

**OREGON ADMINISTRATIVE RULES
OREGON DEPARTMENT OF AGRICULTURE
CHAPTER 603, DIVISION 95**

AGRICULTURAL WATER QUALITY MANAGEMENT PROGRAM

Clackamas Subbasin Management Area

603-095-1200

Purpose

(1) The purpose of these rules is to outline requirements for landowners in the Clackamas Subbasin Management Area for the prevention and control of water pollution from agricultural activities and soil erosion. Compliance with Division 095 rules is expected to aid in the achievement of applicable water quality standards in the Clackamas Subbasin Management Area.

(2) It is intended that the Clackamas Subbasin Agricultural Water Quality Management Area Plan will aid in achieving compliance with these rules through education and promotion of voluntary land management measures.

(3) Failure to comply with any provisions of the Clackamas Subbasin Agricultural Water Quality Management Area Plan:

(a) does not constitute a violation of OAR 603-090-0000 Through 603-090-0120, or of OAR 603-095-1200 through OAR 603-095-1280.

(b) is not intended by the department to be evidence of a violation of any federal, state, or local law by any person.

(4) Nothing in the Clackamas Subbasin Agricultural Water Quality Management Area Plan shall be:

(a) construed as an effluent limitation or standard under the Federal Water Pollution Control Act, 33 USC §§ 1251-1376

(b) used to interpret any requirement of OAR 603-095-1200 through 603-095-1280.

Statutory Authority: ORS 561.190-561.191 and ORS 568.912

Statutes Implemented: ORS 568.900 - 568.933

603-095-1220

Geographic and Programmatic Scope

(1) The Clackamas Subbasin Management Area includes the drainage area of the Clackamas River upstream from the confluence with the Willamette River near Gladstone. The Abernathy Creek and Beaver Creek/Parrot Creek drainages which flow directly into the Willamette from the east are included in this Management Area. Newland Creek, Boeckman Creek, Seely Ditch, Coffee Lake Creek, and Corral Creek flow directly into the Willamette River and are also included in this Management Area. The physical boundaries of the Clackamas Subbasin Management Area are indicated on the map included as Appendix 1 of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Clackamas Subbasin Management Area in agricultural use and agricultural and rural lands which are lying idle or on which management has been deferred, and forested lands with agricultural activities, with the exception of public lands managed by federal agencies and activities which are subject to the Forest Practices Act.

(3) Current productive agricultural use is not required for the provisions of these rules to apply. For example, highly erodible lands with no present active use are within the purview of these rules.

(4) The provisions and requirements outlined in these rules may be adopted by reference by Designated Management Agencies with appropriate authority and responsibilities in other geographic areas of the Clackamas Subbasin Management Area.

(5) For lands in agricultural use within other Designated Management Agencies or state agency jurisdictions, the department and the appropriate Local Management Agency shall work with these Designated Management Agencies to assure that provisions of these rules apply and to assure

that duplication of any services provided or fees assessed does not occur.

Statutory Authority: ORS 561.190-561.191 and ORS 568.912

Statutes Implemented: ORS 568.900 - 568.933

603-095-1240

Prevention and Control Measures

(1) All landowners or operators conducting activities on lands in agricultural use shall be in compliance with the following criteria. A landowner or operator shall be responsible for only those violations of the following prevention and control measures caused by activities conducted on land managed by the landowner or operator. Criteria do not apply to conditions resulting from unusual weather events or other exceptional circumstances which could not have been reasonably anticipated.

(2) Streamside Area Condition. Effective upon rule adoption.

(a) Streamside area conditions shall allow the establishment, growth, and/or maintenance of native or non-native riparian vegetation appropriate to the site capability, that is sufficient to encourage shade and to protect the streamside area during high stream flow events up to and including those expected to occur during or following a 25-year, 24 hour storm event.

(3) Agricultural Waste. Effective upon rule adoption.

(a) No person subject to these rules shall violate any provision of ORS 468B.025 or ORS 468B.050.

Statutory Authority: ORS 561.190-561.191 and ORS 568.912

Statutes Implemented: ORS 568.900 - 568.933

603-095-1260

Voluntary Water Quality Farm Plans

(1) Intent: Landowners or operators are encouraged to develop and implement an Approved Voluntary Water Quality Farm Plan (approved voluntary plan). An approved voluntary plan is defined in OAR 603-095-0010(6) and is not the same as a voluntary plan defined in OAR 603-095-0010(51).

(2) In order to be considered for approval, voluntary plans shall be designed to meet criteria in OAR 603-095-1240. At a minimum, Approved Voluntary Water Quality Farm Plans shall include the following information:

(a) General components:

(A) Maps, aerial photographs, and soil survey, water resource and other natural resource inventory information shall be included to the extent that the information is pertinent and necessary in the formulation of the voluntary plan to assure it achieves the criteria in OAR 603-095-1240;

(B) A list of fields, land uses, acres and resource concerns; and

(C) Any agreements entered into by the landowner or operator involving any agency providing technical or financial assistance in the completion of the conservation measures included in the voluntary plan.

(b) Depending on the nature of the operation, any or all of the following specific components shall be included in the voluntary plan. If any of the components do not apply to the operation, the plan shall so indicate:

(A) Erosion prevention and sediment control;

(B) Livestock waste management;

(C) Roads, staging areas and farmstead construction and maintenance;

(D) Streamside area management;

(E) Irrigation management.

(i) Plans filed with the department pursuant to letters of intent submitted by operators of container nurseries may meet the requirements of the irrigation management component of a voluntary plan, provided that such plans meet other requirements under OAR 603-095-1260(2) and (3).

(3) Preparation:

(a) The landowner or operator may prepare the voluntary plan, arrange with a Local Management Agency to prepare the plan, or may contract with another person or agency to prepare the plan.

(A) The Local Management Agency may require certification by a professional soil scientist or soil conservationist, or a registered professional engineer, that the voluntary plan meets the standards of the USDA Natural Resources Conservation Service technical guide for conservation plans, and that completion of the conservation measures included in the plan will enable the landowner or operator to meet the criteria in OAR 603-095-1240; or

(B) The Local Management Agency may require proof from the preparer of the plan that he or she is qualified to prepare such a plan.

(b) The Local Management Agency may require such additional documentation as is necessary to identify in detail the conservation measures listed.

(4) Implementation schedule: Any portion of a voluntary plan designed to meet the criteria in OAR 603-095-1240 shall provide a schedule of implementation until the relevant criteria in OAR 603-095-1240 are met.

(5) Approval:

(a) The Local Management Agency shall approve or disapprove voluntary plans and any plan amendments at a scheduled meeting and shall maintain a record of its actions as part of the meeting minutes. Approved voluntary plans and plan amendments shall be signed by the chair or the chair's designee. As a condition of approval, all voluntary plans shall meet the criteria in OAR 603-095-1240 and the criteria for plan preparation contained in OAR 603-095-1260(2) and (3).

(b) In the event that the Local Management Agency finds that a voluntary plan or a plan amendment does not meet the criteria in OAR 603-095-1240 or the criteria for plan preparation contained in OAR 603-095-1260(2) and (3), the Local Management Agency shall provide a written explanation, by certified mail, to the landowner or operator who submitted the plan, listing all the deficiencies to be corrected.

(c) Voluntary plans approved under 603-095-1260(5)(a) shall be considered approved until such time as the department adopts new standards or rules applying to approved voluntary plans.

(6) Appeal:

(a) Any landowner or operator may request reconsideration of the Local Management Agency's decision to disapprove a voluntary plan or a plan amendment by submitting a request for a hearing before a scheduled Local Management Agency meeting. If an appeal is filed, the Local Management Agency shall reconsider its decision at its next regularly scheduled meeting and may either affirm, modify or reverse its previous decision. The purpose of the hearing shall be to present relevant information or evidence that the Local Management Agency's action was not based on an appropriate or adequate evaluation of the voluntary plan or plan amendment. The Local Management Agency shall maintain a record of its action regarding reconsideration as part of the meeting minutes.

(b) A landowner or operator may appeal the Local Management Agency's denial of reconsideration within thirty days of the date of the reconsideration decision by filing a hearing request with the department. If the landowner or operator appeals within the prescribed period, the department shall notify the Local Management Agency. The Local Management Agency shall forward its action and rationale to the department within seven days of such notification.

(c) Within thirty (30) days of receiving an appeal request, the department shall schedule a hearing between the landowner or operator, a designated representative of the Local Management Agency, and a representative of the department. The purpose of the hearing shall be to review the Local Management Agency's reconsideration decision. If the representatives of the department and the Local Management Agency can reach agreement, they shall forward a joint recommendation to the Local Management Agency for approval at its next regularly scheduled meeting. The Local Management Agency shall maintain a record of its action as part of its meeting minutes.

(d) If the representatives of the department and the Local Management Agency cannot agree on a joint recommendation, the department may approve or disapprove the voluntary plan or plan amendment. The department shall forward a copy of its decision to the landowner or operator and

the Local Management Agency.

(7) Amendments to an existing plan: Any amendments to an existing approved voluntary plan shall be approved by the Local Management Agency in accordance with OAR 603-095-1260(5) and (6).

Statutory Authority: ORS 561.190-561.191 and ORS 568.912

Statutes Implemented: ORS 568.900 - 568.933

603-095-1280

Complaints and Investigations

(1) When the department receives notice of an apparent occurrence of agricultural water pollution through a written complaint, its own observation, or through notification by another agency, the department may conduct an investigation. The department may, at its discretion, coordinate inspection activities with the appropriate Local Management Agency.

(2) Each notice of an apparent occurrence of agricultural water pollution shall be evaluated in accordance with the criteria in ORS 568.900 to 568.933 or any rules adopted thereunder to determine whether an investigation is warranted.

(3) Any person allegedly being damaged or otherwise adversely affected by agricultural water pollution or alleging any violation of ORS 568.900 to 568.933 or any rules adopted thereunder may file a complaint with the department.

(4) The department will evaluate or investigate a complaint filed by a person under section OAR 603-095-1280(3) if the complaint is in writing, signed and dated by the complainant and indicates the location and description of:

(a) The waters of the state allegedly being damaged or impacted; and

(b) The property allegedly being managed under conditions violating criteria described in ORS 568.900 to 568.933 or any rules adopted thereunder.

(5) As used in section OAR 603-095-1280(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-1280, the department may investigate at any time any complaint if the department determines that the violation alleged in the complaint may present an immediate threat to public health or safety.

(7) Actions based on investigation findings:

(a) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred and an approved voluntary plan exists and the landowner or operator is making a reasonable effort to comply with the plan:

(A) The department shall inform the landowner of the non-compliance with ORS 568.900 to 568.933 or any rules adopted thereunder; and

(B) The department may acknowledge the existence of the approved voluntary plan and direct the landowner to seek appropriate technical assistance and to revise the plan and its implementation in a manner necessary to eliminate the violation.

(b) The landowner may be subject to the enforcement procedures of the department outlined in OAR 603-090-0060 through 603-090-0120 if:

(A) The department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred and an approved voluntary plan does not exist; or

(B) The department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred and an approved voluntary plan exists and the landowner or operator is not making a reasonable effort to comply with the plan; or

(C) The department determines that a landowner or operator has not revised a plan pursuant to paragraph (a)(B) of this section within the time specified by the department.

Statutory Authority: ORS 568.915, 568.918, and 568.933

Stats. Implemented: ORS 568.900 - 568.933

Appendix 1: Clackamas Subbasin Management Area

