Oregon Department of Aviation

Chapter 738

Division 10
RATES AND CHARGES FOR STATE-OWNED AIRPORTS

738-010-0010
Purpose of Rule and Statutory Authority

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

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112
Statutes/Other Implemented: ORS 835.035, 835.040, 835.112 & 836.055
History:
AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02
1AD 2-1981, f. & ef. 4-20-81

738-010-0015
Revenue Disbursement

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

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112
Statutes/Other Implemented: ORS 835.035, 835.040, 835.112 & 836.055
History:
AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02
1AD 2-1981, f. & ef. 4-20-81

738-010-0020
Establishment of Rates and Charges

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

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

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

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

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112
Statutes/Other Implemented: ORS 835.035, 835.040, 835.112 & 836.055
History:
AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02
1AD 2-1981, f. & ef. 4-20-81

738-010-0025
Types of Rates, Charges and Fees

Each user of an Oregon State-owned airport shall be charged one or more of the following types of rates, charges and fees for the use of the premises and the rights granted by the Department:

(1) All leases of improved or unimproved state-owned land at state-owned airports shall include rent assessed at an annual rate per square foot. All rents and other charges for a lease of Department property shall reflect fair market rent as determined by first considering the fair market value established by the most recent appraisal of the property, if available, adjusted, if necessary, to reflect current lease market conditions as reflected in a market rent analysis conducted by a licensed real estate broker or a similar analysis conducted by Department staff experienced in such analysis. The market rent or similar analysis shall consider relevant circumstances including but not limited to whether the land is buildable and the restrictions, if any, that apply to the land. Lessees shall also pay all real property taxes and other taxes, if any, imposed on the leased property.

(a) Rent shall be paid to the Department as follows:

(A) Annually in full, with the first annual payment on or before the date the lease begins and subsequent payments on the anniversary date;

(B) Monthly in equal installments, payable at the beginning of each month; or

(C) By the terms of a payment-in-kind agreement that may constitute partial payment or full payment. The Department will determine and assign a value to payments in kind based upon a determination of the value of the goods, improvements or services actually received or to be provided. In kind payments are subject to rent escalation clauses. The determination of value will be based on an objective process which compares estimates obtained by the Department, the lessee or the proposed lessee from service providers for like services, goods or improvements. A payment-in-kind agreement and all documents used to determine payment-in-kind value must be retained in the lease file. Acceptance of an in kind payment offering requires documentation of an affirmative finding by the Department that the value of the in kind offering primarily benefits the airport generally rather than the individual lessee or the business of the individual lessee. Any payment-in-kind provision contained in an agreement executed before the effective date of this rule will be deemed valid. The Director must approve all payment-in-kind agreements prior to implementation.

(b) In new or renewed leases where all or part of the capital improvements are constructed at the Department's expense, the Department reserves the right to amortize all or part of the construction costs of the capital improvements, plus a reasonable rate of return as part of the rent, during the term of the lease.

(2) A fuel flowage fee, not to exceed $0.12 per gallon, shall be assessed to each FBO for all types of fuel received from a commercial distributor. Fuel flowage fees shall be calculated from the FBO's fuel flowage delivery report and shall be paid in full not later than two working days after the conclusion of the reporting period.

(3) Each user with an agreement to access the State-owned airport property shall pay an access fee according to a published fee schedule. To ensure equity among all users, the schedule shall be based on the quantity and individual weight of user's aircraft that will access the airport.

(a) Each commercial operator shall pay a fee to the Department, either annually on the agreement anniversary date or monthly on or before the 25th, for the month then in process.

(A) The fee shall be the greater of:

(i) A fee for each aircraft based on the adjacent property, based on aircraft maximum gross landing weight as shown below; or

(ii) A minimum guaranteed amount determined by Airport Category, as follows:

$275.00 — Per month per Category II Airport.

$175.00 — Per month per Category III and IV Airports.

$75.00 — Per month per Category V Airport.

(B) For multiple aircraft, payment shall be accompanied by a report listing each based aircraft showing aircraft class, N-number, aircraft type and the hangar or tiedown number where the aircraft is stored.

(b) Each non-commercial operator shall pay a fee for each aircraft based on the adjacent property, based on aircraft's maximum gross landing weight as set forth in Table 1 below. Payment is due either:

(A) Annually on the anniversary date of the agreement; or

(B) Monthly on or before the 25th, for the month then in process.

(c) At residential airparks, access fees as set forth below shall be assessed for each developed lot with airport access, whether or not the access is being utilized.

PER AIRCRAFT WEIGHT-BASED FEE FOR ALL STATE-OWNED AIRPORTS

Aircraft Weight Class — Weight Range — Monthly Fee Per Aircraft.

Class 1 — Up to 5,000 lbs — $15 per month.

Class 2 — 5,001 to 10,000 lbs — $24 per month.

Class 3 — 10,001 to 20,000 lbs — $44 per month.

Class 4 — 20,001 to 30,000 lbs — $66 per month.

Class 5 — 30,001 to 40,000 lbs — $88 per month.

Class 6 — 40,001 lbs. and over — $120 per month.

(4) The Department shall offer tiedown facilities to based and transient aircraft at specific State-owned airports. Based aircraft operators leasing an available tiedown shall pay rent for an entire year in full beginning at lease commencement and subsequently on each anniversary date of the lease, according to rates set forth below. To lease a tiedown please call the Department at (503) 378-4880, or email aviation.mail@state.or.us.

(a) NON-COMMERCIAL TIEDOWN FEES:

Category II Airports — $20 per month.

Category III and IV Airports — $17.50 per month.

Category V Airports — $15 per month.

(b) COMMERCIAL TIEDOWN FEES: ODA shall rent tiedown facilities to FBOs wherever possible. ODA shall collect $10.00 per tiedown per month. The number of tiedowns rented by an FBO shall be stated in FBO's lease contract with ODA. The tiedown fees shall be paid to ODA at the same interval as the lease payments as stated in the lease contract. For example: If an FBO leases 8 tiedowns, than the FBO would pay $80 per month, or $960 for the year.

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112
Statutes/Other Implemented: ORS 835.035, 835.040, 835.112 & 836.055
History:
AVIA 4-2015, f. & cert. ef. 12-15-15
Reverted to AVIA 2-2010, f. 6-9-10, cert. ef. 7-7-10
AVIA 1-2012(Temp), f. & cert. ef. 2-28-12 thru 8-26-12
AVIA 2-2010, f. 6-9-10, cert. ef. 7-7-10
AVIA 1-2010(Temp), f. & cert. ef. 1-7-10 thru 7-6-10
AVIA 2-2003, f. & cert. ef. 4-3-03
AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02
AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02
1AD 2-1981, f. & ef. 4-20-81

738-010-0030

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

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

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

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

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112
Statutes/Other Implemented: ORS 835.035, 835.040, 835.112 & 836.055
History:
AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02
1AD 2-1981, f. & ef. 4-20-81

738-010-0035

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

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

(1) Adjustments shall be made annually;

(2) Adjustments shall be based on the Consumer Price Index-Urban of the State of Oregon, rounded up to the penny, or three percent (3%) of the previous year's rent, whichever is greater, or the lease rate can be determined by an appraisal of the Fair Market Value of the lease rate.

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

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

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

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112
Statutes/Other Implemented: ORS 835.035, 835.040, 835.112 & 836.055
History:
AVIA 4-2015, f. & cert. ef. 12-15-15
AVIA 2-2010, f. 6-9-10, cert. ef. 7-7-10
AVIA 1-2010(Temp), f. & cert. ef. 1-7-10 thru 7-6-10
AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02

738-010-0045
Appraisal/Market Rent Analysis Methodology

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

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

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

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

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

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112
Statutes/Other Implemented: ORS 835.035, 835.040, 835.112 & 836.055
History:
AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02

738-010-0050
Rate of Return

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

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

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

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112
Statutes/Other Implemented: ORS 835.035, 835.040, 835.112 & 836.055
History:

AVIA 4-2015, f. & cert. ef. 12-15-15
AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02

738-010-0055
Highest and Best Use of State-Owned Aeronautical Property

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

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

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

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112
Statutes/Other Implemented: ORS 835.035, 835.040, 835.112 & 836.055
History:
AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02

738-010-0060
Penalties

(1) At the discretion of the Director, or the Director's designee, each lessee may pay a penalty for late or delinquent payments. Such penalty may not exceed ten percent (10%) of the original delinquent payment. Then that amount will be charged to the lessee each month until the lease payment is current. Example: If a lessee fails to pay a $100 lease payment, then the lessee will be charged $10 per month until the original lease payment and late fees are current.

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

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112
Statutes/Other Implemented: ORS 835.035, 835.040, 835.112 & 836.055
History:
AVIA 4-2015, f. & cert. ef. 12-15-15
AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02

Oregon State Archives • 800 Summer Street NE • Salem, OR 97310
Phone: 503-373-0701 • Fax: 503-373-0953 • Adminrules.Archives@sos.oregon.gov

© 2022 Oregon Secretary of State
All Rights Reserved