

2-8

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form..

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on upon filing by the
Date prior to or same as filing date

Department of Human Services, Public Health

333

Agency and Division

Administrative Rules Chapter Number

Christina Hartman

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Rules Coordinator

Address

Telephone

to become effective upon filing through July 30, 2006.

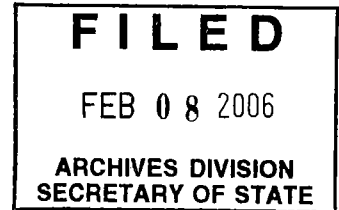
Date upon filing or later

A maximum of 180 days including the effective date.

RULE CAPTION

Retroactive amendment of 333-064-0060 relating to the ORELAP fee schedule.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.



RULEMAKING ACTION

List each rule number separately, 000-000-0000.

ADOPT: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND:

333-064-0060

SUSPEND:

ORS 438.605 through ORS 438.620 and ORS 448.280(1)(b) & (2)

Stat. Auth.

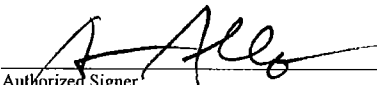
Other Authority

ORS 438.605 through ORS 438.620

Stats. Implemented

RULE SUMMARY

The Department of Human Services (DHS), Public Health, must temporarily and retroactively amend Oregon Administrative Rule (OAR), 333-064-0060, relating to the ORELAP fee schedule to correct rule language that was inadvertently left out of the final rulemaking adopted on October 10, 2002 to specify that, when accredited laboratories requesting additions to their fields of testing during the accreditation period must pay the difference in cost of the application fee, there is a minimum fee of \$200. This rule will have a retroactive effective date of October 10, 2002.


Authorized Signer

2/7/06
Date

Susan Allan, MD, JD, MPH, State Public Health Director

Printed name

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

PH 3-2006 (Temp)

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Human Services, Public Health

333

Agency and Division

Administrative Rules Chapter Number

In the Matter of:

The temporary and retroactive amendment of Oregon Administrative Rule (OAR), 333-064-0060, relating to the Oregon Environmental Laboratory Accreditation Program (ORELAP) fee schedule.

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Retroactive amendment of 333-064-0060 relating to the ORELAP fee schedule.

Statutory Authority: ORS 438.605 through ORS 438.620 and ORS 448.280(1)(b) & (2)

Other Authority:

Stats. Implemented: ORS 438.605 through ORS 438.620

Need for the Temporary Rule(s):

The Department of Human Services, Public Health, must temporarily and retroactively amend OAR 333-064-0060 relating to the ORELAP fee schedule to correct rule language that was inadvertently left out of the final rulemaking adopted on October 10, 2002 to specify that, when accredited laboratories requesting additions to their fields of testing during the accreditation period must pay the difference in cost of the application fee, there is a minimum fee of \$200.

Documents Relied Upon, and where they are available:

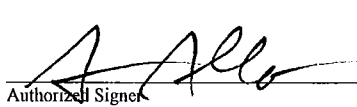
Department of Human Services; 2002-2003 Budget Request

Hard copies of the above documents may be obtained by contacting: Christina Hartman, Oregon Department of Human Services, Public Health, 800 NE Oregon Street, Suite 930, Portland, Oregon 97323, (971) 673-1291 or christina.hartman@state.or.us.

Justification of Temporary Rule(s):

The temporary and retroactive amendment to 333-064-0060 is the same language that was sent to the Office of the Legislative Counsel and interested parties during the rulemaking process that took place in 2002. None of the affected parties, including federal and state government agencies, environmental laboratory owners and customers had reason to believe that the proposed language was not adopted in the final rulemaking on October 10, 2002. Failure to adopt these rules will result in serious prejudice to the Department and the affected environmental labs as ORELAP is a fee supported program and a serious and negative impact on program operations would be created without the temporary and retroactive amendment of this rule.

ORELAP is recognized by the U.S. Environmental Protection Agency's National Environmental Laboratory Accreditation Program (NELAP) to accredit environmental testing laboratories to national standards as adopted by the National Environmental Laboratory Accreditation Conference (NELAC). On January 24, 2001, ORELAP began accrediting qualified laboratories for testing used to implement the Clean Air Act (CAA), Clean Water Act (CWA), Resource Conservation and Recovery Act (RCRA) as well as the Safe Drinking Water Act (SDWA). On July 1, 2004, the Drinking Water Laboratory Certification Program was completely phased out with all lab accreditation for drinking water, except for Oregon State laboratories, being performed through ORELAP. The State laboratories are approved by the U.S. Environmental Protection Agency (EPA) to test public drinking water.


Authorized Signer

2/7/04
Date

Susan Allan, MD, JD, MPH, State Public Health Director

Printed name

DEPARTMENT OF HUMAN SERVICES, PUBLIC HEALTH

CHAPTER 333

DIVISION 060

ACCREDITATION OF LABORATORIES

333-064-0060

Fee Schedule

Fees will be charged to environmental laboratories according to the following schedule.

(1) Payment of a non-refundable application fee must accompany each application.

(a) For laboratories located in Oregon, one of three levels of fees, Tier 1 at \$450, Tier 2 at \$900 and Tier 3 at \$1,600 will be charged. The Tiers will be determined by the total number of points derived from the number of Fields of Testing requested for accreditation listed in section (2)(a) through (c) of this rule.

(A) Each Basic Field of Testing has a multiplier of 1.

(B) Each Moderate Field of Testing has a multiplier of 3.

(C) Each Complex Field of Testing has a multiplier of 5.

(D) The total number of points is determined by first summing the number of Fields of Testing within each category (Basic, Moderate or Complex) and then multiplying the sums by their appropriate multiplier as given in this rule. The sum of these results determines the total number of points for each laboratory.

Laboratories with a total of 1-10 points are to be considered Tier 1 laboratories, 11 to 25 points are Tier 2 laboratories and 26 or more points are Tier 3 laboratories.

(b) For each out-of-state laboratory requesting primary or secondary accreditation through Oregon, one of three levels of fees, Tier 1 at \$1,250, Tier 2 at \$2,000 and Tier 3 at \$3,000 will be charged with each Tier determined according to section (1)(a) of this rule.

(c) If a laboratory fails to submit an acceptable application after two attempts, the application will be rejected and the laboratory may reapply and must pay a new non-refundable application fee as determined in this rule.

(d) If a new owner acquires the laboratory and wishes the laboratory to remain accredited, the laboratory must submit a new application, pay the application fee and be subject to a new on-site inspection and payment of assessment and on-site fees as described in this rule.

(2) Upon ORELAP's review of a laboratory's application, each laboratory requesting primary accreditation through ORELAP, when ORELAP personnel will be used for the assessment, the laboratory will be charged an assessment fee based on the number Fields of Testing and Programs as follows:

(a) \$90 will be charged for each of the following Basic Fields of Testing requested for accreditation:

- (A) Gravimetric;
- (B) Chromofluorogenic (Microbiology);
- (C) Membrane Filter and/or Heterotrophic Plate Count (Microbiology);
- (D) Multiple Tube Fermentation/Most Probable Number (MPN) (Microbiology);
- (E) Microscopy;
- (F) Physical;
- (G) Probe.

(b) \$350 will be charged for each of the following Moderate Fields of Testing requested for accreditation:

- (A) Atomic absorption -- flame;
- (B) Atomic absorption -- furnace;
- (C) Automated colorimetric;
- (D) Gas chromatography -- volatiles;
- (E) Gas chromatography -- extractables;
- (F) High pressure liquid chromatography;
- (G) Immunoassay;
- (H) Instrumental;
- (I) Ion chromatography;
- (J) Manual colorimetric;
- (K) Radiation;
- (L) Toxicity testing.

(c) \$500 will be charged for each of the following Complex Fields of Testing requested for accreditation:

- (A) Gas chromatography/mass spectrometry -- volatiles;
- (B) Gas chromatography/mass spectrometry -- extractables;
- (C) Inductively coupled plasma;
- (D) Inductively coupled plasma/mass spectrometry;
- (E) X-ray.

(d) An additional cost of \$10 for Basic Fields of Testing, \$40 for Moderate Fields of Testing and \$75 for Complex Fields of Testing will be charged for each additional Program per Field of Testing for which the laboratory has requested approval. The Programs are:

- (A) CAA;
- (B) CWA;
- (C) SDWA;
- (D) RCRA.

(e) Assessment fees must be paid during the accreditation period in which the on-site assessment is to be performed but must be paid before the on-site assessment will be scheduled.

(3) All Oregon environmental laboratories requesting primary accreditation through ORELAP where Oregon state assessor(s) will perform the on-site assessment, must pay an on-site trip fee for each on-site assessment.

(a) On-site trip fees are \$350 for Tier 1, \$500 for Tier 2 and \$1,000 for Tier 3 laboratories with the Tiers determined according to section (1) (a) of this rule.

(b) All laboratories must pay the appropriate on-site trip fee prior to scheduling and performing each required on-site assessment and additional assessments as requested by the laboratory for approval for additional Fields of Testing and/or Program.

(c) All laboratories must pay the appropriate on-site trip fee per on-site assessment performed due to just cause according to NELAC Standards.

(4) All environmental laboratories located in Oregon requesting primary accreditation through ORELAP where ORELAP has determined that third party assessors will be used, must pay all ORELAP assessment fees plus all third party assessors costs. ORELAP may require the laboratory to pay the on-site assessment costs directly to the third party assessor according to the schedule of the assessor for all required on-site assessments.

(5) All out of-state environmental laboratories must pay all on-site assessment costs incurred by ORELAP approved assessors to perform the on-site assessment including but not limited to transportation, per diem and wages during travel. If third party assessors are used, ORELAP may require the lab to pay the on-site assessment costs directly to the assessor according to the schedule of the assessor for all required inspections.

(6) Accredited laboratories requesting additions to their fields of testing during the accreditation period must pay:

(a) The difference in cost of the application fee with a minimum fee of \$200;

(b) The difference in cost of the assessment fee;

(c) An on-site trip fee, as described in 3 (a) and 5 of this rule, based only on the additional parameters if ORELAP determines that an on-site assessment is required.

Stat. Auth.: ORS 438.605 through ORS 438.620 and ORS 448.280(1)(b) & (2)

Stats. Implemented: ORS 438.605 through ORS 438.620