, have enacted, or begun the process of enacting, airport zoning for the airport in accordance with OAR 660-013; and

(c) Unless the application is for developing an Airport Layout Plan (ALP), have a current ALP for the airport, consistent with Federal Aviation Administration (FAA) requirements, that meets these criteria:

(A) The ALP was completed within the last 10 years;

(B) The ALP has been accepted by the FAA or the Department; and

(C) The ALP has been adopted or is pending adoption by the municipality's governing body. Adoption shall be by ordinance or by inclusion in the municipality's comprehensive plan. More specifically:

(i) Adoption may occur after notification that the municipality has received a tentative award of FAM grant funds; however

(ii) Adoption must occur before detailed project planning and engineering; and

(iii) Adoption must occur prior to disbursement of FAM grant funding to the municipality.

(3) Applicant must warrant that any grant award will be spent or obligated within the fiscal year for which the grant is made.

(4) Applicant must warrant availability of required dollar match for any potential grant, as described in OAR 738-125-0030.

(5) Any municipality that is past due on any outstanding financial obligation to ODA cannot receive a FAM grant.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 2-2004, f. & cert. ef. 5-24-04

738-125-0025

FAM Grant Application Criteria

(1) To be eligible for FAM grant funds, the applicant's project must meet at least one of the following criteria:

(a) Prevent future deficiencies and preserve existing facilities;

(b) Eliminate existing deficiencies as described in the current OAP;

(c) Modernize the airport by exceeding state or federal minimum standards as stated in the current OAP and identified by FAA Advisory Circulars (AC's) or other regulations;

(d) Leverage available state and federal funds for airport planning and capital improvements; or

(e) Contribute to the airport's financial self-sufficiency.

(2) Capital construction projects at airports included in the National Plan of Integrated Airport Systems (NPIAS) must meet current FAA design criteria;

(3) Applicant shall include a project narrative which:

(a) Describes benefits of proposed improvements;

(b) Describes and confirms existence of local airport zoning;

(c) Provides details of future maintenance commitments;

(d) Describes potential for on-airport expansion; and

(e) Shows availability of adequate surface access to the airport.

(4) The applicant shall address the potential environmental impacts of the project by providing:

(a) A written "Negative Environmental Declaration" or a FAA Environmental Checklist to confirm there will be no significant environmental impact.

(b) If an FAA Environmental Checklist is not required for the project, applicant shall certify it will satisfy all federal National Environmental Protection Act (NEPA) requirements.

(c) If an Environmental Impact Statement (EIS) is required by the FAA, it shall satisfy the requirements of sections (4)(a) and (b).

(d) If an EIS is required to complete a project, it shall conform to the NEPA requirements.

(e) Airport planning projects are exempt from the requirements of this section, (Section 738-125-0025(4)).

(5) If the application requests funding to develop an ALP or to establish airport zoning, the applicant need not meet the requirements of (1) through (4) of this rule, but must comply with all other application requirements of these rules.

(6) An application must include a formal certification asserting that all rules and regulations of federal, state and local regulatory agencies pertaining to the airport and the proposed project are known and will be complied with, including particularly those of the following agencies:

(a) Oregon Department of Aviation;

(b) Oregon Department of Land Conservation and Development;

(c) Oregon Department of Environmental Quality;

(d) Corps of Engineers;

(e) Oregon Department of Fish & Wildlife;

(f) Local planning commissions;

(g) Federal Aviation Administration; and

(h) Any other state, local or federal agencies having jurisdiction over the use or environmental regulation of land potentially affected by the application.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 2-2004, f. & cert. ef. 5-24-04

738-125-0030

Matching Requirements

(1) All applicants must show the ability to provide a dollar match if awarded a FAM grant. This match can be either in cash or in-kind services.

(2) FAM grants may be made to the applicant up to a maximum of \$25,000 per fiscal year per airport.

(3) FAM grant funds may be used as:

(a) Local match for a federally funded Airport Improvement Program (AIP) grant or planning grant to develop or update an airport ALP or Master Plan;

(b) Local match for a project eligible under the AIP but not funded by that program; and

(c) Local match for other federal grants.

(4) FAM grant match requirements are based on the airport's category as listed in the current OAP. This match will be:

(a) Category 1a — Commercial Primary: 50%;

(b) Category 1b — Other Commercial Non-Primary (less than 10,000 enplanements): 35%;

(c) Category 2 — Business: 25%;

(d) Category 3 — Regional: 10%;

(e) Category 4 — Community: 10%;

(f) Category 5 — Low Activity: 5%.

(5) Labor costs and equipment rental related to the project may be submitted as in-kind contributions; however, a list of all proposed hourly labor costs or equipment rental fees must be submitted with the grant application. If proposed rates and fees are not approved by the Department, the applicant may substitute cash. Labor hourly rates may not include overhead.

(6) The following are not eligible as in-kind resources:

(a) Land values for previously acquired land;

(b) Value of buildings or other improvements; and

(c) Non-capital expenditures or expenditures that may be properly designated as “operations and maintenance,” including but not limited to:

- (A) Wages or salaries;
 - (B) Utilities;
 - (C) Service vehicles;
 - (D) Professional services, except for engineering services for the proposed capital improvements under the program;
 - (E) Supplies;
 - (F) Value of construction equipment; or
 - (G) Upkeep and landscaping.
- (7) FAM grant funds will not be used as a match for any other Department funded program, such as the Pavement Maintenance Program.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 2-2004, f. & cert. ef. 5-24-04

738-125-0035

Project Eligibility and Prioritization

(1) Department will review all grant applications received by the grant deadline date established by Department to ensure that both the municipality and the proposed project meet all program requirements.

(2) First priority will be given to those projects which address airport minimum standard deficiencies listed in the current OAP. These will be further prioritized according to the extent to which they:

- (a) Ensure geographic coverage;
- (b) Leverage federal funds;
- (c) Consider the costs and benefits of improvements;
- (d) Demonstrate local support by:
 - (A) Existence of airport zoning;
 - (B) Availability of local match;
 - (C) Maintenance commitment.

(e) Show the potential for expansion, both on and off airport, as defined by applicant’s current ALP;

- (f) Support economic development;
- (g) Provide adequate surface access to airport;
- (h) Environmentally impact the airport; and
- (i) Enhance any emergency role of the airport.

(3) Second priority will be given to projects which do not address airport minimum standard deficiencies. These will also be further prioritized according to the extent to which they meet the criteria listed in (2)(a)–(i) above.

(4) Consistent with sections (2) and (3) above, the following are examples of projects eligible for FAM grants:

- (a) Developing an airport business plan;
- (b) Developing or updating an ALP;
- (c) Developing or updating a Master Plan;
- (d) Developing or updating a Land Use Plan;

(e) Acquiring land to develop or improve aircraft landing facilities, including protecting against encroachment or environmental problems and acquiring “runway protection zones.” (A FAM grant for land acquisition shall be limited to the appraised value, unless a different value is judicially established following condemnation proceedings.);

(f) Acquiring easements or other interests in airspace, as may be reasonably required to safeguard aircraft operations in the vicinity of an aircraft landing facility as published in Federal Aviation Regulations (FAR) Part 77;

(g) Grading and drainage needed to construct or reconstruct runways, taxiways or aprons;

(h) Constructing or reconstructing runways, taxiways or aircraft parking aprons;

(i) Removing obstructions from runway protection zones or other safety areas affecting the airport;

(j) Installing or replacing “segmented circle airport marker systems” and “lighted wind cones” as defined in current FAA directives;

(k) Installing or replacing runway, taxiway, boundary, obstruction, beacon or apron security lights, together with directly related electrical equipment;

(l) Installing or replacing security or game deterrent fencing;

(m) Marking runways, taxiways and aprons for safety purposes;

(n) Air navigational facilities;

(o) Constructing terminal or maintenance buildings or hangars;

(p) Constructing air cargo facilities at airports;

(q) Seal-coating runways, taxiways and aprons;

(r) Constructing or purchasing aviation-related, income-producing facilities that will be owned by the municipality, including but not necessarily limited to cardlock or retail self-service aviation fuel facilities;

(s) Purchasing aircraft rescue and firefighting equipment;

(t) Purchasing snow removal equipment, tractors or mowers subject to subsection (8) below; and

(u) Improving infrastructure for aviation related development.

(5) Minimum dimensional standards for non-AIP projects at general aviation airports shall conform to those included in OAR 738-020-0020, as depicted for general aviation community airports.

(6) All airport projects shall be designed consistent with projected needs as shown on the airport’s current ALP.

(7) Projects for improvements to facilities under exclusive lease or monopoly control of private persons or entities are not eligible.

(8) In the case of projects listed in (4)(t), the applicant shall identify in the FAM grant application the percentage of anticipated on-airport and off-airport use of the equipment. The funding participation for the equipment shall not exceed the percentage estimated for on-airport use, not to exceed \$25,000.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 2-2004, f. & cert. ef. 5-24-04

738-125-0040

Application Process

(1) The Department shall provide potential applicants with an application package for the FAM Grant Program, to include:

(a) A copy of OAR 738-125 “Financial Aid to Municipalities (FAM) Grant Program.”

(b) An application form requiring full disclosure of all information needed to fairly evaluate the applicant’s need for a grant;

(c) Clear instructions for completing the grant application;

(d) A list and samples of mandatory supporting documents and addenda, including instructions for their preparation; and

(e) A sample grant agreement.

(2) The Department shall, on an annual basis, inform all Oregon municipalities that are public-use airport sponsors that FAM grants are available, and how to obtain an application packet. The notice shall include a list of all application deadlines.

(3) To be considered for a FAM grant, a completed application package, including all required information, materials, attachments and addenda must be submitted to the Department by the application deadline.

(4) If additional FAM grant funds become available between annual grant cycle deadlines, the Department will:

(a) Award grants to applicants who submitted an eligible grant application but did not receive a first-round grant.

(b) If all applicants received funding in the first-round, inform all eligible municipalities, and establish a supplemental application cycle. The supplemental application process shall conform to this rule.

(c) If an applicant received a first-round grant, the applicant is not eligible to receive a grant in a supplemental application cycle. No applicant shall receive more than \$25,000 per fiscal year per airport.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 2-2004, f. & cert. ef. 5-24-04

738-125-0045

Project Selection and Fund Allocation

(1) The Department shall consider the following factors in its review of all eligible projects:

- (a) Funds budgeted for the FAM Grant Program;
- (b) Demand for program assistance by Oregon municipalities; and
- (c) Total available funds compared to total numbers of applicant projects.

(2) The Department shall develop a list of recommended projects for submittal to the Board for review and approval.

(3) Applications must be formally approved by the Board before the Department may commit to any grant or enter into a grant agreement with the airport sponsor.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 2-2004, f. & cert. ef. 5-24-04

738-125-0050

Grant Agreements

(1) The Department shall enter into a Grant Agreement with municipality selected to receive a FAM grant prior to distributing program funds.

(2) FAM Grant Agreements shall include the following elements:

- (a) General terms of agreement, including but not limited to:
 - (A) The specific airport project receiving grant funding;
 - (B) Maximum dollar allocation;
 - (C) Effective dates of the grant;
 - (D) Rights to terminate the grant agreement;
 - (E) Inspection and reporting requirements to verify project work and expenditures before distribution of grant program funds; and

(F) Other terms and conditions as specified in the Sample Grant Agreement provided with the application packet.

- (b) Municipality obligations, including but not limited to:
 - (A) The cash or in-kind match required from the municipality;
 - (B) A requirement that grant recipients must maintain and operate the airport as an airport in a usable, safe, and orderly manner at all times for a period of at least 20 years from the date of the agreement;

(C) A financial requirement that grant recipients must deposit all income derived from the airport into an airport account for a period of at least 20 years from the date of the agreement, with those funds used only for the operation, maintenance or capital improvement of the airport;

(D) A prohibition against the applicant and its contractors and lessees or any successor thereto granting any exclusive right to use the airport or airport improvements, or to provide services at the airport during the life of the agreement, or for 20 years, whichever is longer; and

(E) A requirement that applicant will insert provisions in future lease agreements or contracts requiring all aircraft based at the airport to be registered with Department in accordance with ORS 837.040. Based aircraft is defined as those aircraft based at an airport for more than 30 days.

- (c) Department's obligations, including but not limited to:
 - (A) Conditions of disbursement of grant funds; and
 - (B) Other Department obligations as specified in the Sample Grant Agreement provided with the application packet.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 2-2004, f. & cert. ef. 5-24-04

738-125-0055

Waivers and Exceptions

The Board may, in its discretion and upon the recommendation of the Department, waive any provision of this rule upon a finding that there is an imminent and likely loss of a facility, or of funds available to a facility, or that a condition exists causing imminent danger to pilots or aircraft using an airport, and that an immediate FAM grant is reasonably likely to alleviate the loss or danger. In making such a finding the Board must find:

(1) The project proposed meets the overall purpose of the FAM program, and is consistent with the provisions and policies of the OAP;

(2) There is in the Board's reasonable judgment evidence showing that any of the following would be adversely affected unless FAM funds were not made available:

- (a) Aviation safety;
- (b) Community safety;
- (c) Airport viability;
- (d) Availability of federal funds; and

(3) Alternate funding sources are inadequate to meet the need addressed by the proposed exception.

Stat. Auth.: ORS 835.035, 835.040 & 835.112

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

Hist.: AVIA 2-2004, f. & cert. ef. 5-24-04

DIVISION 130

STATE AGENCY COORDINATION PROGRAM

738-130-0005

Purpose

The purpose of this division is to establish the procedures used by the Department of Aviation to implement the provisions of its State Agency Coordination Program which assure that Department land use programs are carried out in compliance with the statewide planning goals and in a manner compatible with acknowledged comprehensive plans, as required by ORS 197.180 and OAR 660, divisions 30 and 31. The Department of Aviation adopts the provisions of the State Agency Coordination Program in effect on the date this rule is filed with the Secretary of State.

Stat. Auth.: ORS 835.035 & 835.112

Stats. Implemented: ORS 197.180

Hist.: AVIA 2-2015, f. & cert. ef. 7-28-15

738-130-0015

Definitions

For the purposes of OAR 738-130-0005 through 738-130-0135 the following definitions apply:

(1) "Affected City or County" means a city or county that has comprehensive planning authority over a site or area which is directly impacted by a proposed Board or Department action.

(2) "Affected State and Federal Agencies" means state and federal agencies identified in the Department's state agency coordination program.

(3) "Board" means the Aviation Board.

(4) "Class 1 Projects" means projects meeting federal criteria for Class 1 Projects under the National Environmental Policy Act (NEPA) and federal agency regulations which carry out NEPA requirements.

(5) "Class 2 Projects" means projects meeting federal criteria for Class 2 Projects under NEPA and federal agency regulations which carry out NEPA requirements.

(6) "Class 3 Projects" means projects meeting federal criteria for Class 3 Projects under NEPA and federal agency regulations which carry out NEPA requirements.

(7) "Department" means the Department of Aviation.

(8) "DLCD" means the Department of Land Conservation and Development.

(9) "Facility Plan" means a plan for a transportation facility such an airport master plan.

(10) "Metropolitan Planning Organization" means the organization designated by the Governor to coordinate transportation planning in an urbanized area of the state.

(11) "Oregon Aviation Plan" means a plan for a statewide system of aviation that includes identification of system needs, classification of facilities, and establishment of policies as defined in the Oregon Aviation Plan.

(12) "New Transportation Facility" means a transportation facility that does not currently exist. It does not mean the expansion of an existing transportation facility.

(13) “Transportation Facility” means a facility and all of its parts which are used for conveying and managing the transportation of people and goods. It includes all associated structures and alterations that are necessary to protect public safety and mitigate the environmental effects of a transportation facility.

Stat. Auth.: ORS 835.035 & 835.112

Stats. Implemented: ORS 197.180

Hist.: AVIA 2-2015, f. & cert. ef. 7-28-15

738-130-0025

Applicability

The provisions of OAR 738-130-0005 through 738-130-0135 apply to the following programs and activities:

- (1) Adoption of the Transportation Policy Plan.
- (2) Adoption of Oregon Aviation Plan.
- (3) Adoption of transportation facility plans.
- (4) Adoption of project plans for Class 1 and Class 3 projects.
- (5) Adoption of project plans for Class 2 projects which would involve any of the activities listed in OAR 738-130-0035.

(6) Carrying out operations, maintenance and modernization activities, which would involve any of the activities listed in OAR 738-130-0035.

(7) Issuing any of the following permits or licenses for Airport Site Approval and License

(8) Renewing permits or licenses for proposed expansion of a licensed airport to permit service to a larger class of aircraft.

Stat. Auth.: ORS 835.035 & 835.112

Stats. Implemented: ORS 197.180

Hist.: AVIA 2-2015, f. & cert. ef. 7-28-15

738-130-0035

Activities Which Significantly Affect Land Use

The following activities undertaken by the Department significantly affect land use:

(1) Adopting Airport Master Plans which significantly affect the objectives of the Transportation Goal (Goal 12).

(2) Enlarging an existing transportation facility to increase the level of transportation service provided, relocating an existing transportation facility, or constructing a new transportation facility.

(3) Constructing a new Airport Operations Area (AOA), enlarging an existing AOA, or significantly changing the use of an existing AOA.

(4) Changing the size of land parcels through the purchase or sale of property.

(5) Altering land or structures in a way that significantly affects resources or areas protected by the statewide planning goals or acknowledged comprehensive plans. Examples include:

(a) Placing or disposing of materials in wetlands, waterways or floodplains;

(b) Draining wetlands by ditching or by other means;

(c) Removing riparian vegetation.

(6) Agency review of proposed development in and around Airport Safety Overlay Zone areas in order to promote aviation safety by prohibiting structures, trees, and other objects of natural growth from penetrating "airport imaginary surfaces."

(7) Agency review of structures outside of Airport Safety Overlay Zone areas that could be classified as a hazard to air navigation based on the Federal Aviation Administration Advisory Circular (A/C) 7460-1.

Stat. Auth.: ORS 835.035 & 835.112

Stats. Implemented: ORS 197.180

Hist.: AVIA 2-2015, f. & cert. ef. 7-28-15

738-130-0045

Coordination Procedures for Adopting Final Oregon Aviation Plan

(1) Except in the case of minor amendments, the Department shall involve DLCD, metropolitan planning organizations, and interested cities, counties, state and federal agencies, special districts and other parties in the development or amendment of a Oregon Aviation Plan. This involvement may take the form of mailings, meeting, or other means that the Department determines are appropriate for the circumstances. The Department shall hold at least one public meeting on the plan prior to adoption.

(2) The Department shall evaluate and write draft findings of compliance with all applicable statewide planning goals.

(3) If the draft plan identifies new facilities which would affect identifiable geographic areas, the Department shall meet with the planning representatives of affected cities, counties and metropolitan planning organization to identify compatibility issues and the means of resolving them. These may include:

(a) Changing the draft plan to eliminate the conflicts;

(b) Working with the affected local governments to amend their comprehensive plans to eliminate the conflicts; or

(c) Identifying the new facilities as proposals which are contingent on the resolution of the conflicts prior to the completion of the transportation planning program for the proposed new facilities.

(4) The Department shall present to the Aviation Board the draft plan, findings of compatibility for new facilities affecting identifiable geographic areas, and findings of compliance with all applicable statewide planning goals.

(5) The Aviation Board, when it adopts a final Oregon Aviation Plan, shall adopt findings of compatibility for new facilities affecting identifiable geographic areas and findings of compliance with all applicable statewide planning goals.

(6) The Department shall provide copies of the adopted final Oregon Aviation Plan and findings to DLCD, the metropolitan planning organizations, and others who request to receive a copy.

Stat. Auth.: ORS 835.035 & 835.112

Stats. Implemented: ORS 197.180

Hist.: AVIA 2-2015, f. & cert. ef. 7-28-15

738-130-0055

Coordination Procedures for Adopting Final Master Plans

(1) Except in the case of minor amendments, the Department shall involve DLCD and affected metropolitan planning organizations, cities, counties, state and federal agencies, special districts and other interested parties in the development or amendment of a facility plan. This involvement may take the form of mailings, meetings or other means that the Department determines are appropriate for the circumstances. The Department shall hold at least one public meeting on the plan prior to adoption.

(2) The Department shall provide a draft of the proposed facility plan to planning representatives of all affected cities, counties and metropolitan planning organization and shall request that they identify any specific plan requirements which apply, any

general plan requirements which apply and whether the draft facility plan is compatible with the acknowledged comprehensive plan. If no reply is received from an affected city, county or metropolitan planning organization within 45 days of the Department's request for a compatibility determination, the Department shall deem that the draft plan is compatible with that jurisdiction's acknowledged comprehensive plan. The Department may extend the reply time if requested to do so by an affected city, county or metropolitan planning organization.

(3) If any statewide goal or comprehensive plan conflicts are identified, the Department shall meet with the local government planning representatives to discuss ways to resolve the conflicts. These may include:

(a) Changing the draft facility plan to eliminate the conflicts;

(b) Working with the local governments to amend the local comprehensive plans to eliminate the conflicts; or

(c) Identifying the conflicts in the draft facility plan and including policies that commit the Department to resolving the conflicts prior to the conclusion of the transportation planning program for the affected portions of the transportation facility.

(4) The Department shall evaluate and write draft findings of compatibility with acknowledged comprehensive plans of affected cities and counties, findings of compliance with any statewide planning goals which specifically apply as determined by OAR 660-030-0065(3)(d), and findings of compliance with all provisions of other statewide planning goals that can be clearly defined if the comprehensive plan of an affected city or county contains no conditions specifically applicable or any general provisions, purposes or objectives that would be substantially affected by the facility plan.

(5) The Department shall present to the Aviation Board the draft plan, findings of compatibility with the acknowledged comprehensive plans of affecting cities and counties and findings of compliance with applicable statewide planning goals.

(6) The Aviation Board shall adopt findings of compatibility with the acknowledged comprehensive plans of affected cities and counties and findings of compliance with applicable statewide planning goals when it adopts the final facility plan.

(7) The Department shall provide copies of the adopted final facility plan and findings to DLCD, to affected metropolitan planning organizations, cities, counties, state and federal agencies, special districts and to others who request to receive a copy.

Stat. Auth.: ORS 835.035 & 835.112

Stats. Implemented: ORS 197.180

Hist.: AVIA 2-2015, f. & cert. ef. 7-28-15

738-130-0065

Coordination Procedures for Adopting Plans for Class 1 and 3 Projects

(1) The Department shall involve affected cities, counties, metropolitan planning organizations, state and federal agencies, special districts and other interested parties in the development of project plans. The Department shall include planning officials of the affected cities, counties and metropolitan planning organization on the project technical advisory committee.

(2) Goal compliance and plan compatibility shall be analyzed in conjunction with the development of the Draft Environmental Impact Statement or Environmental Assessment. The environmental analysis shall identify and address relevant land use requirements in sufficient detail to support subsequent land use decisions necessary to authorize the project.

(3) Except as otherwise set forth in section (4) of this rule, the Department shall rely on affected cities and counties to make all plan amendments and zone changes necessary to achieve compliance with the statewide planning goals and compatibility with local comprehensive plans after completion of the Draft Environmental Impact Statement or Environmental Assessment and before completion of the Final Environmental Impact Statement or Revised Environmental Assessment. These shall include the adoption of general and specific plan provisions necessary to address applicable statewide planning goals.