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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 738
OREGON DEPARTMENT OF AVIATION

FILED

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

FILING CAPTION: Aeronautical Studies

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/21/2022 5:00 PM

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

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

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NEED FOR THE RULE(S)

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

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Senate Bill 38

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

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

FISCAL AND ECONOMIC IMPACT:

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

COST OF COMPLIANCE:

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

expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

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

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

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

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

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

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

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

738-070-0150, 738-070-0160

AMEND: 738-070-0150

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

CHANGES TO RULE:

738-070-0150

Initiation of Studies ¶

An aeronautical study is conducted by the Department:¶

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

(2) Whenever the Department determines it appropriate.

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

Statutes/Other Implemented: ORS 836.530

AMEND: 738-070-0160

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

CHANGES TO RULE:

738-070-0160

Aeronautical Studies ¶

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

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

(a) Solicit comments from all interested persons;¶

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

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

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

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

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

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

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

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

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

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

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

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

Statutes/Other Implemented: ORS 836.530