



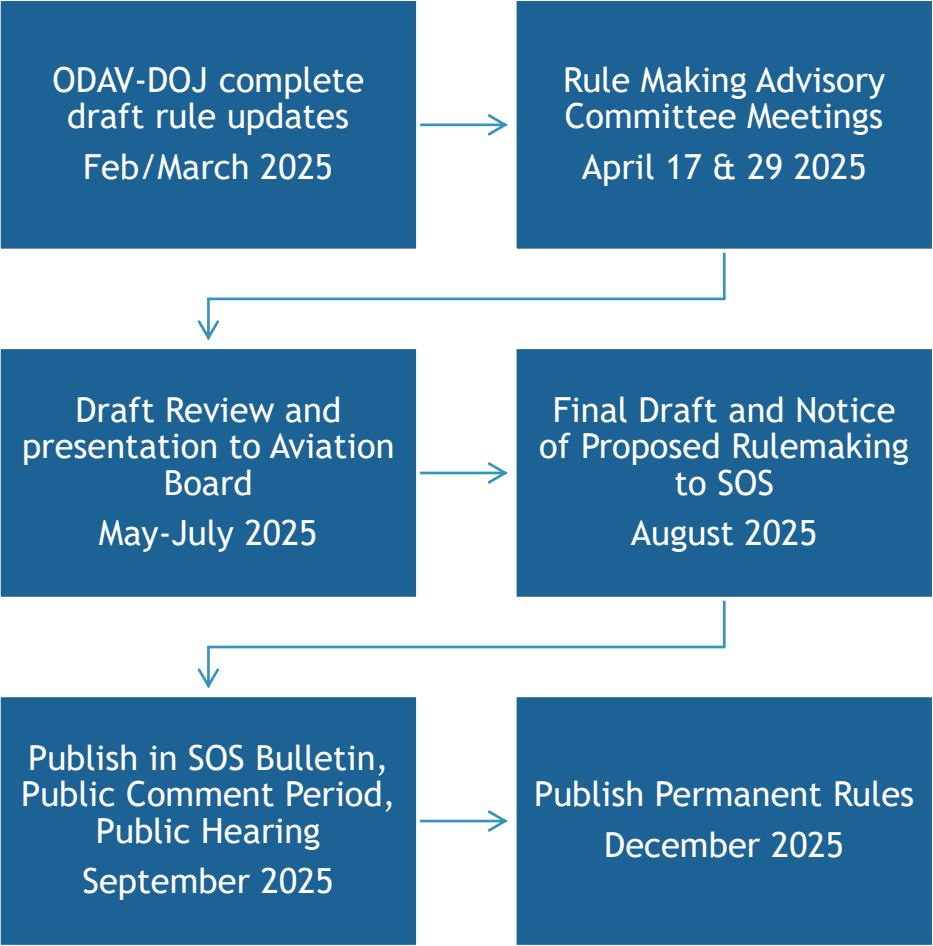
State Aviation Board Meeting 12.4.2025
ASAP Administrative Rule Updates

Rulemaking Presentations 2025

Date	Subject
04.03.2025	Notification that review of rules had begun and timeline for permanent rules to be completed.
07.03.2025	Update on rulemaking process, RAC meetings, proposed changes to OAR.
08.07.2025	Provided OAR updates for Board approval of COAR grants, including proposed changes to OAR, board also requested minor changes.
09.04.2025	Notice of Proposed Rulemaking published in SOS Bulletin, notified of public comment period and public hearing for OAR, summarized language changes, and provided the updates requested by OAB at August meeting. Public comments received (up to 9/22/25) were added to the ODAV website.
10.02.2025	<i>Original planned date for board review and approval, postponed for ODAV internal review.</i>
11.06.2025	Reviewed rulemaking process and summary of updates to OAR 738-124, requested adoption of permanent rules, postponed per board request.
12.04.2025	Review rulemaking process and summary of updates to OAR 738-124, requesting adoption of permanent rules.

OAR 738-124

Aviation System Action Program



Rule	Amendments
738-124-0015	Definitions
738-124-0035	Board Review and Project Selection
738-124-0040	Maximum COAR Grant Award and Recipient Financial Matching Requirements
738-124-0080	COAR Program Administration
738-124-0090	SOAR Program

- Reasons for Updates:
 - Update terms, program efficiencies, and project administration processes.
 - Clarify State Aviation Board ability to redistribute grant funding or re-prioritize grant applications.

Summary of 738-124 Amendments

- Clarification provided on allowable actions by State Aviation Board in re-prioritizing and approving COAR grant applications.
- Added approval criteria based on ORS 319.023 and OAR 738-124-0060.
 - Ensures alignment with ARC review.
- Added process for State Aviation Board to submit justification if applications are re-prioritized or funded for lesser amount than requested by applicant.
- Maximum grant amount set at \$150,000 due to continual increase in project quantity and limited program funds.

Joint Adoption of 738-124-0090

- Removed ARC review process from SOAR projects.
 - SOAR projects are not ranked. Projects are only applied from available funds.
 - SOAR prioritizes Non-NPIAS airports projects.
 - Public comment is still allowed through the State Aviation Board process.
 - ORS 319.023 grants rulemaking authority of SOAR projects (OAR 738-124-0090) to the Oregon Department of Aviation, no the State Aviation board.

The Oregon Department of Aviation, jointly with the Board, adopts the proposed amendments to OAR 724-138-0090, with an effective date of January 1, 2026.

Response to Comments Received

AAIA Objection	ODAV Response
1.OAR 738-124-0035(6) The draft rule proposes to authorize OAB to reprioritize using factors whose “weight of each factor being within the Board’s discretion,” notwithstanding ARC scoring using statutory criteria. The proposed text supplies no weighting method, no decision-making rule, and no limiting standard...”. The proposed reprioritization provision exceeds the statutory delegation to set priorities by rule and respectfully is invalid under ORS 183.400	<p>The criteria for the Board’s review is proposed in 738-124-0035(6)(d)(A)(B). These subsections, as proposed, direct the Board to consider only the criteria set forth in ORS 319.023(3)(b)(A-B) and OAR 738-124-0060(5) when reviewing the applications that ARC has prioritized and recommended.</p> <p>The Board, by statute, is authorized to make the final decision regarding a COAR application. The proposed rule text is intended to ensure that the Board’s consideration aligns with ARC’s review and recommendation.</p> <p><i>The Department proposes two minor changes to the noticed proposed rule language to correct two minor errors:</i></p> <p><i>In subsection 738-124-0035(6)(d), the reference to section “(d)(A)-(D),” should be “(c)(A)-(D).”</i></p> <p><i>And, in subsection 738-124-0035(6)(d)(A), the word COmmittee, will be edited to Committee.</i></p>
2. OAR 738-124-0040(1)(b). The draft purports to set a \$150,000 maximum for COAR funding but the immediately authorizes the Board to exceed it whenever a larger award would “serve the purposes of the program” without any articulation of criteria that would drive a variance from the “maximum.”	<p>The proposed amendment already proposes to repeal 738-124-0040(1)(b). COAR grants would be limited to \$150,000 and the board could not approve a higher amount.</p>

Response to Comments Received

AAIA Objection	ODAV Response
<p>3. OAR 738-124-0035 would improperly (i) elevate “recommendations made by any other stakeholder and advocate entities” to the same level of importance as ARC’s recommendations and (ii) authorize post-scoring “reprioritization” of ARC funding recommendations in OAB’s unfettered discretion.</p>	<p>The Department has not proposed any substantive changes to OAR 738-124-0035(3), which permits the Board or the Department to solicit and receive recommendations of “all other interested persons.” The proposed changes do not increase the weight of public comment.</p> <p>The criteria for the Board’s review is proposed in 738-124-0035(6)(d)(A)(B). These subsections, as proposed, direct the Board to consider only the criteria set forth in ORS 319.023(3)(b)(A-B) and OAR 738-124-0060(5) when reviewing the applications that ARC has prioritized and recommended.</p> <p>The Board, by statute, is authorized to make the final decision regarding a COAR application. The proposed rule text is intended to ensure that the Board’s consideration aligns with ARC’s review and recommendation.</p>

Response to Comments Received

AAIA Objection	ODAV Response
<p data-bbox="104 406 1243 568">4. The proposed changes to OAR 738-124-0035 “invites end-runs around the ARC process the Legislature mandated and undermines the express statutory program that ARC first reviews and recommends and then and only then does the Board approve using the priorities it has established in rule.</p> <p data-bbox="104 668 1243 786">ORS 319.023 allows Board to set priorities for COAR and SOAR fund distributions by rule, but does not authorize it to “sidestep or downgrade” the ARC’s recommendation role or the statutory factors.</p>	<p data-bbox="1276 406 2433 525">For any review by the Board, the Board must first prioritize a COAR grant application according to the priorities established in subsections (6)(a), (b) and (c)(A)-(D) each of which is set by statute.</p> <p data-bbox="1276 558 2433 768">After prioritizing the COAR grant applications in accordance with (6)(a), (b) and (c)(A) – (D), the Board may prioritize one or more applications based on the criteria set forth in 738-124-0035(6)(d)(A) and (B). The criteria for the Board’s review at this second level is confined to the criteria set forth in 738-124-0035(6)(d)(A) and (B), which incorporates ORS 319.023(3)(b)(A), and (B) and OAR 738-124-0060(5).</p> <p data-bbox="1276 801 2433 919">In response to the comment that the Board establishes the priorities for SOAR funding and ARC’s role, ODAV has reviewed and considered these under its authority to adopt rules regarding SOAR funding under ORS 319.023.</p>
<p data-bbox="104 1002 1243 1206">5. OAR 738-124-0090(2). Improperly replaces the legislatures directive to OAB that the ARC “shall recommend to the Board the approval or rejection of each project” with language stating only that ODAV will “provide the Board and the SOAR project list.” Improperly eliminates the legislative required review and recommendation step for SOAR funds distributions.</p>	<p data-bbox="1276 1002 2433 1206">ORS 319.023(3)(a) and (b) requires ARC review and recommendation of all applications for monies distributed under ORS 319.023. ODAV is not an “applicant” under ORS 319.023 for administrative costs or SOAR projects. ARC’s role in the review and recommendation relates only to a grant process that requires an application, i.e. COAR grants and not SOAR grants or other administrative costs.</p> <p data-bbox="1276 1306 2433 1373">In addition, ORS 319.023 grants rule making authority relating to the SOAR process to ODAV, not OAB.</p>

Response to Comments Received

AAIA Objection	ODAV Response
6. ODAV previously proposed legislation removing ARC recommendation from the SOAR grant review process, which the legislature rejected.	<p>HB 2153 did not propose to repeal the language in ORS 319.023(3) which addresses ARC and the priorities it must consider when reviewing an application. Instead, HB 2153 proposed moving all of subsections (2), (3) and (7) to a new Section which would have the effect of creating a new statute. For reference see HB 2153, Sections 3 and 5.</p> <p>In any event, HB2153 was not rejected by the legislature, it remained in committee when the legislature adjourned without passing any transportation funding bills.</p>
7. ODAV’s proposal to alter OAR 738-124-0090 to (i) route a “SOAR project list” to the ARC (to do essentially nothing with it) and (ii) allows OAB to increase or decrease dollar amounts for projects on that list for whatever reason OAB sees fit. At a minimum, OAR 738-124-0090(1) should be rewritten to refer to “*** projects that serve the purposes described in OAR 738-124-0010(3),” so that ODAV/OAB do not have authority to change the 25% SOAR funding distribution.	<p>ORS 319.023(3)(a) and (b) requires ARC review and recommendation of all applications for monies distributed under ORS 319.023. ODAV is not an “applicant” under ORS 319.023 for administrative costs or SOAR projects. ARC’s role in the review and recommendation relates only to a grant process that requires an application, i.e. COAR grants and not SOAR grants or other administrative costs.</p> <p>In addition, ORS 319.023 grants rule making authority relating to the SOAR process to ODAV, not OAB.</p>
8. Request changes in text to OAR 738-124-0090(2) to “Apply the criteria in OAR 738-124-0060(20(b), the ARC shall recommend to the Board the approval or rejection of each project on the SOAR project list.”	<p>ORS 319.023(3)(a) and (b) requires ARC review and recommendation of all <i>applications</i> for monies distributed under ORS 319.023. ODAV is not an “applicant” under ORS 319.023 for administrative costs or SOAR projects. ARC’s role in the review and recommendation relates only to a grant process that requires an application made by a nonstate airport.</p> <p>In addition, ORS 319.023 grants rule making authority relating to the SOAR process to ODAV, not OAB.</p>

Response to Comments Received

AAIA Objection	ODAV Response
9. Either delete the free-floating weighting clause in OAR 738-124-0035(6) or replace it with: “After prioritizing under (6)(a)-(c), the Board may adjust ranking only upon written findings that identify (i) the specific factors in ORS 319.023(3)(b)(A)-(B) and OAR 738-124-0060(5) supporting the adjustment; (ii) the weighting method used; and (iii) why the adjustment better satisfies the rule-established priorities.”	<p>The criteria for the Board’s review is proposed in 738-124-0035(6)(d)(A)(B). These subsections, as proposed, direct the Board to consider only the criteria set forth in ORS 319.023(3)(b)(A-B) and OAR 738-124-0060(5) when reviewing the applications that ARC has prioritized and recommended.</p> <p>The Board, by statute, is authorized to make the final decision regarding a COAR application. The proposed rule text is intended to ensure that the Board’s consideration aligns with ARC’s review and recommendation.</p>
10. Replace OAR 738-124-0040(1)(b) with “Notwithstanding (a), the Board may exceed the maximum only upon written findings, adopted at a public meeting, that (i) specified criteria in this rule are met, and (ii) like applicants will be treated alike.” (Add the criteria list in rule.)	<p>The proposed amendment already proposes to repeal 738-124-0040(1)(b). COAR grants would be limited to \$150,000 and the board could not approve a higher amount.</p>

Adoption of ASAP Administrative Rule Updates

The Board amends the following rules as presented by staff and published in the Secretary of State bulletin on September 2, 2025, OAR 738-124-0015, OAR 738-124-0035, OAR 738-124-0040, and OAR 738-124-0080. The Board also amends, jointly with the Department of Aviation, OAR 738-124-0090.

QUESTIONS?

