



Oregon

Kate Brown, Governor

Oregon Department of Aviation

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August 10, 2022

From: ODAV Planning
To: State Aviation Board

Subj: ASAP Rulemaking

Background

In December 2021, ODAV began the rulemaking process to incorporate the changes of HB 2434 (appendix A).

The focus of the rulemaking centered on updating OAR 738-124 according to the changes required by HB2434. A draft of the proposed rule changes is included as appendix B.

In February 2022, ODAV solicited participation in the rulemaking advisory committee (RAC). Ten invitations were issued to various interested parties including airports managers, consultants, and other stakeholders. Eight invitations were accepted.

ODAV held one RAC meeting. The agenda and comments are attached as appendix C.

ODAV filed notice of the proposed rules on May 19, 2022 with ODOT and opened a public comment period from May 19 through June 21, 2022. The filing is attached as appendix D.

ODAV received no comments during the public comment period

Final rules and recommendation:

Staff recommends adoption of the final rules, with amendments (appendix E) to 738-124, as presented.

*Oregon Department of Aviation's mission is to provide infrastructure, financial resources,
and expertise to ensure a safe and efficient air transport system*

Enrolled House Bill 2434

Sponsored by Representative NATHANSON (Presession filed.)

CHAPTER

AN ACT

Relating to revenue; creating new provisions; amending ORS 319.020, 319.330 and 836.055 and section 7, chapter 700, Oregon Laws 2015; repealing sections 6 and 8, chapter 700, Oregon Laws 2015; prescribing an effective date; and providing for revenue raising that requires approval by a three-fifths majority.

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

SECTION 1. ORS 319.020, as amended by section 4, chapter 700, Oregon Laws 2015, and section 41, chapter 750, Oregon Laws 2017, is amended to read:

319.020. (1) Subject to subsections (2) to (4) of this section, in addition to the taxes otherwise provided for by law, every dealer engaging in the dealer's own name, or in the name of others, in the first sale, use or distribution of motor vehicle fuel or aircraft fuel or withdrawal of motor vehicle fuel or aircraft fuel for sale, use or distribution within areas in this state within which the state lacks the power to tax the sale, use or distribution of motor vehicle fuel or aircraft fuel, shall:

(a) Not later than the 25th day of each calendar month, render a statement to the Department of Transportation of all motor vehicle fuel or aircraft fuel sold, used, distributed or so withdrawn by the dealer in the State of Oregon as well as all such fuel sold, used or distributed in this state by a purchaser thereof upon which sale, use or distribution the dealer has assumed liability for the applicable license tax during the preceding calendar month. The dealer shall render the statement to the department in the manner provided by the department by rule.

(b) Except as provided in ORS 319.270, pay a license tax computed on the basis of 34 cents per gallon on the first sale, use or distribution of such motor vehicle fuel or aircraft fuel so sold, used, distributed or withdrawn as shown by such statement in the manner and within the time provided in ORS 319.010 to 319.430.

(2) When aircraft fuel is sold, used or distributed by a dealer, the license tax shall be computed on the basis of *[nine]* **11** cents per gallon of fuel so sold, used or distributed, except that when aircraft fuel usable in aircraft operated by turbine engines (turbo-prop or jet) is sold, used or distributed, the tax rate shall be *[one cent]* **three cents** per gallon.

(3) In lieu of claiming refund of the tax paid on motor vehicle fuel consumed by such dealer in nonhighway use as provided in ORS 319.280, 319.290 and 319.320, or of any prior erroneous payment of license tax made to the state by such dealer, the dealer may show such motor vehicle fuel as a credit or deduction on the monthly statement and payment of tax.

(4) The license tax computed on the basis of the sale, use, distribution or withdrawal of motor vehicle or aircraft fuel may not be imposed wherever such tax is prohibited by the Constitution or laws of the United States with respect to such tax.

SECTION 2. ORS 319.330, as amended by section 5, chapter 700, Oregon Laws 2015, is amended to read:

319.330. (1) Whenever any statement and invoices are presented to the Department of Transportation showing that motor vehicle fuel or aircraft fuel has been purchased and used in operating aircraft engines and upon which the full tax for motor vehicle fuel has been paid, the department shall refund the tax paid, but only after deducting from the tax paid *[nine]* **11 cents** for each gallon of such fuel so purchased and used, except that when such fuel is used in operating aircraft turbine engines (turbo-prop or jet) the deduction shall be *[one cent]* **three cents** for each gallon. No deduction provided under this subsection shall be made on claims presented by the United States or on claims presented where a satisfactory showing has been made to the department that such aircraft fuel has been used solely in aircraft operations from a point within the State of Oregon directly to a point not within any state of the United States. The amount so deducted shall be paid on warrant of the Oregon Department of Administrative Services to the State Treasurer, who shall credit the amount to the State Aviation Account for the purpose of carrying out the provisions of the state aviation law. Moneys credited to the account under this section are continuously appropriated to the Oregon Department of Aviation.

(2) If satisfactory evidence is presented to the Department of Transportation showing that aircraft fuel upon which the tax has been paid has been purchased and used solely in aircraft operations from a point within the State of Oregon directly to a point not within any state of the United States, the department shall refund the tax paid.

SECTION 3. (1) The amendments to ORS 319.020 by section 1 of this 2021 Act apply to aircraft fuel sold, used or distributed on or after January 1, 2022.

(2) The amendments to ORS 319.330 by section 2 of this 2021 Act apply to aircraft fuel sold, used or distributed on or after January 1, 2022.

SECTION 4. Section 7, chapter 700, Oregon Laws 2015, as amended by section 80a, chapter 750, Oregon Laws 2017, section 1, chapter 485, Oregon Laws 2019, and section 26, chapter 491, Oregon Laws 2019, is amended to read:

Sec. 7. (1) The following amounts shall be distributed in the manner prescribed in this section:

(a) Any amount of tax on aircraft fuel usable in aircraft operated by turbine engines that is computed on a basis in excess of one cent per gallon and any amount of tax on all other aircraft fuel that is computed on a basis in excess of nine cents per gallon, under ORS 319.020 (2); and

(b) Any amount of tax on aircraft fuel usable in aircraft operated by turbine engines in excess of one cent per gallon and any amount of tax on all other aircraft fuel in excess of nine cents per gallon, that is deducted before the refunding of tax under ORS 319.330 (1).

(2)(a) Applications for distributions under *[subsections (5) and (6)]* **subsection (5)** of this section may not be approved unless the applicant demonstrates a commitment to contribute at least five percent of the costs of the project to which the application relates. The Oregon Department of Aviation shall adopt rules for purposes of this paragraph.

(b) The department may adopt rules that:

(A) Set higher minimum contribution commitment requirements; or

(B) Establish maximum grant amounts.

(3)(a) The State Aviation Board shall establish a review committee composed of one member from each of the area commissions on transportation chartered by the Oregon Transportation Commission.

(b) The review committee shall meet as necessary to review applications for distributions of amounts pursuant to this section. In reviewing applications, the review committee shall consider:

(A) Whether a proposed project:

(i) Reduces transportation costs for Oregon businesses or improves access to jobs and sources of labor in this state;

(ii) Results in an economic benefit to this state;

(iii) Connects elements of Oregon's aviation system in a way that will measurably improve utilization and efficiency of the system;

(iv) Is ready for construction or implementation; and
(v) Has a useful life expectancy that offers maximum benefit to this state; and
(B) How much of the cost of the proposed project can be borne by the applicant from sources other than Oregon Department of Aviation funds or the Connect Oregon Fund.

(c) The review committee shall recommend applications to the State Aviation Board for approval.

(4)(a) Five percent of the amounts described in subsection (1) of this section are appropriated to the Oregon Department of Aviation for the costs of the department and the State Aviation Board in administering this section.

(b) The remaining 95 percent of the amounts described in subsection (1) of this section shall be distributed pursuant to subsections (5) *[to (7)]* **and (6)** of this section.

(5)(a) *[Fifty]* **Seventy-five** percent of the amounts described in subsection (4)(b) of this section shall be *[prioritized in the following order and]* distributed for the following purposes:

[(a)] **(A)** *[First,]* To assist airports in Oregon with match requirements for Federal Aviation Administration Airport Improvement Program grants.

[(b)] **(B)** *[Second,]* To make grants for emergency preparedness and infrastructure projects, in accordance with the Oregon Resilience Plan or the Oregon Aviation Plan.

[(c)] **(C)** *[Third,]* To make grants for:

[(A)] **(i)** Services critical or essential to aviation, including, but not limited to, fuel, sewer, water and weather equipment;

[(B)] **(ii)** Aviation-related business development, including, but not limited to, hangars, parking for business aircraft and related facilities; or

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

(D)(i) To assist commercial air service to rural Oregon.

(ii) The Oregon Department of Aviation may adopt a definition of “rural Oregon” for purposes of this subparagraph.

(b) The State Aviation Board may establish by rule priorities for the distributions made pursuant to this subsection.

[(6) Twenty-five percent of the amounts described in subsection (4)(b) of this section shall be distributed for the purpose of assisting commercial air service to rural Oregon.]

[(7)] **(6)** Twenty-five percent of the amounts described in subsection (4)(b) of this section shall be distributed to state-owned airports for the purposes of:

(a) Safety improvements recommended by the State Aviation Board and local community airports.

(b) Infrastructure projects at public use airports.

[(8)(a)] **(7)(a) Not later than September 15 of each year, the State Aviation Board shall submit the reports described in paragraph (b) of this subsection, in the manner provided in ORS 192.245, to the interim committees, as applicable, of the Legislative Assembly related to air transportation.**

(b) *[The State Aviation Board shall submit reports, in the manner provided in ORS 192.245 and paragraph (b) of this subsection, that] The reports required under this subsection shall* describe in detail the projects for which applications have been submitted and approved, the airports affected, the names of the applicants and the persons who will perform the work proposed in the applications, the progress of projects for which applications have been approved and any other information the board considers necessary for a comprehensive analysis of the implementation of this section.

[(b) The reports described in paragraph (a) of this subsection shall be submitted:]

[(A) Not later than February 10 of each year to the committees of the Legislative Assembly related to air transportation; and]

[(B) Not later than September 30 of each year to the interim committees of the Legislative Assembly related to air transportation.]

SECTION 5. The amendments to section 7, chapter 700, Oregon Laws 2015, by section 4 of this 2021 Act apply to applications for distributions submitted on or after the effective date of this 2021 Act.

SECTION 6. Sections 6 and 8, chapter 700, Oregon Laws 2015, are repealed.

SECTION 7. ORS 836.055 is amended to read:

836.055. (1) In operating an airport or air navigation facility owned or controlled by the state, the Oregon Department of Aviation, as authorized by the State Aviation Board, may enter into contracts, leases and other arrangements, for a term not exceeding 30 years *[with any persons]* **for noncommercial arrangements or 50 years for commercial arrangements:**

(a) Granting the privilege of using or improving *[such]* **the** airport or air navigation facility, or any portion or facility *[thereof]* **of**, or space *[therein]* **in, the airport or air navigation facility**, for commercial purposes;

(b) Conferring the privilege of supplying goods, commodities, things, services or facilities at *[such]* **the** airport or air navigation facility; or

(c) Making available services to be furnished by the department or its agents at *[such]* **the** airport or air navigation facility.

(2) In each *[such]* case the department may establish the terms and conditions and fix the charges, rentals or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service and shall be established with due regard to the property and improvements used and the expenses of operation to the state; provided, that in no case shall the public be deprived of its rightful, equal and uniform use of the airport, air navigation facility, or portion or facility *[thereof]* **of the airport or air navigation facility.**

SECTION 8. The amendments to ORS 836.055 by section 7 of this 2021 Act apply to contracts, leases and other arrangements entered into on or after the effective date of this 2021 Act.

SECTION 9. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by House June 17, 2021

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate June 23, 2021

Repassed by Senate June 25, 2021

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Peter Courtney, President of Senate

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 Revision of OAR 738-124 per legislative changes in HB2434

Prepared by Andria Abrahamson, Program Coordinator

***Proposed changes highlighted and in bold text**

Oregon Department of Aviation

Chapter 738

Division 124

AVIATION SYSTEM ACTION PROGRAM FUND

738-124-0010

Purpose

(1) The State of Oregon established the Aviation System Action Program (ASAP) fund pursuant in 2015 Oregon Laws, chapter 700, section 7, as modified by 2019 Oregon Laws, chapter 485, section 1. The Department shall administer the funded programs and distribute funds for the purposes established by the Oregon legislature.

(2) The purposes of the COAR program are to: assist airports in Oregon with match requirements for FAA Airport Improvement Program grants; and make grants for: emergency preparedness and infrastructure projects, in accordance with the Oregon Resilience Plan or the Oregon Aviation Plan; services critical or essential to aviation, including but, not limited to, fuel, sewer, water, navigational aids and weather equipment; aviation-related business development, including but, not limited to, hangars, parking for business aircraft and related facilities; airport development for local economic benefit, including but not limited to signs and marketing; **or to assist commercial air service to rural Oregon.**

(3) The purpose of the SOAR program is to distribute funds to state-owned airports for: safety improvements recommended by the Board and local community airports; and infrastructure projects at public use airports.

Statutory/Other Authority: ORS 835.035, 835.040, 835.112 & OL 2019 c.485 Section 1(2)(b)

Statutes/Other Implemented: OL 2019 c.485 Section 1, ORS 835.025 & 835.040

History:

AVIA 1-2020, amend filed 02/13/2020, effective 02/13/2020

AVIA 4-2016, f. & cert. ef. 10-31-16

AVIA 1-2016(Temp), f. & cert. ef. 5-11-16 thru 11-4-16

738-124-0015

Definitions

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

(1) “Agreement” means a legally binding contract between the Department and Recipient that contains the terms and conditions under which the Department is providing funds from the ASAP Fund.

(2) “Applicant” means a Person or Public Body that applies for funds from the ASAP Fund.

(3) “ARC” means the Aviation Review Committee established by the Board in accordance with 2019 Oregon Laws, chapter 485, section 1(3) and composed of one member from each of the Area Commissions on Transportation chartered by the Oregon Transportation Commission (OTC).

(4) “Area Commissions on Transportation” means advisory bodies chartered by the OTC through the Policy on Formation and Operation of Area Commissions on Transportation (ACTs) approved by the OTC on June 18, 2003.

(5) “Assisting Commercial Air Service” means increasing the volume of passenger air travel via aircraft on a fee for service basis.

(6) “Aviation” has the meaning given in ORS 836.005(5).

(7) “Aviation System Action Program (ASAP) Fund” means the fund created in 2015 Oregon Laws, chapter 700, section 7(1), as modified by 2019 Oregon Laws, chapter 485, section 1(1) and distributed in accordance with 2019 Oregon Laws, chapter 485, section 1(4)

(8) “Board” means the State Aviation Board created in ORS 835.102.

(9) “COAR” or Critical Oregon Airport Relief program means the funding program described in 2019 Oregon Laws, chapter 485, section 1(5).

(10) “Connect Oregon Fund” means the fund established in ORS 367.080.

(11) “Department” means the Oregon Department of Aviation or ODA.

(12) “Director” means the Director of the Oregon Department of Aviation.

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

(14) “Oregon Freight Advisory Committee” (OFAC) means the committee created in ORS 366.212.

(15) “NPIAS” means the National Plan of Integrated Airport Systems.

(16) “Oregon Aviation Plan” (OAP) means the plan developed under ORS 835.015.

(17) “Oregon Business Development Department” means the department defined in ORS 285A.070.

(18) “Oregon Resilience Plan” means the report to the 77th Legislative Assembly prepared by the Oregon Seismic Safety Policy Advisory Commission (OSSPAC) in February 2013, titled “The Oregon Resilience Plan Reducing Risk and Improving Recovery for the Next Cascadia Earthquake and Tsunami.”

(19) “Recipient” means an Applicant who enters into Agreement with the Department to receive funds from the ASAP Fund.

(20) "Revenue Use Policy" means, collectively, the FAA policy set out in 64 Federal Register 7696 (February 16, 1999), and amended in 79 Federal Register 66282 (November 7, 2014), and 49 USC § 47107, 47133.

(21) "Rural Oregon" means any area within the state of Oregon that was not officially designated or delineated as a Metropolitan Statistical Area by the U.S. Office of Management and Budget as of September 2018.

(22) "SOAR" or State Owned Airport Reserve program means funding described in 2019 Oregon Laws, chapter 485, section 1(7).

Statutory/Other Authority: ORS 835.035, 835.040, 835.112 & OL 2019 c.485 Section 1(2)(b)

Statutes/Other Implemented: ORS 835.025, 835.040 & OL 2019 c.485 Section 1

History:

AVIA 1-2020, amend filed 02/13/2020, effective 02/13/2020

AVIA 4-2016, f. & cert. ef. 10-31-16

AVIA 1-2016(Temp), f. & cert. ef. 5-11-16 thru 11-4-16

738-124-0020

COAR Project Eligibility

(1) Project Eligibility.

(a) A project is eligible only if it has not been completed prior to the application deadline set by the Department.

(b) A project is not eligible if its nature is to provide a match for a project or program that is funded with other Department funds or the Connect Oregon Fund.

(c) A project is not eligible if it is prohibited by the Revenue Use Policy.

(2) Additional project eligibility requirement for COAR applications: A project is eligible only if it is located on an airport that is open to flight operations by the public.

Statutory/Other Authority: ORS 835.035, 835.040, 836.112 & OL 2019 c.485 Section 1(2)(b)

Statutes/Other Implemented: ORS 835.025, OL 2019 c.485 Section 1 & 835.040

History:

AVIA 1-2020, amend filed 02/13/2020, effective 02/13/2020

AVIA 3-2017, f. & cert. ef. 7-12-17

AVIA 1-2017(Temp), f. & cert. ef. 3-8-17 thru 9-1-17

AVIA 4-2016, f. & cert. ef. 10-31-16

AVIA 1-2016(Temp), f. & cert. ef. 5-11-16 thru 11-4-16

738-124-0025

COAR Applicant Eligibility

(1) An Applicant is eligible if the Applicant is an Oregon public use airport, privately or publicly owned; or if the Applicant is a public use airport sponsor.

(2) An Applicant is eligible if the Applicant has a current Oregon Secretary of State business registry number, unless the Applicant is an individual doing business under the individual's real and true name, is a public sector entity, or is otherwise exempt under applicable law.

Statutory/Other Authority: ORS 835.035, 835.040, 835.112 & OL 2019 c.485 Section 1(2)(b)

Statutes/Other Implemented: ORS 835.025, OL 2019 c.485 Section 1 & 835.040

History:

AVIA 1-2020, amend filed 02/13/2020, effective 02/13/2020

AVIA 4-2016, f. & cert. ef. 10-31-16

AVIA 1-2016(Temp), f. & cert. ef. 5-11-16 thru 11-4-16

738-124-0030

COAR Application Requirements

(1) The Department shall announce application deadlines for COAR funding. The Department shall not consider applications submitted after the deadline set by the Department.

(2) Applicants interested in receiving funds under the COAR program must submit an application to the Department in a format prescribed by the Department. At a minimum, each application must contain the following information:

(a) Project Information. The application must include:

(A) Applicant's name and Oregon Secretary of State Business Registry number (if one exists), and the contact information of the individual who represents the Applicant with respect to the application;

(B) Project name;

(C) Project location;

(D) Airport information, specifically the:

(i) Airport name,

(ii) Airport category, and

(iii) Whether the airport is NPIAS or Non-NPIAS;

(E) Project overview, including purpose and projected start and end dates; and

(F) A statement describing local support for the project, if any.

(b) Project Documentation. The application must describe documentation necessary to complete the project, specifically statements regarding whether:

(A) The project is in the most current Airport Layout Plan (ALP), signed by the FAA and the airport owner;

(B) A National Environmental Policy Act (NEPA) review is required;

(C) An Airport Safety Overlay Zone, as described in OAR 660-013-0070, has been adopted at the airport where the project will be located; and

(D) Any permits or licenses are required for the project, and if so, a description of each permit or license which identifies the issuing authority and a brief description of the reason the permit or license is required.

(c) Statewide Impact. The application must include a brief statement about whether the project:

(A) Reduces transportation costs for Oregon businesses or improves access to jobs and sources of labor in Oregon;

(B) Results in an economic benefit to Oregon;

(C) Connects elements of Oregon's aviation system in a way that will measurably improve utilization and efficiency of the system;

(D) Is ready for construction or implementation, including whether the project has any unique construction-readiness, project implementation issues, or possible delays; and

(E) Has a useful life expectancy that offers maximum benefit to this state.

(d) Project Budget Information. The application must include each of the following:

(A) The total amount of the COAR grant sought by the Applicant. Amounts sought may not exceed the maximum grant amounts specified in OAR 738-124-0040.

(B) For federally funded projects, a statement of whether the project is listed on the approved Federal Capital Improvement Plan and, if so provide a copy of the Capital Improvement Plan.

(C) A list of project funding sources and the amount of funding from each source. Applicants must include a statement of how much of the cost of the project can be borne by the Applicant from sources other than Department funds or Connect Oregon Fund.

(D) A statement identifying whether the project will have incurred any expenditures prior to the effective date of an Agreement, if awarded, and a brief explanation if so.

(E) Documentation of the Applicant's ability to meet the financial contribution or match requirement specified in OAR 738-124-0040.

(e) Applicant history. A statement in which the Applicant discloses any circumstance in which the Applicant or one of its owners or principals has been involved in a dispute about its use of grant funds or a business loan within the last 5 years preceding the date of the application. If any such circumstances exist, the Applicant shall describe the circumstances, including the approximate date of the circumstance, the entity or individual making the grant or loan at issue, and the outcome of the dispute.

(f) Applicant affirmation. Each Applicant must affirm that the statements contained in the application are complete and accurate.

Statutory/Other Authority: ORS 835.035, 835.040, 835.112 & OL 2019 c.485 Section 1(2)(b)

Statutes/Other Implemented: ORS 835.025, 835.040 & OL 2019 c.485 Section 1

History:

AVIA 1-2020, amend filed 02/13/2020, effective 02/13/2020

AVIA 4-2016, f. & cert. ef. 10-31-16

AVIA 1-2016(Temp), f. & cert. ef. 5-11-16 thru 11-4-16

738-124-0035

Project Selection

(1) The Board will select Projects to be funded through a grant with monies in the Aviation System Action Program Fund.

(2) Prior to selecting Projects to be funded with monies in the Aviation System Action Program Fund, the Board shall solicit recommendations when applicable from:

(a) The Aviation Review Committee (ARC).

(b) The Freight Advisory Committee for freight Transportation Projects when applicable.

(c) The Oregon Business Development Department for aviation transportation projects when applicable.

(3) Prior to selecting Projects to be funded with monies in the Aviation System Action Program Fund, the Board may solicit recommendations from transportation stakeholder and advocate entities not otherwise specified in section (2) of this rule including the Area Commissions on Transportation. Business Oregon and Regional Solutions Teams will provide comments to the designated aviation representative of the Area Commissions on Transportation.

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

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

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

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

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

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

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

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

(C) Third priority is to make grants for:

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

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

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

(iiii) Assist commercial air service to rural Oregon

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

Statutory/Other Authority: ORS 835.035, 835.040, 835.112 & OL 2015 c.700 Section 7

Statutes/Other Implemented: ORS 835.015, 835.025, 836.015, 836.070 & 319.020

History:

AVIA 4-2016, f. & cert. ef. 10-31-16

AVIA 1-2016(Temp), f. & cert. ef. 5-11-16 thru 11-4-16

738-124-0040

Maximum COAR Grant Amounts and Applicant Financial Matching Requirements

(1) Maximum grant amounts for the COAR program is::

(a) \$150,000 per project.

(b) Maximum amount listed in this rule is cumulative to all applications submitted with respect to a single project.

(c) Notwithstanding the maximum grant amounts listed in this section, the Board may award a larger grant if it makes a finding that a larger grant awarded to a particular project would serve the purposes of the program. If an Applicant applies for a grant amount above the maximum amount listed in this section, the application must include a detailed statement of how the grant amount in excess of the maximum listed in this section would serve the purposes of the respective program as described in OAR 738-124-0010.

(2) COAR Financial matching requirements.

(a) Minimum financial match requirements are based on the category of airport at which the project will be performed, as listed in the current Oregon Aviation Plan. By category, the minimum financial match requirements are:

(A) Category 1

(i) Other Commercial Non-Primary (less than 10,000 enplanements): 35% of the total eligible project costs

(ii) Commercial Primary: 50% of the total eligible project costs

(B) Category 2 – Business: 25% of the total eligible project costs

(C) Category 3 – Regional: 10% of the total eligible project costs

(D) Category 4 – Community: 10% of the total eligible project costs

(E) Category 5 – Low Activity: 5% of the total eligible project costs

(b) Notwithstanding subsection (a), the minimum financial match requirement for an airport listed in Table 1 of the FAA's Essential Air Service (EAS)/Economically Distressed Area (EDA) Determination memo dated February 8, 2019 is 5% of the total eligible project costs.

(c) For applications filed for assistance with FAA Airport Improvement Program (AIP) match requirements, the grant match amount is the eligible project cost and is subject to the minimum financial match requirements described above.

Statutory/Other Authority: ORS 835.035, 835.040, 835.112 & OL 2019 c.485 Section 1(2)(b)

Statutes/Other Implemented: ORS 835.025, OL 2019 c.485 Section 1 & 835.040

History:

AVIA 3-2020, minor correction filed 03/24/2020, effective 03/24/2020

AVIA 1-2020, amend filed 02/13/2020, effective 02/13/2020

AVIA 4-2016, f. & cert. ef. 10-31-16

AVIA 1-2016(Temp), f. & cert. ef. 5-11-16 thru 11-4-16

738-124-0045

Project Administration

(1) The Department will administer all Grants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) State statutory requirements have not been met;

(c) There is a significant deviation from the terms and conditions of the Agreement; or

(d) The Department finds that significant corrective actions are necessary to protect the integrity of the Program Funds for the Approved Project and those corrective actions are not, or will not be, made within a reasonable time.

(5) The Department may impose one or more of the following sanctions:

(a) Revoke an existing award.

(b) Withhold unexpended Program Funds.

(c) Require return of unexpended Program Funds or repayment of expended Program Funds.

(d) Bar the Recipient from applying for future assistance.

(e) Other remedies that may be incorporated into grant Agreements.

(6) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the agreement.

(7) The Director will consider protests of the funding and Project administration decisions for the Program. Only the Recipient may protest. Protests must be submitted in writing to the Director within 15 business days of the event or action that is being protested. The Director's decision is final. Jurisdiction for review of the Director's decision is in the circuit court for Marion County pursuant to ORS 183.484.

(8) The Director may waive non-statutory requirements of this Program if it is demonstrated such a waiver would serve to further the goals and objectives of the Program.

Statutory/Other Authority: ORS 835.035, 835.040, 835.112 & OL 2015 c.700 Section 7

Statutes/Other Implemented: ORS 835.015, 835.025, 836.015, 836.070 & 319.020

History:

AVIA 4-2016, f. & cert. ef. 10-31-16

738-124-0050

Department Review of COAR Applications

(1) The Department shall review applications for completeness and to confirm that Applicants and projects are eligible to receive funds. As part of its review, the Department may ask an Applicant to supply missing information or to provide clarification about Applicant or project eligibility.

(2) If an Application is incomplete, or an Applicant or project is ineligible, the Department shall, within 15 business days of making such determination:

(a) Specify in writing or email to the Applicant the additional information the Applicant must provide to complete the application or establish eligibility; or

(b) Notify the Applicant in writing or email that the Applicant or Project is ineligible and briefly describe the basis for ineligibility.

(3) If the Applicant fails to provide requested information within 5 business days from the date of the Department's written or email communication made pursuant to subsection (2)(a) of this rule, the Department may consider the application ineligible and provide the notice described in subsection (2)(b) of this rule.

(4) Affected Applicants may submit written protests of ineligibility determinations to the Director. Protests must be submitted in writing to the Director within 5 business days of the date of notice of the Department's determination of incompleteness or ineligibility that is being protested.

(5) The Director shall prepare a written response to the protest no later than 45 business days after the date the protest is received. The Director's written decision is final.

(6) The Department shall provide all eligible applications from eligible Applicants, including supporting materials, to the ARC.

Statutory/Other Authority: ORS 835.035, 835.040, 835.112 & OL 2019 c.485 Section 1(2)(b)

Statutes/Other Implemented: ORS 835.025, OL 2019 c.485 Section 1 & 835.040

History:

AVIA 1-2020, adopt filed 02/13/2020, effective 02/13/2020

738-124-0060

Aviation Review Committee (ARC) Review and Recommendation of COAR Applications

(1) The ARC shall hold public meetings as necessary to review eligible applications and to prepare approval and rejection recommendations to the Board.

(2) In reviewing applications, ARC shall consider:

(a) The extent to which, if implemented, the project proposed in the Application would:

(A) Assist airports in Oregon with match requirements for FAA Airport Improvement Program grants;

(B) Support emergency preparedness and infrastructure goals in accordance with the Oregon Resilience Plan or the Oregon Aviation Plan; or

(C) Support services critical or essential to aviation, including, but not limited to, fuel, sewer, water and weather equipment; support aviation-related business development, including, but not limited to, hangars, parking for business aircraft and related facilities; support airport development for local economic benefit, including, but not limited to, signs and marketing; **or to assist commercial air service to rural Oregon.**

(b) Whether the project proposed in the application:

(A) Reduces transportation costs for Oregon businesses or improves access to jobs and sources of labor in Oregon;

(B) Results in an economic benefit to Oregon;

(C) Connects elements of Oregon's aviation system in a way that will measurably improve utilization and efficiency of the system;

(D) Is ready for construction or implementation, including whether the project has any unique construction-readiness, project implementation challenges, or possible delays; and

(E) Has a useful life expectancy that offers maximum benefit to Oregon.

(c) How much of the costs of the project proposed in the application can be borne by the Applicant from sources other than the Department or the Connect Oregon Fund.

(3) For each applicable criterion, the ARC will rate whether the proposed project "Meets," "Somewhat Meets" or "Does not Meet" the criterion. For purposes of this process, those terms have the following meanings:

(a) "Meets" means that the Applicant explained in a thorough and specific manner how the project meets the criterion and provided thorough evidence, including specific facts, specific examples, reliable figures, or detailed citations to supporting attachments to the application to support the Applicant's explanation.

(b) "Somewhat Meets" means that the Applicant provided a general, superficial or non-specific explanation how the project meets the criterion or provided only limited or incomplete supporting evidence to support the Applicant's explanation.

(c) "Does Not Meet" means that either:

(A) The Applicant reported that the project did not meet the criterion; or

(B) The Applicant provided an incomplete or implausible explanation of how the project meets the criterion or provided no evidence or only minimal, implausible or unreliable evidence to support the Applicant's explanation.

(4) Prioritizing COAR applications: In prioritizing applications submitted for COAR funds, the ARC may consider the following factors:

(a) Applicant that is able to bear the most cost.

(b) Projects related to safety or infrastructure.

(c) Quantity of projects applied for at an airport, within the same grant cycle.

(d) Regional significance.

(5) Based on its review of eligible applications, the ARC shall:

(a) Prepare a brief written statement to the Board with respect to each application which recommends approval or rejection by the Board.

(b) For COAR applications for which the ARC recommends Board approval, the ARC shall prepare a prioritized list of applications, ranking them in the following priority:

(A) First, to assist airports in Oregon with match requirements for FAA Airport Improvement Program grants.

(B) Second, to make grants for emergency preparedness and infrastructure projects, in accordance with the Oregon Resilience Plan or the Oregon Aviation Plan.

(C) Third, to make grants for:

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

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

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

(iii) To assist commercial air service to rural Oregon

(6) The Department shall provide the ARC's written responses and prioritized list to the Board as soon as practicable after the ARC's review.

Statutory/Other Authority: ORS 835.035, 835.040, 835.112 & OL 2019 c.485 Section 1(2)(b)

Statutes/Other Implemented: ORS 835.025, OL 2019 c.485 Section 1 & 835.040

History:

AVIA 1-2020, adopt filed 02/13/2020, effective 02/13/2020

738-124-0070

Board Approval or Rejection of COAR Applications

(1) Prior to approving COAR applications, the Board shall review and consider the ARC's written recommendations and prioritized list of COAR applications recommended for approval.

(2) As part of its consideration of applications, the Board may solicit written feedback from stakeholders or entities with expertise relevant to a project proposed in a particular application, such as the Freight Advisory Committee, the Oregon Business Development Department, or Area Commissions on Transportation.

(3) The Board may delegate solicitation and collection of written feedback to the Department and may instruct the Department to solicit or collect feedback at any point in the application cycle.

(4) The Board may require any Applicant to make a presentation to the Board or interview with a Board designee as part of its consideration process.

(5) The Board may approve an application for the amount sought or for a smaller amount.

(6) When selecting COAR applications for approval, the Board shall prioritize them as described below:

(a) First, to assist airports in Oregon with match requirements for FAA Airport Improvement Program grants.

(b) Second, to make grants for emergency preparedness and infrastructure projects, in accordance with the Oregon Resilience Plan or the Oregon Aviation Plan.

(c) Third, to make grants for:

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

(B) Aviation-related business development, including, but not limited to, hangars, parking for business aircraft and related facilities; or

(C) Airport development for local economic benefit, including, but not limited to, signs and marketing; or

(D) To assist commercial air service to rural Oregon

Statutory/Other Authority: ORS 835.035, 835.040, 835.112 & OL 2019 c.485 Section 1(2)(b)

Statutes/Other Implemented: ORS 835.025, OL 2019 c.485 Section 1 & 835.040

History:

AVIA 1-2020, adopt filed 02/13/2020, effective 02/13/2020

738-124-0080

COAR Program Administration

- (1) The Department shall administer all COAR grants.
- (2) The Department and Recipient shall execute a written Agreement in a form acceptable to the Department prior to the disbursement of funds for an application approved by the Board.
- (3) At a minimum, the Agreement must contain provisions as listed below.
 - (a) A provision which requires a Recipient to submit documentation of the projected costs for the project must be submitted to the Department prior to the disbursement of funds.
 - (b) A provision which requires that disbursement of funds be made on a reimbursement basis.
 - (c) A provision which requires a Recipient to separately account for all monies received from the ASAP Fund in project accounts in accordance with Generally Accepted Accounting Principles.
 - (d) A provision which authorizes the Department to withhold a percentage of funds for which reimbursement is sought by a Recipient and authorizes the Department to release the funds to Recipient when the conditions established by the Department are met or upon final project acceptance by the Department. The Department shall determine retainage limits in accordance with ORS 835.112.
 - (e) A provision which requires a Recipient to remain current on all applicable state and local taxes, fees and assessments for the useful life of the project as prescribed in the Agreement.
 - (f) A provision or provisions which protect public funds by identifying circumstances under which the Department may require repayment of disbursed funds or terminate the Agreement and which identify the rights and remedies of the Department upon termination.
 - (g) A provision which requires changes to the project's cost, scope, objectives or timeframe be effective only upon written amendment to the Agreement.

(h) Provisions which require the Recipient to provide the Department with information, records, materials, progress reports or other information that may be requested by the Department.

(i) A provision which authorizes the Department to conduct reasonable inspections of projects funded under the Agreement.

(4) The Department shall comply with applicable review requirements set out in statute, rule or Department policy prior to executing Agreements.

Statutory/Other Authority: ORS 835.035, 835.040, 835.112 & OL 2019 c.485 Section 1(2)(b)

Statutes/Other Implemented: ORS 835.040, ORS 835.025 & OL 2019 c.485 Section 1

History:

AVIA 1-2020, adopt filed 02/13/2020, effective 02/13/2020

738-124-0090

SOAR Program

(1) Application process. The Department shall prepare, as approved by the Director, a list of proposed projects that serve some or all of the purposes described in OAR 738-124-0010(4) ("SOAR project list"). A SOAR project list prepared under this section is an eligible application, consisting of eligible projects, from an eligible Applicant for purposes of these rules. The Department shall forward the SOAR project list to the ARC for review and recommendation.

(2) Review by the ARC. Applying the criteria in OAR 738-124-0060(2)(c), the ARC shall recommend to the Board the approval or rejection of each project on the SOAR project list.

(3) Approval by Board. The Board shall approve or reject projects listed in the SOAR project list at a public meeting. The Board may increase or decrease dollar amounts allocated to projects it approves from the SOAR project list.

Statutory/Other Authority: ORS 835.035, 835.040, 835.112 & OL 2019 c.485 Section 1(2)(b)

Statutes/Other Implemented: ORS 835.040, ORS 835.025 & OL 2019 c.485 Section 1

History:

AVIA 1-2020, adopt filed 02/13/2020, effective 02/13/2020

DRAFT



Oregon

Kate Brown, Governor



Rulemaking Advisory Committee

Date: April 1, 2022

Time: 1:30pm – 3:30pm

Location: 3040 25th St SE
Salem, OR 97302

Livestream: Zoom link for meeting will be sent to participants

The public may view the meeting on the official
Oregon State Department of Aviation YouTube
channel

<https://www.youtube.com/channel/UC71mK0ILNCbNTID7hNgNlmg>

INFORMATION & REVIEW ITEMS*

<u>#</u>	<u>Type of Item</u>	<u>Item</u>	<u>Lead(s)</u>
1	Action	Call to Order / Introductions	Staff
2	Info	Rulemaking Goals ASAP Background - Inception of program - COAR Numbers by Cycle Process for Rulemaking	Staff
3	Info	Questions or Comments	Staff/RAC
4	Break		
5	Info	Review of proposed rules	Staff
6	Info	Comment, discussion, recommended changes for proposed rules	Staff/RAC
7	Action	Adjourn	Staff

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

Minutes

Present: Cathryn Stephens, Haley Walker, Corley McFarland, Byron Henicle, Samantha Peterson, Neal White

Absent: Jerry Brienza

Oregon Department of Aviation (ODAV) Staff: Andria Abrahamson, Cathy Clark, Heather Peck

ASAP Background question:

- Cathryn Stephens asked what the ROAR grant for Salem Area Chamber of Commerce (SACC) entails
- Explained grant is to bring commercial air service to Salem Airport, clarified not a minimum revenue guarantee (MRG)
- SACC will be presenting at State Aviation Board meeting 04.07.2022 regarding project

Discussion of Proposed Rules:

- Neal White regarding adding the phrase *assist commercial air service to rural Oregon* - text already says aviation related businesses, wouldn't rural air service be included already; ODAV tries to be specific as possible so it is clear to a stakeholder looking to apply for a grant; language also part of Department of Justice (DOJ) recommendation
- Cathryn Stephens regarding the definition of Rural – previous rulemaking defined the term Rural for the purposes of the Critical Oregon Airport Relief (COAR) program; ODAV is not changing definitions with this rulemaking and the definition of Rural will stay the same; Heather Peck to verify this definition only eliminates PDX and not EUG as well, and provide to RAC
- Byron Henicle regarding the items listed under Third Priority – if these project types are prioritized under Priority 3; No, all projects types under Priority 3 are given equal weight, but are prioritized through normal scoring and ranking by the Aviation Review Committee
- Cathryn Stephens regarding wording under “airport development for local economic benefit including but not limited to signs and marketing” – what is signs referring to, redundant to marketing; ODAV to look at changing to signage and marketing
- Corley McFarland regarding how match percentage for COAR grants is determined – smaller airports with no AIP grant don't get the full grant amount if costs under runs estimates; COAR was developed with a process similar to the Connect Oregon grant program, this issue would not be addressed through administrative rule but rather through ODAV policy document so that the agency is not limited to making changes through the rulemaking process
- Haley Walker regarding max dollar amount of COAR grants – since 75% of fuel tax increase now going into COAR should the max grant amount be increased; this rulemaking limited to legislation passed in 2021. Regardless, currently grantee may request above the \$150k with justification describing how project meets the purposes of COAR program. Grants over \$150K are subject to DOJ review and Board approval. Heather Peck will look into bringing up to the Board via policy discussion and look at possibly changing during later rule making

RAC members encouraged to reach out to COAR program coordinators with any additional comments or suggestions. ODAV is happy to discuss future rule making and changes that may be made via policy.

Note: Meeting notes and link to meeting recording sent to Jerry Brienza 04/04/2022 for review and comment. After reviewing Jerry asked for clarification regarding applicant eligibility and if privately owned airports may apply. Per Heather Peck (ODAV) a private airstrip is not eligible for COAR grant funds unless it is a recognized Public Use airport per Oregon statute. Privately owned private use airports are NOT eligible for COAR grants. Copy of email correspondence included in Rulemaking file.

ABRAHAMSON Andria

From: ABRAHAMSON Andria
Sent: Tuesday, April 5, 2022 2:03 PM
To: Jerry Brienza; PECK Heather
Cc: CLARK Cathy RB
Subject: RE: Re: Re: RAC meeting 4/1/2022

Thank you, Jerry. I will update the RAC notes, and we will be in touch if anything else is required of the RAC members. Please let us know if you have any additional questions or comments.

Kind regards,

Andria Abrahamson

OREGON DEPARTMENT OF AVIATION
Program Coordinator/Fiscal Analyst



OFFICE 503-378-4881 **Cell** 503-302-3645

EMAIL andria.abrahamson@aviation.state.or.us

3040 25TH STREET SE, SALEM, OR 97302

WWW.OREGON.GOV/AVIATION

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From: Jerry Brienza <BrienzJB@jacksoncounty.org>
Sent: Tuesday, April 5, 2022 12:43 PM
To: PECK Heather <heather.peck@odav.oregon.gov>; ABRAHAMSON Andria <Andria.ABRAHAMSON@odav.oregon.gov>
Cc: CLARK Cathy RB <Cathy.RB.CLARK@odav.oregon.gov>
Subject: RE: Re: Re: RAC meeting 4/1/2022

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Thank you for the explanation. No need to go through all the trouble, my observation came from a very high level but you have explained it well. I appreciate your efforts. Otherwise, I am good with all the recommended revisions.

Have a good week.

Jerry Brienza
Airport Director
Rogue Valley International-Medford Airport (MFR)
1000 Terminal Loop Parkway, Suite 201
Medford, Oregon 97504
541-776-7222
brienzjb@jacksoncounty.org
www.flymfr.com



From: PECK Heather <heather.peck@odav.oregon.gov>

Sent: Tuesday, April 05, 2022 11:06 AM

To: Jerry Brienza <BrienzJB@jacksoncounty.org>; ABRAHAMSON Andria <Andria.ABRAHAMSON@odav.oregon.gov>

Cc: CLARK Cathy RB <Cathy.RB.CLARK@odav.oregon.gov>

Subject: EXT: Re: Re: RAC meeting 4/1/2022

When I get some free time I can send you all of the links to state law (specific ORS's) and it should also be referenced in the State Land Use Compatibility Guidelines by DLCD and our OAP State System Plan.

Kind Regards,

Heather

HEATHER PECK

OREGON DEPARTMENT OF AVIATION

PLANNING & PROGRAMS MANAGER



OFFICE 503-378-3168 **CELL** 503-881-6966

EMAIL heather.peck@aviation.state.or.us

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From: Jerry Brienza <BrienzJB@jacksoncounty.org>

Sent: Tuesday, April 5, 2022 10:51 AM

To: PECK Heather <heather.peck@odav.oregon.gov>; ABRAHAMSON Andria <Andria.ABRAHAMSON@odav.oregon.gov>

Cc: CLARK Cathy RB <Cathy.RB.CLARK@odav.oregon.gov>

Subject: RE: Re: RAC meeting 4/1/2022

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Thank you Heather. My ignorance lies behind the definition of a Public Use Airport. Can someone with an airstrip simply say they are not restricting anyone from flying in and, therefore, its Public Use. Maybe not that simple, but that was my justification behind the email.

Appreciate the quick response.

Jerry Brienza

Airport Director

Rogue Valley International-Medford Airport (MFR)

1000 Terminal Loop Parkway, Suite 201

Medford, Oregon 97504

541-776-7222

brienzjb@jacksoncounty.org

www.flymfr.com



From: PECK Heather <heather.peck@odav.oregon.gov>

Sent: Tuesday, April 05, 2022 10:40 AM

To: Jerry Brienza <BrienzJB@jacksoncounty.org>; ABRAHAMSON Andria <Andria.ABRAHAMSON@odav.oregon.gov>

Cc: CLARK Cathy RB <Cathy.RB.CLARK@odav.oregon.gov>

Subject: EXT: Re: RAC meeting 4/1/2022

Thank you Jerry but the program could never fund a private airstrip in someone's back yard unless it was a recognized Public Use airport.

We need to use the actual language in legislation regardless of NPIAS designation. The language was thought about a lot prior to being written in legislation. Privately or Publically owned Public Use airports ARE eligible (whether or not they are NPIAS). Privately owned Private Use airports are NOT eligible.

(1) An Applicant is eligible if the Applicant is an Oregon public use airport, privately or publicly owned; or if the Applicant is a public use airport sponsor

This is always a good topic to discuss as it is confusing to many people. Also, privately owned Private Use airports are bound by local level conditional use permits and are not outrightly permitted.

Kind Regards,

Heather

HEATHER PECK

OREGON DEPARTMENT OF AVIATION

PLANNING & PROGRAMS MANAGER

OFFICE 503-378-3168 CELL 503-881-6966

EMAIL heather.peck@aviation.state.or.us

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Kind Regards,

Heather

HEATHER PECK

OFFICE 503-378-3168 CELL 503-881-6966

OREGON DEPARTMENT OF AVIATION

PLANNING & PROGRAMS MANAGER



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From: Jerry Brienza <BrienzJB@jacksoncounty.org>
Sent: Tuesday, April 5, 2022 10:15 AM
To: ABRAHAMSON Andria <Andria.ABRAHAMSON@odav.oregon.gov>
Cc: CLARK Cathy RB <Cathy.RB.CLARK@odav.oregon.gov>; PECK Heather <heather.peck@odav.oregon.gov>
Subject: RE: RAC meeting 4/1/2022

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Thank you very much for the opportunity to participate. I have reviewed the video and the minutes. I appreciate the engaging nature of these discussions as well as the diverse expertise assembled on the RAC.

I have one comment regarding the COAR Applicant Eligibility. It appears that any publicly or privately owned airport is eligible to apply, which could essentially mean a landing strip in someone's backyard that is not restricted to owner aircraft only. Should it include the term NPIAS Airports so that the funding is not open to everyone with a strip?

Best -

Jerry Brienza
Airport Director
Rogue Valley International-Medford Airport (MFR)
1000 Terminal Loop Parkway, Suite 201
Medford, Oregon 97504
541-776-7222
brienzjb@jacksoncounty.org
www.flymfr.com



From: ABRAHAMSON Andria <Andria.ABRAHAMSON@odav.oregon.gov>
Sent: Monday, April 04, 2022 8:12 AM
To: Jerry Brienza <BrienzJB@jacksoncounty.org>
Cc: CLARK Cathy RB <Cathy.RB.CLARK@odav.oregon.gov>; PECK Heather <heather.peck@odav.oregon.gov>
Subject: EXT: RAC meeting 4/1/2022

Good morning Jerry,

As you know, the RAC met last Friday. You may view the recording of the meeting on ODAV's YouTube channel linked here:

[Aviation System Action Program \(ASAP\) Rule Advisory Committee Meeting - YouTube](#)

I will get notes from the meeting put together and sent out to all RAC members today. If you have any additional questions or comments please forward by this Thursday 4/7/2022. After reviewing, ODAV will determine if a second RAC meeting is needed, and notify the RAC members.

Thank you so much for your participation. If you have any questions about the process itself please let me know, otherwise we look forward to hearing any comments on the rulemaking.

Kind regards,

Andria Abrahamson
OREGON DEPARTMENT OF AVIATION
Program Coordinator/Fiscal Analyst



OFFICE 503-378-4881 **Cell** 503-302-3645
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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**05/19/2022 2:42 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Update of grant rules and removal of closed ROAR grant program

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: Andria Abrahamson
503-378-4881
andria.abrahamson@odav.oregon.govOregon Department of Aviation
3040 25th Street SE
Salem, OR 97302Filed By:
Lauri Kunze
Rules Coordinator**NEED FOR THE RULE(S)**

The Legislature changed the statutes that control Oregon Department of Aviation grant programs. Rules are being changed in response to new legislation. The rules provide clarification on project and applicant eligibility as well as application requirements and financial matching requirements. The proposed changes clarify review and approval processes, as well as program administration.

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 the ASAP program from this rule making will be applicable to all eligible stakeholders regardless of race or other protected classes.

FISCAL AND ECONOMIC IMPACT:

The rule changes include closing the Rural Oregon Airport Relief (ROAR) grant program and applying a greater percentage of aviation fuel tax revenue to the Critical Oregon Airport Relief (COAR) program, one of the two grant programs remaining in ASAP. The COAR program will also be expanded to include grants to assist commercial air service to rural Oregon. Because the stipulations in the ROAR program made it difficult to award grant funds it is anticipated that closing this program and changing the COAR program will allow greater opportunity for grant funds to go to supporting air service in rural Oregon. Additionally, the extra fuel tax revenue being applied to the COAR fund will allow for higher funding cap in future grant cycles, which equals more money going to Oregon airports.

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 738-124 and revisions apply to privately and publicly owned, public use Oregon airport owners and/or sponsors.

(2)(a), (b) and (c) None; the rule changes only impact those who affirmatively apply for ODAV grants.

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:

738-124-0010, 738-124-0015, 738-124-0020, 738-124-0025, 738-124-0030, 738-124-0035, 738-124-0040, 738-124-0050, 738-124-0060, 738-124-0070, 738-124-0080

AMEND: 738-124-0010

RULE SUMMARY: OAR 738-124-0010 is amended to update purposes of the COAR program to include assist commercial air service to rural Oregon and to clarify the term signs to signage, and to remove sections relating to the closed ROAR grant program.

CHANGES TO RULE:

738-124-0010

Purpose ¶

(1) The State of Oregon established the Aviation System Action Program (ASAP) fund pursuant in 2015 Oregon Laws, chapter 700, section 7, as modified by 2019 Oregon Laws, chapter 485, section 1. The Department shall administer the funded programs and distribute funds for the purposes established by the Oregon legislature.¶
(2) The purposes of the COAR program are to: assist airports in Oregon with match requirements for FAA Airport Improvement Program grants; and make grants for: emergency preparedness and infrastructure projects, in accordance with the Oregon Resilience Plan or the Oregon Aviation Plan; services critical or essential to aviation, including but, not limited to, fuel, sewer, water, navigational aids and weather equipment; aviation-related business development, including but, not limited to, hangars, parking for business aircraft and related facilities; or airport development for local economic benefit, including but not limited to signage and marketing.¶
~~(3) The purpose of the ROAR program is, or to assist commercial air service to Rural Oregon.¶~~
(4) The purpose of the SOAR program is to distribute funds to state-owned airports for: safety improvements recommended by the Board and local community airports; and infrastructure projects at public use airports.
Statutory/Other Authority: ORS 835.035, 835.040, 835.112, OL 2019 c.485 Section 1(2)(b)
Statutes/Other Implemented: OL 2019 c.485 Section 1, ORS 835.025, 835.040, OL 2021 c.526 Section 4(5)(a)(D) and (b)

AMEND: 738-124-0015

RULE SUMMARY: OAR 738-124-015 is amended to remove section(s) relating to the closed ROAR grant program.

CHANGES TO RULE:

738-124-0015

Definitions ¶¶

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

- (1) "Agreement" means a legally binding contract between the Department and Recipient that contains the terms and conditions under which the Department is providing funds from the ASAP Fund.¶¶
- (2) "Applicant" means a Person or Public Body that applies for funds from the ASAP Fund.¶¶
- (3) "ARC" means the Aviation Review Committee established by the Board in accordance with 2019 Oregon Laws, chapter 485, section 1(3) and composed of one member from each of the Area Commissions on Transportation chartered by the Oregon Transportation Commission (OTC). ¶¶
- (4) "Area Commissions on Transportation" means advisory bodies chartered by the OTC through the Policy on Formation and Operation of Area Commissions on Transportation (ACTs) approved by the OTC on June 18, 2003.¶¶
- (5) "Assisting Commercial Air Service" means increasing the volume of passenger air travel via aircraft on a fee for service basis. ¶¶
- (6) "Aviation" has the meaning given in ORS 836.005(5).¶¶
- (7) "Aviation System Action Program (ASAP) Fund" means the fund created in 2015 Oregon Laws, chapter 700, section 7(1), as modified by 2019 Oregon Laws, chapter 485, section 1(1) and distributed in accordance with 2019 Oregon Laws, chapter 485, section 1(4)¶¶
- (8) "Board" means the State Aviation Board created in ORS 835.102.¶¶
- (9) "COAR" or Critical Oregon Airport Relief program means the funding program described in 2019 Oregon Laws, chapter 485, section 1(5).¶¶
- (10) "Connect Oregon Fund" means the fund established in ORS 367.080.¶¶
- (11) "Department" means the Oregon Department of Aviation or ODA.¶¶
- (12) "Director" means the Director of the Oregon Department of Aviation.¶¶
- (13) "FAA" means the Federal Aviation Administration.¶¶
- (14) "Oregon Freight Advisory Committee" (OFAC) means the committee created in ORS 366.212.¶¶
- (15) "NPIAS" means the National Plan of Integrated Airport Systems. ¶¶
- (16) "Oregon Aviation Plan" (OAP) means the plan developed under ORS 835.015.¶¶
- (17) "Oregon Business Development Department" means the department defined in ORS 285A.070.¶¶
- (18) "Oregon Resilience Plan" means the report to the 77th Legislative Assembly prepared by the Oregon Seismic Safety Policy Advisory Commission (OSSPAC) in February 2013, titled "The Oregon Resilience Plan Reducing Risk and Improving Recovery for the Next Cascadia Earthquake and Tsunami."¶¶
- (19) "Recipient" means an Applicant who enters into Agreement with the Department to receive funds from the ASAP Fund.¶¶
- (20) "Revenue Use Policy" means, collectively, the FAA policy set out in 64 Federal Register 7696 (February 16, 1999), and amended in 79 Federal Register 66282 (November 7, 2014), and 49 USC § 47107, 47133.¶¶
- ~~(21) "ROAR" or Rural Oregon Aviation Relief program means grant funding as described in 2019 Oregon Laws, chapter 485, section 1(6).¶¶~~
- ~~(22) "Rural Oregon" means any area within the state of Oregon that was not officially designated or delineated as a Metropolitan Statistical Area by the U.S. Office of Management and Budget as of September 2018. ¶¶~~
- ~~(23) "SOAR" or State Owned Airport Reserve program means funding described in 2019 Oregon Laws, chapter 485, section 1(7).~~

Statutory/Other Authority: ORS 835.035, 835.040, 835.112, OL 2019 c.485 Section 1(2)(b)

Statutes/Other Implemented: ORS 835.025, 835.040, OL 2019 c.485 Section 1, OL 2021 c.526 Section 4(5)(a)(D)

AMEND: 738-124-0020

RULE SUMMARY: OAR 738-124-020 is amended to remove section(s) related to the closed ROAR grant program.

CHANGES TO RULE:

738-124-0020

COAR and ROAR Project Eligibility ¶

(1) Project Eligibility. ¶

(a) A project is eligible only if it has not been completed prior to the application deadline set by the Department. ¶

(b) A project is not eligible if its nature is to provide a match for a project or program that is funded with other Department funds or the Connect Oregon Fund. ¶

(c) A project is not eligible if it is prohibited by the Revenue Use Policy. ¶

(2) Additional project eligibility requirement for COAR applications: A project is eligible only if it is located on an airport that is open to flight operations by the public. ¶

~~(3) Additional project eligibility requirement for ROAR applications: A project is eligible if it will increase commercial passenger travel between an airport in Rural Oregon and another airport in Oregon.~~

Statutory/Other Authority: ORS 835.035, 835.040, 836.112, OL 2019 c.485 Section 1(2)(b)

Statutes/Other Implemented: ORS 835.025, OL 2019 c.485 Section 1, 835.040, OL 2021 c.526 Section 4(5)(a)(D) and (b)

AMEND: 738-124-0025

RULE SUMMARY: OAR 738-124-025 is amended to remove section(s) related to the closed ROAR grant program and create an additional COAR applicant eligibility.

CHANGES TO RULE:

738-124-0025

COAR and ROAR Applicant Eligibility ¶¶

(1) An Applicant is eligible if the Applicant is an Oregon public use airport, privately or publicly owned; or if the Applicant is a public use airport sponsor.¶¶

(2) An Applicant is eligible if the Applicant has a current Oregon Secretary of State business registry number, unless the Applicant is an individual doing business under the individual's real and true name, is a public sector entity, or is otherwise exempt under applicable law.¶¶

(2) Additional applicant eligibility requirement for ROAR applications: Applicants must either be airports located in Rural Oregon, or apply in partnership with an airport located outside of Rural Oregon.

Statutory/Other Authority: ORS 835.035, 835.040, 835.112, OL 2019 c.485 Section 1(2)(b)

Statutes/Other Implemented: ORS 835.025, OL 2019 c.485 Section 1, 835.040, OL 2021 c.526 Section 4(5)(a)(D) and (b)

RULE SUMMARY: OAR 738-124-030 is amended to remove section(s) related to the closed ROAR grant program.

CHANGES TO RULE:

738-124-0030

~~COAR and ROAR~~ Application Requirements

- (1) The Department shall announce application deadlines for ~~COAR and ROAR~~ funding. The Department shall not consider applications submitted after the deadline set by the Department.¶
- (2) Applicants interested in receiving funds under ~~either COAR or RCOAR~~ must submit an application to the Department in a format prescribed by the Department. At a minimum, each application must contain the following information:¶
- (a) Project Information. The application must include:¶
- (A) Applicant's name and Oregon Secretary of State Business Registry number (if one exists), and the contact information of the individual who represents the Applicant with respect to the application; ¶
- (B) Project name;¶
- (C) Project location;¶
- (D) Airport information, specifically the:¶
- (i) Airport name,¶
- (ii) Airport category, and¶
- (iii) Whether the airport is NPIAS or Non-NPIAS;¶
- (E) Project overview, including purpose and projected start and end dates; and ¶
- (F) A statement describing local support for the project, if any.¶
- (b) Project Documentation. The application must describe documentation necessary to complete the project, specifically statements regarding whether:¶
- (A) The project is in the most current Airport Layout Plan (ALP), signed by the FAA and the airport owner;¶
- (B) A National Environmental Policy Act (NEPA) review is required;¶
- (C) An Airport Safety Overlay Zone, as described in OAR 660-013-0070, has been adopted at the airport where the project will be located; and¶
- (D) Any permits or licenses are required for the project, and if so, a description of each permit or license which identifies the issuing authority and a brief description of the reason the permit or license is required.¶
- (c) Statewide Impact. The application must include a brief statement about whether the project:¶
- (A) Reduces transportation costs for Oregon businesses or improves access to jobs and sources of labor in Oregon;¶
- (B) Results in an economic benefit to Oregon;¶
- (C) Connects elements of Oregon's aviation system in a way that will measurably improve utilization and efficiency of the system;¶
- (D) Is ready for construction or implementation, including whether the project has any unique construction-readiness, project implementation issues, or possible delays; and¶
- (E) Has a useful life expectancy that offers maximum benefit to this state.¶
- (d) Project Budget Information. The application must include each of the following:¶
- (A) The total amount of the ~~COAR or ROAR~~ grant sought by the Applicant. Amounts sought may not exceed the maximum grant amounts specified in OAR 738-124-0040.¶
- (B) For federally funded projects, a statement of whether the project is listed on the approved Federal Capital Improvement Plan and, if so provide a copy of the Capital Improvement Plan.¶
- (C) A list of project funding sources and the amount of funding from each source. Applicants must include a statement of how much of the cost of the project can be borne by the Applicant from sources other than Department funds or Connect Oregon Fund.¶
- (D) A statement identifying whether the project will have incurred any expenditures prior to the effective date of an Agreement, if awarded, and a brief explanation if so. ¶
- (E) Documentation of the Applicant's ability to meet the financial contribution or match requirement specified in OAR 738-124-0040. ¶
- (e) Applicant history. A statement in which the Applicant discloses any circumstance in which the Applicant or one of its owners or principals has been involved in a dispute about its use of grant funds or a business loan within the last 5 years preceding the date of the application. If any such circumstances exist, the Applicant shall describe the circumstances, including the approximate date of the circumstance, the entity or individual making the grant or loan at issue, and the outcome of the dispute.¶
- (f) Applicant affirmation. Each Applicant must affirm that the statements contained in the application are complete and accurate.¶

~~(3) Additional requirements for ROAR applications:¶¶~~

~~(a) ROAR applications must also include: an amount of the projected increase in the volume of passenger air travel to rural Oregon and an explanation of the factors that support it; and a list of local companies, non-profit organizations or government agencies that have expressed interest in the project or a commitment to support it, accompanied by letters or other evidence of support from the entities.¶¶~~

~~(b) For projects that include marketing, the application must include a proposed marketing and communication plan.¶¶~~

~~(c) For projects that include air service, the application must also specify: projected aircraft to be used; type of FAA certificate under which operations will be conducted; and estimated projected draw down of grant funds, month by month, for the initial 24 month period.~~

Statutory/Other Authority: ORS 835.035, 835.040, 835.112, OL 2019 c.485 Section 1(2)(b)

Statutes/Other Implemented: ORS 835.025, 835.040, OL 2019 c.485 Section 1, OL 2021 c.526 Section 4(5)(a)(D) and (b)

AMEND: 738-124-0035

RULE SUMMARY: OAR 738-124-035 is amended to update the percent of Aviation System Action Program Fund that goes to the COAR program, update priorities of the COAR program to include assist commercial air service to rural Oregon and clarify the term signs to signage, and to remove sections relating to the closed ROAR grant program.

CHANGES TO RULE:

738-124-0035

Project Selection ¶

(1) The Board will select Projects to be funded through a grant with monies in the Aviation System Action Program Fund.¶

(2) Prior to selecting Projects to be funded with monies in the Aviation System Action Program Fund, the Board shall solicit recommendations when applicable from:¶

(a) The Aviation Review Committee (ARC).¶

(b) The Freight Advisory Committee for freight Transportation Projects when applicable.¶

(c) The Oregon Business Development Department for aviation transportation projects when applicable.¶

(3) Prior to selecting Projects to be funded with monies in the Aviation System Action Program Fund, the Board may solicit recommendations from transportation stakeholder and advocate entities not otherwise specified in section (2) of this rule including the Area Commissions on Transportation. Business Oregon and Regional Solutions Teams will provide comments to the designated aviation representative of the Area Commissions on Transportation.¶

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

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

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

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

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

(a) ~~Fifty~~Seventy-five percent of the Aviation System Action Program Fund amounts described in subsection OL 20215 c.700 ~~526~~ Section 7 (4)(b) shall be prioritized in the following manner and distributed for the following purposes under the COAR Grant Program:¶

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

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

(C) Third priority is to make grants for:¶

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

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

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

~~(iiii) Assist commercial air service to rural Oregon~~¶

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

Statutory/Other Authority: ORS 835.035, 835.040, 835.112, OL 2015 c.700 Section 7

Statutes/Other Implemented: ORS 835.015, 835.025, 836.015, 836.070, 319.020, OL 2021 c.526 Section 4(5)(a)(D) and (b)

AMEND: 738-124-0040

RULE SUMMARY: OAR 738-124-040 is amended to remove section(s) related to the closed ROAR grant program, and correct the order of subcategories under (2)(A) to be consistent with the FAA airport categories.

CHANGES TO RULE:

738-124-0040

Maximum COAR and ROAR Grant Amounts and Applicant Financial Matching Requirements

(1) Maximum grant amounts for the respective programs are:¶

~~(a) COAR program: \$150,000 per project. COAR program is:¶~~

~~(b) ROAR program: \$150,000 per project.¶~~

~~(c) Maximum amounts listed in this rule are cumulative to all applications submitted with respect to a single project.¶~~

~~(d) Notwithstanding the maximum grant amounts listed in this section, the Board may award a larger grant if it makes a finding that a larger grant awarded to a particular project would serve the purposes of the program. If an Applicant applies for a grant amount above the maximum amount listed in this section, the application must include a detailed statement of how the grant amount in excess of the maximum listed in this section would serve the purposes of the respective program as described in OAR 738-124-0010.¶~~

~~(2) COAR Financial matching requirements Version 23, 11/12/2019.¶~~

~~(a) Minimum financial match requirements are based on the category of airport at which the project will be performed, as listed in the current Oregon Aviation Plan. By category, the minimum financial match requirements are:¶~~

~~(A) Category 1¶~~

~~(i) Other Commercial Non-Primary: 50 (less than 10,000 enplanements): 35% of the total eligible project costs¶~~

~~(ii) Other Commercial Non-Primary (less than 10,000 enplanements): 35; 50% of the total eligible project costs¶~~

~~(B) Category 2 - Business: 25% of the total eligible project costs¶~~

~~(C) Category 3 - Regional: 10% of the total eligible project costs¶~~

~~(D) Category 4 - Community: 10% of the total eligible project costs¶~~

~~(E) Category 5 - Low Activity: 5% of the total eligible project costs¶~~

~~(b) Notwithstanding subsection (a), the minimum financial match requirement for an airport listed in Table 1 of the FAA's Essential Air Service (EAS)/Economically Distressed Area (EDA) Determination memo dated February 8, 2019 is 5% of the total eligible project costs.¶~~

~~(c) For applications filed for assistance with FAA Airport Improvement Program (AIP) match requirements, the grant match amount is the eligible project cost and is subject to the minimum financial match requirements described above.¶~~

~~(3) ROAR financial matching requirements:¶~~

~~(a) For applications seeking funds for capital projects, the Applicant shall contribute at least 50% of the total eligible project costs.¶~~

~~(b) For applications seeking funds for any other purpose, the Applicant shall contribute at least 10% of the total eligible project costs.~~

Statutory/Other Authority: ORS 835.035, 835.040, 835.112, OL 2019 c.485 Section 1(2)(b)

Statutes/Other Implemented: ORS 835.025, OL 2019 c.485 Section 1, 835.040, OL 2021 c.526 Section 4(5)(a)(D) and (b)

AMEND: 738-124-0050

RULE SUMMARY: OAR 738-124-050 is amended to remove references to the closed ROAR grant program.

CHANGES TO RULE:

738-124-0050

Department Review of COAR and ~~ROAR~~ Applications

(1) The Department shall review applications for completeness and to confirm that Applicants and projects are eligible to receive funds. As part of its review, the Department may ask an Applicant to supply missing information or to provide clarification about Applicant or project eligibility.¶

(2) If an Application is incomplete, or an Applicant or project is ineligible, the Department shall, within 15 business days of making such determination:¶

(a) Specify in writing or email to the Applicant the additional information the Applicant must provide to complete the application or establish eligibility; or¶

(b) Notify the Applicant in writing or email that the Applicant or Project is ineligible and briefly describe the basis for ineligibility.¶

(3) If the Applicant fails to provide requested information within 5 business days from the date of the Department's written or email communication made pursuant to subsection (2)(a) of this rule, the Department may consider the application ineligible and provide the notice described in subsection (2)(b) of this rule.¶

(4) Affected Applicants may submit written protests of ineligibility determinations to the Director. Protests must be submitted in writing to the Director within 5 business days of the date of notice of the Department's determination of incompleteness or ineligibility that is being protested.¶

(5) The Director shall prepare a written response to the protest no later than 45 business days after the date the protest is received. The Director's written decision is final.¶

(6) The Department shall provide all eligible applications from eligible Applicants, including supporting materials, to the ARC.

Statutory/Other Authority: ORS 835.035, 835.040, 835.112, OL 2019 c.485 Section 1(2)(b)

Statutes/Other Implemented: ORS 835.025, OL 2019 c.485 Section 1, 835.040, OL 2021 c.526 Section 4(5)(a)(D) and (b)

RULE SUMMARY: OAR 738-124-0060 is amended to remove sections relating to the closed ROAR grant program, update purposes of the COAR program to include assist commercial air service to rural Oregon, and to clarify the term signs to signage.

CHANGES TO RULE:

738-124-0060

Aviation Review Committee (ARC) Review and Recommendation of COAR and ROAR Applications

(1) The ARC shall hold public meetings as necessary to review eligible applications and to prepare approval and rejection recommendations to the Board.¶¶

(2) In reviewing applications, ARC shall consider:¶¶

(a) ~~For COAR applications:~~ The extent to which, if implemented, the project proposed in the Application would:¶¶

(A) Assist airports in Oregon with match requirements for FAA Airport Improvement Program grants;¶¶

(B) Support emergency preparedness and infrastructure goals in accordance with the Oregon Resilience Plan or the Oregon Aviation Plan; or ¶¶

(C) Support services critical or essential to aviation, including, but not limited to, fuel, sewer, water and weather equipment; support aviation-related business development, including, but not limited to, hangars, parking for business aircraft and related facilities; or support airport development for local economic benefit, including, but not limited to, signage and marketing.¶¶

(b) ~~For ROAR applications: the extent to which the project proposed in the Application would, if implemented, assist commercial air service to Rural Oregon.~~¶¶

(c) Whether the project proposed in the application:¶¶

(A) Reduces transportation costs for Oregon businesses or improves access to jobs and sources of labor in Oregon;¶¶

(B) Results in an economic benefit to Oregon;¶¶

(C) Connects elements of Oregon's aviation system in a way that will measurably improve utilization and efficiency of the system;¶¶

(D) Is ready for construction or implementation, including whether the project has any unique construction-readiness, project implementation challenges, or possible delays; and¶¶

(E) Has a useful life expectancy that offers maximum benefit to Oregon.¶¶

(d) How much of the costs of the project proposed in the application can be borne by the Applicant from sources other than the Department or the Connect Oregon Fund. ¶¶

(3) For each applicable criterion, the ARC will rate whether the proposed project "Meets," "Somewhat Meets" or "Does not Meet" the criterion. For purposes of this process, those terms have the following meanings:¶¶

(a) "Meets" means that the Applicant explained in a thorough and specific manner how the project meets the criterion and provided thorough evidence, including specific facts, specific examples, reliable figures, or detailed citations to supporting attachments to the application to support the Applicant's explanation.¶¶

(b) "Somewhat Meets" means that the Applicant provided a general, superficial or non-specific explanation how the project meets the criterion or provided only limited or incomplete supporting evidence to support the Applicant's explanation. ¶¶

(c) "Does Not Meet" means that either:¶¶

(A) The Applicant reported that the project did not meet the criterion; or ¶¶

(B) The Applicant provided an incomplete or implausible explanation of how the project meets the criterion or provided no evidence or only minimal, implausible or unreliable evidence to support the Applicant's explanation.¶¶

(4) Prioritizing COAR applications: In prioritizing applications submitted for COAR funds, the ARC may consider the following factors:¶¶

(a) Applicant that is able to bear the most cost. ¶¶

(b) Projects related to safety or infrastructure.¶¶

(c) Quantity of projects applied for at an airport, within the same grant cycle.¶¶

(d) Regional significance.¶¶

(5) Based on its review of eligible applications, the ARC shall:¶¶

(a) Prepare a brief written statement to the Board with respect to each application which recommends approval or rejection by the Board.¶¶

(b) For COAR applications for which the ARC recommends Board approval, the ARC shall prepare a prioritized list of applications, ranking them in the following priority:¶¶

(A) First, to assist airports in Oregon with match requirements for FAA Airport Improvement Program grants.¶¶

(B) Second, to make grants for emergency preparedness and infrastructure projects, in accordance with the

Oregon Resilience Plan or the Oregon Aviation Plan.¶¶

(C) Third, to make grants for:¶¶

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

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

(iii) Airport development for local economic benefit, including, but not limited to, signage and marketing; or¶¶

(iiii) To assist commercial air service to rural Oregon¶¶

(6) The Department shall provide the ARC's written responses and prioritized list to the Board as soon as practicable after the ARC's review.

Statutory/Other Authority: ORS 835.035, 835.040, 835.112, OL 2019 c.485 Section 1(2)(b)

Statutes/Other Implemented: ORS 835.025, OL 2019 c.485 Section 1, 835.040, OL 2021 c.526 Section 4(5)(a)(D) and (b)

AMEND: 738-124-0070

RULE SUMMARY: OAR 738-124-0070 is amended to update purposes of the COAR program to include assist commercial air service to rural Oregon and to clarify the term signs to signage, and to remove sections relating to the closed ROAR grant program.

CHANGES TO RULE:

738-124-0070

Board Approval or Rejection of COAR and ROAR Applications

- (1) Prior to approving COAR and ROAR applications, the Board shall review and consider the ARC's written recommendations and prioritized list of COAR applications recommended for approval.¶
 - (2) As part of its consideration of applications, the Board may solicit written feedback from stakeholders or entities with expertise relevant to a project proposed in a particular application, such as the Freight Advisory Committee, the Oregon Business Development Department, or Area Commissions on Transportation. ¶
 - (3) The Board may delegate solicitation and collection of written feedback to the Department and may instruct the Department to solicit or collect feedback at any point in the application cycle. ¶
 - (4) The Board may require any Applicant to make a presentation to the Board or interview with a Board designee as part of its consideration process.¶
 - (5) The Board may approve an application for the amount sought or for a smaller amount.¶
 - (6) When selecting COAR applications for approval, the Board shall prioritize them as described below:¶
 - (a) First, to assist airports in Oregon with match requirements for FAA Airport Improvement Program grants.¶
 - (b) Second, to make grants for emergency preparedness and infrastructure projects, in accordance with the Oregon Resilience Plan or the Oregon Aviation Plan.¶
 - (c) Third, to make grants for:¶
 - (A) Services critical or essential to aviation, including, but not limited to, fuel, sewer, water and weather equipment; or¶
 - (B) Aviation-related business development, including, but not limited to, hangars, parking for business aircraft and related facilities; or¶
 - (C) Airport development for local economic benefit, including, but not limited to, signage and marketing; or¶
 - (D) To assist commercial service to rural Oregon
- Statutory/Other Authority: ORS 835.035, 835.040, 835.112, OL 2019 c.485 Section 1(2)(b)
Statutes/Other Implemented: ORS 835.025, OL 2019 c.485 Section 1, 835.040, OL 2021 c.526 Section 4(5)(a)(D) and (b)

AMEND: 738-124-0080

RULE SUMMARY: OAR 738-124-080 is amended to remove section(s) related to the closed ROAR grant program.

CHANGES TO RULE:

738-124-0080

~~COAR and ROAR~~ Program Administration

- (1) The Department shall administer all ~~COAR and ROAR~~ grants.¶
- (2) The Department and Recipient shall execute a written Agreement in a form acceptable to the Department prior to the disbursement of funds for an application approved by the Board. ¶
- (3) At a minimum, the Agreement must contain provisions as listed below.¶
- (a) A provision which requires a Recipient to submit documentation of the projected costs for the project must be submitted to the Department prior to the disbursement of funds.¶
- (b) A provision which requires that disbursement of funds be made on a reimbursement basis. ¶
- (c) A provision which requires a Recipient to separately account for all monies received from the ASAP Fund in project accounts in accordance with Generally Accepted Accounting Principles.¶
- (d) A provision which authorizes the Department to withhold a percentage of funds for which reimbursement is sought by a Recipient and authorizes the Department to release the funds to Recipient when the conditions established by the Department are met or upon final project acceptance by the Department. The Department shall determine retainage limits in accordance with ORS 835.112. ¶
- (e) A provision which requires a Recipient to remain current on all applicable state and local taxes, fees and assessments for the useful life of the project as prescribed in the Agreement. ¶
- (f) A provision or provisions which protect public funds by identifying circumstances under which the Department may require repayment of disbursed funds or terminate the Agreement and which identify the rights and remedies of the Department upon termination.¶
- (g) A provision which requires changes to the project's cost, scope, objectives or timeframe be effective only upon written amendment to the Agreement.¶
- (h) Provisions which require the Recipient to provide the Department with information, records, materials, progress reports or other information that may be requested by the Department.¶
- (i) A provision which authorizes the Department to conduct reasonable inspections of projects funded under the Agreement. ¶
- (4) The Department shall comply with applicable review requirements set out in statute, rule or Department policy prior to executing Agreements.

Statutory/Other Authority: ORS 835.035, 835.040, 835.112, OL 2019 c.485 Section 1(2)(b)

Statutes/Other Implemented: ORS 835.040, ORS 835.025, OL 2019 c.485 Section 1, OL 2021 c.526 Section 4(5)(a)(D) and (b)

Chapter 738

Division 124

AVIATION SYSTEM ACTION PROGRAM (ASAP) FUND

738-124-0010

Purpose

(1) The State of Oregon established the Aviation System Action Program (ASAP) fund pursuant in 2015 Oregon Laws, chapter 700, section 7, as modified by 2019 Oregon Laws, chapter 485, section 1. The Department shall administer the funded programs and distribute funds for the purposes established by the Oregon legislature.

(2) The purposes of the COAR program are to: assist airports in Oregon with match requirements for FAA Airport Improvement Program grants; and make grants for: emergency preparedness and infrastructure projects, in accordance with the Oregon Resilience Plan or the Oregon Aviation Plan; services critical or essential to aviation, including but, not limited to, fuel, sewer, water, navigational aids and weather equipment; aviation-related business development, including but, not limited to, hangars, parking for business aircraft and related facilities; airport development for local economic benefit, including but not limited to signage and marketing; or to assist commercial air service to rural Oregon

(3) The purpose of the SOAR program is to distribute funds to state-owned airports for: safety improvements recommended by the Board and local community airports; and infrastructure projects at public use airports.

738-124-0015

Definitions

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

(1) “Agreement” means a legally binding contract between the Department and Recipient that contains the terms and conditions under which the Department is providing funds from the ASAP Fund.

(2) “Applicant” means a Person or Public Body that applies for funds from the ASAP Fund.

(3) “ARC” means the Aviation Review Committee established by the Board in accordance with 2019 Oregon Laws, chapter 485, section 1(3) and composed of one member from each of the Area Commissions on Transportation chartered by the Oregon Transportation Commission (OTC).

(4) “Area Commissions on Transportation” means advisory bodies chartered by the OTC through the Policy on Formation and Operation of Area Commissions on Transportation (ACTs) approved by the OTC on June 18, 2003.

(5) "Assisting Commercial Air Service" means increasing the volume of passenger air travel via aircraft on a fee for service basis.

(6) "Aviation" has the meaning given in ORS 836.005(5).

(7) "Aviation System Action Program (ASAP) Fund" means the fund created in 2015 Oregon Laws, chapter 700, section 7(1), as modified by 2019 Oregon Laws, chapter 485, section 1(1) and distributed in accordance with 2019 Oregon Laws, chapter 485, section 1(4)

(8) "Board" means the State Aviation Board created in ORS 835.102.

(9) "COAR" or Critical Oregon Airport Relief program means the funding program described in 2019 Oregon Laws, chapter 485, section 1(5).

(10) "Connect Oregon Fund" means the fund established in ORS 367.080.

(11) "Department" means the Oregon Department of Aviation or ODA.

(12) "Director" means the Director of the Oregon Department of Aviation.

(13) "FAA" means the Federal Aviation Administration.

(14) "Oregon Freight Advisory Committee" (OFAC) means the committee created in ORS 366.212.

(15) "NPIAS" means the National Plan of Integrated Airport Systems.

(16) "Oregon Aviation Plan" (OAP) means the plan developed under ORS 835.015.

(17) "Oregon Business Development Department" means the department defined in ORS 285A.070.

(18) "Oregon Resilience Plan" means the report to the 77th Legislative Assembly prepared by the Oregon Seismic Safety Policy Advisory Commission (OSSPAC) in February 2013, titled "The Oregon Resilience Plan Reducing Risk and Improving Recovery for the Next Cascadia Earthquake and Tsunami."

(19) "Recipient" means an Applicant who enters into Agreement with the Department to receive funds from the ASAP Fund.

(20) "Revenue Use Policy" means, collectively, the FAA policy set out in 64 Federal Register 7696 (February 16, 1999), and amended in 79 Federal Register 66282 (November 7, 2014), and 49 USC § 47107, 47133.

(21) "Rural Oregon" means any area within the state of Oregon that was not officially designated or delineated as a Metropolitan Statistical Area by the U.S. Office of Management and Budget as of September 2018.

(22) "SOAR" or State Owned Airport Reserve program means funding described in 2019 Oregon Laws, chapter 485, section 1(7).

738-124-0020

COAR Project Eligibility

(1) Project Eligibility.

(a) A project is eligible only if it has not been completed prior to the application deadline set by the Department.

(b) A project is not eligible if its nature is to provide a match for a project or program that is funded with other Department funds or the Connect Oregon Fund.

(c) A project is not eligible if it is prohibited by the Revenue Use Policy.

(2) Additional project eligibility requirement for COAR applications: A project is eligible only if it is located on an airport that is open to flight operations by the public.

738-124-0025

COAR Applicant Eligibility

(1) An Applicant is eligible if the Applicant is an Oregon public use airport, privately or publicly owned; or if the Applicant is a public use airport sponsor.

(2) An Applicant is eligible if the Applicant has a current Oregon Secretary of State business registry number, unless the Applicant is an individual doing business under the individual's real and true name, is a public sector entity, or is otherwise exempt under applicable law.

738-124-0030

COAR Application Requirements

(1) The Department shall announce application deadlines for COAR funding. The Department shall not consider applications submitted after the deadline set by the Department.

(2) Applicants interested in receiving funds under the COAR program must submit an application to the Department in a format prescribed by the Department. At a minimum, each application must contain the following information:

(a) Project Information. The application must include:

(A) Applicant's name and Oregon Secretary of State Business Registry number (if one exists), and the contact information of the individual who represents the Applicant with respect to the application;

(B) Project name;

(C) Project location;

(D) Airport information, specifically the:

(i) Airport name,

(ii) Airport category, and

(iii) Whether the airport is NPIAS or Non-NPIAS;

(E) Project overview, including purpose and projected start and end dates; and

(F) A statement describing local support for the project, if any.

(b) Project Documentation. The application must describe documentation necessary to complete the project, specifically statements regarding whether:

(A) The project is in the most current Airport Layout Plan (ALP), signed by the FAA and the airport owner;

(B) A National Environmental Policy Act (NEPA) review is required;

(C) An Airport Safety Overlay Zone, as described in OAR 660-013-0070, has been adopted at the airport where the project will be located; and

(D) Any permits or licenses are required for the project, and if so, a description of each permit or license which identifies the issuing authority and a brief description of the reason the permit or license is required.

(c) Statewide Impact. The application must include a brief statement about whether the project:

(A) Reduces transportation costs for Oregon businesses or improves access to jobs and sources of labor in Oregon;

(B) Results in an economic benefit to Oregon;

(C) Connects elements of Oregon's aviation system in a way that will measurably improve utilization and efficiency of the system;

(D) Is ready for construction or implementation, including whether the project has any unique construction-readiness, project implementation issues, or possible delays; and

(E) Has a useful life expectancy that offers maximum benefit to this state.

(d) Project Budget Information. The application must include each of the following:

(A) The total amount of the COAR grant sought by the Applicant. Amounts sought may not exceed the maximum grant amounts specified in OAR 738-124-0040.

(B) For federally funded projects, a statement of whether the project is listed on the approved Federal Capital Improvement Plan and, if so provide a copy of the Capital Improvement Plan.

(C) A list of project funding sources and the amount of funding from each source. Applicants must include a statement of how much of the cost of the project can be borne by the Applicant from sources other than Department funds or Connect Oregon Fund.

(D) A statement identifying whether the project will have incurred any expenditures prior to the effective date of an Agreement, if awarded, and a brief explanation if so.

(E) Documentation of the Applicant's ability to meet the financial contribution or match requirement specified in OAR 738-124-0040.

(e) Applicant history. A statement in which the Applicant discloses any circumstance in which the Applicant or one of its owners or principals has been involved in a dispute about its use of grant funds or a business loan within the last 5 years preceding the date of the application. If any such circumstances exist, the Applicant shall describe the circumstances, including the approximate date of the circumstance, the entity or individual making the grant or loan at issue, and the outcome of the dispute.

(f) Applicant affirmation. Each Applicant must affirm that the statements contained in the application are complete and accurate.

738-124-0035

Project Selection

(1) The Board will select Projects to be funded through a grant with monies in the Aviation System Action Program Fund.

(2) Prior to selecting Projects to be funded with monies in the Aviation System Action Program Fund, the Board shall solicit recommendations when applicable from:

(a) The Aviation Review Committee (ARC).

(b) The Freight Advisory Committee for freight Transportation Projects when applicable.

(c) The Oregon Business Development Department for aviation transportation projects when applicable.

(3) Prior to selecting Projects to be funded with monies in the Aviation System Action Program Fund, the Board may solicit recommendations from transportation stakeholder and advocate entities not otherwise specified in section (2) of this rule including the Area Commissions on Transportation. Business Oregon and Regional Solutions Teams will provide comments to the designated aviation representative of the Area Commissions on Transportation.

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

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

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

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

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

(a) Seventy-five percent of the Aviation System Action Program Fund amounts described in OL 2021 c. 526 Section 7 (4)(b) shall be prioritized in the following manner and distributed for the following purposes under the COAR Grant Program:

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

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

(C) Third priority is to make grants for:

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

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

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

(iiii) Assist commercial air service to rural Oregon

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

738-124-0040

Maximum COAR Grant Amounts and Applicant Financial Matching Requirements

(1) Maximum grant amounts for the COAR program is::

(a) \$150,000 per project.

(b) Maximum amount listed in this rule is cumulative to all applications submitted with respect to a single project.

(c) Notwithstanding the maximum grant amounts listed in this section, the Board may award a larger grant if it makes a finding that a larger grant awarded to a particular project would serve the purposes of

the program. If an Applicant applies for a grant amount above the maximum amount listed in this section, the application must include a detailed statement of how the grant amount in excess of the maximum listed in this section would serve the purposes of the respective program as described in OAR 738-124-0010.

(2) COAR Financial matching requirements.

(a) Minimum financial match requirements are based on the category of airport at which the project will be performed, as listed in the current Oregon Aviation Plan. By category, the minimum financial match requirements are:

(A) Category 1

(i) Other Commercial Non-Primary (less than 10,000 enplanements): 35% of the total eligible project costs

(ii) Commercial Primary: 50% of the total eligible project costs

(B) Category 2 – Business: 25% of the total eligible project costs

(C) Category 3 – Regional: 10% of the total eligible project costs

(D) Category 4 – Community: 10% of the total eligible project costs

(E) Category 5 – Low Activity: 5% of the total eligible project costs

(b) Notwithstanding subsection (a), the minimum financial match requirement for an airport listed in Table 1 of the FAA's Essential Air Service (EAS)/Economically Distressed Area (EDA) Determination memo dated February 8, 2019 is 5% of the total eligible project costs.

(c) For applications filed for assistance with FAA Airport Improvement Program (AIP) match requirements, the grant match amount is the eligible project cost and is subject to the minimum financial match requirements described above.

738-124-0045

Project Administration

(1) The Department will administer all Grants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) State statutory requirements have not been met;

(c) There is a significant deviation from the terms and conditions of the Agreement; or

(d) The Department finds that significant corrective actions are necessary to protect the integrity of the Program Funds for the Approved Project and those corrective actions are not, or will not be, made within a reasonable time.

(5) The Department may impose one or more of the following sanctions:

(a) Revoke an existing award.

- (b) Withhold unexpended Program Funds.
 - (c) Require return of unexpended Program Funds or repayment of expended Program Funds.
 - (d) Bar the Recipient from applying for future assistance.
 - (e) Other remedies that may be incorporated into grant Agreements.
- (6) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the agreement.
- (7) The Director will consider protests of the funding and Project administration decisions for the Program. Only the Recipient may protest. Protests must be submitted in writing to the Director within 15 business days of the event or action that is being protested. The Director's decision is final. Jurisdiction for review of the Director's decision is in the circuit court for Marion County pursuant to ORS 183.484.
- (8) The Director may waive non-statutory requirements of this Program if it is demonstrated such a waiver would serve to further the goals and objectives of the Program.

738-124-0050

Department Review of COAR Applications

- (1) The Department shall review applications for completeness and to confirm that Applicants and projects are eligible to receive funds. As part of its review, the Department may ask an Applicant to supply missing information or to provide clarification about Applicant or project eligibility.
- (2) If an Application is incomplete, or an Applicant or project is ineligible, the Department shall, within 15 business days of making such determination:
- (a) Specify in writing or email to the Applicant the additional information the Applicant must provide to complete the application or establish eligibility; or
 - (b) Notify the Applicant in writing or email that the Applicant or Project is ineligible and briefly describe the basis for ineligibility.
- (3) If the Applicant fails to provide requested information within 5 business days from the date of the Department's written or email communication made pursuant to subsection (2)(a) of this rule, the Department may consider the application ineligible and provide the notice described in subsection (2)(b) of this rule.
- (4) Affected Applicants may submit written protests of ineligibility determinations to the Director. Protests must be submitted in writing to the Director within 5 business days of the date of notice of the Department's determination of incompleteness or ineligibility that is being protested.
- (5) The Director shall prepare a written response to the protest no later than 45 business days after the date the protest is received. The Director's written decision is final.

(6) The Department shall provide all eligible applications from eligible Applicants, including supporting materials, to the ARC.

738-124-0060

Aviation Review Committee (ARC) Review and Recommendation of COAR Applications

(1) The ARC shall hold public meetings as necessary to review eligible applications and to prepare approval and rejection recommendations to the Board.

(2) In reviewing applications, ARC shall consider:

(a) The extent to which, if implemented, the project proposed in the Application would:

(A) Assist airports in Oregon with match requirements for FAA Airport Improvement Program grants;

(B) Support emergency preparedness and infrastructure goals in accordance with the Oregon Resilience Plan or the Oregon Aviation Plan; or

(C) Support services critical or essential to aviation, including, but not limited to, fuel, sewer, water and weather equipment; support aviation-related business development, including, but not limited to, hangars, parking for business aircraft and related facilities; support airport development for local economic benefit, including, but not limited to, signage and marketing; or to assist commercial air service to rural Oregon.

(b) Whether the project proposed in the application:

(A) Reduces transportation costs for Oregon businesses or improves access to jobs and sources of labor in Oregon;

(B) Results in an economic benefit to Oregon;

(C) Connects elements of Oregon's aviation system in a way that will measurably improve utilization and efficiency of the system;

(D) Is ready for construction or implementation, including whether the project has any unique construction-readiness, project implementation challenges, or possible delays; and

(E) Has a useful life expectancy that offers maximum benefit to Oregon.

(c) How much of the costs of the project proposed in the application can be borne by the Applicant from sources other than the Department or the Connect Oregon Fund.

(3) For each applicable criterion, the ARC will rate whether the proposed project "Meets," "Somewhat Meets" or "Does not Meet" the criterion. For purposes of this process, those terms have the following meanings:

(a) "Meets" means that the Applicant explained in a thorough and specific manner how the project meets the criterion and provided thorough evidence, including specific facts, specific examples, reliable figures, or detailed citations to supporting attachments to the application to support the Applicant's explanation.

(b) "Somewhat Meets" means that the Applicant provided a general, superficial or non-specific explanation how the project meets the criterion or provided only limited or incomplete supporting evidence to support the Applicant's explanation.

(c) "Does Not Meet" means that either:

(A) The Applicant reported that the project did not meet the criterion; or

(B) The Applicant provided an incomplete or implausible explanation of how the project meets the criterion or provided no evidence or only minimal, implausible or unreliable evidence to support the Applicant's explanation.

(4) Prioritizing COAR applications: In prioritizing applications submitted for COAR funds, the ARC may consider the following factors:

(a) Applicant that is able to bear the most cost.

(b) Projects related to safety or infrastructure.

(c) Quantity of projects applied for at an airport, within the same grant cycle.

(d) Regional significance.

(5) Based on its review of eligible applications, the ARC shall:

(a) Prepare a brief written statement to the Board with respect to each application which recommends approval or rejection by the Board.

(b) For COAR applications for which the ARC recommends Board approval, the ARC shall prepare a prioritized list of applications, ranking them in the following priority:

(A) First, to assist airports in Oregon with match requirements for FAA Airport Improvement Program grants.

(B) Second, to make grants for emergency preparedness and infrastructure projects, in accordance with the Oregon Resilience Plan or the Oregon Aviation Plan.

(C) Third, to make grants for:

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

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

(iii) Airport development for local economic benefit, including, but not limited to, signage and marketing; or

(iiii) To assist commercial air service to rural Oregon

(6) The Department shall provide the ARC's written responses and prioritized list to the Board as soon as practicable after the ARC's review.

738-124-0070

Board Approval or Rejection of COAR Applications

- (1) Prior to approving COAR applications, the Board shall review and consider the ARC's written recommendations and prioritized list of COAR applications recommended for approval.
- (2) As part of its consideration of applications, the Board may solicit written feedback from stakeholders or entities with expertise relevant to a project proposed in a particular application, such as the Freight Advisory Committee, the Oregon Business Development Department, or Area Commissions on Transportation.
- (3) The Board may delegate solicitation and collection of written feedback to the Department and may instruct the Department to solicit or collect feedback at any point in the application cycle.
- (4) The Board may require any Applicant to make a presentation to the Board or interview with a Board designee as part of its consideration process.
- (5) The Board may approve an application for the amount sought or for a smaller amount.
- (6) When selecting COAR applications for approval, the Board shall prioritize them as described below:
 - (a) First, to assist airports in Oregon with match requirements for FAA Airport Improvement Program grants.
 - (b) Second, to make grants for emergency preparedness and infrastructure projects, in accordance with the Oregon Resilience Plan or the Oregon Aviation Plan.
 - (c) Third, to make grants for:
 - (A) Services critical or essential to aviation, including, but not limited to, fuel, sewer, water and weather equipment; or
 - (B) Aviation-related business development, including, but not limited to, hangars, parking for business aircraft and related facilities; or
 - (C) Airport development for local economic benefit, including, but not limited to, signage and marketing; or
 - (D) To assist commercial air service to rural Oregon

738-124-0080

COAR Program Administration

- (1) The Department shall administer all COAR grants.
- (2) The Department and Recipient shall execute a written Agreement in a form acceptable to the Department prior to the disbursement of funds for an application approved by the Board.
- (3) At a minimum, the Agreement must contain provisions as listed below.

- (a) A provision which requires a Recipient to submit documentation of the projected costs for the project must be submitted to the Department prior to the disbursement of funds.
 - (b) A provision which requires that disbursement of funds be made on a reimbursement basis.
 - (c) A provision which requires a Recipient to separately account for all monies received from the ASAP Fund in project accounts in accordance with Generally Accepted Accounting Principles.
 - (d) A provision which authorizes the Department to withhold a percentage of funds for which reimbursement is sought by a Recipient and authorizes the Department to release the funds to Recipient when the conditions established by the Department are met or upon final project acceptance by the Department. The Department shall determine retainage limits in accordance with ORS 835.112.
 - (e) A provision which requires a Recipient to remain current on all applicable state and local taxes, fees and assessments for the useful life of the project as prescribed in the Agreement.
 - (f) A provision or provisions which protect public funds by identifying circumstances under which the Department may require repayment of disbursed funds or terminate the Agreement and which identify the rights and remedies of the Department upon termination.
 - (g) A provision which requires changes to the project's cost, scope, objectives or timeframe be effective only upon written amendment to the Agreement.
 - (h) Provisions which require the Recipient to provide the Department with information, records, materials, progress reports or other information that may be requested by the Department.
 - (i) A provision which authorizes the Department to conduct reasonable inspections of projects funded under the Agreement.
- (4) The Department shall comply with applicable review requirements set out in statute, rule or Department policy prior to executing Agreements.

738-124-0090

SOAR Program

- (1) Application process. The Department shall prepare, as approved by the Director, a list of proposed projects that serve some or all of the purposes described in OAR 738-124-0010(4) ("SOAR project list"). A SOAR project list prepared under this section is an eligible application, consisting of eligible projects, from an eligible Applicant for purposes of these rules. The Department shall forward the SOAR project list to the ARC for review and recommendation.
- (2) Review by the ARC. Applying the criteria in OAR 738-124-0060(2)(c), the ARC shall recommend to the Board the approval or rejection of each project on the SOAR project list.
- (3) Approval by Board. The Board shall approve or reject projects listed in the SOAR project list at a public meeting. The Board may increase or decrease dollar amounts allocated to projects it approves from the SOAR project list.