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ARCHIVES DIVISION

STEPHANIE CLARK  
DIRECTOR

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

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

CHAPTER 603  
DEPARTMENT OF AGRICULTURE

**FILED**

07/12/2024 4:19 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Update the Klamath Headwaters Agricultural Water Quality Rules.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/23/2024 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

CONTACT: Brittany Mills  
971-218-1409  
rulemaking@oda.oregon.gov

635 Capitol St NE  
Salem, OR 97301

Filed By:  
Sunny Summers  
Rules Coordinator

HEARING(S)

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

DATE: 08/23/2024

TIME: 12:00 PM - 1:00 PM

OFFICER: Judith Callens

REMOTE HEARING DETAILS

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

PHONE NUMBER: 503-446-4951

CONFERENCE ID: 238702319858

SPECIAL INSTRUCTIONS:

Meeting ID: 238 702 319 858

Passcode: AXwy5i

Dial in by phone

+1 503-446-4951,,775440461# United States, Portland

Phone conference ID: 775 440 461#

NEED FOR THE RULE(S)

There is a need to remove inaccurate references make more consistent with rules statewide.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Other documents relied upon include rules from other management areas within the state - available through the Secretary of State website.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

There is no anticipated affect on racial equity.

FISCAL AND ECONOMIC IMPACT:

There may be minor fiscal impacts to landowners or land operators restoring streamside areas.

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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).

(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): There is minimal small business impact anticipated. There are no additional recordkeeping, reporting or administrative costs associated with compliance of the rules. There are minimal costs associated with restoration of streamside areas.

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

There were businesses involved in the development of the rules during the Klamath Headwaters Local Advisory Committee (LAC) meeting. An LAC is a group of local landowners and agricultural interests who provide input to ODA on rules.

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

There was no RAC convened for the making of these rules because a LAC was consulted instead. The LAC acted as a RAC.

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AMEND: 603-095-3840

RULE SUMMARY: The rule related to "Excessive Sheet and Rill Erosion" was removed because it references (T), the soil loss tolerance from the Revised Universal Soil Loss Equation (RUSLE). RUSLE is useful for understanding soil loss, but not for understanding impacts to water quality. There are existing rules that address erosion and impacts to water quality. The rules related to "Nonfunctional Riparian Conditions were edited to remove references to Technical Reference 1737-15, 1998, United States Department of Interior, Bureau of Land Management regarding Proper Functioning Condition.

CHANGES TO RULE:

603-095-3840

Unacceptable Conditions ¶

(1) All landowners or operators conducting activities on lands in agricultural use will comply with the ~~following criteria~~criteria listed below. A landowner is only responsible for ~~only~~ those conditions resulting from activities caused by the landowner. A landowner is not responsible for conditions resulting from actions by another landowner on other lands. A landowner is not responsible for conditions resulting from unusual weather events (such as would be expected to follow a 25-year, 24-hour storm) or other exceptional circumstances that could not have been reasonably anticipated. A landowner is not responsible for natural increases in nutrient loading or temperature loading. ¶

~~(2) Excessive Sheet and Rill Erosion: Effective January 1, 2007. Combined sheet, rill and wind erosion of soil averaged through a crop rotation period shall not be greater than~~ increases resulting from natural or off-property conditions. ¶

(2) Streamside Vegetation ¶

~~(a) Landowners or operators must allow vegetation, consistent with the soil loss tolerance value (T).~~ ¶

(3) Nonfunctional Riparian Conditions: Effective January 1, 2007.¶

(a) ~~Agricultural activities must not create riparian conditions that are downward-trending according to Technical Reference 1737-15, 1998, United States Department of Interior, Bureau of Land Management (Proper Functioning Condition) guidelines or that degrade stream shading consistent with site capability.¶~~

(b) Agricultural activities must not prevent riparian areas rated as non-functional by Proper Functioning Condition Guidelines from improving consistent with site capability, to establish and grow along perennial and intermittent streams to protect water quality by providing shade, filtering out pollutants from surface runoff, and protecting streambank integrity during high stream flows.¶

(b) If any agricultural activity disturbs enough streamside vegetation to impair the conditions and functions described in 603-095-3840(2)(a), the landowner or operator must replant or restore the disturbed area with vegetation that will provide the functions required in 603-095-3840(2)(a).¶

(c) ~~Exemptions from OAR 603-095-3840(32)(a) and (b).¶~~

~~(A) Limited duration agricultural activities such as pump installation or livestock crossings, or riparian grazing provided they do not compromise achieving the conditions described in 603-095-3840(32)(a) and (b).¶~~

~~(B) Constructed.¶~~

~~(B) Existing irrigation delivery systems, dikes, borrow pits, drainage and irrigation ditches, and ponds not hydraulically connected to waters of the State.¶~~

~~(d) This rule is not intended to prohibit riparian grazing where it can be managed to meet water quality standard.¶~~

(C) Levees and dikes except for areas on the river/streamside of these structures that are not part of the structures, or which can be vegetated without affecting the integrity of the structure.¶

(D) Drainage areas where the only connection to other waterbodies is through pumps.¶

(43) Effective upon adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or ORS 468B.050.

Statutory/Other Authority: ORS 561.190 - 561.191, 568.912

Statutes/Other Implemented: ORS 568.900 - 568.933