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OREGON DEPARTMENT OF AVIATION

DIVISION 40

SEAPLANE OPERATION

738-040-0010

Purpose and Statutory Authority

To regulate seaplane operations on certain waters of this state to ensure the safe operation of such aircraft in relation to marine craft and persons using the same waters:

- (1) ORS 184.619 pertaining to rulemaking authority.
- (2) ORS 835.035 pertaining to the general public interest, safety and the development and promotion of aeronautics.
- (3) ORS 835.080 directing the State Aviation Board to adopt rules governing seaplane safety and operations on state waters.

Stat. Auth.: ORS 184.619, ORS 835.035 & ORS 835.080

Stats. Implemented: ORS 835.035, ORS 835.080 & ORS 835.085

Hist.: 1AD 3-1981, f. 7-23-81, ef. 8-1-81; 1AD 5-1981, f. & ef. 11-18-81; AERO 1-1997, f. & cert. ef. 2-28-97; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-040-0016

General Provisions

- (1) Division 40 rules are applicable to all seaplanes on state waters and waters of this state except when inconsistent with an applicable laws or regulations of an agency of the United States.
- (2) Given due regard for the suitability of any area for take off and landing in accordance with Federal Aviation Regulation 91.103, Seaplanes may land, take off or operate on waters of this state open to motorboats, unless specifically prohibited by Division 40 rules or unless inconsistent with any applicable laws or regulations of an agency of the United States. These rules establish no priority or precedence for seaplane operations. All seaplane operators must exercise due caution and consideration for the other users of the water.
- (3) A seaplane, operating on the water and not in flight, is subject to, and must comply with all boating restrictions and regulations established for the particular body of water on which it is operating.
- (4) No political subdivision of this state may enact or enforce any law or other regulation pertaining to the operation of seaplanes on waters of this state (See OAR 738-040-0040 for the application for special regulations.)

Stat. Auth.: ORS 184.619, ORS 835.035 & ORS 835.080

Stats. Implemented: ORS 835.035, ORS 835.080 & ORS 835.085

Hist.: AERO 1-1997, f. & cert. ef. 2-28-97

738-040-0018

Waters Closed to Seaplane Operation

Except in an emergency, seaplanes shall not land, takeoff or operate on the following waters:

- (1) Any body of water designated as a state or federal Wilderness or Primitive area or Wildlife refuge.
- (2) Those waters listed in ORS 830.180 and in State Marine Board rules, OAR Chapter 250, Division 20, where motors are prohibited or that allow electric motors only. These restrictions are summarized and published in the "Oregon Boating Regulations" booklet available from the State Marine Board.
- (3) Other bodies of water as designated by special regulations and adopted in OAR Chapter 738, Division 40.
- (4) Those waters under federal jurisdiction that are closed to seaplane operations by federal regulations.
- (5) Privately owned bodies of water without the permission of the owner.

Stat. Auth.: ORS 184.619, ORS 835.035 & ORS 835.080
Stats. Implemented: ORS 835.035, ORS 835.080 & ORS 835.085
Hist.: AERO 1-1997, f. & cert. ef. 2-28-97

250-019-0065 738-040-0019

Cooperation between Oregon State Marine Board and Oregon Department of Aviation Related to Regulation of Seaplanes Operating as Boats

(1) As defined in ORS 830.005(2) & (4), "boat" means every description of watercraft, including a seaplane on the water and not in flight; and "in flight" means from the moment a seaplane starts its takeoff run until the end of a normal power-off landing run.

(2) Pursuant to ORS ~~830.110(19)~~ 835.205, the State Marine Board has authority to regulate boats that are seaplanes "in cooperation" with the State Aviation Board.

(3) The meaning of the phrase "in cooperation" in ORS ~~830.110(19)~~ 835-205 is established as follows:

(a) The Marine Board will notify the Aviation Board of its intention to initiate rulemaking which may impact boats that are seaplanes, as an "interested person," as provided in ORS 183.335.

(b) The Director of the Department of Aviation may submit a written objection to the State Marine Director during the defined public comment period.

(c) If no written objection is received during the public comment period, the Aviation Board is considered to have accepted the proposed rule, and the Marine Board and the Aviation Board are deemed to have acted "in cooperation" with each other on a mutually acceptable rule.

(d) If the Marine Board Director receives a written objection from the Aviation Director, the Directors, the Boards, or subcommittees of each Board, may meet to discuss their respective concerns regarding the proposed rule and to attempt to resolve potential rule conflicts.

(4) The State Marine Board and the State Aviation Board are deemed to have acted "in cooperation" with each other when any of the procedures set forth in this rule are initiated following the required notice of a proposed rule or rule change, regardless of whether consensus by both Boards is ultimately reached on the language of the proposed rule or rule change.

(5) If the Boards are unable between them to reconcile conflicts regarding a proposed rule or rule change affecting seaplanes operating as boats, representatives from each board may meet with the Governor, or the Governor's designee, in an attempt to resolve policy conflicts.

(a) A decision regarding a proposed rule or rule change affecting seaplanes operating as boats made by the Governor or the Governor's designee, as arbiter, is final.

(b) Consultation with the Governor or the Governor's office is not required in order for the Boards to be deemed to have acted in cooperation, as required by ORS 830.110(19) and ORS 835.205.

(6) Nothing within this rule negates the Marine Board's authority to make rules as defined in ORS 830.110.

738-040-0020

Interagency Coordination

(1) Seaplane operations on those federally navigable waters defined under 33 Code of Federal Regulations §§ 2.05-25(a)(1995), are subject to regulation by the United States Coast Guard and, for impoundments behind Corps of Engineer dams, by the Army Corps of Engineers. Seaplane operators should ascertain the federal regulations before conducting seaplane operations on these waters:

(a) For informational purposes, a list of significant Oregon river segments that have been determined as of 1995 to be federally navigable waters is provided as section (3) to this rule. These waters are subject to Coast Guard regulation. Impoundments under Corps of Engineer jurisdiction are not listed, however, the Corps of Engineers has adopted regulations for seaplane operations at lakes under Corps of Engineer jurisdiction. These regulations and the waters effected are listed in the Corps pamphlet, "Seaplane Operations at Corps of Engineers Lakes" (1982). A copy may be obtained from the Portland District Office of the Army Corps of Engineers or from the Department.

(b) Sources of information on federal seaplane regulations include:

(A) 14 Code of Federal Regulations Part 91 (1996) (FAA);

(B) 33 Code of Federal Regulations Part 81, Appendix A, and 33 USC §§ 2001 - 2073 (1995) (U.S. Coast Guard);

(C) 36 Code of Federal Regulations Part 327.4 (1995) (U.S. Army Corps of Engineers); and

(D) Advisory Circular 91-69 "Seaplane Safety" (1992) (FAA).

(2) The governing body of a political subdivision of this state wishing to apply for special regulations affecting seaplane operations on waters within the territorial limits of the political subdivision shall submit an application to the State Aviation Board through the Department, as provided for in OAR 738-040-0040. It shall be the policy of the Department to investigate and analyze each request for special regulations in a timely manner and to cooperate with such governmental agencies to develop consistent regulations necessary to promote safe seaplane operation and to adopt these regulations as part of these rules.

(3) Navigable waters of the United States where Federal Regulations apply, include but are not limited to, the significant river segments listed in subsections (a) through (v) of this section. This list of waters is meant to be informational only. Determinations of navigability are made by the U.S. Coast Guard and are subject to change. (See 33 CFR § 2.10-5 for the latest determinations and other waters not noted here.) The distance shown in the column headed "Miles" refers to the distance up-stream from the river's entrance at the ocean, or its confluence other body of water): Name - Miles

- (a) Alsea Bay and River - 13;
- (b) Chetco River - 3.5;
- (c) Columbia River - Entire Length in Oregon;
- (d) Coos River (above Coos Bay) - 6;
- (e) Coos River (South Fork) - 9;
- (f) Coquille River - 35;
- (g) Coquille River (North Fork) - 2;
- (h) Coquille River (East Fork of North Fork) - 2;
- (i) Coquille River (South Fork) - 2;
- (j) Little Nestucca River - 2;
- (k) Millicoma River - 9;
- (l) Nehalem Bay and River - 8;
- (m) Nehalem River (North Fork) - 5;
- (n) Nehalem River (South Fork) - 5;
- (o) Nestucca Bay and River - 9;
- (p) Netarts Bay - 5;
- (q) Rogue River - 33;
- (r) Salmon River - 3;
- (s) Siletz Bay and River - 22;
- (t) Siuslaw River - 19;
- (u) Siuslaw River (North Fork) - 2;
- (v) Smith River - 20;
- (w) Smith River (North Fork) - 1;
- (x) Snake River (along boundary) - 54;
- (y) Tillamook Bay and River - 16;
- (z) Trask River - 2;
- (aa) Umpqua River - 25;

(bb) Willamette River (to Eugene) - 185;

(cc) Wilson River - 3;

(dd) Yamhill River - 7;

(ee) Yaquina Bay and River - 23;

(ff) Youngs Bay and River - 10.

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

Stat. Auth.: ORS 184.619, ORS 835.035 & ORS 835.080

Stats. Implemented: ORS 835.035, ORS 835.040 & ORS 835.080

Hist.: 1AD 3-1981, f. 7-23-81, ef. 8-1-81; 1AD 5-1981, f. & ef. 11-18-81; AERO 1-1997, f. & cert. ef. 2-28-97; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02

738-040-0025

Equipment

All seaplanes must be equipped as required by the regulations of the Federal Aviation Administration specifically for seaplanes that are in effect on November 1, 1996.

Stat. Auth.: ORS 184.619, ORS 835.035 & ORS 835.080

Stats. Implemented: ORS 835.035, ORS 835.080 & ORS 835.085

Hist.: 1AD 3-1981, f. 7-23-81, ef. 8-1-81; 1AD 5-1981, f. & ef. 11-18-81; AERO 1-1997, f. & cert. ef. 2-28-97

738-040-0030

Operation

(1) Each person operating an aircraft on the waters shall, insofar as possible, keep clear of all vessels and avoid impeding their navigation, and shall give way to any vessel or aircraft that is given the right-of-way by any of the following provisions of this section:

(a) When aircraft, or an aircraft and a vessel, are on crossing courses, the aircraft or vessel to the other's right has the right-of-way;

(b) When aircraft, or an aircraft and a vessel, are approaching head-on or nearly so, each shall alter its course to the right to keep well clear;

(c) Each aircraft or vessel that is being overtaken has the right-of-way, and the one overtaking shall alter course to keep well clear; and

(d) When aircraft, or an aircraft and a vessel, approach so as to involve risk of collision, such aircraft or vessel shall proceed with careful regard to existing circumstances, including the limitations of the respective craft.

(2) Each person operating an aircraft on any water in the state shall observe these additional operational restrictions:

(a) No seaplane shall be moored to any navigational aid placed by federal authority or by the State Marine Board;

(b) No seaplane shall be anchored or moored in such a position as to obstruct a chartered channel or other passageway ordinarily used by other watercraft;

(c) No seaplane shall be operated in any water area that is clearly marked by buoys or other devices as a bathing or swimming area;

(d) No seaplane shall tow any person or object at speeds greater than five (5) knots without an observer on board maintaining constant direct visual contact with the person or object being towed;

(e) No person shall ride on the outside of a seaplane while the seaplane is taxiing at speeds greater than five (5) knots;

(f) No seaplane shall accomplish any portion of its take off or landing run within 200' of a public boat launching ramp or a boat moorage listed in the "Oregon Boating Facilities Guide," a ferry landing or a designated and marked swimming area; and

(g) No seaplane shall initiate a take off or landing run if that run can reasonably be expected to bring it within 100' of a canoe, kayak, a water skier or a diver in the water marked by a flag.

[Publications: Publications referenced in this rule are available from the agency.]

Stat. Auth.: ORS 184.619, ORS 835.035 & ORS 835.080

Stats. Implemented: ORS 835.035, ORS 835.080 & ORS 835.085

Hist.: 1AD 3-1981, f. 7-23-81, ef. 8-1-81; 1AD 5-1981, f. & ef. 11-18-81; AERO 1-1997, f. & cert. ef. 2-28-97

738-040-0040

Application for Special Regulations

(1) The governing body of a political subdivision of this state may apply to the State Aviation Board for special regulations relating to the operations of seaplanes on waters within the territorial limits of the political subdivision. These regulations may include, but are not limited to, the establishment of limits on the areas of operations, hours and time of operations and the prohibition of seaplane landings and take offs.

(2) Written application for special regulations shall be made through the Department for review and processing. The application shall clearly state the nature and scope of the existing conflict that requires the restriction of seaplane operations, and the seaplane restrictions requested. A description of the use patterns, existing boating regulations and history of the body of water shall be included as part of the application.

(3) Within a reasonable time after receiving such application, the Department Director will investigate and analyze the proposal for the appropriateness and effectiveness of the proposed regulations. In evaluating the request, the Department may conduct an inspection of the site to document its physical attributes, and to collect other pertinent data. The Director will consider the following aspects (among others) of the proposal in arriving at a finding:

(a) The general suitability and safety of the body of water for seaplane use, such as the physical layout and dimensions of the body of water, surrounding obstructions and hazards;

(b) The traditional uses of the water in question; and

(c) The nature and volume of others uses and seasonal use patterns.

(4) The evaluation will be conducted in consultation with the Oregon State Marine Board.

(5) After evaluating the application, the Director shall present the application and recommendations to the Board. The Director may recommend:

(a) Denial of the application, if the proposed regulations are not justified;

(b) Consideration of the application with amendments, if the requested seaplane restrictions are excessive; or

(c) Consideration of the application as requested.

(6) If the Board determines that special regulations may be appropriate, formal rule making in accordance with ORS 183, will be initiated to amend these rules.

(7) In determining the appropriate regulations for seaplanes, the least restrictive solution consistent with safety will be sought. Outright seaplane prohibition will be reserved for only the most extreme situations of unusual and continuous congestion or the lack of physical suitability for seaplane operations. Normally, limits on the areas of operation or time or seasonal restrictions will be adequate to avoid conflict.

Stat. Auth.: ORS 814.619, ORS 835.035 & ORS 835.080

Stats. Implemented: ORS 835.035, ORS 835.080 & ORS 835.085

Hist.: AERO 1-1997, f. & cert. ef. 2-28-97; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02