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Chapter 738

Division 15

LEASING FOR AERONAUTICAL ACTIVITIES AT STATE-OWNED AIRPORTS

738-015-0005

Leasing Application for Commercial Aeronautical Activities

(1) To obtain an initial commercial lease at a State-owned airport, a person shall submit a written application to Oregon Department of Aviation (the Department or ODA) for review, in the form specified by ODA. As a prerequisite to initially granting commercial aeronautical activity privileges or occupancy at a State-owned airport, the prospective Lessee must submit a specific, detailed description of the scope of the intended commercial aeronautical activities, as well as the means and methods to be employed to accomplish the contemplated activities. Applications for the renewal of existing leases or applications for additional initial leases submitted by current lessees may require a written application at the discretion of the Department.

(2) Required information that must accompany an application for commercial lease shall include:

(a) The legal name of the person applying as prospective Lessee, and its business name if different;

(b) The name(s), address(es), and telephone number(s) of the person and the name of the primary contact individual;

(c) The names, addresses, and telephone numbers of all owners of five percent (5%) or more equity interest, management control, or debt in the entity;

(d) The proposed date for commencement of the intended activities and proposed base lease term for conducting these activities;

(e) A comprehensive listing of all activities proposed to be offered, along with copies of all applicable Federal, State, or local operating certificates and licenses held;

(f) For proposed agreements to lease existing structures or improvements, a description of the size, location, and proposed utilization of office, hangar, tiedown area(s), and vehicle parking area(s) to be utilized;

(g) For proposed agreements to lease unimproved State-owned airport areas, a layout (to scale) of the size, configuration, and location of the property proposed for occupancy, and preliminary drawing(s) of the building(s) and improvements to be constructed, together with identification of vehicle parking areas. Drawings shall be legible and reproducible with clearly defined dimensions. Each drawing shall be not less than 8.5 inches by 11 inches in size and be drawn in permanent media;

(h) The number of persons to be employed, including the name and qualifications of each management/supervisory person, and specifications as to whether the employees will be full-time, part-time, or seasonal;

(i) The number of aircraft to be utilized in connection with the proposed commercial aeronautical activities and, as soon as known, the make, model, passenger seating capacity, cargo capacity, aircraft registration number, and copies of applicable operating certificates for each aircraft; and

(j) A comprehensive list of the equipment, vehicles, and inventory proposed to be utilized in connection with the intended activities.

(3) The prospective lessee is responsible for providing any required infrastructure to support their proposed use of the site, at the lessee's expense. The prospective lessee shall provide to ODA prior to any construction, occupancy or use of the site written confirmation that all required services have been or will be installed (power, water, fire suppression, sewer, etc). Services must comply with local government and ODA requirements.

(4) At its option, the Department may:

- (a) Request to review a written business plan; and
- (b) Request a metes and bounds legal description of lease property boundaries.

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112

Statutes/Other Implemented: ORS 935.035, 935.040, 835.112 & 836.055

History:

[AVIA 2-2010, f. 6-9-10, cert. ef. 7-7-10](#)

[AVIA 1-2010\(Temp\), f. & cert. ef. 1-7-10 thru 7-6-10](#)

[AVIA 1-2006, f. & cert. ef. 1-27-06](#)

[AVIA 1-2002, f. & cert. ef. 9-3-02](#)

738-015-0010

Commercial Aeronautical Lease Applicant's Financial Responsibility and Experience

(1) All persons applying for a lease for commercial aeronautical activity at a State-owned airport must demonstrate the financial capability and responsibility to:

- (a) Initiate proposed commercial aeronautical activities;
- (b) Construct proposed improvements; and
- (c) Provide working capital to perform proposed activities for the lease term.

(2) The demonstration of financial capability shall include:

- (a) Projected cash flow and profit-and-loss calculations for the first five (5) years of the proposed operation;
- (b) A three-year historical profit-and-loss statement (if applicable); and
- (c) A current (within 90 days) balance sheet.

(3) A prospective Lessee who will be constructing lease property improvements shall provide the Department evidence of financial capacity in one of the following forms:

- (a) A performance bond in the amount equal to the cost for constructing the proposed improvements, which may be supplied by a contractor;
- (b) An irrevocable letter of credit guaranteeing funds to complete the project;
- (c) An escrow agreement administered by a title and escrow company; or
- (d) A trust administered by a commercial bank.

(4) The prospective Lessee shall furnish the Department with a statement of its past experience in providing the specified commercial aeronautical service for which the application is being made, including:

- (a) Résumés of management individuals who will be directly responsible for the proposed commercial operation; and
- (b) Business, financial and managerial references.

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112

Statutes/Other Implemented: ORS 935.035, 935.040, 835.112 & 836.055

History:

[AVIA 1-2002, f. & cert. ef. 9-3-02](#)

738-015-0015

ODA Review of Application for Commercial Aeronautical Lease

(1) The Department shall review the lease application for commercial aeronautical activities of the prospective Lessee and the financial responsibility documentation, and determine whether to approve or deny the application. The decision shall be conveyed in writing to the prospective Lessee.

(2) The Department may deny any prospective Lessee's application if it is determined that:

- (a) The proposed commercial aeronautical activities, operation, and/or construction would create a safety hazard at the airport or surrounding community;

- (b) The prospective Lessee, for any reason, does not fully meet the qualifications, standards, and requirements of the Airport Operating Minimum Standards;
- (c) The granting of the lease application will require the Department to expend funds, or supply labor or materials in connection with the proposed activity and/or construction, that the Department is unwilling or unable to spend, or the proposed activity and/or construction will result in a financial loss or hardship to the airport;
- (d) No adequate space is available or no buildings exist at the State-owned airport that would accommodate the proposed commercial operation at the time of the application, nor is such contemplated within a reasonable time frame;
- (e) The proposed operation, development, and/or construction does not comply with the Airport Master Plan and/or the Airport Layout Plan in effect at that time, or those plans anticipated to be in effect within the time frame proposed by the prospective Lessee;
- (f) The development or use of the area requested by the prospective Lessee is likely to result in congestion of aircraft or airport buildings, or will unduly interfere with operations or activities of any present Lessee at the airport, or will prevent adequate access to the assigned Lease area of any present Lessee;
- (g) The prospective Lessee has failed to make full disclosure or has misrepresented or omitted material facts in its application or in supporting documents;
- (h) The prospective Lessee, or a principal of the prospective Lessee, has a record of violating the rules, regulations, statutes, ordinances, laws, or orders of any airport, or any civil air regulations, FAA regulations, or any other rules, regulations, statutes, ordinances, laws, or orders applicable to airports;
- (i) The prospective Lessee, or a principal of the prospective Lessee, has defaulted at any time in the performance of any other agreement with the State;
- (j) On the basis of current financial information, the prospective Lessee does not, in the discretion of ODA, exhibit adequate financial responsibility or capability to undertake the proposed operation and activities;
- (k) The prospective Lessee cannot or will not provide a performance bond or applicable insurance in the amounts and type required the Department for the proposed commercial aeronautical activity; or
- (l) It is determined that the prospective Lessee's activities or operations could be detrimental in any way whatsoever to the State-owned airport.

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112

Statutes/Other Implemented: ORS 935.035, 935.040, 835.112 & 836.055

History:

AVIA 1-2004, f. & cert. ef. 2-17-04

AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0020

Commercial Aeronautical Lease Provisions

- (1) The prospective Lessee shall be provided a draft commercial lease for review only after the Department has approved the lease application. Before entering into the lease with ODA, the prospective Lessee shall review the applicable:
 - (a) Operating Minimum Standards;
 - (b) Airport Rules and Regulations;
 - (c) Rates and Charges Policy; and
 - (d) Leasing Policy for Commercial Aeronautical Activities.
- (2) The draft commercial lease shall include, but not be limited to, the following elements:
 - (a) Description of lease property;
 - (b) Term of lease;
 - (c) Names and addresses of all responsible parties;
 - (d) All fees and charges associated with occupying and operating on the lease property;
 - (e) Insurance requirements;
 - (f) Information on all taxes, liens and utilities;

- (g) Payment procedures relating to all fees and charges;
 - (h) Approved commercial aeronautical activities;
 - (i) Prohibited commercial aeronautical activities;
 - (j) Compliance with FAA regulations and pertinent laws;
 - (k) State aircraft and pilot registration requirements;
 - (L) ODA entry onto lease property;
 - (m) Access to lease property;
 - (n) Fire prevention;
 - (o) Maintenance requirements;
 - (p) Landscaping;
 - (q) Construction or alteration procedures;
 - (r) Restrictions on hazardous substances;
 - (s) Default and penalty provisions;
 - (t) Remedies on default;
 - (u) Bankruptcy;
 - (v) Termination for airport development;
 - (w) Transfer of airport ownership;
 - (x) Sale of improvements;
 - (y) Lease renewal options;
 - (z) Subleasing provisions;
 - (aa) Procedures for vacating the lease property; and
 - (bb) Termination of lease provisions.
- (3) The base term for commercial aeronautical leases shall be no longer than forty-five (45) years.
- (4) If Lessee requests a renewal, the Department may agree to renew the lease, consistent with this rule, for one (1) five-year period, provided the total lease term does not exceed fifty (50) years.
- (5) At the expiration of the base term and any renewals, Lessee may make application for a new lease. The new lease application will be reviewed under the standards of OAR 738-015-0015, ODA Review of Application for Commercial Aeronautical Lease. The Department may negotiate a new lease if it determines that:
- (a) The existing lease is not in default;
 - (b) The lease property is not required for other State-owned airport uses;
 - (c) Lessee has met its obligations under the terms of the preceding lease;
 - (d) Any improvements to the lease property are structurally sound and capable of safe and legal occupancy for the new lease term; and
 - (e) The Department otherwise finds that a new lease is appropriate.
- (6) The duration of the new lease shall be at the Department's option.
- (7) Each lease renewal or each new lease that follows the base-term lease, shall incorporate all current terms and conditions for leases and any special terms the Department deems necessary based on the particular circumstances of the Lessee and lease property.
- (8) If the Department determines that a lease renewal or proposed new lease will not be offered to Lessee, the Department may require Lessee to remove any structures on the lease property, at Lessee's expense, at the expiration of the current lease between Lessee and ODA.

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112

Statutes/Other Implemented: ORS 835.112, 836.055, 935.035 & 935.040

History:

[AVIA 1-2022, amend filed 05/04/2022, effective 05/04/2022](#)

[AVIA 1-2021, temporary amend filed 09/22/2021, effective 09/25/2021 through 03/23/2022](#)

AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0025

Commercial Aeronautical Lease Renewal Options

(1) In accordance with OAR 738-015-0020, Commercial Aeronautical Lease Provisions, Lessee shall have the option to renew its lease beyond the base term, subject to the satisfaction of all of the following conditions:

(a) The existing lease is not in default;

(b) Any improvements to the lease property are structurally sound and capable of safe and legal occupancy for the remaining term of the renewal period; and

(c) Lessee files a notice with ODA, in the form specified by ODA, stating that Lessee has complied with (a) and (b) above and intends to exercise its renewal option. The notice must be filed no later than 120 days prior to the expiration of the base term lease.

(2) The Department shall inspect Lessee's improvements for condition and appearance in accordance with ODA's standards for maintaining clean, safe and attractive facilities at the airport.

(a) Items considered shall include, but not be limited to:

(A) Siding and exterior finish;

(B) Roofing;

(C) Doors; and

(D) Structural framing.

(b) If the Department determines from its inspection that the improvements may not be structurally sound, the Department may require Lessee to obtain an inspection by a certified inspector, at Lessee's expense, to verify the condition of the structure.

(c) The Department may require Lessee to correct any deficiencies noted by ODA's inspection, or may require further structural inspection as described in paragraph (b) above, as a condition of Lessee's renewal.

(d) If corrections cannot be completed prior to the expiration of the current lease term, Lessee may request in writing that the Department approve additional time to make such corrections; the Department shall not unreasonably withhold approval of the request. The Department and Lessee may enter into the lease renewal or new lease, subject to the written commitment of Lessee to complete the repairs within a specified period. Failure to make such repairs within the period agreed upon may be cause for immediate termination of the renewal term or new lease.

(3) The length of the term of a new lease following a base term lease, and any renewal, shall be at the Department's discretion.

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112

Statutes/Other Implemented: ORS 935.035, 935.040, 835.112 & 836.055

History:

AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0030

Termination of Commercial Aeronautical Lease for Default or Airport Development

(1) In the event of termination of a commercial lease by the Department for default by Lessee, Lessee has two options, either of which must be completed within 120 days of the date of written notice of lease termination:

(a) Lessee may sell the lease improvements to a qualified buyer who is able to enter into a lease with the Department, under the criteria set forth in OAR 738-015-0005 through 738-015-0015; or

(b) Within that same period, Lessee may remove the improvements, at Lessee's expense, and restore the lease property to its original condition.

- (2) In the event of termination for default by Lessee, Lessee shall pay basic rent for any post-termination occupancy until a new Lessee has entered into a lease agreement with the Department, or until the lease property is restored to their original condition.
- (3) If the Department makes a determination, in accordance with the Airport Master Plan and FAA-approved Airport Layout Plan, that the lease property is required for airport development, it shall offer to Lessee an alternative site, if such other suitable space is available on airport property.
- (4) If no suitable alternative site is available, or if Lessee chooses not to relocate, either party may terminate the lease.
- (5) Upon termination, Lessee shall vacate the lease property within 120 days following ODA's termination notice.
- (6) If Lessee's lease was a base term lease, the Department shall offer to buy out the remaining base term of the lease. If Lessee's lease is not a base term lease, then the Department shall not pay compensation for lease termination.
- (7) The base term lease buy-out amount shall be determined by amortizing the construction cost of any improvements on the lease property over the base term of the lease, factoring in straight-line depreciation and adjusting for inflation based on the Department's periodic rental increases. The Department shall purchase each remaining year of the base term of the lease according to the amortization/depreciation schedule.
- (8) Upon termination, Lessee shall continue to own all improvements on the lease property, including hangars. The improvements are personal property of the Lessee and must be removed when the Lessee vacates the lease property pursuant to paragraph (5) of this rule.

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112

Statutes/Other Implemented: ORS 935.035, 935.040, 835.112 & 836.055

History:

AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0035

Sale of Improvements, Assignment of Commercial Leases, Subleases

- (1) The Department shall not allow assignment of any lease for commercial aeronautical activity.
- (2) If Lessee desires to sell the improvements, the Department shall consider entering into a new lease with the buyer of the improvements.
- (a) The prospective Lessee (the buyer of the improvements) must meet all requirements imposed on any lessee under the terms of a lease with the Department for commercial aeronautical activity at a State-owned airport.
- (b) If the prospective Lessee (the buyer of the improvements) qualifies to obtain a lease, the Department shall offer a lease with the terms, conditions and rates then in effect. The term of the new lease shall be determined by the Department, consistent with OAR 738-015-0005 through 738-015-0015.
- (3) The original Lessee's lease shall remain in full force and effect until the Department and the new Lessee (the buyer of the improvements) have entered into a new lease. The original Lessee must comply with all terms and conditions of the lease until the new lease is executed and in effect.
- (4) Upon execution of the new lease, the original lease is automatically terminated by mutual agreement of the parties.
- (5) Subleasing of a commercial aeronautical activity lease is allowed with prior written approval by the Department.

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112

Statutes/Other Implemented: ORS 935.035, 935.040, 835.112 & 836.055

History:

AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0040

Commercial Lease Insurance Requirements

Each Lessee shall meet all State of Oregon insurance requirements and shall maintain the types of insurance specified in the lease, in the amounts specified.

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112

Statutes/Other Implemented: ORS 935.035, 935.040, 835.112 & 836.055

History:

AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0045**Exclusive Rights**

(1) The Department shall not grant an exclusive right aeronautical activity agreement to any single commercial operator or service provider, since such an agreement would create a the absence of competitive enterprise or a local monopoly at a State-owned Airport.

(2) The Department does not regard a State-owned airport with one single commercial operator to constitute an "exclusive right" or monopoly to that operator by ODA.

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112

Statutes/Other Implemented: ORS 935.035, 935.040, 835.112 & 836.055

History:

AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0050**Competitive Proposal Process for Commercial Aeronautical Activity**

(1) In order for the State to determine the level of market demand, the Department may, at its discretion, seek competitive proposals for leases for commercial aeronautical activity at all State-owned airports.

(a) The proposal process will include public notices and posting of information and proposal documents on the Department website.

(b) All Requests for Proposals will be consistent with any and all applicable State policies.

(c) A fair and objective evaluation process will be utilized to select the proposals that best meet the interests of the State, as defined within the proposal documents.

(2) Current Lessees will not be excluded from submitting a competitive proposal at any State-owned airport.

(3) Each Request for Proposals will contain specific information regarding the state-owned airport property currently being considered.

(4) All proposals will include requirements for detailed information from the respondents regarding:

(a) Qualifications;

(b) Capital investment proposed;

(c) Experience in services being offered;

(d) Experience of management personnel;

(e) Proposed services and products; and

(f) Financial ability.

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112

Statutes/Other Implemented: ORS 935.035, 935.040, 835.112 & 836.055

History:

AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0055**Access Permits**

Effective August 15, 2001, the date of approval of the Leasing Policy for Commercial Property by the State Aviation Board, the Department shall not issue any new access permits until all State-owned airport property has been developed, except at those airports where access permits already exist.

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112

Statutes/Other Implemented: ORS 935.035, 935.040, 835.112 & 836.055

History:

AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0060**Leasing Application for Non-Commercial Aeronautical Activities**

- (1) To obtain a non-commercial lease at a State-owned airport, a person shall submit an application to the Department for review, in a form specified by ODA.
- (2) The application for non-commercial lease shall include:
- (a) A detailed description of the scope of the proposed development;
 - (b) A description of the means to be employed to accomplish the construction;
 - (c) The legal name of the person applying as prospective Lessee and its business name (if different), as well as address(es) and telephone number(s);
 - (d) The names, addresses, and telephone numbers of all owners, officers and directors;
 - (e) The proposed dates for commencement and completion of the proposed development;
 - (f) Verification that pilot(s) and aircraft comply with State of Oregon Department of Aviation registration requirements (pursuant to ORS 837.020-070);
 - (g) A listing of all applicable FAA Certificates;
 - (h) The number of initial projected aircraft to be stored in the proposed structure; and
 - (i) A layout (to scale) of the size, configuration, and location of the property proposed for occupancy and preliminary drawing(s) of the building(s) and improvements to be constructed, together with identification of vehicle parking areas. Drawings shall be legible and reproducible with clearly defined dimensions. Each drawing shall be not less than 8.5 inches by 11 inches in size and be drawn in permanent media.
- (3) The Department may request a metes and bounds legal description of lease property boundaries.
- (4) For proposed agreements to lease existing structures and improvements, application shall include a description of the site, based on ODA records.

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112

Statutes/Other Implemented: ORS 935.035, 935.040, 835.112 & 836.055

History:

AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0065

Hangar Occupancy Under Leases for Noncommercial Aeronautical Activity

- (1) All hangars, whether constructed by the Lessee or leased from the Department, shall be used as a base for at least one aircraft registered with the State of Oregon Department of Aviation, or at least one aircraft currently being repaired, modified or constructed.
- (2) These conditions are met only if:
- (a) Any aircraft being repaired, modified or constructed shows progress towards an airworthy condition over a twelve-month period; or
 - (b) Lessee does not exceed a period of 180 days without having an aircraft based in the hangar.
- (3) Upon the above conditions not being met, the Lessee shall:
- (a) Make arrangements to vacate the lease property; or
 - (b) Transfer ownership to a qualified Lessee who has been approved by the Department, within thirty (30) days of written notice of noncompliance by the Department.

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112

Statutes/Other Implemented: ORS 935.035, 935.040, 835.112 & 836.055

History:

AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0070

Non-Commercial Aeronautical Lease Applicant's Financial Responsibility

- (1) All persons applying for a lease for non-commercial aeronautical activity at a State-owned airport who will be constructing improvements to the lease property shall provide the Department evidence, in a form acceptable to ODA, of the applicant's financial capability and responsibility to complete the project, in one of the following forms:

- (a) A performance bond in the amount equal to the cost for constructing the proposed improvements, which may be supplied by a contractor;
 - (b) An irrevocable letter of credit guaranteeing funds to complete the project;
 - (c) An escrow agreement administered by a title and escrow company; or
 - (d) A trust administered by a commercial bank.
- (2) At its option, the Department may require the prospective Lessee to obtain one or more of the above documents as proof of financial responsibility to complete the project.

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112

Statutes/Other Implemented: ORS 935.035, 935.040, 835.112 & 836.055

History:

AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0075

ODA Review of Application for Non-Commercial Aeronautical Activities

- (1) The Department shall review the application for lease for non-commercial aeronautical activities at a State-owned airport, as well as the financial responsibility documentation, and determine whether to approve or deny the application. The decision shall be made in writing to the prospective Lessee.
- (2) The Department may deny any prospective Lessee's application if it is determined that:
- (a) The proposed construction would create a safety hazard at the airport or the surrounding community;
 - (b) The prospective Lessee, for any reason, does not meet the qualifications, standards, and requirements of the Department or exhibit adequate financial responsibility or capability to undertake and complete the proposed construction (the burden of proof shall be on the applicant and the standard of proof shall be by clear and convincing evidence);
 - (c) The granting of the lease application will require the Department to expend funds, or supply labor or materials in connection with the proposed activity and/or construction, or will result in a financial loss (or hardship) for the airport;
 - (d) No appropriate, adequate, or available site or building(s) exist(s) to accommodate the needs of the prospective Lessee as presented in the lease application, nor is such contemplated within a reasonable time frame;
 - (e) The proposed development does not comply with the Airport Master Plan and/or Airport Layout Plan in effect at that time, or those plans anticipated to be in effect within the time frame proposed by the prospective Lessee;
 - (f) The development or use of the area requested by the prospective Lessee is likely to result in congestion of aircraft or airport buildings, or will unduly interfere with operations or activities of any present Lessee on the airport, and/or will prevent adequate access to the assigned lease area of any present Lessee;
 - (g) The prospective Lessee has failed to make full disclosure, or has misrepresented or omitted material facts in the application or in supporting documents;
 - (h) The prospective Lessee, or a principal of the prospective Lessee, has a record of violating the rules, regulations, statutes, ordinances, laws or orders of any airport, or any civil air regulations, FAA regulations or any other rules, regulations, statutes, ordinances, laws or orders applicable to airports;
 - (i) The prospective Lessee, or a principal of the prospective Lessee, has defaulted in the performance of any other agreement with the State;
 - (j) The prospective Lessee cannot or will not provide a performance bond or applicable insurance in the amounts and type required by the Department for the proposed development; or
 - (k) It is determined that the prospective Lessee's proposed development, activities and/or operations could be detrimental in any way whatsoever to the airport.
- (3) The prospective lessee is responsible for providing any required infrastructure to support their proposed use of the site, at the lessee's expense. The prospective lessee shall provide to ODA, prior to any construction, occupancy or use of the site written confirmation that all required services have been or will be installed (power, water, fire suppression, sewer, etc). Services must comply with local government and ODA requirements.

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112

Statutes/Other Implemented: ORS 935.035, 935.040, 835.112 & 836.055

History:

[AVIA 2-2006, f. & cert. ef. 1-27-06](#)

[AVIA 1-2002, f. & cert. ef. 9-3-02](#)

738-015-0080

Non-Commercial Aeronautical Lease Provisions

(1) The prospective Lessee shall be provided a draft non-commercial lease for review only after the Department has approved the lease application. Before entering into the lease with ODA, the prospective Lessee shall review the applicable:

- (a) Operating Minimum Standards;
- (b) Airport Rules and Regulations;
- (c) Rates and Charges Policy; and
- (d) Leasing Policy for Non-Commercial Aeronautical Activities.

(2) The draft non-commercial lease shall include, but not be limited to, the following elements:

- (a) Description of the lease property, as provided from ODA records;
- (b) Term of lease;
- (c) Names and addresses of responsible parties;
- (d) All fees and charges associated with occupying and operating on the lease property;
- (e) Insurance requirements;
- (f) Information on all taxes, liens and utilities;
- (g) Payment procedures relating to all fees and charges;
- (h) Approved non-commercial activities;
- (i) Prohibited non-commercial activities;
- (j) Compliance with FAA regulations and pertinent laws;
- (k) State aircraft and pilot registration requirements;
- (l) ODA entry onto lease property;
- (m) Access to lease property;
- (n) Fire prevention;
- (o) Maintenance requirements;
- (p) Landscaping;
- (q) Construction or alteration procedures;
- (r) Restrictions on hazardous substances;
- (s) Default and penalty provisions;
- (t) Remedies on default;
- (u) Bankruptcy;
- (v) Termination for airport development;
- (w) Transfer of airport ownership;
- (x) Sale of improvements;
- (y) Lease renewal options;
- (z) Procedures for vacating the lease property; and
- (aa) Termination of lease provisions.

(3) The base term for non-commercial aeronautical leases shall be no longer than twenty-five (25) years.

(4) If the Lessee requests a renewal, the Department may agree to renew the lease, consistent with OAR 738-015-0080, Non-Commercial Aeronautical Lease Renewal Options, for one (1) five-year period, provided the total lease term does not exceed thirty (30) years.

(5) At the expiration of the base term and any renewals, Lessee may request a new Lease. The Department may negotiate a new lease if the Department determines that:

- (a) The existing lease is not in default;
 - (b) The lease property is not required for other airport uses;
 - (c) Lessee has met its obligations under the terms of the preceding lease;
 - (d) Any improvements to the lease property are structurally sound and capable of safe and legal occupancy for the new lease term; and
 - (e) The Department otherwise finds that a new lease is appropriate.
- (6) The duration of the new lease shall be at the Department's option.

(7) Each renewal or new lease following the base term lease shall incorporate all current terms and conditions for leases and any special terms the Department deems necessary based on the particular circumstances of the Lessee and lease property.

(8) If the Department determines that a renewal or new lease will not be offered to Lessee, the Department may require Lessee to remove any structures on the lease property, at Lessee's expense, at the expiration of the current lease between Lessee and the Department.

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112

Statutes/Other Implemented: ORS 935.035, 935.040, 835.112 & 836.055

History:

AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0085

Non-Commercial Aeronautical Lease Renewal Options

(1) In accordance with OAR 738-015-0080, Non-Commercial Aeronautical Lease Provisions, Lessee shall have the option to renew its lease with the Department beyond the base term, subject to the satisfaction of all of the following conditions:

- (a) The existing lease is not in default;
 - (b) Any improvements to the lease property are structurally sound and capable of safe and legal occupancy for the remaining term of the renewal period; and
 - (c) Lessee files a notice with ODA, in the form specified by ODA, stating that Lessee has complied with (a) and (b) above and intends to exercise its renewal option. The notice must be filed not later than 120 days prior to the expiration of the base term lease.
- (2) The Department shall inspect Lessee's improvements for condition and appearance in accordance with ODA's standards for maintaining clean, safe and attractive facilities at the airport.

(a) Items considered will include, but not be limited to:

- (A) Siding and exterior finish;
- (B) Roofing;
- (C) Doors; and
- (D) Structural framing.

(b) If the Department determines from its inspection that the improvements may not be structurally sound, the Department may require Lessee to obtain an inspection by a certified inspector, at Lessee's expense, to verify the condition of the structure.

(c) The Department may require Lessee to correct any deficiencies noted by ODA's inspection or further structural inspection as a condition of Lessee's renewal.

(d) If corrections cannot be completed prior to the expiration of the current lease term, Lessee may request in writing that the Department approve additional time to make the corrections; the Department shall not unreasonably withhold

approval of the request. The Department and Lessee may enter into the lease renewal or new lease, subject to the written commitment of Lessee to complete the repairs within a specified period. Failure to make the repairs within the period agreed upon may be cause for immediate termination of the renewal term.

(3) The length of the term of a new lease following a base term lease and any renewal shall be at the Department's discretion.

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112

Statutes/Other Implemented: ORS 935.035, 935.040, 835.112 & 836.055

History:

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738-015-0090

Termination of Non-Commercial Aeronautical Lease for Default or Airport Development

(1) In the event of termination of a non-commercial lease for default by Lessee, Lessee has two options, either of which must be completed within 120 days of the date of written notice of lease termination:

(a) Lessee may sell the lease improvements to a qualified buyer who is able to enter into a lease with the Department under OAR 738-015-0055 through 738-015-0075; or

(b) Within that same period, Lessee may remove the improvements, at Lessee's expense, and restore the lease property to their original condition.

(2) In the event of termination by the Department for default by Lessee, Lessee shall pay basic rent for any post-termination occupancy, until another Lessee has entered into a lease with the Department or until the lease property are restored to their original condition.

(3) If the Department makes a determination, in accordance with the Airport Master Plan and FAA-approved Airport Layout Plan, that the lease property are required for airport development, it shall offer to Lessee an alternative site, if such other suitable space is available on airport property.

(4) If no suitable alternative site is available, or Lessee chooses not to relocate, the lease may be terminated by either party.

(5) Upon termination, Lessee shall vacate the lease property upon 120 days written notice by the Department to buy out the remaining base term of the lease.

(6) If Lessee's lease is not a base term lease, the Department shall not pay compensation for lease termination. If Lessee's lease was a base term lease, then the Department shall offer to buy out the remaining base term of the lease.

(7) The base term buy-out will be determined by amortizing the construction cost of the hangar (or other improvements) over the base term of the lease, factoring in straight-line depreciation and adjusting for inflation based on ODA's periodic rental increases. The Department shall purchase each remaining year of the base term according to the amortization/depreciation schedule.

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112

Statutes/Other Implemented: ORS 935.035, 935.040, 835.112 & 836.055

History:

AVIA 1-2002, f. & cert. ef. 9-3-02

738-015-0095

Sale of Improvements, Assignment of Non-Commercial Leases, Subleases

(1) The Department shall not allow assignment or sublease of any non-commercial lease.

(2) If Lessee desires to sell the improvements, the Department shall consider entering into a new lease with the buyer of the improvements, provided said prospective new Lessee is qualified under criteria set forth in OAR 738-015-0060, Leasing Application for Non-Commercial Aeronautical Activities, 738-015-0065, Hangar Occupancy Under Leases for Non-Commercial Aeronautical Activity, 738-015-0070, Non-Commercial Aeronautical Lease Applicant's Financial Responsibility, and 738-015-0075, ODA Review of Application for Non-Commercial Aeronautical Activities.

(a) The prospective Lessee (the buyer of the improvements) must meet all requirements imposed on any Lessee with a non-commercial aeronautical lease.

(b) If the prospective Lessee (the buyer of the improvements) qualifies to obtain a lease, the Department shall offer a lease with the terms, conditions and rates then in effect. The term of the new lease shall be determined by the Department, consistent with OAR 738-015-0080.

(3) The original Lessee's lease shall remain in full force and effect until the Department and the buyer of the improvements have entered into a new lease. The original Lessee must comply with all terms and conditions of the original lease until the new lease is executed and in effect.

(4) Upon execution of the new lease, the original lease is automatically terminated by mutual agreement of the parties.

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112

Statutes/Other Implemented: ORS 935.035, 935.040, 835.112 & 836.055

History:

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738-015-0100

Non-Commercial Lease Insurance Requirements

Each Lessee shall meet all State of Oregon insurance requirements and shall maintain the types of insurance specified in the lease, in the amounts specified.

Statutory/Other Authority: ORS 835.035, 835.040 & 835.112

Statutes/Other Implemented: ORS 935.035, 935.040, 835.112 & 836.055

History:

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