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; or airport development for local economic benefit, including but not limited to signs and marketing.

(3) The purpose of the ROAR program is 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.

738-124-015
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).


(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.


(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.
“ROAR” or Rural Oregon Aviation Relief program means grant funding as described in 2019 Oregon Laws, chapter 485, section 1(6).

“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 30, 2019.

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

738-124-00020
COAR and ROAR Project Eligibility

(1) Project Eligibility.
   (a) Projects are eligible only if they have not been completed prior to the application deadline set by the Department.
   (b) Projects are not eligible if their nature is to provide a match for a project or program that is funded with other Department funds or the Connect Oregon Fund.
   (c) Projects are not eligible if they are prohibited by the Revenue Use Policy.

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

(3) Additional project eligibility requirement for ROAR applications: Projects must increase commercial passenger travel between airports in Rural Oregon and other airports in Oregon.

738-124-00025
Applicant Eligibility

(1) 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 which is located in Rural Oregon.

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 ROAR 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;

   (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.

738-124-0040

Maximum COAR and ROAR Grant Amounts and Applicant Financial Matching Requirements

(1) Applicants may not apply for grant amounts above the maximum amounts for the respective programs, which are:

   (a) COAR program: $150,000 per project.

   (b) ROAR program: $500,000 per project.

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

(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) Commercial Primary: 50% of the total eligible project costs.
          (ii) Other Commercial Non-Primary (less than 10,000 enplanements): 35% 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) The minimum financial match requirements for airports receiving Essential Air Service, and are located in Economically Distressed Areas (EDA), and are listed in the most current
EAS/EDA Determination by the FAA, is equal to the match requirements in (2)(a)(C) of this section.

(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.

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.

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, signs 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

(F) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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 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, signs and marketing.

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.

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.