



Oregon

Kate Brown, Governor

Oregon Department of Aviation

3040 25th Street SE
Salem, OR 97302-1125
Office: 503-378-4880
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August 10, 2022

From: ODAV Planning
To: State Aviation Board

Subj: Aeronautical Studies Rulemaking

Background

In December 2021, ODAV began the rulemaking process to incorporate the changes of SB 38 (appendix A).

The focus of the rulemaking centered on establishing a fee to cover the costs of tall structure evaluations according to the changes required by SB38. A draft of the proposed rule changes is included as appendix B.

In March 2022, ODAV solicited participation in the rulemaking advisory committee (RAC). Eight invitations were issued to various interested parties including city representatives and other stakeholders. Three invitations were accepted.

ODAV held one RAC meeting. The agenda is attached as appendix C.

ODAV filed notice of the proposed rules on May 10, 2022 with ODOT and opened a public comment period from May 10 through June 21, 2022. ODAV received one comment during the public comment period. The filing and comment are attached as appendix D.

ODAV Policy 031 for Aeronautical Study Fees and a fee schedule are attached as appendix E. The fee requirement will be effective 30 days after the Aviation Board approval of rule amendment to OAR 738-070-160.

Final rules and recommendation:

Staff recommends adoption of the final rules, with amendments (appendix F) to 738-070, as presented.

Enrolled
Senate Bill 38

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Kate Brown for Oregon Department of Aviation)

CHAPTER

AN ACT

Relating to tall structure evaluation fee; amending ORS 836.530.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 836.530 is amended to read:

836.530. (1) In addition to any other rulemaking authority, the Director of the Oregon Department of Aviation may adopt rules:

(a) To define physical hazards to air navigation and determine whether specific types or classes of objects or structures constitute hazards. Rules defining physical hazards and determining whether specific types or classes of objects or structures constitute hazards may be adopted only after a fact-finding process and must be supported by substantial evidence.

(b) Establishing standards for lighting or marking objects and structures that constitute hazards to air navigation.

(c) Establishing standards for mitigating physical hazards to air navigation by altering the height or location of objects and structures.

(d) Establishing standards for mitigating hazards to air navigation by altering approach surface standards or installing navigational aids.

(e) Establishing a fee to cover the costs of tall structure evaluations.

(2) In accordance with the rules adopted under this section, the director shall do the following:

(a) Determine whether specific objects or structures constitute a hazard to air navigation.

(b) Determine responsibility for installation and maintenance of lighting or marking and for alteration of the height or location of specific objects or structures that constitute hazards to air navigation.

(c) Issue orders to require that specific objects or structures determined to be hazards to air navigation be marked or lighted in accordance with rules adopted under this section.

(d) Make recommendations to the Federal Aviation Administration to require that airports alter approach surface standards or install navigational aids for the purpose of mitigating hazards to air navigation.

(3) Rules and standards adopted under this section are limited to and may not be 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 this section may contest the order as provided under ORS chapter 183.

Passed by Senate June 16, 2021

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House June 22, 2021

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2021

Approved:

.....M,....., 2021

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2021

.....
Shemia Fagan, Secretary of State

Draft Rules of OAR 738-070-0160 (3) (a-c) per approval of Senate Bill 38

Prepared by Seth Thompson, Aviation Planner

***Proposed changes underlined and in bold text**

Oregon Department of Aviation

Chapter 738

Division 070

Section 160 - Aeronautical Studies

738-070-0160/Aeronautical Studies

(1) The Director, or designee, conducts the aeronautical study of the effect of the proposal upon the operation of air navigation facilities and the safe and efficient utilization of the navigable airspace. This study may include the physical and electromagnetic radiation effect the proposal may have on the operation of an air navigation facility.

(2) To the extent considered necessary, the Director, or designee, may take any or all of the following actions:

(a) Solicit comments from all interested persons;

(b) Explore objections to the proposal and attempt to develop recommendations for adjustment of aviation requirements that would accommodate the proposed construction or alteration;

(c) Examine possible revisions of the proposal that would eliminate the exceeding of the standards in OAR 738-070-0100; and

(d) Convene a meeting with all interested persons for the purpose of gathering all facts relevant to the effect of the proposed construction or alteration on the safe and efficient utilization of the navigable airspace.

(3) The Director or designee may require a fee be paid to the Department to perform an aeronautical study or studies. The fee shall be paid by the sponsor or representative of the construction or alteration if the construction or alteration requires notice to the ODA per OAR 738-080-0060. As needed, the Director may adjust, reduce or waive the amount of the fee as the Director sees fit to support the operational costs of performing the aeronautical study or studies. The non-refundable fee for the aeronautical study or studies shall be administered as follows:

(a) The sponsor or representative of the construction or alteration shall notify the Director or designee of the construction or alteration in conformance with OAR 738-080-0080 to initiate the aeronautical study or studies.

(b) The fee for the aeronautical study or studies must be paid prior to delivery of the aeronautical determination or determinations by the Director or designee to the sponsor or representative.

(c) Fees are calculated for each separate instance for each sponsor or representative and are based on actual cost of services provided. Each individual aeronautical study shall have a minimum associated fee of \$100.

(34) The Director, or designee, issues a determination as to whether the proposed construction or alteration would be a hazard to air navigation and sends copies to all known interested persons. This determination is final unless a petition for review is granted under OAR 738-070-0170.

(45) If the sponsor revises his proposal to eliminate exceeding of obstruction standards, or withdraws it, the Director, or designee, terminates the study and notifies all known interested persons.

(56) The FAA Handbook, Procedures for Handling Airspace Matters, may be used in arriving at the determination.

Statutory Authority: ORS 184, 835, 836

Statutes Implemented: ORS 836.530

DRAFT



Kate Brown, Governor

Oregon



Rulemaking Advisory Committee (RAC) for Aeronautical Study Fees

Date: April 6, 2022

Time: 1:00 – 3:00PM

Location: 3040 25th St SE Salem, OR 97302

Livestream: Zoom link for meeting will be sent to participants

Please note: The RAC meeting will be recorded and made available for viewing on the Oregon Department of Aviation's website.

INFORMATION AND REVIEW ITEMS

#	Type of Item	Item	Lead(s)
1	Action	Call to Order / Introductions	Staff
2	Info	Staff presentation	Staff
3	Info	Questions or comments on rulemaking process	Staff/RAC
4	Info	Review proposed rules	Staff/RAC
5	Info	Comment, discussion, recommended changes for proposed rules	Staff/RAC
6	Info	Review proposed policy document	Staff/RAC
7	Info	Comment, discussion, recommended changes for proposed policy document	Staff/RAC
8	Action	Adjourn	Staff

Persons with disabilities who require special accommodations please call (503)378-4880 at least 48 hours before the meeting.

RAC members in attendance: Doug Dreith, NessCampbell; Lisa Klingensmith, Crown Castle; and Bryce Bishop, City of Salem.

OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 738
OREGON DEPARTMENT OF AVIATION

FILED
05/10/2022 1:18 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Aeronautical Studies

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/21/2022 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: Heather Peck
503-378-3168
heather.peck@odav.oreon.gov

Oregon Department of Aviation
3040 25th Street SE
Salem, OR 97302

Filed By:
Lauri Kunze
Rules Coordinator

NEED FOR THE RULE(S)

The Legislature changed the statutes that control Oregon Department of Aviation Aeronautical Studies program. Rules are being changed in response to new legislation to charge a fee for performing aeronautical studies. The rules provide clarification on the process of submitting an aeronautical study and receiving a determination. The proposed rules will clarify the minimum fee to be charged as well as the new process for submitting a study and receiving a determination with regard to ODAV collecting a fee.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Senate Bill 38

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 the Aeronautical Studies process from this rulemaking will be applicable to all eligible stakeholders regardless of race or other protected classes.

FISCAL AND ECONOMIC IMPACT:

The rule changes include a fee requirement to be paid for each aeronautical study performed by ODAV, requirements for submitting an aeronautical study and receiving a determination, and a minimum associated fee for each study performed.

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).

(1) OAR 738-080-0160 applies to the sponsor or representative of a construction or alteration that requires notice to ODAV per OAR 738-080-0060.

(2)(a) This rule should not have any negative affect small business. We have no information showing any effect on small business.

(2)(b) Agency will track the number of activities associated with rule, and report on a periodic basis. Costs include FTE associated with analysis, software and hardware usage, and payment processing.

(2)(c) Costs include FTE associated with analysis, software and hardware associated with analysis, and software and administration for payment processing. Agency will track costs and report on a periodic basis.

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

ODAV established a Rule Advisory Committee, which included private industry representatives to evaluate the rule changes.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

738-070-0150, 738-070-0160

AMEND: 738-070-0150

RULE SUMMARY: OAR-738-070-0150 is amended to add "or representative" under section (1) to clarify who may request an aeronautical study from ODAV.

CHANGES TO RULE:

738-070-0150

Initiation of Studies ¶

An aeronautical study is conducted by the Department:¶

(1) Upon the request of the sponsor or representative of any construction or alteration, unless that construction or alteration would be located within an antenna farm area as discussed in OAR 738-070-0190 and 738-070-0200; or¶

(2) Whenever the Department determines it appropriate.

Statutory/Other Authority: ORS ~~184~~, 835, 836

Statutes/Other Implemented: ORS 836.530

AMEND: 738-070-0160

RULE SUMMARY: OAR 738-070-0160 has been amended to add section (3) to notify that ODAV may charge a fee to perform aeronautical studies. Subsections (a) through (c) describe when a fee may be charged, when a fee may be paid, and the minimum fee amount.

CHANGES TO RULE:

738-070-0160

Aeronautical Studies ¶

(1) ~~The Director, or designee, department may~~ conducts the an aeronautical study of the effect of the proposal upon the operation of air navigation facilities and the safe and efficient utilization of the navigable airspace. This study may include the physical and electromagnetic radiation effect the proposal may have on the operation of an air navigation facility.¶

(2) To the extent considered necessary, the ~~Director, or designee, department~~ may take any or all of the following actions:¶

(a) Solicit comments from all interested persons;¶

(b) Explore objections to the proposal and attempt to develop recommendations for adjustment of aviation requirements that would accommodate the proposed construction or alteration;¶

(c) Examine possible revisions of the proposal that would eliminate the exceeding of the standards in OAR 738-070-0100; and¶

(d) Convene a meeting with all interested persons for the purpose of gathering all facts relevant to the effect of the proposed construction or alteration on the safe and efficient utilization of the navigable airspace.¶

(3) The Director, or designee, department may require a fee be paid to the Department to perform an aeronautical study or studies. The fee shall be paid by the sponsor or the representative of the construction or alteration if the construction or alteration requires notice to the ODAV per OAR 738-080-0060. As needed, the Department may adjust, reduce or waive the amount of the fee as the Department sees fit to support the operation costs of performing the aeronautical study or studies. The non-refundable fee for the aeronautical study or studies shall be administered as follows:¶

(a) The sponsor or representative of the construction or alteration shall notify the Department of the construction or alteration in conformance with OAR 738-080-0080 to initiate the aeronautical study or studies.¶

(b) The fee for the aeronautical study or studies may be required to be paid prior to delivery of the aeronautical determination or determinations by the Department to the sponsor or representative.¶

(c) Fees are calculated for each separate instance for each sponsor or representative and are based on actual cost of services provided. Each individual aeronautical study shall have a minimum associated fee of \$100.¶

(4) The Department 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.¶

(45) If the sponsor revises his proposal to eliminate exceeding of obstruction standards, or withdraws it, the ~~Director, or designee, department~~ terminates the study and notifies all known interested persons.¶

(56) The FAA Handbook, Procedures for Handling Airspace Matters, may be used in arriving at the determination.¶

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS ~~184~~, 835, 836

Statutes/Other Implemented: ORS 836.530



Crown Castle
2000 Corporate Drive
Canonsburg, PA 15317

June 21, 2022

via e-mail: heather.peck@odav.oreon.gov

Oregon Department of Aviation
3040 25th Street SE
Salem, OR 97302
Attn: Heather Peck

RE: Aeronautical Studies – Chapter 738; OAR 738-070
Comments of Crown Castle USA Inc. (“Crown Castle”)

Dear Ms. Peck,

I am writing in reference to the Notice of Proposed Rulemaking (“NPRM”) by the Oregon Department of Aviation (“Department”) regarding Aeronautical Studies. On behalf of Crown Castle USA Inc., thank you for the opportunity to submit these comments to the agency as it considers adoption of the rules set forth in the NPRM.

We appreciate the Department’s efforts to facilitate aeronautical studies in the State of Oregon and welcome the partnership the Department has offered to us. My colleague, Lisa Klingensmith, is a private industry representative on the rulemaking advisory committee. While the initiative to create a framework for aeronautical studies in Oregon is a worthwhile endeavor, we believe that the NPRM as written will fall short of the Department’s need to create regulatory certainty on this issue. In Oregon and across the nation, broadband availability, including the use of wireless infrastructure, has never been more important. We continue to have reservations that the NPRM will delay the important work of ensuring quality connectivity.

Specifically, the process of review and fee payment set forth by the Department in the NPRM is ambiguous, uncertain and likely to lead to unnecessary delays in these important projects. Again, we appreciate that the Department proposes to limit the fee to “actual costs.” However, the uncertainty of knowing what those fees will be, which the Department can “adjust” as it “sees fit,” creates an untenably large exception to the actual cost provision. In addition, an applicant’s inability to pay those fees until after the review is finished injects delay and uncertainty into the process.

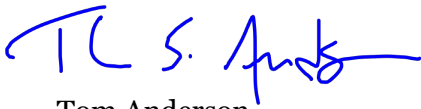
We encourage the Department to revise the proposed language of the NPRM to create an environment of regulatory certainty with clear rules of the road. This type of policy is good for all stakeholders,

Oregon Department of Aviation – Aeronautical Studies NPRM
Comments of Crown Castle USA Inc.
June 21, 2022
Page 2 of 2

including private industry, the Department and ultimately, the citizens of Oregon who rely on the timely and efficient approval of these projects for their connectivity needs.

Thank you for the opportunity to comment on the NPRM. We look forward to continuing our partnership with the Department and would be happy to discuss this proposal or our concerns further.

Sincerely,

A handwritten signature in blue ink, appearing to read "T.C. Anderson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Tom Anderson
Managing Counsel



ODAV Policy and Procedure Aeronautical Study Fees

EFFECTIVE DATE 08/10/2022	NUMBER ODAV - 031
SUPERCEDES	PAGE NUMBER -1 of 1-
APPROVED SIGNATURE	

PURPOSE: To facilitate payment to the ODAV to perform an aeronautical study or studies per OAR 738-070-0160(3)(a-c).

Applicability: OAR 738-070-0160(3)(a-c) is applicable to sponsors or representatives of construction or alteration proposals that require notice to the ODAV per OAR 738-070-0060.

Policy: The Oregon Department of Aviation (“Department”) may require a fee be paid to the ODAV to perform an aeronautical study or studies. The fee shall be paid by the sponsor or representative of the construction or alteration proposal if the construction or alteration requires notice to the ODAV per OAR 738-070-0060. FAA owned equipment, NOAA owned equipment, and on-airport structures owned by the airport are exempt from aeronautical study fees. Fee requirement will be effective 30 days after Aviation Board approval of rule amendment to OAR 738-070-160.

Overview: A sponsor or representative of a construction or alteration proposal shall notify the Department of the construction or alteration in conformance with OAR 738-070-0080 to initiate the aeronautical study or studies.

The fee for the aeronautical study or studies may be required to be paid prior to delivery of the aeronautical determination or determinations by the Department to the sponsor or representative.

Procedure: OAR 738-070-0160(3)(a-c):

1. Notice required under OAR 738-070-0060 (Notice of Construction or Alteration) shall be provided to the ODAV in conformance with OAR 738-070-0080 which states the notice 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.
2. Payment information for each notice required under OAR 738-070-0060 shall be submitted in accordance with the existing payment processing methods utilized by the ODAV. There may be additional processing time for payment made by check.
3. Notice required under OAR 738-070-0060 may not be considered complete until applicant has submitted notice and fee has been processed and received by ODAV.
4. Once notice and payment to ODAV are complete, ODAV will provide the applicant a Letter of Determination for each construction or alteration proposal submitted to the ODAV within 20 working days of submittal.

Statutory Authority: ORS 835, 836

Statutes Implemented: ORS 836.530

Oregon Administrative Rules:

OAR 738-070-0160 – Aeronautical Studies



Aeronautical Study Fee Schedule

(Effective September 9, 2022)

Aeronautical Study Review	\$100 / per review
Additional Reviews	\$100 / per review

Statutory Authority:

ORS 836.530

Oregon Administrative Rules:

OAR 738-070-0160

Chapter 738

Division 070

Physical Hazards to Air Navigation

Aeronautical Studies

738-070-0150

Initiation of Studies

An aeronautical study is conducted by the Department:

- (1) Upon the request of the sponsor or representative of any construction or alteration, unless that construction or alteration would be located within an antenna farm area as discussed in OAR 738-070-0190 and 738-070-0200; or
- (2) Whenever the Department determines it appropriate.

738-070-160

Aeronautical Studies

(1) The Department may conduct an 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 Department 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 Department may require a fee be paid to the Department to perform an aeronautical study or studies. The fee shall be paid by the sponsor or the representative of the construction or alteration if the construction or alteration requires notice to the ODAV per OAR 738-080-0060. As needed, the Department may adjust, reduce or waive the amount of the fee as the Department sees fit to support the operation costs of performing the aeronautical study or studies. The non-refundable fee for the aeronautical study or studies shall be administered as follows:

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(c) Fees are calculated for each separate instance for each sponsor or representative and are based on actual cost of services provided. Each individual aeronautical study shall have a minimum associated fee of \$100.

(4) The Department 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.

(5) If the sponsor revises his proposal to eliminate exceeding of obstruction standards, or withdraws it, the Department terminates the study and notifies all known interested persons.

(56) The FAA Handbook, Procedures for Handling Airspace Matters, may be used in arriving at the determination.