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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 738  
OREGON DEPARTMENT OF AVIATION

**FILED**  
11/26/2019 3:39 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Amending ASAP grant rules

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 01/10/2020 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.*

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HEARING(S)

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

DATE: 01/10/2020

TIME: 4:00 PM

OFFICER: Staff

ADDRESS: Oregon Department of

Aviation

3040 25th Street SE

Salem, OR 97302

NEED FOR THE RULE(S):

The Legislature changed the statutes that control three aviation grant programs (COAR, ROAR and SOAR). Rules are being changed in response to the new legislation. The rules provide new definitions, clarify project and applicant eligibility, application requirements and financial matching requirements. The proposed changes also clarify the review and approval/rejection processes, and program administration.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None

FISCAL AND ECONOMIC IMPACT:

See statements below.

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) The rule changes create caps and minimum matching requirements which are authorized by the statute. For COAR grants, the proposed match requirements are based on the category of airport at which the project will be performed, as listed in the current Oregon Aviation Plan. Match percentages will range between 5% and 50% total eligible project costs. For ROAR grants, the match requires are based on the project type. Applicants seeking funds for capital projects are subject to a 50% match of total eligible project costs; applicants seeking funds for any other purpose are subject to a 10% match of total eligible project costs. The changes will have the effect, in some cases, of lowering the grant amount to individual applicants but should also make grants available to more applicants.

(2)(a), (b) and (c) None; the rule changes impact only applicants for ODA grants.

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

ODA established a Rule Advisory Committee, which included private industry representatives to evaluate the rule changes.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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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: Provides the purpose for the Aviation System Action Program Fund.

CHANGES TO RULE:

738-124-0010

Purpose ¶

~~OL 2015 c.700 Section 7 creates~~(1) The State of Oregon established the Aviation System Action Program Fund, allowing for the distribution of fuel tax revenues for the purpose of financing grants to fund Aviation and Airport Projects that involve:~~(ASAP) fund pursuant in 2015 Oregon Laws, chapter 700, section 7, as modified by 2019 Oregon Laws, chapter 485, section 1. The Department shall administer the funded programs and distribute funds for the purposes established by the Oregon legislature.~~¶

~~(12) Providing assistance for federal grant match support, airport safety and emergency preparedness enhancements;~~The purposes of the COAR program are to: assist airports in Oregon with match requirements for FAA Airport Improvement Program grants; and make grants for: emergency preparedness and infrastructure projects, in accordance with the Oregon Resilience Plan or the Oregon Aviation Plan; services critical and/or essential to aviation, aviation-related business development, and airport development for local economic benefit; including but, not limited to, fuel, sewer, water, navigational aids and weather equipment; aviation-related business development, including but, not limited to, hangars, parking for business aircraft and related facilities; or airport development for local economic benefit, including but not limited to signs and marketing.¶

~~(23) Rural~~The purpose of the ROAR program is to assist commercial air service development; and to Rural Oregon.¶

~~(34) Safety improvements and infrastructure projects at S~~The purpose of the SOAR program is to distribute funds to state-owned airports. The purpose of division 124 rules is to establish the Aviation System Action Program Fund for: safety improvements recommended by the Board and local community airports; and infrastructure projects at public use airports.

Statutory/Other Authority: ORS 835.035, 835.040, 835.112, OL 20159 c.700485 Section 71(2)(b)

Statutes/Other Implemented: ORS 835.015, 835.025, 836.015, 836.070, 319.02L 2019 c.485 Section 1, ORS 835.025, 835.040

AMEND: 738-124-0015

RULE SUMMARY: Updating definitions.

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 ~~Aviation System Action Program Fund for an Approved Project~~SAP Fund.¶¶
- (2) "Applicant" means a Person or Public Body that applies for funds from the ~~Aviation System Action Program Fund.~~¶¶
- (3) "~~Approved Project~~" means a Project that the Board has selected to receive funding through a grant or Selection Process from the ~~Aviation System Action Program Fund.~~¶¶
- (4) "~~ARC~~" means the ~~Aviation Review Committee established in accordance with~~SAP Fund.¶¶
- (3) "ARC" means the Aviation Review Committee established by the Board in accordance with 2019 Oregon Laws, chapter 485, section 1(3) and composed of one member from each of the Area Commissions on Transportation chartered by the OL-2015-c.700 Section 7 (3)regon Transportation Commission (OTC).¶¶
- (54) "Area Commissions on Transportation" means advisory bodies chartered by the ~~Oregon Transportation Commission (OTC)~~ through the Policy on Formation and Operation of Area Commissions on Transportation (ACTs) approved by the OTC on June 18, 2003.¶¶
- (6) "~~Aviation~~" is defined in ~~ORS 836.005(5).~~¶¶
- (7) "~~Aviation Project~~" or "project" includes but is not limited to airport safety and emergency preparedness, enhancements, rural air service development5) "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 P~~rogram grants~~ means ~~grant~~the funding program described in OL-2015-c.700 §2019 Oregon Laws, chapter 485, section 7-1(5).¶¶
- (10) "~~Department~~" or "~~Department of Aviation~~Connect Oregon Fund" means the fund established in ~~ORS 367.080.~~¶¶
- (11) "Department" means the Oregon Department of Aviation or ODA.¶¶
- (142) "Director" means the Director of the Oregon Department of Aviation.¶¶
- (123) "FAMA" or ~~Financial Aid to Municipalities Grant Program~~ means the grant funding program described in ~~ORAR Chapter 738, Division 125~~means the Federal Aviation Administration.¶¶
- (134) "Oregon Freight Advisory Committee" (OFAC) means the committee created in ORS 366.212.¶¶
- (145) "~~Municipality~~" as defined by ~~ORS 836.005,~~ refers to the applicant or airport sponsorNPIAS" means the National Plan of Integrated Airport Systems. ¶¶
- (16) "Oregon Aviation Plan" (OAP) means the plan developed under ORS 835.015.¶¶
- (157) "Oregon Business Development Department" means the department defined in ORS 285A.070.¶¶
- (168) "~~Person~~" has the meaning given in ~~ORS 174.100(6), limited to~~Oregon Resilience Plan" means those Persons that are registered with~~the report to the 77th Legislative Assembly prepared by the Oregon Secretary of State to conduct business within the State of Oregon.~~¶¶

(17) "Program" means the Aviation System Action Program established by division 124 rules to administer the Aviation System Action Program Fund.¶

(18) "Public Body" is defined in ORS 174.109.¶

(19) "Receive Federal Grants" means execution of a grant agreement with any agency of the United States.¶

(20) ismic 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 ~~that~~who enters into Agreement with the Department to receive funds from the Aviation System Action Program ~~SAP~~ Fund.¶

(210) "Recipient's Total Project Costs" means the funds ~~r~~venue Use Policy" means, collected from the Aviation System Action Program Fund program plus the Recipient's matching funds, and any additional funds, if applicable ly, 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.¶

(221) "ROAR" or Rural Oregon Aviation Relief Pprogram grants means grant funding ~~for the sole purpose of assisting commercial air service to rural Oregon as described in OL 2015 c.700 S~~as described in 2019 Oregon Laws, chapter 485, section 7-1(6).¶

(232) "Rural Airport Oregon" means any airport ~~that pri~~area within the state of Oregon that was not officipally serves a city or mdesignated or delineated as a Metropolitan sStatistical aArea with a population of 500,000 or fewer, by the U.S. Office of Management and Budget as of September 2018. ¶

(243) "SOAR" or State Owned Airport Reserve Pprogram means funding described in ~~OL 2015 c.700 S~~2019 Oregon Laws, chapter 485, section 7-1(7).

Statutory/Other Authority: ORS 835.035, 835.040, 835.112, OL 2015 ~~c.700~~485 Section 7-1(2)(b)

Statutes/Other Implemented: ORS 835.0125, 835.025, 836.015, 836.070, 319.02040, OL 2019 c.485 Section 1

AMEND: 738-124-0020

RULE SUMMARY: Amends project eligibility of COAR and ROAR projects.

CHANGES TO RULE:

738-124-0020

Application Submission Periods COAR and ROAR Project Eligibility ¶¶

~~(1) The Department will announce Project Eligibility. ¶¶~~

~~(a) A project is eligible only if it has not been completed periods for submitting applications for funding from the Aviation System Action Program to the application deadline set by the Department. ¶¶~~

~~(b) A 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. ¶¶~~

~~(2c) PA project applications will be not eligible if it is prohibited by the rReviewed for compliance with the requirements as prescribed Use Policy. ¶¶~~

~~(2) Additional project eligibility requirement for COAR applications: A project is eligible only if it is located in Chapter 738, division 124 and 125 rules. ¶¶~~

~~(3) Applications not funded may be resubmitted during subsequent application submission periods announced by the Department at an airport that is open to flight operations by the public. ¶¶~~

~~(3) Additional project eligibility requirement for ROAR applications: A projects is eligible if it will increase commercial passenger travel between an airport in Rural Oregon and another airport in Oregon.~~

Statutory/Other Authority: ORS 835.035, 835.040, 835.112, OL 2015 c.700485 Section 71(2)(b)

Statutes/Other Implemented: ORS 835.0125, 835.025, 836.015, 836.070, 319OL 2019 c.485 Section 1, 835.0240

AMEND: 738-124-0025

RULE SUMMARY: Adds requirements for COAR and ROAR applications.

CHANGES TO RULE:

738-124-0025

Application Requirements COAR and ROAR Applicant Eligibility ¶

(1) ~~An Applicant~~ interested in receiving funds from the Aviation System Action Program Fund must submit an application to the Department per the Department's current program Policy as established for the COAR Grant Program and the ROAR Program.¶

(2) Applications may not be submitted for projects already completed by eligible if the Applicant has a current Oregon Secretary of State business registry number, unless the aApplication deadline.¶

(3) Applications for fundnt is an individual doing must be in a format prescribed by the Department and contain or be accompanied by such information as the Department may require, including:¶

(a) The expected results from the proposed Project for each of the considerations as prescribed in OAR 738-125-0035; iness under the individual's real and true name, is a public sector entity, or is otherwise exempt under applicable law.¶

(b2) ~~Documented desire for and support of the Project from the businesses and entities to be served by the Project; and~~¶

(c) ~~Documentation to va~~Additional applicant eligibility requirement for ROAR applidcate the Project schedule and costs.¶

(4) Applications submitted for the purpose of receiving funding to assist commercial air service to rural Oregon will follow the ROAR Program guidelines set forth in the Department's current program Policy.¶

(5) Only state-owned airports are eligible to receive funding from the SOAR Program following the SOAR Program guidelines set forth in the Board's policyions: Applicants must either be airports located in Rural Oregon, or apply in partnership with an airport located outside of Rural Oregon.

Statutory/Other Authority: ORS 835.035, 835.040, 835.112, OL 20159 c.700485 Section 71(2)(b)

Statutes/Other Implemented: ORS 835.0125, 835.025, 836.015, 836.070, 319OL 2019 c.485 Section 1, 835.0240

AMEND: 738-124-0030

RULE SUMMARY: This rule changed due to reorganization of Division 124 rules. The changes require the Department to announce application deadlines, and provides the requirements for COAR and ROAR applications.

CHANGES TO RULE:

738-124-0030

Eligibility and COAR and ROAR Application Review requirements

~~(1) The Department will review applications received to determine whether the application is complete and the Applicant and the Project are eligible for Program Funds.~~

~~(a) COAR Grant Applications shall be reviewed using Department Policy guidelines as established by OAR 738-125-0035, in accordance with OL 2015 c.700 Section 7 (3) and ORS 836.015.~~

~~(b) ROAR Applications shall be reviewed using Department Policy guidelines and submitted directly to the Board for final review and approval per OL 2015 c.700 Section 7 (6); shall announce application deadlines for COAR and ROAR funding. The Department shall not consider applications submitted after the deadline set by the Department.~~

~~(2) Applicants interested in receiving funds under either COAR or ROAR must submit an application to the Department in a format prescribed by the Department. At a minimum, each application must contain the following information:~~

~~(a) Project Information. The application must include:~~

~~(A) Applicant's name and Oregon Secretary of State Business Registry number (if one exists), and the contact information of the individual who represents the Applicant with respect to the application;~~

~~(B) Project name;~~

~~(C) SOAR Projects submitted by the Oregon Department of Aviation for state airport improvements shall be reviewed 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 approved by the Board independently in accordance with ORS 835.060; projected start and end dates; and~~

~~(2F) Applicant Eligibility. Applicants that meet the following criteria are eligible:~~

~~(a) The Applicant describing local support for the project, is a Public Body or Person within the State of Oregon.~~

~~(b) Project Documentation. The Applicant has sufficient management and financial capacity; must describe documentation necessary to complete the Project including without constraint the ability to contribute match in accordance with OAR 738-125-0030.~~

~~(3) Project Eligibility. Projects that meet all of the following criteria are eligible:~~

~~(a) For the COAR Grant Program, the project is an Aviation Project described in 738-124-0035 (8).~~

~~(b) For the ROAR Program, applications will be reviewed in accordance with adopted policy for the purpose of assisting commercial air service to rural, specifically statements regarding whether:~~

~~(A) The project is in the most current Airport Layout Plan (ALP), signed by the FAA and the airport owner;~~

~~(B) A National Environmental Policy Act (NEPA) review is required;~~

~~(C) An Airport Safety Overlay Zone, as described in OAR 660-013-0070, has been adopted at the airport where the project will be located; 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) The Project will not require or rely upon continuing subsidies from the Department Connects elements of Oregon's aviation system in a way that will measurably improve utilization and efficiency of the system.

(D) Is ready for congoing operations.

(d) Tstruction or implementation, including whether the Pproject is not a public road or other project that is eligible for funding from revenues described in section 3a, Article IX of the Oregon Constitution, i.e. the State Highway Trust Fundhas any unique construction-readiness, project implementation issues, or possible delays: and

(E) Has a useful life expectancy that offers maximum benefit to this state.

(ed) The Project is feasible, including the estimated cost of the Project, the expected results from the proposed Project for each of the considerations as prescribBudget Information. The application must include each of the following:

(A) The total amount of the COAR or ROAR grant sought by the Applicant. Amounts sought may not exceed the maximum grant amounts specified byin OAR 738-1254-0035(2), the Project schedule, and a40.

(B) For federally funded projects, a statement of whether the project is listed on the approved Federal Cappable and required permits that shall be obtained within the Project schedule.

(4) If an Applicant or Application for funding is incomplete and/or not eligible for Program Funds, the Department will, within 15 business days of making such dital Improvement Plan and, if so provide a copy of the Capital Improvement Plan.

(C) A list of project funding sources and the amount of funding from each source. Applicants must include a statement of how much of the cost of the project can be borne by the Applicant from sources other than Department funds or Connect Oregon Fund.

(D) A statement identifying whethetermination:

(a) Specify the additional information the Applicant must provide to establish eligibility; or the project will have incurred any expenditures prior to the effective date of an Agreement, if awarded, and a brief explanation if so.

(b)E) Notify the Applicant that the application request is ineligible.

(5) The Department may deem an application ineligible ifDocumentation of the Applicant's ability to meet the financial contribution or match requirement specified in OAR 738-124-0040.

(e) Applicant history. A statement in which the Applicant discloses any circumstance in which the Applicant fails to meet eligibility requirements of subsections (2) and (3) of this rule, or fails to provide requested information ior one of its owners or principals has been involved in a dispute about its use of grant funds or a business loan wrihtin g by the date required by the Department, or if the application contains false or misleading information.

(6) The Director will consider protests of the eligibility determination for the Program. Only the Applicant 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 Direlast 5 years preceding the date of the application. If any such circumstances exist, the Applicant shall describe the circumstances, including the approximate date of the circumstance, the entity or individual making the grant or loan at issue, and the outcome of the dispute.

(f) Applicant affirmation. Each Applicant must affirm that the statements contained in the application are complete and accurate.

(3) Additional requirements for ROAR applications:

(a) ROAR applications must also include: an amount of the projected increase in the volume of passenger air travel to rural Oregon and an explanation of the factor's written decision is final.

(7) The Department will make all eligible applications available for review, as applicable under OL 2015 c.700 Section 7 to the designated Review committee and to the Board for final review and approval. If applicable, the Freight Advisory Committee, and the Oregon Business Development Department will provide addthat support it; and a list of local companies, non-profit organizations or government agencies that have expressed interest in the project or a commitment to support it, accompanied by letters or other evidence of support from the entities.

(b) For projects that include marketing, the application must include a proposed marketing and communication plan.

(c) For projects that include air service, the application must also specify: projected aircraft to be used; type of FAA certificate under which operations will be conducted; and estimated projected draw down of grant funds, month by month, for the initial comments to the Bear 24 month period.

Statutory/Other Authority: ORS 835.035, 835.040, 835.112, OL 20159 c.700485 Section 71(2)(b)

Statutes/Other Implemented: ORS 835.0125, 835.025, ~~836.015, 836.070, 319.02040~~, OL 2019 c.485 Section 1

REPEAL: 738-124-0035

RULE SUMMARY: Rules in Chapter 738, Division 124 are being reorganized. This section has been reorganized into other rules in Division 124.

CHANGES TO RULE:

~~738-124-0035~~

~~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).~~

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

~~(c) The Oregon Business Development Department for aviation transportation projects when applicable.~~

~~(3) Prior to selecting Projects to be funded with monies in the Aviation System Action Program Fund, the Board may solicit recommendations from transportation 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) 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 shall include the evaluation results and recommendations from each of the committees and entities in sections (2) and (3) of this rule. The Board shall provide its final recommendations 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.~~

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

~~(7) The committees and entities in sections (2), (3) and (5) of this rule shall follow the organizational guidance determined by the Department under section (6) of this rule.~~

~~(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) Fifty percent of the Aviation System Action Program Fund amounts described in subsection OL 2015 c.700 Section 7(4)(b) shall be prioritized in the following manner and distributed for the following purposes under the COAR Grant Program:~~

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

~~(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) Aviation-related business development, including, but not limited to, hangars, parking for business aircraft and~~

related facilities.¶¶

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

(b) Priority in distributing grants shall 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 and ROAR.

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: 738-124-0040

RULE SUMMARY: The rule amendment create caps and minimum matching requirements which are authorized by statute. For COAR grants, the proposed match requirements are based on the category of airport at which the project will be performed, as listed in the current Oregon Aviation Plan. Match percentages will range between 5% and 50% total eligible project costs. For ROAR grants, the match requires are based on the project type. Applicants seeking funds for capital projects are subject to a 50% match of total eligible project costs; applicants seeking funds for any other purpose are subject to a 10% match of total eligible project costs.

CHANGES TO RULE:

738-124-0040

Maximum COAR and ROAR Grant Award amounts and Match Applicant Financial Matching Requirements

~~(1) Once a project is selected by the Board under this rule the amount of monies identified~~ Applicants may not apply for grant amounts above the maximum amounts for the respective programs, which are:¶

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

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

~~(c) Maximum amounts listed by in the Board is considered allocated from the Fund to a Recipient. If an Agreement with a Recipient has not been executed within 180 days from is rule are cumulative to all applications submitted with respect to a single project. ¶~~

~~(2) COAR Financial matching requirements¶~~

~~(a) Minimum financial match requirements are based on the date of selection, the grant is deemed terminated, and the funds may be reassigned by the Board.~~ category of airport at which the project will be performed, as listed in the current Oregon Aviation Plan. By category, the minimum financial match requirements are:¶

~~(2A) Grants will be awarded only wCategory 1¶~~

~~(i) Commercial Primary: 50% of then there are sufficient funds available in the Aviation System Actio~~total eligible project costs ¶

~~(ii) Other Commercial Non-Program Fund to cover the costs of the grants.¶~~

~~(a) Recipient matching funds must be provided by the Recipient in the form of monetary outlay for elements necessary for implementation of the Project, including land, excavation, permits, engineering, payroll, special imary (less than 10,000 enplanements): 35% of the total eligible project costs¶~~

~~(B) Category 2 - Business: 25% of the total eligible project costs¶~~

~~(C) Category 3 - Regional: 10% of the total eligible project costs¶~~

~~(D) Category 4 - Community: 10% of the total eligible project costs¶~~

~~(E) Category 5 - Low Activity: 5% of the total eligible project costs¶~~

~~(b) Notwithstanding subsection (a), the minimum financial match requirement purchase or rfor an airport listed in Table 1 of the FAA's Essential, and cover a percentage Air Service (EAS)/Economically Distressed Area (EDA) Determination memo dated February 8, 2019 is 5% of the total eligible Pproject costs required by OAR 738-125-0030 and/or Board approval. The match requirement is not applicable to the SOAR Program.¶~~

~~(b) Board has the sole authority to amend required match responsibility of the Recipient if Recipient cannot meet OAR 738-125-0030(4) match requirement. These. ¶~~

~~(c) For applications filed for assistance with FAA Airport Improvement Program (AIP) match requirements, the grant match amount is the eligible project cost and is subject to the minimum financial match requirements described above. ¶~~

~~(3) ROAR financial matching requirements are not applicable to the SOAR Program. Board at its sole discretion may determine no match is required if the Recipient can demonstrate economic distress by submitting supporting documentation, including but not limited to:¶~~

~~(A) Copies of current budget;¶~~

~~(B) Letters of support: ¶~~

~~(a) For applications seeking funds for capital projects, the Applicant shall contribute at least 50% of the total~~

eligible project costs. ¶

(b) For applications seeking funds for any other purpose, the Applicant shall contribute at least 10% of the total eligible project costs.

Statutory/Other Authority: ORS 835.035, 835.040, 835.112, OL 2015 ~~c.700~~ 485 Section ~~71~~ 1(2)(b)

Statutes/Other Implemented: ORS 835.0125, ~~835.025, 836.015, 836.070, 319~~ OL 2019 c.485 Section 1, 835.0240

REPEAL: 738-124-0045

RULE SUMMARY: Rules in Chapter 738, Division 124 are being reorganized. This section has been reorganized into other rules in Division 124.

CHANGES TO RULE:

~~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~~



ADOPT: 738-124-0050

RULE SUMMARY: Provides the requirements for the Department review of COAR and ROAR applications. Establishes timelines for the Department if an application is incomplete or an applicant or project is ineligible, and timelines for affected applicants to submit written protests of ineligibility determinations. Requires the Department to provide all eligible applications and supporting material to the Aviation Review Committee.

CHANGES TO RULE:

738-124-0050

Department Review of COAR and ROAR Applications

(1) The Department shall review applications for completeness and to confirm that Applicants and projects are eligible to receive funds. As part of its review, the Department may ask an Applicant to supply missing information or to provide clarification about Applicant or project eligibility.

(2) If an Application is incomplete, or an Applicant or project is ineligible, the Department shall, within 15 business days of making such determination:

(a) Specify in writing or email to the Applicant the additional information the Applicant must provide to complete the application or establish eligibility; or

(b) Notify the Applicant in writing or email that the Applicant or Project is ineligible and briefly describe the basis for ineligibility.

(3) If the Applicant fails to provide requested information within 5 business days from the date of the Department's written or email communication made pursuant to subsection (2)(a) of this rule, the Department may consider the application ineligible and provide the notice described in subsection (2)(b) of this rule.

(4) Affected Applicants may submit written protests of ineligibility determinations to the Director. Protests must be submitted in writing to the Director within 5 business days of the date of notice of the Department's determination of incompleteness or ineligibility that is being protested.

(5) The Director shall prepare a written response to the protest no later than 45 business days after the date the protest is received. The Director's written decision is final.

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

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

ADOPT: 738-124-0060

RULE SUMMARY: These rules provide the requirements for application review by the Aviation Review Committee (ARC) and the recommendations to the State Aviation Board. Requires the Department to provide the ARC's written responses and prioritized list to the Board.

CHANGES TO RULE:

738-124-0060

Aviation Review Committee (ARC) Review and Recommendation of COAR and ROAR Applications

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

(2) In reviewing applications, ARC shall consider:¶

(a) For COAR applications: The extent to which, if implemented, the project proposed in the Application would:¶

(A) Assist airports in Oregon with match requirements for FAA Airport Improvement Program grants;¶

(B) Support emergency preparedness and infrastructure goals in accordance with the Oregon Resilience Plan or the Oregon Aviation Plan; or ¶

(C) Support services critical or essential to aviation, including, but not limited to, fuel, sewer, water and weather equipment; support aviation-related business development, including, but not limited to, hangars, parking for business aircraft and related facilities; or support airport development for local economic benefit, including, but not limited to, signs and marketing.¶

(b) For ROAR applications: the extent to which the project proposed in the Application would, if implemented, assist commercial air service to Rural Oregon.¶

(c) Whether the project proposed in the application:¶

(A) Reduces transportation costs for Oregon businesses or improves access to jobs and sources of labor in Oregon;¶

(B) Results in an economic benefit to Oregon;¶

(C) Connects elements of Oregon's aviation system in a way that will measurably improve utilization and efficiency of the system;¶

(D) Is ready for construction or implementation, including whether the project has any unique construction-readiness, project implementation challenges, or possible delays; and¶

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

(d) How much of the costs of the project proposed in the application can be borne by the Applicant from sources other than the Department or the Connect Oregon Fund. ¶

(4) For each applicable criterion, the ARC will rate whether the proposed project "Meets," "Somewhat Meets" or "Does not Meet" the criterion. For purposes of this process, those terms have the following meanings:¶

(a) "Meets" means that the Applicant explained in a thorough and specific manner how the project meets the criterion and provided thorough evidence, including specific facts, specific examples, reliable figures, or detailed citations to supporting attachments to the application to support the Applicant's explanation.¶

(b) "Somewhat Meets" means that the Applicant provided a general, superficial or non-specific explanation how the project meets the criterion or provided only limited or incomplete supporting evidence to support the Applicant's explanation. ¶

(c) "Does Not Meet" means that either:¶

(A) The Applicant reported that the project did not meet the criterion; or ¶

(B) The Applicant provided an incomplete or implausible explanation of how the project meets the criterion or provided no evidence or only minimal, implausible or unreliable evidence to support the Applicant's explanation.¶

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

(a) Applicant that is able to bear the most cost. ¶

(b) Projects related to safety or infrastructure.¶

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

(d) Regional significance.

(6) Based on its review of eligible applications, the ARC shall:

(a) Prepare a brief written statement to the Board with respect to each application which recommends approval or rejection by the Board.

(b) For COAR applications for which the ARC recommends Board approval, the ARC shall prepare a prioritized list of applications, ranking them in the following priority:

(A) First, to assist airports in Oregon with match requirements for FAA Airport Improvement Program grants.

(B) Second, to make grants for emergency preparedness and infrastructure projects, in accordance with the Oregon Resilience Plan or the Oregon Aviation Plan.

(C) Third, to make grants for:

(i) Services critical or essential to aviation, including, but not limited to, fuel, sewer, water, navigational aids and weather equipment; or

(ii) Aviation-related business development, including, but not limited to, hangars, parking for business aircraft and related facilities; or

(iii) Airport development for local economic benefit, including, but not limited to, signs and marketing.

(7) The Department shall provide the ARC's written responses and prioritized list to the Board as soon as practicable after the ARC's review.

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

ADOPT: 738-124-0070

RULE SUMMARY: Rule changes: Board is to review and consider the ARC's written recommendations and prioritized list of COAR projects. The rule changes also provide considerations the Board may require or approve in considering applications, and sets priorities for application approval.

CHANGES TO RULE:

738-124-0070

Board Approval or Rejection of COAR and ROAR Applications

- (1) Prior to approving COAR and ROAR applications, the Board shall review and consider the ARC's written recommendations and prioritized list of COAR applications recommended for approval.¶
- (2) As part of its consideration of applications, the Board may solicit written feedback from stakeholders or entities with expertise relevant to a project proposed in a particular application, such as the Freight Advisory Committee, the Oregon Business Development Department, or Area Commissions on Transportation. ¶
- (3) The Board may delegate solicitation and collection of written feedback to the Department and may instruct the Department to solicit or collect feedback at any point in the application cycle. ¶
- (4) The Board may require any Applicant to make a presentation to the Board or interview with a Board designee as part of its consideration process.¶
- (5) The Board may approve an application for the amount sought or for a smaller amount.¶
- (6) When selecting COAR applications for approval, the Board shall prioritize them as described below:¶
  - (a) First, to assist airports in Oregon with match requirements for FAA Airport Improvement Program grants.¶
  - (b) Second, to make grants for emergency preparedness and infrastructure projects, in accordance with the Oregon Resilience Plan or the Oregon Aviation Plan.¶
  - (c) Third, to make grants for:¶
    - (A) Services critical or essential to aviation, including, but not limited to, fuel, sewer, water and weather equipment; or¶
    - (B) Aviation-related business development, including, but not limited to, hangars, parking for business aircraft and related facilities; or¶
    - (C) Airport development for local economic benefit, including, but not limited to, signs and marketing.

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

ADOPT: 738-124-0080

RULE SUMMARY: The changes establish provisions that must be in the agreement for COAR and ROAR grants. Requires the Department to comply with statute, rule or Department policy prior to executing Agreements.

CHANGES TO RULE:

738-124-0080

COAR and ROAR Program Administration

(1) The Department shall administer all COAR and ROAR grants.¶

(2) The Department and Recipient shall execute a written Agreement in a form acceptable to the Department prior to the disbursement of funds for an application approved by the Board. ¶

(3) At a minimum, the Agreement must contain provisions as listed below.¶

(a) A provision which requires a Recipient to submit documentation of the projected costs for the project must be submitted to the Department prior to the disbursement of funds.¶

(b) A provision which requires that disbursement of funds be made on a reimbursement basis. ¶

(c) A provision which requires a Recipient to separately account for all monies received from the ASAP Fund in project accounts in accordance with Generally Accepted Accounting Principles.¶

(d) A provision which authorizes the Department to withhold a percentage of funds for which reimbursement is sought by a Recipient and authorizes the Department to release the funds to Recipient when the conditions established by the Department are met or upon final project acceptance by the Department. The Department shall determine retainage limits in accordance with ORS 835.112. ¶

(e) A provision which requires a Recipient to remain current on all applicable state and local taxes, fees and assessments for the useful life of the project as prescribed in the Agreement. ¶

(f) A provision or provisions which protect public funds by identifying circumstances under which the Department may require repayment of disbursed funds or terminate the Agreement and which identify the rights and remedies of the Department upon termination.¶

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

(h) Provisions which require the Recipient to provide the Department with information, records, materials, progress reports or other information that may be requested by the Department.¶

(i) A provision which authorizes the Department to conduct reasonable inspections of projects funded under the Agreement. ¶

(4) The Department shall comply with applicable review requirements set out in statute, rule or Department policy prior to executing Agreements.

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

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

ADOPT: 738-124-0090

RULE SUMMARY: The changes establish the application process, the review process by the Aviation Review Committee, and approval by the State Aviation Board.

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 of the purposes described in OAR 738-124-0010(4) ("SOAR project list"). A SOAR project list prepared under this section is an eligible application, consisting of eligible projects, from an eligible Applicant for purposes of these rules. The Department shall forward the SOAR project list to the ARC for review and recommendation.

(2) Review by the ARC. Applying the criteria in OAR 738-124-0060(2)(c), the ARC shall recommend to the Board the approval or rejection of each project on the SOAR project list.

(3) Approval by Board. The Board shall approve or reject projects listed in the SOAR project list at a public meeting. The Board may increase or decrease dollar amounts allocated to projects it approves from the SOAR project list.

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

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