



# Oregon

Kate Brown, Governor

## Oregon Department of Aviation

3040 25<sup>th</sup> Street SE  
Salem, OR 97302-1125  
Office: 503-378-4880  
Fax: 503-373-1688



March 30, 2022

To: Oregon Aviation Board  
From: Anthony Beach, State Airports Manager  
Subj: Lease Term Rulemaking

### **Background**

In the 2021 legislative session, the legislature passed HB2434, which allows the Oregon Department of Aviation (ODAV) to increase the maximum lease period on commercial aeronautical leases to a maximum of 50 years.

In September 2021, ODAV began the rulemaking process to amend OAR 738-015-0020 sections (3) and (4) to increase the maximum lease term for commercial aeronautical leases. The base term is changed from 25 years to 45 years, and the total lease term not to exceed is changed from 30 years to 50 years with one 5-year renewal.

In September 2021, ODAV initiated a temporary rulemaking to incorporate the lease term changes.

In February 2022, the Oregon Aviation Board authorized ODAV to initiate permanent rulemaking to extend the lease terms to 50 years.

ODAV filed notice of the proposed rules on February 28<sup>th</sup> with ODOT and opened a public comment period from March 1, 2022 through the close of the public hearing on March 21<sup>st</sup>, 2022. The filing with the final rule as amended is attached (appendix A.)

ODAV received no comments during the public comment period.

### **Final rules and recommendation:**

Staff recommends adoption of the final rules, with amendments to 738-015-0020 sections (3) and (4), as presented.



# Request to Adopt Final Rule OAR 738-015-0020, (3) & (4)

## Permanent Rule Adoption

*ODAV requests the Aviation Board to adopt final rule amending  
OAR 738-015-0020, (3) & (4)*

## OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN  
SECRETARY OF STATECHERYL MYERS  
DEPUTY SECRETARY OF STATE

## ARCHIVES DIVISION

STEPHANIE CLARK  
DIRECTOR800 SUMMER STREET NE  
SALEM, OR 97310  
503-373-0701**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACTCHAPTER 738  
OREGON DEPARTMENT OF AVIATION**FILED**02/28/2022 4:12 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Amending the maximum commercial lease term for aeronautical leases

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 03/21/2022 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

*A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.*

CONTACT: Anthony Beach

503-378-2523

anthony.beach@aviation.state.or.us

Oregon Department of Aviation

3040 25th Street SE

Salem, OR 97302

Filed By:

Lauri Kunze

Rules Coordinator

## NEED FOR THE RULE(S)

The rule changes are needed to establish consistent and fair commercial aeronautical lease provisions at Oregon's state-owned airports. 738-015-0020 sections (3) and (4) establish the base, renewal, and total lease term durations.

This rule amendment changes the base term from twenty five (25) years to forty five (45) years, and the total lease term from thirty (30) years to fifty (50) years with the same five (5) year renewal period.

## DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

House Bill 2434

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

This rule will have no effect on racial equity in Oregon. The Oregon Department of Aviation (ODAV) remains committed to affirmative action and equal opportunity, and to an active affirmative action program. ODAV aims to provide an integrated aviation system that benefits all Oregonians. The changes in lease terms from this rule making will be available to all Oregonians regardless of race or other protected classes.

## FISCAL AND ECONOMIC IMPACT:

This rulemaking will have a positive fiscal and economic impact for ODAV, and for Oregonians, as it helps stimulate economic development and enhances how aviation serves local communities throughout the state.

## COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost

*of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

The Department of Aviation, Commercial Aeronautical Service Providers at State-owned airports, aeronautical customers, airport users, aviation business employees.

- (a) One small business has benefitted from the temporary rule change, and one more business is currently in lease negotiations which is contingent on the 50 year lease terms.
- (b) The same reporting, recordkeeping, and administrative activities currently needed to comply with the existing rules will meet the needs to comply with the amended rules.
- (c) No change from the existing rules.

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

Only small businesses with interests in leasing will be impacted by these rules; others were not involved. Through years of lease negotiations, demand for 50 year lease terms from small aviation businesses at State-owned airports is very high.

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

This rule change implements legislation and allows ODAV to enter lease terms that are consistent with federal standards and grant assurances for commercial aeronautical leases at public-use airports.

AMEND: 738-015-0020

RULE SUMMARY: This rulemaking is intended to make permanent the temporary rule language that allows for maximum 50 year commercial aeronautical leases.

CHANGES TO RULE:

738-015-0020

Commercial Aeronautical Lease Provisions ¶¶

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

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

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

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

- (r) Restrictions on hazardous substances;¶
  - (s) Default and penalty provisions;¶
  - (t) Remedies on default;¶
  - (u) Bankruptcy;¶
  - (v) Termination for airport development;¶
  - (w) Transfer of airport ownership;¶
  - (x) Sale of improvements;¶
  - (y) Lease renewal options;¶
  - (z) Subleasing provisions;¶
  - (aa) Procedures for vacating the lease property; and¶
  - (bb) Termination of lease provisions.¶
  - (3) The base term for commercial aeronautical leases shall be no longer than ~~twenty~~forty-five (245) years.¶
  - (4) If Lessee requests a renewal, the Department may agree to renew the lease, consistent with this rule, for one
    - (1) five-year period, provided the total lease term does not exceed ~~thirty~~fifty (350) years.¶
    - (5) At the expiration of the base term and any renewals, Lessee may make application for a new lease. The new lease application will be reviewed under the standards of OAR 738-015-0015, ODA Review of Application for Commercial Aeronautical Lease. The Department may negotiate a new lease if it determines that:¶
      - (a) The existing lease is not in default;¶
      - (b) The lease property is not required for other State-owned airport uses;¶
      - (c) Lessee has met its obligations under the terms of the preceding lease;¶
      - (d) Any improvements to the lease property are structurally sound and capable of safe and legal occupancy for the new lease term; and¶
      - (e) The Department otherwise finds that a new lease is appropriate.¶
    - (6) The duration of the new lease shall be at the Department's option.¶
    - (7) Each lease renewal or each new lease that follows the base-term lease, shall incorporate all current terms and conditions for leases and any special terms the Department deems necessary based on the particular circumstances of the Lessee and lease property.¶
    - (8) If the Department determines that a lease renewal or proposed new lease will not be offered to Lessee, the Department may require Lessee to remove any structures on the lease property, at Lessee's expense, at the expiration of the current lease between Lessee and ODA.
- Statutory/Other Authority: ORS 835.035, 835.040, 835.112
- Statutes/Other Implemented: ORS ~~835.035, 835.040, 835.112, 836.055~~ 112, 836.055, 935.035, 935.040