

OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 738
OREGON DEPARTMENT OF AVIATION

FILED

05/06/2024 4:16 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amend Division 124 to ensure compliance with ASAP administration and procedures

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/21/2024 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.

CONTACT: Andria Abrahamson
503-302-3645
andria.abrahamson@odav.oregon.gov

3040 25th St SE
Salem, OR 97302

Filed By:
Alex Thomas
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 06/19/2024

TIME: 10:00 AM - 11:00 AM

OFFICER: Andria Abrahamson

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 503-302-3645

CONFERENCE ID: 241334558811

SPECIAL INSTRUCTIONS:

Passcode: rXstdJ

NEED FOR THE RULE(S)

HB4109 (2024) removed language from statute and proposed rules are updated to reflect this change. Additionally, the proposed changes clarify review and approval processes, program administration, project and applicant eligibility, and application and budgetary requirements.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

HB4109 (2024), ORS 319.023

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 ASAP program from this rule making will be applicable to all eligible stakeholders regardless of race or other protected classes.

FISCAL AND ECONOMIC IMPACT:

The amendments to OAR 738-124 are for administrative and clarification purposes, and not anticipated to cause a significant fiscal or economic impact.

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) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s) N/A. (2) Effect on Small Business: (a) Estimate the number and type of small businesses subject to the rule(s): None; the rule changes only impact those who are eligible to apply for ODAV grants. (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s): N/A (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s): N/A

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

N/A

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

No; after analyzing need for outreach it was determined that electronic notice and public hearing were the appropriate level of engagement for this update to administrative rules.

RULES PROPOSED:

738-124-0010, 738-124-0015, 738-124-0020, 738-124-0025, 738-124-0030, 738-124-0035, 738-124-0040, 738-124-0045, 738-124-0050, 738-124-0060, 738-124-0070, 738-124-0080, 738-124-0090

AMEND: 738-124-0010

RULE SUMMARY: Establishes the Aviation System Action Program (ASAP) for administration of aircraft fuel tax funds

CHANGES TO RULE:

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 ORS 319.023 requires the Department of Aviation to establish and administer a program to distribute a portion of aircraft fuel taxes submitted to the State of Oregon under ORS 319.020(2) and ORS 319.330(1) for qualifying airport related projects. The Department therefore establishes the Aviation System Action Program (ASAP) fund to administer the funds in accordance with ORS 319.023(5) and (6). ¶¶~~

~~(2) In accordance with ORS 319.023(5), the Department established bys the Oregon legislature.¶¶~~

~~(2) The purposes of the COAR program are to: Critical Oregon Airport Relief (COAR) program to distribute seventy-five percent of the ASAP funding for the following purposes: ¶¶~~

~~(a) To assist airports in Oregon with match requirements for FAA Airport Improvement Program grants; and federal Aviation Administration grants. ¶¶~~

~~(b) To make grants for: emergency preparedness and infrastructure projects, in accordance with the Oregon Resilience Plan or the Oregon Aviation Plan; s. ¶¶~~

~~(c) To make grants for: ¶¶~~

(A) Services critical or essential to aviation, including but; not limited to, fuel, sewer, water, navigational aids and weather equipment; a ¶
(B) Aviation-related business development, including but; not limited to, hangars, parking for business aircraft and related facilities; or a ¶
(C) Airport development for local economic benefit, including but not limited to signage and marketing; or a ¶
(D) To assist commercial air service to rural Oregon. ¶
(3) The purpose of the SOAR Department also establishes the State-Owned Airports Reserve (SOAR) program is to distribute funds to state-owned airports for: safety improvements recommended by the Board and local community airports; and twenty-five percent of the remaining ASAP funding in accordance with ORS 319.023(6) for the purposes of: ¶
(a) Safety improvements, including maintenance; and ¶
(b) Infrastructure projects at public use on state-owned airports.
Statutory/Other Authority: ORS 835.035, ORS 835.040, ORS 835.112, OL 2019 c.485 Section 1(2)(b) RS 319.023
Statutes/Other Implemented: OL 2019 c.485 Section 1, ORS 835.025, ORS 835.04035, OL 2021 c.526 Section 4(5)(a)(D) and (b) RS 319.023

CHANGES TO RULE:

738-124-0015

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 P~~, as that term is defined in ORS 174.100, public B body, as that term is defined in ORS 174.109, or a local government or local service district as those terms are defined in ORS 174.116 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~~ ORS 319.023(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~~ the regional advisory commissions established by the OTC through the Policy on Formation and Operation of Area Commissions on Transportation (ACTs) approved by the OTC on June 18, 2003, to advise on state and regional policies, funding, and investments affecting the transportation system. ¶
- (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). ¶
- (7) "Aviation System Action Program (ASAP) Fund" means ~~the fund created in 2015 Oregon Laws, chapter 700, section 7(1), as modified by 2019 Oregon Laws, chapter 485, section 1(1) and distributed in accordance with 2019 Oregon Laws, chapter 485, section 1(4)~~ ¶
- (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, collectively, the aviation fuel taxes available for distribution under created in ORS 319.023(1).~~ ¶
- (8) "Board" means the State Aviation Board created in ORS 835.102. ¶
- (9) "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~~ established in ORS 285A.070. ¶
- (18) "Oregon Resilience Plan" means the report to the 77th Legislative Assembly prepared by the Oregon Seismic Safety Policy Advisory Commission (OSSPAC) in February 2013, titled "The Oregon Resilience Plan Reducing Risk and Improving Recovery for the Next Cascadia Earthquake and Tsunami." ¶
- (19) "Recipient" means an Applicant who enters into an 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. ¶
- (21) "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 2018. ¶
- (22) "SOAR" or State Owned Airport Reserve program means funding described in 2019 Oregon Laws, chapter 485, section 1(7).

Statutory/Other Authority: ORS 835.035, ORS 835.040, ORS 835.112, OL 2019 c.485 Section 1(2)(b) RS 319.023

Statutes/Other Implemented: ORS 835.025, ORS 835.04035, OL 2019 c.485 Section 1, OL 2021 c.526 Section 4(5)(a)(D) RS 319.023

RULE SUMMARY: Describes the application requirements for Critical Oregon Airport Relief (COAR) grant funding

CHANGES TO RULE:

738-124-0020

COAR Project Eligibility Application Requirements ¶

- (1) Project Eligibility The Department shall publicly announce application deadlines for COAR funding. The Department shall not consider applications submitted after the deadline set by the Department. ¶
- (a2) A project is eligible only if it has not been completed prior to the application deadline set by the Department. Applicants interested in receiving funds under COAR 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 the contact information of the individual who represents the Applicant with respect to the application; ¶
- (B) Project name; ¶
- (C) Project location; ¶
- (D) Airport identification, 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 ¶
- (b) A statement describing local support for the project, is not eligible if its nature is to provide a match for a project or program that is funded with other Department funds or the Connect Oregon Fund; f 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) If the project is subject to the National Environmental Policy Act (NEPA); ¶
- (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; and ¶
- (D) Any permits or licenses are required for the project, and if so, a description of each permit or license that 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; ¶
- (e) AIs ready for construction or implementation, including whether the project is not eligible if it is prohibited by the Revenue Use Policy; 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 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. ¶
- (2C) Additional project eligibility requirement for COAR applications: A project is eligible only if it is located on an airport that is open to flight operations by the public 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, as requested by the Department. ¶
- (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

them, including the approximate date of their occurrence, 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.

Statutory/Other Authority: ORS 835.035, ORS 835.040, ORS 836.112, OL 2019 c.485 Section 1(2)(b), RS 319.023

Statutes/Other Implemented: ORS 835.025, OL 2019 c.485 Section 1, RS 835.04035, OL 2021 c.526 Section 4(5)(a)(D) and (b), RS 319.023

REPEAL: 738-124-0025

RULE SUMMARY: Describes COAR applicant eligibility

CHANGES TO RULE:

~~738-124-0025~~

~~COAR Applicant Eligibility ¶¶~~

~~(1) An Applicant is eligible if the Applicant is an Oregon public use airport, privately or publicly owned; or if the Applicant is a public use airport sponsor.¶¶~~

~~(2) 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.~~

~~Statutory/Other Authority: ORS 835.035, 835.040, 835.112, OL 2019 c.485 Section 1(2)(b)~~

~~Statutes/Other Implemented: ORS 835.025, OL 2019 c.485 Section 1, 835.040, OL 2021 c.526 Section 4(5)(a)(D) and (b)~~

RULE SUMMARY: Describes COAR application and applicant eligibility

CHANGES TO RULE:

738-124-0030

COAR Application Requirements Eligibility

(1) The Department shall announce application deadlines for COAR funding. The Department shall not consider applications submitted after the deadline set by the Department. ¶

(2) Applicants interested in receiving funds under COAR 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; will submit an application to ARC for review pursuant to OAR 738-124-0020 only if, after Department review, the Department determines the application satisfies the eligibility criteria in this rule. ¶

(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: An application for a COAR grant is eligible for ARC review only if it satisfies all of the following: ¶

(Aa) 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; and ¶

(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 for which the COAR grant will be used has not been completed prior to the application deadline set by the Department. ¶

(b) The project is for an airport that is open to flight operations by the public. ¶

(c) The Applicant is: ¶

(EA) Has a useful life expectancy that offers maximum benefit to this state. A publicly owned airport; ¶

(dB) Project Budget Information. The application must include each of the following: An Oregon public use airport; ¶

(AC) The total amount of the COAR grant sought by the Applicant. Amounts sought may not exceed the maximum grant amounts specified in OAR 738-124-0040. A public use airport sponsor; or ¶

(BD) 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. A privately owned airport if the airport is available for public use. 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. provide proof of public use to the satisfaction of the Department. ¶

(D3) 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. n application is ineligible for COAR funding if: ¶

(Ea) 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 seeks COAR funding to fulfill a match requirement for a project or program that 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 funded with other Department funds; or a business loan within the last 5 years preceding the date of the application. If any such circumstances exist, the

(b) The project to which the funds will be 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 and is prohibited by the Revenue Use Policy.

(4) If the Department determines that an application is ineligible, it will not submit the application to ARC for review.

Statutory/Other Authority: ORS 835.035, 835.040, 835.112, OL 2019 c.485 Section 1(2)(b) 319.020, ORS 319.023(5), ORS 835.025, ORS 835.035

Statutes/Other Implemented: ORS 835.025, ORS 835.04035, OL 2019 c.485 Section 1, OL 2021 c.526 Section 4(5)(a)(D) and (b) RS 319.023

RULE SUMMARY: Describes review and selection of projects to be funded by COAR grants by State Aviation Board

CHANGES TO RULE:

738-124-0035

Board Review and Project Selection ¶

~~(1) The Board will select Projects to be funded through a grant with monies in the Aviation System Action Program Fund.¶~~

~~(2) Prior to selecting Projects to be funded with monies in the Aviation System Action Program Fund, the Board shall solicit recommendations when applicable from:¶~~

~~(a) The Aviation Review Committee (ARC) make the final determination to approve an application for a COAR grant. ¶~~

~~(2) The Board's review and final decision will be made based upon the following: ¶~~

~~(b) The Freight Advisory Committee for freight Transportation Projects when applicable.¶~~

~~(c) The Oregon Business Development Department for aviation transportation projects when applicable. Priorities established by the Board pursuant to this rule. ¶~~

~~(3) Prior to selecting Projects to be funded with monies in the Aviation System Action Program Fund, the Board may solicit recommendations from transportation Recommendations made by ARC following its review pursuant to 738-124-0060. ¶~~

~~(c) Recommendations made by any other stakeholder and advocate entities not otherwise specified in section (2) of this rule including the Area Commissions on Transportation. Business Oregon and Regional Solutions Teams will provide comments to the designated aviation representative of the Area Commissions on Transportation.¶~~

~~(4) On behalf of the Board, the Department shall solicit recommendations from the committees and entities in section (2) of this rule before soliciting recommendations from entities in section (3) of this rule. The Department shall provide the recommendations from the committees and entities in section (2) of this rule to the entities in section (3) of this rule.¶~~

~~(5) than the ARC. ¶~~

~~(d) Interested persons and groups other than the ARC, including the Area Commissions on Transportation. ¶~~

~~(3) The Director, in consultation with Department staff, shall provide the Board a list of recommendations from the review committees and entities in section (2) and section (3) of this rule. The list ARC which shall include the evaluation results and recommendations from each of the commit. For all other interes and entities in sections (2) and (3) of this rule. The Board shall provide its final recommendatited persons, the Board or the Department ons in a report of projects to be funded with monies in the Aviation System Action Program Fund listing in priority order eligible Projects together with a reasonable number of alternate Projects in priority order. ts behalf may solicit and receive recommendations. ¶~~

~~(6) The Department shall determine the organizational guidance for the committees' and entities' processes and protocols.¶~~

~~(7) The committees and Board may require any Applicant to make a presentiaties in sections (2), (3) and (5) of this rule shall follow the organizational guidance determined by the Department under section (6) of this rule. on to the Board or interview with a Board designee as part of the application process. ¶~~

~~(8) The Board will consider all of the following in its determination of eligible Projects to approve for receipt of funds from the Aviation System Action Program Fund through the COAR Grant Program. The ARC committee shall recommend applications to the State Aviation Board, which shall select applications with priority in accordance with OAR 738-125-0035 (3):¶~~

~~(a) Seventy five percent of the Aviation System Action Program Fund amounts described in subsection OL 2021 c. 526 Section 7 (4)(b) may approve an application for the amount sought or for a smaller amount. ¶~~

~~(6) When selecting COAR applications for approval, the Board shall be prioritized in the following manner and dist them as described for the following purposes under the COAR Grant Program: below: ¶~~

~~(A) First priority is, to assist airports in Oregon with match requirements for Federal Aviation Administration Airport Improvement Program AA grants; ¶~~

~~(B) Second priority is, to make grants for emergency preparedness and infrastructure projects, in accordance with the Oregon Resilience Plan, including grants for emergency management plan development, seismic studies and emergency generators and similar equipment; or the Oregon Aviation Plan. ¶~~

~~(C) Third priority is, to make grants for: ¶~~

~~(i) Services critical or essential to aviation, including, but not limited to, fuel, sewer, water, and weather equipment.¶~~

~~(ii) or ¶~~

(B) Aviation-related business development, including, but not limited to, hangars, parking for business aircraft and related facilities.¶

~~(iii); or ¶~~

(C) Airport development for local economic benefit, including, but not limited to, signage and marketing.¶

~~(iii); or ¶~~

(D) Assisting commercial air service to rural Oregon¶

~~(b) P. ¶~~

~~(d) Notwithstanding these priorities based on use, priority in distributing grants shall~~may be given to projects for which applicants demonstrate a commitment to contribute the greatest amounts toward the costs of the projects to which the applications relate. ~~Priorities will be in accordance with the corresponding OAR as they relate to COAR Grants ¶~~

~~(7) The Board shall provide its final recommendations in a report of projects to be funded with ASAP funds listing in priority order eligible Projects, together with a reasonable number of alternate Projects in priority order.~~

~~Statutory/Other Authority: ORS 835.035, ORS 835.040, ORS 835.112, OL 2015 c.700 Section 7RS 319.023~~

~~Statutes/Other Implemented: ORS 835.0125, ORS 835.025, 836.015, 836.070, 319.020, OL 2021 c.526 Section~~

~~4(5)(a)(D) and (b)35, ORS 319.023~~

AMEND: 738-124-0040

RULE SUMMARY: Describes the maximum COAR grant award and matching requirements for grant recipients

CHANGES TO RULE:

738-124-0040

Maximum COAR Grant Amounts and Application and Recipient Financial Matching Requirements

(1) Maximum grant amounts for COAR Grant Award

(a) Subject to subsection (b), the aggregate maximum grant award that a Recipient may receive under the COAR program is:

(a) \$150,000 per project.

(b) Maximum amount listed in this rule is cumulative to all applications submitted with respect to a single, regardless of the number of applications filed for the project.

(c) Notwithstanding the maximum grant amounts listed in this subsection (a), the Board may award a larger grant if it makes a finding that a larger grant awarded toward for a particular project would serve the purposes of the program. If an Applicant applies for a grant amount above exceeding the maximum amount listed in this in subsection (a), the application must include a detailed statement of Department may request additional documentation detailing how the grant amount in excess of the maximum listed in this section would serve the purposes of the respective program as described would serve one or more of the program purposes listed in OAR 738-124-0010.(2).

(2) COAR Financial matching requirements.

(a) Minimum financial match requirements are based on the category of airport at which the project will be performed implemented, as listed in the current Oregon Aviation Plan. By category, the minimum financial match requirements are:

(A) Category 1

(i) Other Commercial Non-Primary (less than 10,000 enplanements): 35% of the total eligible project costs.

(ii) Commercial Primary: 50% 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) Notwithstanding subsection (a), the minimum financial match requirement for an airport listed in Table 1 of the FAA's Essential Air Service (EAS)/Economically Distressed Area (EDA) Determination memo dated February 8, 2019 is 5% of the total eligible project costs.

(c) For applications filed for assistance with FAA Airport Improvement Program (AIP) match requirements, the grant match amount is the grant match requirements, the eligible project cost equals (i) the FAA grant match amount less (ii) any non-FAA, non-Applicant project funding sources, for example, Connect Oregon funds. The resulting eligible project cost and is subject to the minimum financial match requirements described above.

Statutory/Other Authority: ORS 835.035, ORS 835.040, ORS 835.112, OL 2019 c.485 Section 1(2)(b) RS 319.023

Statutes/Other Implemented: ORS 835.025, OL 2019 c.485 Section 1, 835.040, OL 2021 c.526 Section 4(5)(a)(D) and (b) RS 835.040, ORS 319.023

738-124-0045

Project Administration

- (1) The Department will administer all Grants.¶¶
- (2) The Department and Recipient will execute an Agreement prior to the disbursement of Program Funds for an Approved Project. The Agreement is effective on the date all required signatures are obtained or at such later date as specified in the Agreement. Agreements shall follow Board approved Department Policy and Procedures document and manual.¶¶
- (3) The Agreement will contain provisions and requirements, including but not limited to:¶¶
 - (a) Documentation of the projected costs for an Approved Project must be submitted to the Department prior to the disbursement of Program Funds.¶¶
 - (b) Only Project costs incurred on or after the effective date of the Agreement are eligible for grant funds.¶¶
 - (c) Disbursement of Program Funds for grants will be paid on a reimbursement basis and will not exceed one disbursement per month; this is not applicable to the SOAR Program. The Director or the Board may make exceptions to the reimbursement basis if the Department finds that the Recipient would have difficulty meeting requirements.¶¶
 - (d) Except under the SOAR Program, five percent of funds received from the Aviation System Action Program Fund will be withheld from each reimbursement request and shall be released to Recipient as the conditions established by the Department are met. The Department will determine retainage limits in accordance with ORS 835.112. Funds withheld shall be released to Recipient upon final project acceptance by the Department.¶¶
 - (e) Upon request, a Recipient must provide the Department with a copy of documents, studies, reports and materials developed during the Project, including a written report on the activities or results of the Project and any other information that may be reasonably requested by the Department.¶¶
 - (f) Recipients must separately account for all monies received from the Aviation System Action Program Fund in Project accounts in accordance with Generally Accepted Accounting Principles.¶¶
 - (g) Any Program Funds disbursed but not used for an Approved Project must be returned to the Department.¶¶
 - (h) Amendments to Agreements are required to change an Approved Project's cost, scope, objectives or timeframe.¶¶
 - (i) Recipients must covenant, represent and agree to use Project funds in a manner that will not adversely affect the tax-exempt status of any bonds issued under the Program.¶¶
 - (j) Recipients, if applicable, must covenant, represent and agree to remain current on all state and local taxes, fees and assessments for the useful life of the Project as prescribed in the Agreement.¶¶
- (4) The Department may invoke sanctions against a Recipient that fails to comply with the requirements governing the Program. The Department will not impose sanctions until the Recipient has been notified in writing of such failure to comply with the Program requirements as specified in this Rule and has been given a reasonable time to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:¶¶
 - (a) Work on the Approved Project has not been substantially initiated within six months of the effective date of the Agreement;¶¶
 - (b) State statutory requirements have not been met;¶¶
 - (c) There is a significant deviation from the terms and conditions of the Agreement; or¶¶
 - (d) The Department finds that significant corrective actions are necessary to protect the integrity of the Program Funds for the Approved Project and those corrective actions are not, or will not be, made within a reasonable time.¶¶
- (5) The Department may impose one or more of the following sanctions:¶¶
 - (a) Revoke an existing award.¶¶
 - (b) Withhold unexpended Program Funds.¶¶
 - (c) Require return of unexpended Program Funds or repayment of expended Program Funds.¶¶
 - (d) Bar the Recipient from applying for future assistance.¶¶
 - (e) Other remedies that may be incorporated into grant Agreements.¶¶
- (6) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the agreement.¶¶
- (7) The Director will consider protests of the funding and Project administration decisions for the Program. Only the Recipient may protest. Protests must be submitted in writing to the Director within 15 business days of the event or action that is being protested. The Director's decision is final. Jurisdiction for review of the Director's decision is in the circuit court for Marion County pursuant to ORS 183.484.¶¶
- (8) The Director may waive non-statutory requirements of this Program if it is demonstrated such a waiver would

serve to further the goals and objectives of the Program.

Statutory/Other Authority: ORS 835.035, 835.040, 835.112, OL 2015 c.700 Section 7

Statutes/Other Implemented: ORS 835.015, 835.025, 836.015, 836.070, 319.020

AMEND: 738-124-0050

RULE SUMMARY: Describes ODAV internal review of COAR applications and process for requesting additional information for an application

CHANGES TO RULE:

738-124-0050

Department Review of COAR 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 510 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.~~

Statutory/Other Authority: ORS 835.035, ORS 835.040, ORS 835.112, ~~OL 2019 c.485 Section 1(2)(b)~~ RS 319.023

Statutes/Other Implemented: ORS 835.025, ~~OL 2019 c.485 Section 1~~, RS 835.04035, ~~OL 2021 c.526 Section~~

~~4(5)(a)(D) and (b)~~ RS 319.023

RULE SUMMARY: Describes review and recommendation of COAR applications by Aviation Review Committee (ARC)

CHANGES TO RULE:

738-124-0060

~~Aviation Review Committee~~ (ARC) Review and Recommendation of COAR Applications.

~~(1) The Department shall provide all eligible applications from eligible Applicants, including supporting materials, to the ARC. ¶~~

~~(2) The ARC shall hold public meetings as necessary to review eligible applications and to prepare approval and rejection recommendations to the Board. ¶~~

~~(23) In reviewing applications, the ARC shall consider: ¶~~

~~(a) 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, signage and marketing; or to assist commercial air service to rural Oregon. ¶~~

~~(b) 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 ¶~~

~~(E) Has a useful life expectancy that offers maximum benefit to Oregon. ¶~~

~~(c) 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. ¶~~

~~(34) 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. ¶~~

~~(45) Prioritizing COAR applications: In prioritizing applications submitted for COAR funds, the ARC may consider the following factors: ¶~~

~~(a) The percentage of total project cost that the Applicant that is able to bear the most cost. ¶~~

~~(b) Projects related to safety or infrastructure. ¶~~

~~(c) Quantity of projects applied for at an single airport, within the same grant cycle. ¶~~

~~(d) Regional significance. ¶~~

~~(56) Based on its review of eligible applications, the ARC shall: ¶~~

~~(a) Prepare a brief ~~written statement~~ report to the Board with respect to ~~each~~ all eligible applications which recommends approval or rejection by the Board. ¶~~

~~(b) For COAR applications ~~for which~~ that the ARC recommends the Board approve, 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, signage and marketing; or ¶

~~(iii) To av) Assisting commercial air service to rural Oregon. ¶~~

~~(6Z) The Department shall provide the ARC's written responses report and prioritized list to the Board as soon as practicable after no more than 10 business days following the ARC's review.~~

Statutory/Other Authority: ORS 835.035, ORS 835.040, ORS 835.112, ~~OL 2019 c.485 Section 1(2)(b)~~ RS 319.023

Statutes/Other Implemented: ORS 835.025, ~~OL 2019 c.485 Section 1~~, RS 835.04035, ~~OL 2021 c.526 Section 4(5)(a)(D) and (b)~~ RS 319.023

REPEAL: 738-124-0070

RULE SUMMARY: Describes State Aviation Board approval or rejection of COAR applications

CHANGES TO RULE:

~~738-124-0070~~

~~Board Approval or Rejection of COAR Applications~~

- ~~(1) Prior to approving COAR 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, signage and marketing; or¶¶~~
 - ~~(D) To assist commercial service to rural Oregon~~

~~Statutory/Other Authority: ORS 835.035, 835.040, 835.112, OL 2019 c.485 Section 1(2)(b)~~

~~Statutes/Other Implemented: ORS 835.025, OL 2019 c.485 Section 1, 835.040, OL 2021 c.526 Section 4(5)(a)(D) and (b)~~

AMEND: 738-124-0080

RULE SUMMARY: Describes COAR program administration and provisions for grant agreement

CHANGES TO RULE:

738-124-0080

COAR Program Administration

(1) The Department shall administer all COAR 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, without limitation, the following provisions: ¶

(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: upon review and approval of auditable documentation ¶

(c) A provision ~~which requires~~ requiring the 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 that states only project costs incurred on or after the effective date of the Agreement are eligible for grant funds, with the exception of Priority 1 FAA grant match projects for which all other applicable FAA grant requirements have been met. ¶

(e) 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.~~ ¶

(f) 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. ¶

(g) 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. ¶

(h) A provision which requires changes to the project's cost, scope, objectives, or timeframe be effective only upon written amendment to the Agreement. ¶

(i) 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. ¶

(j) 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.

Statutory/Other Authority: ORS 835.035, ORS 835.040, ORS 835.112, OL 2019 c.485 Section 1(2)(b), RS 319.023

Statutes/Other Implemented: ORS 835.04025, ORS 835.0235, OL 2019 c.485 Section 1, OL 2021 c.526 Section 4(5)(a)(D) and (b), RS 319.023

AMEND: 738-124-0090

RULE SUMMARY: Describes process for submission and approval of projects using State Owned Airports Reserve (SOAR) funds

CHANGES TO RULE:

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~~ at least one 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)(~~eb~~), 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.

Statutory/Other Authority: ~~ORS 835.035, 835.040, 835.112, OL 2019 c.485 Section 1(2)(b)40, ORS 835.035, ORS 835.112, ORS 319.023~~

Statutes/Other Implemented: ~~ORS 835.040, ORS 835.025, OL 2019 c.485 Section 1~~ RS 319.023