

DIVISION 1

PROCEDURAL RULES

Contested Case Hearings

- 738-001-0010** Evidence
- 738-001-0015** Close of Hearing and Final Briefs

Consultants

- 738-001-0025** Selection and Hiring of Consultants

DIVISION 10

**SCHEDULE OF RATES AND FEES
FOR STATE-OWNED AIRPORTS**

- 738-010-0010** Purpose of Rule and Statutory Authority
- 738-010-0015** Definitions
- 738-010-0020** Designation of Schedules for Rates and Fees
- 738-010-0025** Flexibility of Fee Schedule: Negotiated Fees
- 738-010-0030** Eligibility Criteria for Negotiation for Commercial Operations

DIVISION 20

MINIMUM STANDARDS FOR AIRPORTS

- 738-020-0010** Purpose and Statutory Authority
- 738-020-0015** Definitions
- 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 30

**COMMERCIAL ACTIVITY ON
STATE-OWNED AIRPORTS**

- 738-030-0005** Policy
- 738-030-0010** Definitions and Limitations
- 738-030-0015** Prohibition
- 738-030-0020** Duty to Report: Enforcement
- 738-030-0025** Aeronautics Authority

DIVISION 40

SEAPLANE OPERATION

- 738-040-0010** Purpose and Statutory Authority
- 738-040-0015** Definition
- 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

- 738-060-0010** Definition of an Aircraft Dealer
- 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
- 738-070-0030** Definitions
- 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
- 738-070-0260** Rules of Practice for Hearings

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

- 738-090-0010** Purpose
- 738-090-0020** Definitions
- 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
738-100-0015	Definitions
738-100-0020	Interagency Coordination
738-100-0030	Notice
738-100-0035	Advisory

DIVISION 110

RENUMBERED STATUTES

738-110-0010	Purpose of Rule and Statutory Authority
738-110-0020	Aeronautics Administration

State Assistance

738-110-0030	Airports and Landing Fields
738-110-0040	Aircraft Operation
738-110-0050	Airport Districts

DIVISION 1

PROCEDURAL RULES

Contested Case Hearings

738-001-0010

Evidence

(1) Only testimony of persons who have taken an oath or affirmation before the Examiner, or Commission or Engineer, as the case may be, shall be admitted.

(2) Every party has the right to present his case or defense by oral, documentary or other satisfactory evidence, to submit evidence in rebuttal, and to conduct such cross-examination as may be required for a full and complete disclosure of the facts.

(3) The petitioner shall bear the burden of proof.

(4) Admission and exclusion of evidence:

(a) The rules of evidence and requirements of proof shall conform, to the extent practicable, with those in civil non-jury cases in the circuit courts, except as otherwise provided by ORS Chapter 183;

(b) Hearsay evidence in the discretion of the hearings officer or body, may be received if the hearings officer or body determines that the evidence is of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs;

(c) Irrelevant, immaterial and merely cumulative evidence may be excluded and must be excluded upon objection;

(d) Expert and opinion evidence may be limited in the discretion of the Examiner or Commission or Engineer conducting the hearing;

(e) The hearings officer or body may rule upon the admission or exclusion of evidence at the hearing or may defer any such ruling until incorporated in the order;

(f) Unless specifically excluded by the hearings officer or body, exhibits and items of tangible evidence offered at the hearing shall be deemed admitted into evidence.

(5) Objections. If a party objects to the admission or rejection of any evidence or to the limitations of the scope of any examination or cross-examination, he shall state briefly the grounds of such objection, whereupon the party adversely affected by the ruling on the objection shall be granted an automatic exception.

(6) Judicial notice. The Examiner, Commission or Engineer, after first advising all parties of its intention to do so, may take notice of judicially cognizable facts as is provided by law (ORS 183.450) and of general, technical or scientific facts within the specialized knowledge of the official(s) conducting the hearing.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 835.035

Hist.: 1 OTC 21-1980(Temp), f. & ef. 12-1-80; 1 OTC 1-1981, f. & ef. 4-1-81; AERO 3-1990, f. & cert. ef. 3-9-90

738-001-0015

Close of Hearing and Final Briefs

(1) Within 15 business days following the close of the hearing or the filing of final briefs, if any, the hearings officer or body shall either prepare a proposed order, direct the parties to submit proposed orders, or direct the prevailing party, as determined by the hearings officer or body, to submit a proposed order. Should the hearings officer or body direct the preparation of a proposed order(s) it shall do so by letter, with copies to all parties appearing at the hearing. The letter shall also set a date within which the order(s) must be submitted.

(2) Upon the preparation or submission of a proposed order, the hearings officer or body may accept an order or modify an order to comply with its findings and conclusions. The hearings officer or body shall thereupon serve the proposed order upon all parties appearing at the hearing. If the officer or body is not the entity charged with administering the statutes involved in the hearing, and has not been delegated authority to issue a final order, it shall forward the case file, transcripts and exhibits, together with its proposed order, to the officer or entity charged with administering the relevant statutes.

(3) Upon mailing the proposed order to the parties, the parties shall have 20 days in which to file exceptions to the proposed order. If the proposed order has been forwarded to the officer charged with administering the relevant statutes, the parties may also request oral argument before that officer or body.

(4) Within 30 days of either the service of the proposed order, the filing of exceptions, or oral argument, as the case may be, the hearings officer or body, or the officer or entity charged with administering the relevant statutes, shall issue and mail a final order to all parties. The officer, body or entity may adopt, reverse or modify the proposed order in issuing a final order.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 835.035

Hist.: 1 OTC 21-1980(Temp), f. & ef. 12-1-80; 1 OTC 1-1981, f. & ef. 4-1-81

Consultants

738-001-0025

Selection and Hiring of Consultants

The rules relating to the Selection and Hiring of Consultants have been adopted by the Department of Transportation and apply to the Aeronautics Section of the Transportation Development Branch.

Stat. Auth.: ORS 279

Stats. Implemented: ORS 835.020 & ORS 835.030

Hist.: 1 OTC 3-1981, f. & ef. 4-21-81

DIVISION 10

**SCHEDULE OF RATES AND FEES
FOR STATE-OWNED AIRPORTS**

738-010-0010

Purpose of Rule and Statutory Authority

To set rates and fees to be charged at state-owned airports; said Schedule of Rates and Fees to include commercial and private yearly, monthly or daily rental charges for leasing state-owned land, aircraft parking spaces (tie-downs), ingress/egress permits, fuel flowage fees and other commercial concessions or private uses utilizing state-owned property.

This rule carries out and is authorized by ORS 835.035(1) and (3), 836.030, and 836.055(2), and becomes effective April 20, 1981.

Stat. Auth.: ORS 835 & ORS 836

Stats. Implemented: ORS 836.080 - ORS 836.120

Hist.: 1AD 2-1981, f. & ef. 4-20-81

738-010-0015

Definitions

(1) "State-Owned Airport": As used in OAR 738-010-0010 to 738-010-0030, "state-owned airport" or "airport" means an airport

owned and/or operated by the Aeronautics Section, Transportation Development Branch of the Oregon Department of Transportation (Aeronautics). These rules do not apply to airports, or surfaces of land or water used for the operation of aircraft, which are owned, operated or under the jurisdiction of other governmental bodies.

(2) "Airport Classifications" (reference **Exhibit 1** attached):

(a) Class I: Airports located near urban areas with high traffic volume and a high demand for space. Facilities are adequate-to-good with major improvements planned. Full services are available;

(b) Class II: Airports located in or near urban or prime recreational areas, with medium traffic volume and good growth potential. Facilities generally are adequate with improvements planned. Services are normally not available;

(c) Class III: Airports located in urban-rural areas with recreational or other types of facilities in the area. Generally, traffic volume is medium-to-low, growth potential is considered medium-to-low, adequate-to-nominal facilities are maintained with some improvements planned. Services are normally not available;

(d) Class IV: Airports maintained in the public interest as emergency landing fields or for community access. Some airports are temporarily owned by the state until transfer can be arranged (as per the Oregon Aviation System Plan). Generally, traffic volume is low, growth potential is considered to be poor, facilities are minimal and services normally unavailable.

[ED. NOTE: The Exhibit referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 835 & ORS 836

Stats. Implemented: ORS 836.055

Hist.: IAD 2-1981, f. & ef. 4-20-81

738-010-0020

Designation of Schedules for Rates and Fees

(1) Class I Airports:

(a) Private Use:

(A) Rental of ground space for building sites or other aeronautical-related activities: \$.09 to \$.12 per square foot per year;

(B) Ingress/egress permits for off-airport property: \$15 per month minimum.

(b) Commercial Use:

(A) Rental of ground space for building sites or other aeronautical-related activities: \$.15 to \$.19 per square foot per year;

(B) Ingress/egress permits for off-airport property: \$75 per month minimum;

(C) Commercial operations on or out of the airport may be conducted only under the terms of a written agreement with Aeronautics, and a \$.03 per gallon fuel flowage fee will be collected on all fuel sold, used or transferred for commercial purposes.

(c) Tie-Down Space:

(A) Occupation by itinerant or transient aircraft of one tie-down space on any public tie-down area shall be assessed at the rate of \$2 per day;

(B) Rental fee for one tie-down space on a paved public tie-down area shall be at the rate of \$18 per month;

(C) Rental fee for one tie-down space on a turfed public tie-down area shall be at the rate of \$15 per month.

(2) Class II Airports:

(a) Private Use:

(A) Rental of ground space for building sites or other aeronautical-related activities: \$.07 to \$.10 per square foot per year;

(B) Ingress/egress permits for off-airport property: \$10 per month minimum.

(b) Commercial Use:

(A) Rental of ground space for building sites or other aeronautical-related activities: \$.12 to \$.16 per square foot per year;

(B) Ingress/egress permits for off-airport property: \$50 per month minimum;

(C) Commercial operations on or out of the airport may be conducted only under the terms of a written agreement with Aeronautics, and a \$.03 per gallon flowage fee will be collected on all fuel sold, used or transferred for commercial purposes.

(c) Tie-Down Space:

(A) Occupation by itinerant or transient aircraft of one tie-down area shall be assessed at the rate of \$1.50 per day;

(B) Rental fee for one tie-down space on a paved public tie-down area shall be at the rate of \$15 per month;

(C) Rental fee for one tie-down space on a turfed public tie-down area shall be at the rate of \$12 per month.

(3) Class III Airports:

(a) Private Use:

(A) Rental of ground space for building sites or other aeronautical-related activities: \$.05 to \$.08 per square foot per year;

(B) Ingress/egress permits for off-airport property: \$5 per month minimum.

(b) Commercial Use:

(A) Rental of ground space for building or other aeronautical-related activities: \$.09 to \$.13 per square foot per year;

(B) Ingress/egress permits for off-airport property: \$25 per month minimum;

(C) Commercial operations on or out of the airport may be conducted only under the terms of a written agreement with Aeronautics, and a \$.03 per gallon flowage fee will be collected for all fuel sold, used or transferred for commercial purposes.

(c) Tie-Down Space:

(A) Occupation by itinerant or transient aircraft of one tie-down space on any public tie-down area shall be assessed at the rate of \$1 per day;

(B) Rental fee for one tie-down space on a paved tie-down area shall be at the rate of \$12 per month;

(C) Rental fee for one tie-down space on a turfed public tie-down area shall be at the rate of \$9 per month.

(4) Class IV Airports:

(a) Private Use:

(A) Rental of ground space for building sites or other aeronautical-related activities: \$.03 per square foot per year;

(B) Ingress/egress permits for off-airport property: \$2.50 per month minimum.

(b) Commercial Use:

(A) Rental of ground space for building sites or other aeronautical-related activities: \$.06 per square foot per year;

(B) Ingress/egress permits for off-airport property: \$12.50 per month minimum;

(C) Commercial operations on or out of the airport may be conducted only under the terms of a written agreement with Aeronautics, and a \$.03 per gallon flowage fee will be collected on all fuel sold, used or transferred for commercial purposes.

(c) Tie-Down Space:

(A) Occupation by itinerant or transient aircraft of one tie-down space on any public tie-down area shall be assessed at the rate of \$1 per day;

(B) Rental fee for one tie-down space on a paved public tie-down area shall be at the rate of \$10 per month;

(C) Rental fee for one tie-down space on a turfed public tie-down area shall be at the rate of \$7 per month.

(5) Fuel Flowage Fees: For purposes of determining whether fuel is "sold, used or transferred for commercial purposes," and is therefore subject to payment of flowage fees, the test to be used will be whether the commercial operator's activities are such that the operator is required to obtain a fuel dealer's license or aircraft fuel retailer's license under ORS Chapter 319.

Stat. Auth.: ORS 835 & ORS 836

Stats. Implemented: ORS 836.055

Hist.: IAD 2-1981, f. & ef. 4-20-81

738-010-0025

Flexibility of Fee Schedule: Negotiated Fees

(1) The fee schedule sets equitable fees for most ordinary special use situations which envisions the lease of relatively small parcels of land and/or buildings. However, unusual contingencies may arise even in the most conventional real property transactions or agreements. ORS 491.100(3) states that Aeronautics shall develop and promote aeronautics in Oregon. Aeronautics must retain sufficient flexibility to comply with ORS 491.100(3). As a result, Aeronautics has established minimum and maximum fee levels in the schedule which are intended to be compatible with general economic conditions existing at the time an agreement is entered into.

(a) Waiver Provisions. The Manager of Aeronautics may, upon making a determination that waiving the collection of a given rate or fee will tend to promote aeronautics in Oregon, waive the collection of such fee or rate from any organization or person engaged in a non-profit aeronautically-related program or activity. Examples of parties potentially eligible to receive such waiver include, but are not limited to:

(A) Organizations conducting aviation safety programs or demonstrations;

(B) Organizations conducting air fairs for the benefit of any charitable organization or public corporation.

(2) It is necessary to utilize negotiations to establish equitable fees for other revenue-producing events that are not subject to the fixed schedule under ordinary special use situations.

(3) ORS 492.110(2) provides that charges or fees shall be reasonable and uniform for the same class of use. The statute, however, also commands that such charges shall be established with due regard to the property used by a commercial activity. To give effect to both of these statutory commands, Aeronautics must retain latitude to set charges on a case-by-case basis where a given proposed use is in a class of its own:

(a) Upon finding that a proposed use possesses unusually high or low profit-making potential, and/or that the land or facilities to be occupied by the use are of unusually high or low business or rental value, Aeronautics may enter into negotiations with the proponent in order to establish equitable charges for that use. The execution of an agreement negotiated hereunder shall constitute the finding required by this subsection;

(b) Examples of such potential uses include, but are not limited to:

(A) Agricultural;

(B) Glider and flying clubs;

(C) Aerial applicator operations;

(D) Commercial and light-industrial facilities; and

(E) Other operations involving relatively large parcels of land.

(c) Ingress/egress permits, subject to the minimum fees set forth in OAR 738-010-0020, shall be subject to negotiation on the same basis as other uses under this section.

(4) In negotiating charges under this section, Aeronautics will consider the reasonable commercial rental value of the subject property, the extent of the proponent's commitment to provide necessary aviation-related services, and facilities to the airport, and the criteria set forth in OAR 738-010-0030.

Stat. Auth.: ORS 491 & ORS 492

Stats. Implemented: ORS 836.055

Hist.: IAD 2-1981, f. & ef. 4-20-81

738-010-0030

Eligibility Criteria for Negotiation for Commercial Operations

In determining whether to enter into negotiations or execute an agreement relating to the establishment or modification of any commercial operation on state-owned airport property, Aeronautics will consider the following criteria:

(1) Impact on the Airport:

(a) Whether there is sufficient unutilized state-owned space at the airport under consideration to accommodate the proposed facilities or activities;

(b) Whether the land, space or facilities available at the airport should, in the interests of promoting aviation in the state, be reserved for or devoted to a use other than that proposed;

(c) Whether the establishment of the proposed operation would interfere with any future development or expansion of the airport;

(d) Whether the proposal, if accepted, would result in any safety hazard or impede the traffic at the airport;

(e) Whether the proposed operation is reasonably related to, and will tend to promote, the public use of the airport as a transportation facility.

(2) Ability of Proponent to Perform:

(a) The resources, financial and otherwise, available to the proponent for establishing and maintaining the operation;

(b) The past experiences of the proponent in managing similar commercial aviation operations or other business enterprises;

(c) The past history of the proponent with regard to honesty in business dealings, and observance of regulatory and criminal law and regulations; and

(d) Aeronautics' past experiences in dealing with the proponent on aeronautics-related matters.

(3) As used in this section, the term "proponent" shall mean any person, firm, partnership, corporation or other entity involved in the proposal, and shall include any individual bearing a managerial, supervisory or ownership relationship to a proponent organization.

(4) In evaluating the foregoing criteria, Aeronautics may require the proponent to furnish detailed information on its organization, financial status including personal and organizational tax returns, and any public records relating to any criminal proceedings or proceedings involving fraud, instituted against the proponent.

(5) In discharging its rental, leasing and operator-agreement responsibilities, Aeronautics will take no action which would result in the granting of an "exclusive right" (the granting of rights to a person which would prohibit other persons from receiving like rights) for the use of any landing area or air navigation facility as prohibited by Section 308(a) of the Federal Aviation Act of 1958. Aeronautics will likewise comply with the Minority Business Enterprise (MBE) regulations of the United States Department of Transportation, as established in 45 **Federal Regulations 22172-22192** (March 31, 1980).

Stat. Auth.: ORS 835 & ORS 836

Stats. Implemented: ORS 836.060

Hist.: IAD 2-1981, f. & ef. 4-20-81

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 Aeronautics Section, Transportation Development Branch of the Department of Transportation (Aeronautics).

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

Stat. Auth.: ORS 835 & ORS 836

Stats. Implemented: ORS 836.080 - ORS 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

738-020-0015

Definitions

(1) Airport Classification (see **Exhibit 1** for dimensional standards):

(a) "General Aviation Recreational/Emergency Airport": A designated area for the take-off and landing of aircraft where aircraft services are usually not available and student instruction is not permitted without prior written permission of the Manager of Aeronautics. Such an airport should meet one or more of the following:

(A) An airport close to recreational facilities or areas that are remote from community airports; or

(B) An airport in a flyway or area where frequent inclement weather or rough terrain or both make it prudent to have an emergency airport in close proximity.

(b) "General Aviation Community Airport": A designated area for the take-off and landing of aircraft which is designed for public use by general aviation, and where aircraft service facilities are normally provided and student instruction can occur on a routine basis;

(c) "Personal Use Airport": A designated area where all aircraft must be owned or controlled by the owner of the airport and non-based aircraft must have the permission of the airport owner to land;

(d) "Agricultural Airstrip (Agstrip)": 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;

(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.

(e) "Heliport": An area of land, water, or structure designated for the landing and take-off of helicopters or other rotorcraft.

(2) Types of Airports — By Use:

(a) "Personal-Use Airport": As used in this rule, means an airstrip restricted, except for aircraft emergencies, to use by the owner and, on an infrequent and occasional basis, by his invited guests, and to 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 to the activities permitted under this definition may be granted through waiver action by the Manager of Aeronautics in specific instances;

(b) "Public-Use Airport": Open to the flying public considering performance and weight of the aircraft being used. May or may not be attended or have services available.

(3) Miscellaneous:

(a) "Manager": The Manager of the space Aeronautics Section;

(b) "Approach and Departure Zone": 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 type and purpose of the airport;

(c) "Building Restriction Line": A designated, but not necessarily marked, boundary which provides lateral clearance between the landing strip and buildings or other permanent structures;

(d) "Commercial": Any flight activities performed for compensation or hire;

(e) "Control": When used herein in reference to runway approach-departure zones means ownership in fee or easement or existence of appropriate zoning;

(f) "Controlled": When used herein in reference to use of personal-use airport by aircraft other than those owned by the owner, means supervised or regulated by the airport owner in such a manner as to:

(A) Reasonably minimize disturbance, by aircraft operations, to persons and property in the vicinity of the airport; and

(B) Reasonably insure that all users are fully aware of conditions, limitations, and possible hazards which may exist at the airport.

(g) "Department": Oregon State Department of Transportation;

(h) "Aeronautics": The Aeronautics Section, Transportation Development Branch of the Department of Transportation;

(i) "Landing Strip": That portion of the airport or airstrip on which an aircraft can be landed or taken off without damage to the aircraft or injury to its occupants;

(j) "Occasional": Infrequent, irregular, or from time-to-time as determined by the Manager. In making this determination, the Manager shall consider compatibility with the existing uses of the surrounding area;

(k) "Operation of an Airport": For any purpose other than use on an occasional basis, as determined by the Manager, any person, municipality, or officer or employee thereof who offers for use, or permits use of an aircraft landing area under his control for landing or take-off of aircraft; or, 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;

(l) "Property Line": A designated, but not necessarily marked, boundary which outlines the area of land to be controlled by the airport owner;

(m) "Runway": The center portion of the landing strip which is designed and constructed for take-off and landing of aircraft;

(n) "Tie-Down Restriction Line": A designated, but not necessarily marked, boundary which provides lateral clearance between the landing strip and facilities for securing aircraft to the ground.

[ED NOTE: The Exhibits referenced in the above rule is not printed in the Administrative Rules Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 835 & ORS 836

Stats. Implemented: ORS 836.080 - ORS 836.120

Hist.: 1 OTC 46, f. 11-29-74, ef. 12-25-74; 1 OTC 81, f. & ef. 5-3-77; 1 AD 3-1984; f. & ef. 7-31-84; 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 Manager 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) Aeronautics 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: The Exhibits referenced in the above rule is not printed in the Administrative Rules Compilation. Copies are available from the agency.]
 Stat. Auth.: ORS 835 & ORS 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

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 Aeronautics 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 Manager, 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 Aeronautics 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 Aeronautics.

(3) Written application for site approval shall set forth, on a form provided by Aeronautics, 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 nonrefundable 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 Manager will render a finding as to whether the proposed airport is compatible with the State Aviation System Plan. If found to be compatible, an Aeronautics 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) Following the site investigation, the inspector shall calculate the actual costs of the site investigation and refund to the applicant any excess monies paid from the \$300 received for the cost of the site inspection. Allowable costs shall be limited to the inspector's per diem and lodging expenses as defined by Department of Administrative Services policy, and cost of the state motor pool car. When it is reasonable to do so, the inspector shall combine inspections within a geographic area and prorate the charges specified above, for each of the airports or sites being inspected.

(6) 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, Aeronautics will issue a provisional site approval. If not satisfied, Aeronautics will deny site approval or may make suggestions as to how the site can meet the standards.

(7) Aeronautics 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, Aeronautics shall issue final site approval.

(8) 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, ORS 184.619, ORS 835.035 & ORS 836.085

Stats. Implemented: ORS 836.085 & ORS 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

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 Aeronautics, Department of Transportation. 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 Aeronautics 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 Aeronautics. 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 Aeronautics. New airports shall be registered within thirty days of completion of the airport in accordance with plans submitted for site approval and approved by Aeronautics. 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 & ORS 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

738-020-0035

Approval of Site: Issuance of License

(1) Within a reasonable time after receipt of application, Aeronautics 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 Aeronautics 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) Aeronautics, 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, Aeronautics 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) Aeronautics 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, ORS 184.619, ORS 835.035, ORS 836.095 & ORS 836.105

Stats. Implemented: ORS 836.095 & 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; AERO 1-1998, f. & cert. ef. 2-25-98

738-020-0040

Revocation of Site Approval or License

(1) Aeronautics 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) Aeronautics 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 & ORS 836

Stats. Implemented: ORS 836.100 & ORS 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

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 agency.]

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

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

DIVISION 30

COMMERCIAL ACTIVITY ON STATE-OWNED AIRPORTS

738-030-0005

Policy

The policies underlying these rules are:

(1) To ensure that persons, firms and corporations who make use of state airport property and utilities for profit-making, rather than merely as members of the public entitled to use such facilities, pay their fair share of the costs to the taxpayers of owning and maintaining such facilities.

(2) To ensure that no person, firm or corporation receives an undue competitive advantage by virtue of the free use of state facilities

where comparable commercial entities are paying the state for use of such facilities.

(3) To ensure that those portions of state airports, such as public spaces, roads, taxiways, runways, pathways and aprons remain open and free for the use of the public for aeronautical purposes, unobstructed by unregulated commercial enterprises.

Stat. Auth.: ORS 835

Stats. Implemented: ORS 836.055

Hist.: 1AD 1-1981, f. & ef. 1-29-81

738-030-0010

Definitions and Limitations

(1) A "commercial activity" means any activity which results in or causes the occupancy of state-owned real property on any airport owned or operated by the State of Oregon, Aeronautics Section, Transportation Development Branch of the Department of Transportation (Aeronautics), such activity which is conducted for compensation or for the purpose of soliciting business. This includes the subletting or utilization by others of airport property as permitted by a person who has leased such property from Aeronautics.

(2) "Compensation" means payment or exchange of anything of value for services or goods offered or furnished with profit as a motive.

(3) "Soliciting Business" shall mean 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 for the performance of any service, immediately or in the future, in exchange for anything of value.

(4) The prohibitions of this rule shall not apply to the actual provision of flight services when such services are conducted in the same manner as operations by transient aircraft belonging to the general public. For example, the following activities shall not be considered "commercial activity" subject to this rule so long as those conducting the activity do not occupy airport space with the purpose of soliciting business therefrom:

(a) Occasional, unscheduled aircraft operation at a state airport by a commercial pilot or air-taxi service;

(b) Use of a state airport runway by a certified flight instructor for take-offs and landings incidental to flight instruction and for touch-and-go training operations;

(c) The posting of commercial advertisements on bulletin boards at state-owned airports when such boards are authorized by Aeronautics or permission to so use such a board is given by the operator having control of the premises on which the bulletin board is located.

(5) The use of state-owned or operated airports by an aerial applicator is considered as a commercial activity and requires prior written permission of Aeronautics. Environmental considerations prevent the unrestricted use of state-owned or operated airports by an aerial applicator for any period of time without such an agreement. However, the first two calendar days operation by a transient aerial applicator, within any calendar year, will not require compensation for utilization of an airport. The term "aerial applicator" refers to any pilot, firm, partnership, or other organization, including its subcontractors, engaged in aerial application activities.

(6) This rule is not intended to prohibit a person who is at a state-owned airport for other reasons from accepting agreements to perform services for another when approached by that customer on a casual basis. However, the erection or use of advertising signs, except on aircraft or as authorized under subsection (4)(c) of this rule shall constitute commercial activity.

(7) This rule shall not apply to commercial activity or a commercial act performed for or on behalf of Aeronautics on any state-owned airport.

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.055

Hist.: 1 OTC 12-1980(Temp), f. & ef. 6-17-80; 1AD 1-1981, f. & ef. 1-29-81; AERO 1-1987(Temp), f. & ef. 9-17-87; AERO 2-1987, f. & ef. 12-15-87

738-030-0015

Prohibition

No person shall engage in any commercial activity, permanently or temporarily, upon state-owned or operated property or which utilizes a state-financed facility, at any airport owned by the State of Oregon, Aeronautics, without first having obtained the consent of Aeronautics, or having entered into an agreement under which Aeronautics has authorized the conduct of that activity.

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.055

Hist.: 1 OTC 12-1980(Temp), f. & ef. 6-17-80; IAD 1-1981, f. & ef. 1-29-81; AERO 1-1987(Temp), f. & ef. 9-17-87; AERO 2-1987, f. & ef. 12-15-87

738-030-0020**Duty to Report: Enforcement**

(1) In questionable cases, it shall be the duty of the person arguably engaging in a commercial activity at a state airport to contact Aeronautics for a determination of that person's status. The person shall report to: Oregon Aeronautics, Airports Branch, 3040 25th Street S.E., Salem, OR 97310, Phone: (503) 378-4880.

(2) If any person is dissatisfied with Aeronautics' determination, that person may request a hearing before Aeronautics by mailing a written request to the above address. Such hearings will be held in accordance with the Administrative Procedures Act (ORS 183.413 – 183.470) and the procedural rules of the Department of Transportation. The person requesting the hearing shall have the burden of proving that his activity is not a commercial activity as defined herein.

(3) It is the policy of Aeronautics not to institute formal enforcement proceedings against persons that may be in violation of this rule until such person has been notified of the problem and has refused or failed, after 15 days from such notice, to report to Aeronautics with the information necessary to determine the status of the person's operation.

Stat. Auth.: ORS 835

Stats. Implemented: ORS 836.055

Hist.: IAD 1-1981, f. & ef. 1-29-81

738-030-0025**Aeronautics Authority**

(1) When Aeronautics has determined that a person is engaged or proposes to engage in commercial activity at a state-owned airport, Aeronautics may grant that person permission to do so, may issue that person a permit with restrictions or conditions, may require the person to enter into an agreement with Aeronautics, or may deny permission.

(2) In determining whether, and under what conditions, the activity will be permitted, Aeronautics will consider the following criteria:

(a) The eligibility criteria set forth in Aeronautics' Rates and Fees rule;

(b) The terms and conditions under which any pre-existing permitted activity at the airport which the new activity would compete with is operating; in order to avoid creation of artificial competitive advantages, Aeronautics will ensure as nearly as possible that competitors compete on the same terms and conditions;

(c) The impact of the activity on public safety and convenience; Aeronautics will impose such conditions and restrictions as are necessary to ensure safety in the air and on the ground, and to preserve unobstructed traffic patterns;

(d) The amount of space available at the airport, the consistency of the activity with the customary uses of an airport and with present and planned development at the airport;

(e) The extent to which the activity threatens unjustified devotion of public property and resources to a private use;

(f) Consistency of the activity and the manner in which it is conducted with state, local and federal laws and regulations, including land use provisions;

(g) Whether the activity is carried on for profit, or is a non-profit activity reasonably related to the promotion of aeronautics or aviation safety or education.

(3) Nothing in the rule shall be construed as detracting from Aeronautics' rights as a landowner at a state-owned airport.

(4) Nothing in this rule shall derogate from any rights, granted under the terms of its agreement with Aeronautics, of a fixed base operator to regulate and control the use of properties and facilities placed in its custody under agreement with Aeronautics.

(5) Aeronautics shall take no action under this rule which amounts to the granting of an "exclusive right" for the use of any landing area or air navigation facility as forbidden by Section 308(a) of the Federal Aviation Act of 1958 (codified as **49 U.S.C. § 1349(a)**).

[Publications: The publication(s) referenced to in this rule are available from the agency.]

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.055

Hist.: IAD 1-1981, f. & ef. 1-29-81; AERO 1-1987(Temp), f. & ef. 9-17-87; AERO 2-1987, f. & ef. 12-15-87

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 Oregon Transportation Commission to adopt rules governing seaplane safety and operations on state waters.

Stat. Auth.: ORS 184.619, ORS 835.035 & ORS 835.080

Stats. Implemented: ORS 835.035, ORS 835.080 & ORS 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

738-040-0015**Definitions**

As used in OAR 738-040-0010 through 738-040-0040, the following definitions apply:

(1) "Aeronautics Section" means the Aeronautics Section of the Oregon Department of Transportation.

(2) "Aircraft" means any contrivance used or designed for navigation of or flight in the air, but does not mean a one-person motorless glider which is launched from the earth's surface solely by the operator's power.

(3) "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.

(4) "Commission" means the Oregon Transportation Commission.

(5) "In flight" means from the moment a seaplane starts its take-off run until the end of a normal power-off landing run.

(6) "Manager" means the Aeronautics Section Manager of the Oregon Department of Transportation.

(7) "Motorboat" means any boat propelled in whole or in part by machinery, including boats temporarily equipped with detachable motors.

(8) "Navigable waters of the United States" means those waters of the United States, including the territorial seas adjacent thereto, the general character of which is navigable, and which, either by themselves or by uniting with other waters, form a continuous waterway on which boats or vessels may navigate or travel between two or more states, or to and from foreign nations.

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

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

(11) "Waters of this state" means all waters within the territorial limits of this state, the marginal sea adjacent to this state and the

high seas when navigated as part of a journey or ride to or from the shore of this state.

Stat. Auth.: ORS 184.619, ORS 835.035 & ORS 835.080
 Stats. Implemented: ORS 835.035, ORS 835.080 & ORS 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

738-040-0016

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, ORS 835.035 & ORS 835.080
 Stats. Implemented: ORS 835.035, ORS 835.080 & ORS 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, ORS 835.035 & ORS 835.080
 Stats. Implemented: ORS 835.035, ORS 835.080 & ORS 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 Aeronautics Section.

(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 Commission through the Aeronautics Section, as provided for in OAR 738-040-0040. It shall be the policy of the Aeronautics Section 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.

[Publications: The publication(s) referenced to in this rule are available from the agency.]

Stat. Auth.: ORS 184.619, ORS 835.035 & ORS 835.080
 Stats. Implemented: ORS 835.035, ORS 835.080 & ORS 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

738-040-0025

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, ORS 835.035 & ORS 835.080
 Stats. Implemented: ORS 835.035, ORS 835.080 & ORS 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: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 184.619, ORS 835.035 & ORS 835.080

Stats. Implemented: ORS 835.035, ORS 835.080 & ORS 835.085

Hist.: 1AD 3-1981, f. 7-23-81, ef. 8-1-81; 1AD 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 Commission 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 Aeronautics Section 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 Aeronautics Manager will investigate and analyze the proposal for the appropriateness and effectiveness of the proposed regulations. In evaluating the request, the Aeronautics Section may conduct an inspection of the site to document its physical attributes, and to collect other pertinent data. The Manager 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 Manager shall present the application and recommendations to the Commission. The Manager 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 Commission 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. Out-right 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, ORS 835.035 & ORS 835.080

Stats. Implemented: ORS 835.035, ORS 835.080 & ORS 835.085

Hist.: AERO 1-1997, f. & cert. ef. 2-28-97

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: The Figure referenced in the above rule is not printed in the Administrative Rules Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.095 & ORS 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 Manager of the Aeronautics Section, Transportation Development Branch of the Department of Transportation (Aeronautics) on a case-by-case basis.

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.095 & ORS 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

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.

[Publications: The publication(s) referenced to in this rule are available from the agency.]

[ED. NOTE: The Figure referenced in the above rule is not printed in the Administrative Rules Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.095 & ORS 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, ORS 835 & ORS 836

Stats. Implemented: ORS 836.095 & ORS 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, ORS 835 & ORS 836

Stats. Implemented: ORS 836.095 & ORS 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 Manager of Aeronautics.

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.095 & ORS 836.505

Hist.: 1AD 4-1981(Temp), f. & ef. 8-21-81; 1AD 1-1982, f. & ef. 4-20-82

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 Manager of Aeronautics.

(3) In determining whether ultralight operations should be allowed at the airport, the Manager of Aeronautics 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, ORS 835 & ORS 836

Stats. Implemented: ORS 836.095 & ORS 836.505

Hist.: 1AD 4-1981(Temp), f. & ef. 8-21-81; 1AD 1-1982, f. & ef. 4-20-82

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, ORS 835 & ORS 836

Stats. Implemented: ORS 836.095 & ORS 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 Manager of Aeronautics.

(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 Aeronautics for commercial operations (Fixed Base Operators) shall develop procedures for dealing with emergency situations involving aircraft.

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.095 & ORS 836.505

Hist.: 1AD 1-1982, f. & ef. 4-20-82

DIVISION 60

AIRCRAFT DEALER'S LICENSE

738-060-0010

Definition of an Aircraft Dealer

(1) An "aircraft dealer" or "dealer" is any person, business or corporate entity within the State of Oregon who:

(a) Solicits to the general public aircraft for sale; or

(b) Holds a lease to conduct a business that includes aircraft sales or brokering of aircraft as an authorized activity.

(2) A person who sells an aircraft owned by that person for personal or company business is not considered as an aircraft dealer provided the aircraft is registered with the Aeronautics Section, Transportation Development Branch of the Department of Transportation (Aeronautics) and the Federal Aviation Administration in that person's or company's name.

Stat. Auth.: ORS 184, ORS 835 & ORS 837

Stats. Implemented: ORS 837.075

Hist.: 1AD 1-1983, f. & ef. 2-14-83

738-060-0020

General Requirements

All dealers in new or used aircraft shall apply to the Oregon Department of Transportation, Aeronautics Section 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, Aeronautics 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, ORS 835 & ORS 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 Aeronautics 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 Aeronautics 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 Aeronautics 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, ORS 835 & ORS 837

Stats. Implemented: ORS 837.075

Hist.: 1AD 1-1983, f. & ef. 2-14-83; AERO 3-1987, f. & ef. 12-15-87

738-060-0040

Licensing Procedures

Processing of application by Aeronautics:

(1) The aircraft dealer shall be considered licensed as soon as the completed application and fee has been accepted by Aeronautics.

(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 Aeronautics.

Stat. Auth.: ORS 184, ORS 835 & ORS 837

Stats. Implemented: ORS 837.075

Hist.: 1AD 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 Aeronautics 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 Aeronautics in accordance with ORS 837.040 to 837.075 and furnish the purchaser with the appropriate registration application;

(b) Notify the Manager of Aeronautics, 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, ORS 835 & ORS 837

Stats. Implemented: ORS 837.075

Hist.: 1AD 1-1983, f. & ef. 2-14-83; AERO 3-1987, f. & ef. 12-15-87

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, ORS 835 & ORS 837

Stats. Implemented: ORS 837.075

Hist.: 1AD 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, ORS 835 & ORS 837

Stats. Implemented: ORS 837.990

Hist.: 1AD 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 Manager of Aeronautics 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 Manager 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 Manager 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 Manager 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, ORS 835 & ORS 836
Stats. Implemented: ORS 836.530
Hist.: 1AD 2-1983, f. & ef. 2-14-83

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 Manager 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, ORS 835 & ORS 836
Stats. Implemented: ORS 836.530
Hist.: 1AD 2-1983, f. & ef. 2-14-83

738-070-0030

Definitions

Definitions as used in OAR Chapter 738, Division 70, shall be:

(1) "Manager": The Manager of the Aeronautics Section, Transportation Development Branch of the Department of Transportation (Aeronautics).

(2) "Airport": Any area of land or water, within or without this state, which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

(3) "Airport Available for Public Use": An airport that is open to the general public with or without a prior request to use the airport.

(4) "Lighting and Marking of Hazards to Air Navigation": 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.

(5) "Nonprecision Instrument Runway": A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in 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.

(6) "Precision Instrument Runway": A runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS), Microwave Landing System (MLS), or a 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.

(7) "Proponent": Any person who proposes to erect or construct any object or structure that exceeds certain minimum altitudes contained in this rule that may be a potential hazard to air navigation and who may be responsible for lighting and marking such object or structure.

(8) "Seaplane Base": Any area of water, within or without this state, which is used, or intended for use, for the landing and take-off of aircraft, 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.

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

(10) "Visual Runway": 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 the state by competent authority.

Stat. Auth.: ORS 184, ORS 835 & ORS 836
Stats. Implemented: ORS 836.530
Hist.: 1AD 2-1983, f. & ef. 2-14-83

738-070-0040

Standards

The standards established in this rule for determining obstructions to air navigation are used by the Manager 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, ORS 835 & ORS 836
Stats. Implemented: ORS 836.530
Hist.: 1AD 2-1983, f. & ef. 2-14-83

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, ORS 835 & ORS 836
Stats. Implemented: ORS 836.530
Hist.: 1AD 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 Manager. 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: The publication(s) referenced to in this rule are available from the agency.]

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.530

Hist.: 1AD 2-1983, f. & ef. 2-14-83

738-070-0070

Construction or Alteration Requiring Notice

(1) Each proponent of any of the following construction or alteration shall notify the Manager 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 Aeronautics, 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 Aeronautics, 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 Aeronautics that a supplemental notice is required, shall submit that supplemental notice on a prescribed form to be received by Aeronautics 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 Oregon Aeronautics Section, if:

(a) The construction or alteration is more than 200 feet above the surface level of its site; or

(b) Aeronautics advises the proponent that submission of the form is required.

[Publications: The publication(s) referenced to in this rule are available from the agency.]

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.530

Hist.: 1AD 2-1983, f. & ef. 2-14-83

738-070-0080

Form and Time of Notice

(1) Each person who is required to notify the Manager 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 Aeronautics Section. Copies of FAA Form 7460-1 may be obtained from the headquarters of the FAA and its regional offices or Aeronautics.

(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 Aeronautics 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, ORS 835 & ORS 836

Stats. Implemented: ORS 836.530

Hist.: 1AD 2-1983, f. & ef. 2-14-83

738-070-0090

Acknowledgment of Notice

(1) Within 20 working days, Aeronautics 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 738-70-100 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 completion of any further study, it is presumed the construction or alteration would be a hazard to air navigation.

[Publications: The publication(s) referenced to in this rule are available from the agency.]

Stat. Auth.: ORS 184, ORS 835 & ORS 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 Aeronautics.

(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, ORS 835 & ORS 836
Stats. Implemented: ORS 836.530
Hist.: IAD 2-1983, f. & ef. 2-14-83

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, ORS 835 & ORS 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 runways. 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 non-precision 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, ORS 835 & ORS 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, ORS 835 & ORS 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, ORS 835 & ORS 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 Aeronautics:

(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 Aeronautics determines it appropriate.

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.530

Hist.: IAD 2-1983, f. & ef. 2-14-83

738-070-0160

Aeronautical Studies

(1) The Manager, 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 Manager, 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 Manager, 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 Manager, 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: The publication(s) referenced to in this rule are available from the agency.]

Stat. Auth.: ORS 184, ORS 835 & ORS 836

Stats. Implemented: ORS 836.530

Hist.: IAD 2-1983, f. & ef. 2-14-83

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 Manager, 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 OAR 738-070-0180, for a review of the determination, revision, or extension. This section does not apply to any acknowledgment issued under OAR 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 Manager 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 Aeronautics of the aeronautical study, briefs, and related submissions by any interested party, and other relevant facts. Following such review, the Manager 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, ORS 835 & ORS 836
Stats. Implemented: ORS 836.530
Hist.: 1AD 2-1983, f. & ef. 2-14-83

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 Manager 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 Manager 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 Manager 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, ORS 835 & ORS 836
Stats. Implemented: ORS 836.530
Hist.: 1AD 2-1983, f. & ef. 2-14-83

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 Aeronautics 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, ORS 835 & ORS 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 Aeronautics;

(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, ORS 835 & ORS 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 Manager 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 Manager 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, ORS 835 & ORS 836
Stats. Implemented: ORS 836.530
Hist.: 1AD 2-1983, f. & ef. 2-14-83

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: The publication(s) referenced to in this rule are available from the agency.]

Stat. Auth.: ORS 184, ORS 835 & ORS 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 Manager 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 Manager 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 Manager 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 Manager 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, ORS 835 & ORS 836

Stats. Implemented: ORS 836.530

Hist.: 1AD 2-1983, f. & ef. 2-14-83

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, ORS 835 & ORS 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, ORS 835 & ORS 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 Aeronautics 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 Aeronautics Section.]

Stat. Auth.: ORS 183, ORS 184, ORS 835 & ORS 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 & ORS 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 Aeronautics Section, Transportation Development Branch of the Oregon Department of Transportation (Aeronautics):

(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 Manager of Aeronautics or the Manager'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 Aeronautics 30 days before the appropriate registration deadline. This will allow time for the Manager of Aeronautics 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 Aeronautics 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 Manager of Aeronautics or the Manager's designee's decision after payment of the appropriate registration fee has been submitted. Such review may include an informal discussion with the Manager of Aeronautics or the Manager's designee's 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, ORS 835.035 & ORS 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

738-080-0040

Placement of Registration Decal (Number Plate) on Aircraft

(1) The decal (number plate) signifying registration of an aircraft by the Aeronautics 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, Aeronautics 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, ORS 835 & ORS 837
Stats. Implemented: ORS 837.066
Hist.: IAD 1-1985, f. & ef. 12-20-85

DIVISION 90

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 Department of Transportation 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, ORS 184.619 & ORS 836.610
Stats. Implemented: ORS 836.610
Hist.: AERO 1-1999, f. & cert. ef. 3-25-99

738-090-0020

Definitions

- (1) "Aeronautics" means the Aeronautics Division of the Oregon Department of Transportation.
- (2) "Airport" means an area of land or water that is used or intended to be used for the landing and takeoff of aircraft, and includes its buildings and facilities, if any, as defined in FAA Regulation Part 1 Definitions 1.1, General Definitions.
- (3) "Airport available for public use" means any airport that is open to the general public with or without a prior request to use the airport, as defined in Federal Aviation Regulation Part 77, 77.2 and OAR 738-070-0030(3).
- (4) "Airport sponsor" means a public agency with control of a publicly owned airport or a private owner of a privately owned airport.
- (5) "Commission" means the Oregon Transportation Commission.
- (6) "Department" means the Oregon Department of Transportation.
- (7) "Economic importance" means airports that support the community and local economy in a manner that extends well beyond the immediate economic benefit of the airport owner and its employees.
- (8) "Essential safety or emergency services" are search and rescue; emergency landing; medical evaluation; fire patrol or suppression; and law enforcement operations or training.
- (9) "FAA" means the Federal Aviation Administration.
- (10) "Important links" means those airports that provide a meaningful or significant connection in Oregon's air traffic network.
- (11) "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.
- (12) "Privately owned airport" means an airport owned by a person which includes a natural person, a domestic or foreign cor-

poration, a partnership, an association, a joint stock company, a trust, or any unincorporated organization as defined in ORS 92.305 or other privately held entity.

(13) "Publicly owned airport" means an airport owned, leased or operated by the Federal government, a state, county, city, town, village, borough, authority, district or other political subdivision or public corporation.

Stat. Auth.: ORS 184.616, ORS 184.619 & ORS 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) Exhibit 1 lists 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.
- (b) Exhibit 2 lists 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.
- (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 Commission 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.

Stat. Auth.: ORS 184.616, ORS 184.619 & ORS 836.610
Stats. Implemented: ORS 836.610
Hist.: AERO 1-1999, f. & cert. ef. 3-25-99

738-090-0040

Procedure for Adding an Airport to Listings

- (1) The procedure for adding a publicly owned airport to Exhibit 1 is as follows:
 - (a) The airport sponsor shall submit a written request to Aeronautics, 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) Aeronautics 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 Aeronautics shall be forwarded to the airport sponsor;
 - (d) Aeronautics shall evaluate the airport sponsor's written request and make a recommendation to the Commission whether the proposed addition should be approved or denied;
 - (e) Upon approval of the Commission, the airport shall be added to Exhibit 1 upon filing of formal amendment to the rules; and
 - (f) If the Commission 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 Exhibit 2 is as follows:
 - (a) The airport sponsor shall apply to Aeronautics for site approval as a public use airport on a site approval application form, Form 802-7611, provided by Aeronautics;
 - (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) Aeronautics 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 Aeronautics shall be forwarded to the airport sponsor;

(d) Aeronautics 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 adopted pursuant to ORS 836.616 and 836.619. 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 Aeronautics within 21 days of a written request from Aeronautics. Failure of the local government to provide this list within the above time lines eliminates the responsibility of Aeronautics to provide notice under this subsection. Upon receipt of the address list, Aeronautics 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. Aeronautics 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) Aeronautics shall evaluate the proposal based upon criteria in ORS 836.610(1)(b) and comments received from the airport sponsor, local governments and testimony taken at a public hearing;

(f) Aeronautics shall make a recommendation to the Commission whether the proposed action should be approved or denied;

(g) Upon approval of the Commission, the airport shall be added to Exhibit 2 upon filing of formal amendment to the rules; and

(h) If the Commission 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.

Stat. Auth.: ORS 184.616, ORS 184.619 & ORS 836.610

Stats. Implemented: ORS 836.610

Hist.: AERO 1-1999, f. & cert. ef. 3-25-99

738-090-0050

Information to be Considered in Determining Airport Listings

The Commission 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 Commission.

(1) To determine whether an airport provides important links in air traffic in this state, the Commission 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 Commission 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 Commission 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, ORS 184.619 & ORS 836.610

Stats. Implemented: ORS 836.610

Hist.: AERO 1-1999, f. & cert. ef. 3-25-99

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, ORS 184.619 & ORS 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 Aeronautics Section, Transportation Development Branch of the Department of Transportation (Aeronautics) 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 Aeronautics to be a "visual airport"; or

(B) Within 10,000 feet of the sides or ends of the runway of an airport determined by Aeronautics 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 pro-

vided 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.

(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 Aeronautics Section, 3040 25th Street S.E., Salem, OR 97310.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 836.325

Hist.: AERO 4-1987, f. & ef. 12-15-87

738-100-0015

Definitions

When used in this administrative rule, the following terms shall have these definitions:

(1) "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 Dimensions and the slope of the approach surface for each of the classifications of airports is as follows:

(a) "Visual airport" — 250 feet wide expanding to a width of 1,250 feet at a length of 5,000 feet. Has a slope of 20:1.

(b) "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:

(A) Non-precision approach — 34:1;

(B) Precision approach — 50:1.

(2) Classification of airports as used in this rule are:

(a) "Visual airport" an airport intended solely for the operation of aircraft using a visual approach procedure;

(b) "Instrument airport" — An airport which has an approach using electronic aids or has such an approach planned for the future. The instrument approach may be non-precision or precision.

(3) Instrument approaches can be:

(a) "Non-precision" which utilizes air navigation facilities with only horizontal guidance or area-type navigation equipment for which an approach has been approved or planned; or

(b) "Precision" which utilizes a facility providing 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;

(c) An airport that may have both a non-precision and a precision instrument approach shall use the same approach surface dimensions.

(4) "Public-Use Airport" — An airport that is open to use by the flying public and may be:

(a) Owned by a public entity such as a state, county, city, town, village, borough, authority, district or other political subdivision or public corporation; or

(b) Owned by a person which includes a natural person, a domestic or foreign corporation, a partnership, an association, a joint stock company, a trust or any unincorporated organization (ORS 92.305) or other privately-held entity.

(5) "Notification Area" — That area surrounding a public-use airport that is:

(a) Within 5,000 feet of the sides or ends of a runway of a visual airport; or

(b) Within 10,000 feet of the sides or ends of a runway of an instrument airport.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 836.325

Hist.: AERO 4-1987, f. & ef. 12-15-87

738-100-0020

Interagency Coordination

(1) Aeronautics 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) Aeronautics 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) Aeronautics 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 Aeronautics, 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 Aeronautics Section. Form 7460-1 can be obtained from the Federal Aviation Administration or the Oregon Aeronautics Section. 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

DIVISION 110

RENUMBERED STATUTES

738-110-0010

Purpose of Rule and Statutory Authority

Following the 1989 Legislative Session the Oregon Revised Statutes (ORS) pertaining to the Aeronautics Division of the Oregon Department of Transportation were renumbered from Chapters 491, 492, 493 and 494 to Chapters 835, 836, 837, and 838 respectively. Hereafter, effective with the adoption of this rule, statutory references in Aeronautics Administrative Rules, publications and other documents that refer to ORS Chapters 491, 492, 493 and 494 will be referenced to and have the same meaning as the renumbered statutes shown below.

Stat. Auth.: ORS 183, ORS 491, ORS 492, ORS 493, ORS 494, ORS 835, ORS 836, ORS 837 & ORS 838
 Stats. Implemented: 1989 Legislative Council
 Hist.: AERO 1-1990, f. & cert. ef. 1-23-90

738-110-0020

Aeronautics Administration

- 491.002 Definitions — 835.005
- 491.005 Aeronautics Division Established — 835.010
- 491.050 Development of Aeronautics — 835.015
- 491.060 Contracts by Administrator — 835.020
- 491.070 Use and Administration of Federal and Other Moneys — 835.025
- 491.090 Employment of Personnel — 835.030
- 491.100 General Commission Powers; United States Facilities Exempt from Commission Orders — 835.035
- 491.110 Limitations on Rules and Regulations — 835.040
- 491.120 Aeronautics Administrator; Qualifications; Compensation and Expenses — 835.045
- 491.130 Bond of Administrator; Action on Bond — 835.050
- 491.140 Administrator's General Duties and Powers — 835.055
- 491.150 State Aeronautics Account; Appropriation; Use — 835.060
- 491.160 Audit and Payment of Expenses — 835.065
- 491.170 Accounts — 835.070
- 491.190 Program for Air Search and Rescue — 835.075
- Stat. Auth.: ORS 183, ORS 491, ORS 492, ORS 493, ORS 494, ORS 835, ORS 836, ORS 837 & ORS 838
- Stats. Implemented: 1989 Legislative Council
- Hist.: AERO 1-1990, f. & cert. ef. 1-23-90

State Assistance

738-110-0030

Airports and Landing Fields

- 492.010 Definitions — 836.005
- 492.020 Availability of Services of Division — 836.010
- 492.030 Financial Assistance by Administrator — 836.015
- 492.040 Division as Municipal Agent — 836.020
- 492.050 Establishment of Airports and Air Navigation Facilities by Division — 836.025
- 492.060 Disposal of Property — 836.030
- 492.070 Effect of Statue on Airport Zoning — 836.035
- 492.080 Joint Exercise of Power — 836.040
- 492.090 Condemnation by Division — 836.045
- 492.100 Condemnation of Railroad or Public Utility Property — 836.050
- 492.110 Commercial Concessions at State Airports — 836.055
- 492.120 Operation of State Airports by Private Persons — 836.060
- 492.130 Liens of State for Repairs, Improvements or Services to Personal Property — 836.065
- 492.140 Use of Federal and Other Moneys — 836.070
- 492.150 State Airway System — 836.075
- 492.160 Exemptions from ORS 492.170 to 492.240 — 836.080
- 492.170 Approval of Airport Sites; Fee — 836.085
- 492.180 Applications for Site Approval — 836.090
- 492.190 Approval Criteria and Conditions — 836.095
- 492.200 Revocation of Approval — 836.100
- 492.210 Licensing of Airports — 836.105
- 492.220 Revocation of License; Refusal of Renewal — 836.110
- 492.230 Public Hearing Regarding Site or License, Transcripts — 836.115
- 492.240 Unlicensed Airport Operation Prohibited — 836.120

Municipal Airports

- 492.310 Authority to Establish Airports — 836.200
- 492.320 Acquisition of Lands Declared to be for Public Purpose — 836.205
- 492.330 Delegation of Authority to Develop and Maintain Airports; Regulations for Charges, Fees and Tolls — 836.210
- 492.340 Municipal Acquisition of Property for Airports — 836.215
- 492.350 Source of Airport Funds — 836.220
- 492.360 Use of Funds from Operation — 836.230
- 492.370 Authorization to Budget and Levy Taxes — 836.240
- 492.380 Authority as Supplemental — 836.245
- 492.390 Acquisition by Municipality of Real Property Contiguous to Airport; Subsequent Use or Disposition; Financing Acquisition or Use — 836.250

Airport Zoning Act

- 492.510 Citation of Short Title — 836.400
- 492.520 Definitions — 836.300
- 492.530 Declaration of Policy — 836.305
- 492.540 Authority to Adopt Airport Zoning Regulations — 836.310
- 492.550 Joint Airport Zoning Board; Authority to Adopt Airport Zoning Regulations — 836.315
- 492.560 Incorporation of Airport Zoning Regulations in Comprehensive Zoning Regulations — 836.320
- 492.570 Manner of Adopting or Amending Zoning Regulations — 836.325
- 492.580 Airport Zoning Commission — 836.330
- 492.590 Character of Regulations Which May be Adopted — 836.335
- 492.600 Railroad and Public Utility as Airport Hazards — 836.340
- 492.610 Permit Required for New and Nonconforming Structures — 836.345
- 492.620 Variance from Zoning Regulations — 836.350
- 492.630 Attaching Conditions to Permits or Variances — 836.355
- 492.640 Agency to Administer and Enforce Regulations — 836.360
- 492.650 Board of Adjustment; Powers; Members; Appointment; Removal — 836.365
- 492.660 Vote Required for Board Decisions, Rules and Procedures — 836.4370
- 492.670 Appeal to Board of Adjustment from Administrative Agency — 836.375
- 492.680 Appeal to Circuit Court from Board of Adjustment — 836.380
- 492.690 Effect of Unconstitutional Regulations — 836.385
- 492.700 Injunctive Relief — 836.390
- 492.710 Municipal Acquisition of Air Rights, Navigation Easements or Other Interests — 836.395

Miscellaneous

- 492.760 Marks and Lights on Structures or Obstructions; Acquisition of Right or Easement — 836.500
- 492.770 Designation of Landing Places on Lands; Rules Governing User — 836.505
- 492.780 Use of Certain Ocean Beaches as Landing Fields — 836.510
- 492.790 Petition to Set Aside Shore as Landing Field — 836.515
- 492.800 Action on Petition; Order Setting Aside Area for Landing Field; User Permits Revocation of Order or Permit — 836.520
- 492.810 Enforcement of ORS 492.780 and 492.800 — 836.525
- 492.820 Rules and Standards; Orders; Appeals — 836.530
- Stat. Auth.: ORS 183, ORS 491, ORS 492, ORS 493, ORS 494, ORS 835, ORS 836, ORS 837 & ORS 838
- Stats. Implemented: 1989 Legislative Council
- Hist.: AERO 1-1990, f. & cert. ef. 1-23-90

738-110-0040

Aircraft Operation

- 493.010 Exemptions of Certain Aircraft from Requirements of Registration — 837.005
- 493.020 Federal Pilot Certificate Required — 837.010

Chapter 738 Oregon Department of Aviation

493.030	Registration of Aircraft — 837.015
493.040	Registration of Pilots; Renewal — 837.020
493.050	Requirements for Pilot Registration; Fee; Certificates Issued — 837.025
493.060	Exhibition of Certificate on Demand — 837.030
493.070	Disposition of Moneys Received for Registration of Pilot Licenses — 837.035
493.080	Application for Registration of Aircraft — 837.040
493.090	Fee; Time of Registration; Penalty for Late Registration — 837.045
493.095	Transfer of Aircraft Registration Money to State Aeronautic Account — 837.050
493.100	Action on Application; Number Plate and Certificate; Duplicate Certificates; Applications as Public Records — 837.055
493.110	Expiration and Renewal of Registrations — 837.060
493.120	Effect of Paying Aircraft or Pilot Registration Fee with Worthless Check — 837.065
493.130	Notice of Sale of Aircraft; Transfer of Registration — 837.070
493.140	Aircraft Dealer's License — 837.075
493.160	Prohibited Operation of Aircraft — 837.080
493.170	Dropping Articles without Permit Prohibited; Exceptions — 837.085
493.180	Landing on Public Highways and Grounds Prohibited — 837.090
493.190	Flying Over Military and Naval Establishments; Photographs from Airplanes — 837.095
493.225	Infraction Procedure — 837.100
493.230	Notice of Insurance Coverage for Rented or Leased Aircraft — 837.105
493.991	Penalties — 837.990

Stat. Auth.: ORS 183, ORS 491, ORS 492, ORS 493, ORS 494, ORS 835, ORS 836, ORS 837 & ORS 838
Stats. Implemented: 1989 Legislative Council
Hist.: AERO 1-1990, f. & cert. ef. 1-23-90

738-110-0050

Airport Districts

494.010	Definitions — 838.005
494.020	Establishing District; Election; Tax Base; Prerequisite for Inclusion of County; Prerequisite for Inclusion of Airport Owned by City — 838.010
494.030	Establishing Tax Base — 838.015
494.040	Governing Body of District; First Terms and Meeting — 838.020
494.043	Election Laws Apply — 838.025
494.046	Officers of Board; Vacancies; Procedures — 838.030
494.050	District as Municipal Corporation — 838.035
494.060	Powers of District — 838.040
494.070	Regulations — 838.045
494.080	Employees — 838.050
494.090	Contracting to Carry Out Functions — 838.055
494.110	Ad Valorem Taxation; Special Tax; Collection — 838.060
494.120	General Obligation Bonds; Amount; Maturity; Revenue Bonds; Sale — 838.065
494.130	General Obligation Bond Election — 838.070
494.140	Refunding Bonds — 838.075
Stat. Auth.: ORS 183, ORS 491, ORS 492, ORS 493, ORS 494, ORS 835, ORS 836, ORS 837 & ORS 838	
Stats. Implemented: 1989 Legislative Council	
Hist.: AERO 1-1990, f. & cert. ef. 1-23-90	

