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DIVISION 90

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603-095-0900	Purpose	603-095-1960	Voluntary Water Quality Farm Plans
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603-095-1060	Complaints and Investigations	603-095-2100	Purpose
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603-095-2200 Purpose
603-095-2220 Geographic and Programmatic Scope
603-095-2240 Prevention and Control Measures
603-095-2260 Complaints and Investigations

Middle Willamette

603-095-2300 Purpose
603-095-2320 Geographic and Programmatic Scope
603-095-2340 Prevention and Control Measures
603-095-2360 Complaints and Investigations

South Santiam Agricultural Water Quality Management Area

603-095-2400 Purpose
603-095-2420 Geographic and Programmatic Scope
603-095-2440 Prevention and Control Measures
603-095-2460 Complaints and Investigations

Middle John Day River Subbasin

603-095-2500 Purpose
603-095-2520 Geographic and Programmatic Scope
603-095-2540 Prevention and Control Measures
603-095-2560 Complaints and Investigations

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603-095-2600 Purpose
603-095-2620 Geographic and Programmatic Scope
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603-095-2660 Complaints and Investigations

Owyhee Agricultural Water Quality Management Area

603-095-2700 Purpose
603-095-2720 Geographic and Programmatic Scope
603-095-2740 Prevention and Control Measures
603-095-2760 Complaints and Investigations

Willow Creek

603-095-2800 Purpose
603-095-2820 Geographic and Programmatic Scope
603-095-2840 Prevention and Control Measures
603-095-2860 Complaints and Investigations

Lower John Day

603-095-2900 Purpose
603-095-2920 Geographic and Programmatic Scope
603-095-2940 Prevention and Control Measures
603-095-2960 Complaints and Investigations

Upper Deschutes

603-095-3000 Purpose
603-095-3020 Geographic and Programmatic Scope
603-095-3040 Requirements
603-095-3060 Complaints and Investigations

Goose and Summer Lakes Basin

603-095-3100 Purpose
603-095-3120 Geographic and Programmatic Scope
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Burnt River Agricultural Water Quality Management Area

603-095-3200 Purpose
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Greater Harney Basin

603-095-3300 Purpose
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603-095-3340 Requirements
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603-095-3400 Purpose
603-095-3420 Geographic and Programmatic Scope
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603-095-3500 Purpose
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Powder/Brownlee Agricultural Water Quality Management Area

603-095-3600 Purpose
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Lower Willamette

603-095-3700 Purpose
603-095-3720 Geographic and Programmatic Scope
603-095-3740 Prevention and Control Measures
603-095-3760 Complaints and Investigations

Klamath Headwaters Area

603-095-3800 Purpose
603-095-3820 Geographic and Programmatic Scope
603-095-3840 Unacceptable Conditions
603-095-3860 Complaints and Investigations

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603-095-3900 Purpose
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DIVISION 1

PROCEDURAL RULES

603-001-0001

Procedure for Notice of Intended Rulemaking

In order to provide a reasonable opportunity for interested persons to be notified of the Department’s proposed administrative rule-making actions, the Department shall give notice of its proposed adoption, amendment, or repeal of any administrative rule prior to such adoption, amendment, or repeal of any administrative rule in the following manner:

- (1) By causing the Notice to be published in the Secretary of State’s Bulletin, referred to in ORS 183.360, at least 21 days prior to the effective date of the proposed action with the exception of temporary rules which may become effective upon filing with the Secretary of State pursuant to ORS 183.355(2)(b);
- (2) By mailing a copy of the Notice to persons on each of the appropriate departmental lists established pursuant to ORS 183.335(8);
- (3) By mailing a copy of the Notice to known interested persons, or in lieu thereof, organizations or associations known to represent such interested persons; and
- (4) By causing the Notice to be published in the Oregonian as a legal notice.

Stat. Auth.: ORS 183
 Stats. Implemented: ORS 561.190
 Hist.: AD 1078(2-76), f. & ef. 1-16-76; DOA 9-2001, f. & cert. ef. 5-4-01; DOA 21-2002, f. & cert. ef. 9-3-02; DOA 5-2004, f. & cert. ef. 2-10-04

603-001-0005

Model Rules of Procedure

The Attorney General’s “Model Rules of Procedure Under the Administrative Procedures Act,” effective October 3, 2001 are hereby adopted as the rules of procedure for the Department in its rule-making activities, declaratory ruling activities, collaborative dispute resolution and contested case considerations.

Stat. Auth.: ORS 183.341(1)
 Stats. Implemented: ORS 183.341(1)
 Hist.: AD 953(20-71), f. 10-20-71, ef. 11-11-71; AD 999(13-73), f. 10-26-73, ef. 11-25-73; AD 1090(13-76), f. & ef. 3-26-76; AD 4-1978, f. & ef. 5-11-78; AD 1-1980, f. & ef. 1-24-80; AD 23-1981, f. & ef. 11-24-81; AD 5-1986, f. & ef. 2-11-86; AD 16-1993, f. & cert. ef. 11-24-93; DOA 5-1998, f. & cert. ef. 5-20-98; DOA 4-2002, f. & cert. ef. 1-28-02; DOA 1-2003, f. & cert. ef. 1-7-03

Administration

603-001-0110

Uniform Date Statements are Mailed

Unless a different time is specified by law, the monthly date on which the Department shall forward its itemized statement for any amount owing for services and materials on which credit has been extended shall be on or before the 5th business day of each month. The amount specified in the statement is due and payable to the Department within 15 days after this statement is forwarded by the Department.

Stat. Auth.: ORS 183, 192, 561 & 603
 Stats. Implemented: ORS 183, 192, 561 & 603
 Hist.: AD 791(15-64) f. 9-24-64, ef. 11-1-64; AD 9-1984, f. & ef. 7-6-84

603-001-0120

Meat Dealer License Refunds

The following procedure shall be applicable to requests for refunds as provided in ORS 603.027:

- (1) The licensee shall submit his written application for refund, which may be in letter form, to the Department, which shall include:
 - (a) The last business day the license was effective; and
 - (b) The name and full mailing address of the new licensee.
- (2) The application shall be accompanied by the license being terminated.
- (3) The application and license shall be submitted to the Department within 30 days of the last business day the license was effective.

(4) The Department shall base such refunds upon calendar quarters of the licensing year for which the refund is sought.

(5) Upon making such refund to the applicant, the Department shall thereafter refund to the new licensee an amount equal to the unrefunded portion of the annual license fee.

Stat. Auth.: ORS 183, 192, 561 & 603
 Stats. Implemented: ORS 183, 192, 561 & 603
 Hist.: AD 1091(14-76), f. & ef. 4-9-76; AD 9-1984, f. & ef. 7-6-84

Public Information

603-001-0125

Purpose and Policy

In order to implement the provisions of ORS 183.330(1) requiring each agency to publish its methods for the public to obtain information, and in order to implement the provisions of ORS 192.430 so as to provide reasonable rules necessary for the protection of department records and to prevent interference with the regular discharge of the department’s duties, the department adopts the procedures set forth in OAR 603-001-0130 to 603-001-0165. Such procedures shall apply to requests for inspection or copying of public records of the department, and to requests for the department to prepare and supply certified or other types of copies of public records. Procedures for review of any departmental denial of public records inspections or public record copies are to be in accordance with the provisions of ORS 192.450 to 192.490. It is the policy of the department to attempt to balance those public interests that favor disclosure against those public interests that favor governmental confidentiality with a presumption in favor of disclosure.

Stat. Auth.: ORS 183, 192.005 & 561
 Stats. Implemented: ORS 183, 192.005 & 561
 Hist.: AD 1114(35-76), f. & ef. 12-20-76; DOA 15-2005, f. 6-16-05, cert. ef. 6-30-05

603-001-0130

Procedures for Obtaining General Information

Except as otherwise provided in OAR 603-001-0125 to 603-001-0170, requests for information shall be directed to the department’s Information Officer at the Agriculture Building, 635 Capitol Street, N.E., Salem, OR 97301.

Stat. Auth.: ORS 183 & 561
 Stats. Implemented: ORS 192.005
 Hist.: AD 1114(35-76), f. & ef. 12-20-76; DOA 15-2005, f. 6-16-05, cert. ef. 6-30-05

603-001-0135

Procedures for Inspection or Copying of Public Records

(1) Requests for inspection or copying of public records shall be made either, via FAX, via e-mail, or in writing and shall be directed to the appropriate Division Administrator or Assistant Director of Agriculture responsible for the pertinent activity, as shown in the organizational description set forth in OAR 603-001-0155. All requests shall be made at or directed to the department's principal office located at 635 Capitol Street, N.E., Salem, OR 97301. Requests delivered in person shall be done between the hours of 8:30 a.m. to 11:30 a.m. and 1:00 p.m. to 4:30 p.m. Monday through Friday of each week except holidays. Receipt of a request shall be acknowledged in writing by the department, and the required fees, if any, for research and copies, and the time and place the requested records would be available for inspection or copying.

(2) Requests for inspection or copying of public records, which would result in any of the following, shall only be accepted if made in writing, and then shall be subject to the provisions of OAR 603-001-0140(2):

(a) If the department is required to search for or to collect the requested public records from department field facilities or from other offices separate from the department's principal office;

(b) If the department is required to search for, collect, examine, or sort voluminous and separate records or documents in order to comply with such request; or

(c) If the department is required to consult with another public body or agency having any interest in the propriety of such request.

(3) The provisions of OAR 603-001-0145 apply to this type of request.

Stat. Auth.: ORS 183 & 561
 Stats. Implemented: ORS 192.420
 Hist.: AD 1114(35-76), f. & ef. 12-20-76; DOA 15-2005, f. 6-16-05, cert. ef. 6-30-05

603-001-0140

Procedures for Obtaining Copies of Public Records

(1) Requests for certified or other types of copies of public records shall be made, via FAX, via e-mail, or in writing and shall include a reasonably specific description of the particular record copy requested, i.e., the type of document, the subject matter, the approximate document date, and the name of the firm or person identified in the document (if pertinent).

(2) Subject to the provisions of OAR 603-001-0150, requested copies of public records shall be submitted to the requester within 20 days of the receipt of the request, unless any of the conditions set forth in OAR 603-001-0135(2) would result in a requirement for additional time. If such additional time is required, the department shall notify the requester of such fact within the 20-day period stated above.

(3) The provisions of OAR 603-001-0145 apply to this type of request.

Stat. Auth.: ORS 183 & 561
 Stats. Implemented: ORS 192.440, 192.450, 561.040 & 561.260
 Hist.: AD 1114(35-76), f. & ef. 12-20-76; DOA 15-2005, f. 6-16-05, cert. ef. 6-30-05

603-001-0145

Fees for Public Record Disclosures

(1) As provided by ORS 192.440(2), the following fees are established for public record disclosures:

(a) Reimbursement of department staff time: an hourly rate of \$30.00 will be assessed for any staff time greater than 15 minutes spent locating records, reviewing records to delete exempt material, supervising the inspection of records, copying records, certifying records, and mailing records. The department may charge for the cost of searching for records regardless of whether the department was able to locate the requested record(s).

- (b) Copies: Per page (all duplication processes) — \$.15;
- (c) Certification: Per certificate — \$2.50;
- (d) Electronic records searches are \$50.00 per hour;
- (e) Express mailing is actual or minimum cost of \$9.00;
- (f) Photo color reprints are \$0.50 per photo;
- (g) Blue prints are at actual cost;

- (h) Archive retrieval is actual cost with a minimum of \$10.00;
- (i) Audio tapes (90 min) are \$5.00.

(2) If the request appears to require departmental services for which no fee has been established (computer time, travel, shipping cost, communication costs, etc.) the actual cost shall be determined or estimated by the department and, if \$25 or more, the requester shall be notified of such prior to the department complying with the request.

(3) A requester shall pay the applicable fees to the department prior to or at the time the department complies with the request. No refund of fees shall be made. If the department notifies a requester of determined or estimated fees in excess of \$25, as provided in section (2) of this rule, the requester shall, pay a deposit of such determined or estimated fee prior to the department complying with the request.

(4) All or a portion of fees may be waived as provided in OAR 603-001-0160 and 0165.

Stat. Auth.: ORS 183, 561, 192 & 603
 Stats. Implemented: ORS 192.440, 192.450, 561.040 & 561.260
 Hist.: AD 1114(35-76), f. & ef. 12-20-76; AD 9-1984, f. & ef. 7-6-84; DOA 15-2005, f. 6-16-05, cert. ef. 6-30-05

603-001-0150

Noncompliance with Requests

(1) If a request received by the department has been erroneously submitted, in that the department has no public records relating to the request, the request shall be returned to the requester with any information concerning the appropriate agency to be contacted.;

(2) If the department determines that all or any part of a public record should not be inspected or copied pursuant to a request, the department shall, within ten days of the receipt of such request, notify the requester of such fact, the public records or parts thereof that will not be disclosed, the reasons therefore, and the right of the requester to petition the Attorney General for review.

(3) In determining whether all or any part of a public record should not be inspected or copied pursuant to a request therefore, the department shall consider:

- (a) Public record exemptions specified in ORS 192.500;
- (b) Public record exemptions specified in applicable federal laws or regulations;
- (c) Public record exemptions specified in other applicable Oregon law;
- (d) Whether the requested public record is of a class of records that, by its very nature, either requires nondisclosure or disclosure considering confidentiality and feasibility factors; and
- (e) Whether a partially exempt public record can be reasonably segregated so as to allow disclosure of an intelligible and undistorted portion of such record while preserving the confidentiality of the exempt portion of such record.

Stat. Auth.: ORS 183 & 561
 Stats. Implemented: ORS 192.440, 192.450, 561.040 & 561.260
 Hist.: AD 1114(35-76), f. & ef. 12-20-76; DOA 15-2005, f. 6-16-05, cert. ef. 6-30-05

603-001-0155

Organizational Structure

In order to comply with the provisions of ORS 183.330(1) requiring each agency to publish a description of its organization, a chart of the department's organizational structure is set forth as

Appendix 1.

[ED. NOTE: Appendices referenced are available from the agency.]
 Stat. Auth.: ORS 183, 561, 192 & 603
 Stats. Implemented: ORS 192.440, 192.450, 561.040 & 561.260
 Hist.: AD 1114(35-76), f. & ef. 12-20-76; AD 9-1984, f. & ef. 7-6-84; DOA 15-2005, f. 6-16-05, cert. ef. 6-30-05

Parking Policy

603-001-0160

Fee Waivers and Reductions

(1) Ordinarily there will be no charge for one copy of a public record:

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(a) When the material requested is currently being distributed or has been distributed as part of the public participation process such as a news release or public notice;

(b) When the requested material has been distributed through mass mailing and is readily available from the department at the time of request;

(c) When a records request is made by a local, state, or federal public/governmental entity or a representative of a public/governmental entity acting in a public function or capacity. Even if a person qualifies under this subsection, the department may still charge for record review and copying based on the following factors:

(A) Any financial hardship to the department;

(B) The extent of time, expense, and interference with the department's regular business;

(C) The volume of the records requested; or

(D) The necessity to segregate exempt from non-exempt materials.

(2) Public Interest Annual Fee Waivers:

(a) An approved annual fee waiver allows the requester to either review or obtain one copy of a requested record at no charge. Fee waivers are effective for a one-year period.

(b) A person, including members of the news media and non-profit organizations, may be entitled to an annual fee waiver provided that a Fee Waiver Form is completed and approved by the department. The form must identify the person's specific ability to disseminate information of any kind maintained by the department to the general public and that such information is generally in the interest of and in the benefit to the public within the meaning of the Public Records Law. Additional information may be requested by the department before granting any fee waiver.

(c) Even if a person has a fee waiver, the department may charge for record review and copying based on the following factors:

(A) Any financial hardship on the department;

(B) The extent of time, expense, and interference with the department's regular business;

(C) The volume of the records requested;

(D) The necessity to segregate exempt from non-exempt materials; and

(E) The extent to which the record request does not further the public interest or the particular needs of the requester.

(3) Case-by-case waivers or reductions: A person who does not request, or who is not approved for an annual waiver, may request a waiver or reduction of record review and reproduction costs on a case-by-case basis.

Stat. Auth: ORS 192.410 – 505 & 468.020

Stats. Implemented: ORS 192.440

Hist: DOA 15-2005, f. 6-16-05, cert. ef. 6-30-05

603-001-0165

Parking at Department Owned Facilities

(1) This administrative rule describes the Department's policy regarding parking at facilities owned or controlled by the Department in compliance with ORS 276.595.

(2) "Department" means State of Oregon, Department of Agriculture.

(3) The following procedures shall apply:

(a) The Department, under authority granted by ORS 276.595, shall maintain a policy of not charging parking fees for vehicles or other equipment at all facilities in noncongested areas owned or controlled by the Department;

(b) This policy will apply to all Department employees, Department visitors, members of boards, commissions or committees or any governmental entities.

Stat. Auth.: ORS 276.595

Stats. Implemented: ORS 276.595

Hist.: AD 20-1991, f. & cert. ef. 12-23-91

603-001-0170

Public Interest Test

In determining whether sufficient public interest for a fee waiver is demonstrated, the department will consider:

(1) The requester's identity, public interest affiliation, and contact information;

(2) The purpose for which the requester intends to use the information;

(3) The character of the information;

(4) Whether the requested information is already in the public domain;

(5) Whether the requester can demonstrate the ability to disseminate the information to the public;

(6) The requester's inability to pay, but this fact alone is not a sufficient basis for a fee waiver;

(7) If the requester seeks technical information, a showing that the requester is able to understand that information and disseminate it to the public in a meaningful form;

(8) Any other additional information provided by the requester that would be helpful for the department in evaluating the request for a fee waiver or fee reduction. **Appendix I**

[ED NOTE: Appendices referenced are available from the agency]

Stat. Auth: ORS 183, 561, 192 & 603

Stats. Implemented: ORS 192.440, 192.450, 561.040 & 561.260

Hist: DOA 15-2005, f. 6-16-05, cert. ef. 6-30-05

603-001-0175

Procedure for Assessing Penalties for Delinquent License Renewals

(1) As used in this rule a license fee means a fee for a license, certificate of sanitation, permit or registration that is established for a fixed term and is subject to renewal.

(2) As provided in ORS 561.300 the department shall collect a delinquent renewal penalty for any license fee if the licensee fails to renew the license before the 60th day after the license expiration date. The license fees required by the following laws under the jurisdiction of the department are subject to a delinquent renewal penalty:

(a) Section 3, Chapter 584, Oregon Laws 1991 (preceding ORS 561.005) (veterinary medicine registrations);

(b) ORS 468B.215, 561.175 (confined animal feeding operations);

(c) ORS 571.055, 571.057, 571.075 (growers and dealers of nursery stock);

(d) ORS 571.525–571.535 (Christmas tree growers);

(e) ORS 585.020, 585.040–585.050 (produce dealers, peddlers and cash buyers);

(f) ORS 586.270, 586.280 (grain warehouses);

(g) ORS 599.215–599.245 (livestock auction markets);

(h) ORS 600.020, 600.030 (feeding garbage to swine);

(i) ORS 601.030, 601.040, 601.080, 601.100 (transporting, rendering and disposing of dead animals);

(j) ORS 603.025 (meat sellers and slaughterers);

(k) ORS 604.620 (livestock feed lots);

(l) ORS 616.706 (food retailers and processors, food warehouses);

(m) ORS 618.121, 618.136–618.146 (scales and metering devices);

(n) ORS 619.031 (animal food processors);

(o) ORS 621.070, 621.072, 621.161, 621.166, 621.266, (dairy producers, distributors, samplers, graders, haulers and pasteurizers, and dairy products plants);

(p) ORS 621.335 (manufacturers of frozen desserts);

(q) ORS 622.020, 622.080, 622.220, 622.290 (shellfish growers, harvesters, distributors and shucker-packers, oyster plat fees);

(r) ORS 625.020, 625.050, 625.080, 625.110, 625.180 (bakeries and bakery distributors);

(s) ORS 628.220–628.240 (refrigerated locker plants);

(t) ORS 632.715–632.730 (commercial egg breakers and handlers);

(u) ORS 633.700 (seed dealers);

(v) ORS 635.027, 635.030 (manufacturers of nonalcoholic beverages).

(3) The department shall collect a delinquent renewal penalty for each license listed in section (2) of this rule according to the following schedule:

(a) For each license fee of \$100 or less, \$30 or the amount of each fee, whichever amount is less; and

(b) For each license fee greater than \$100, 30 percent of the amount of each fee or \$750, whichever amount is less.

(4) The department will send a notice to all licensees who fail to renew their license by the 30th day after their license expires, that a delinquent renewal penalty will be collected if their license fee is not paid before the 60th day after the license expires.

(5) The department will send a notice to all licensees who have failed to renew their license by the 60th day after the license expires, that a delinquent renewal penalty must be paid in addition to the license fee before the license is renewed.

(6) The department will waive the delinquent renewal penalty if:

(a) The licensee's failure to renew the license prior to the 60th day was caused entirely or in part by a department error or omission; or

(b) The licensee notifies the department in writing prior to the 60th day after the license has expired, that the licensee will not engage in the licensed activity any time during the current license period. However, if the licensee resumes the licensed activity during the current license period, the licensee must pay both the license renewal fee and the delinquent renewal penalty.

(7) The delinquent renewal penalty will be assessed in addition to any other penalty or liability, provided by law, for engaging in an activity licensed by the department without obtaining and maintaining a valid license.

Stat. Auth.: ORS 561.190 & 561.300

Stats. Implemented: ORS 561.300

Hist.: AD 5-1994, f. & cert. ef. 4-28-94; AD 20-1994, f. & cert. ef. 12-20-94

DIVISION 5

CONFIDENTIALITY AND INADMISSIBILITY OF MEDIATION COMMUNICATIONS

603-005-0001

Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) **Mediations Excluded.** Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential;

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) **Disclosures by Mediator.** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule.

(7) **Confidentiality and Inadmissibility of Mediation Communications.** Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) **Written Agreement.** Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]

(9) **Exceptions to confidentiality and inadmissibility.**

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency.

An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Director or designee determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms

to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 36.224 & 561.190
Stats. Implemented: ORS 36.224, 36.228, 36.230 & 36.232
Hist.: DOA 10-1999, f. & cert. ef. 5-28-99

DIVISION 9

OREGON AGRICULTURAL OPPORTUNITIES FUND

[ED. NOTE: Standards to determine project eligibility and applicable procedures for a competitive statewide program for grants made from the Oregon Agricultural Opportunities fund.]

603-009-0000

Definitions

As used in this division of administrative rules, unless the context requires otherwise:

(1) "Agribusiness" means any business that deals with agricultural products or services.

(2) "Department" means the Oregon Department of Agriculture.

(3) "Director" means the director of the Department of Agriculture.

(4) "Rural Area" means any area within the state of Oregon except the urbanized portions of metropolitan statistical areas, as determined by the U.S. Bureau of the Census.

Stat. Auth.: ORS 561 & 576
Stats. Implemented: ORS 576.013
Hist.: AD 13-1989, f. & cert. ef. 9-18-89

603-009-0010

Purpose

The purpose of this division of rules is to provide criteria and procedures for administration of the Oregon Agricultural Opportunities Fund.

Stat. Auth.: ORS 561 & 576
Stats. Implemented: ORS 576.013
Hist.: AD 13-1989, f. & cert. ef. 9-18-89

603-009-0020

Eligible Applicants

Eligible applicants shall include:

(1) Cities, counties, councils of government, and state agencies.

(2) Private nonprofit organizations.

(3) Consortia and combinations of the above.

Stat. Auth.: ORS 561 & 576
Stats. Implemented: ORS 576.013
Hist.: AD 13-1989, f. & cert. ef. 9-18-89

603-009-0030

Standards to Determine Project Eligibility

(1) The Director will consider applications for agricultural promotion and marketing projects which:

(a) Encourage existing Oregon agribusiness expansion;

(b) Encourage new agribusinesses to locate in Oregon;

(c) Encourage existing Oregon agribusiness expansion with emphasis on promotion of Oregon agricultural products.

(2) Each project submitted for consideration will be evaluated primarily for potential economic benefit to Oregon, based on how well the project meets the following criteria:

Chapter 603 Department of Agriculture

(a) Emphasizes agricultural development in underdeveloped rural areas of Oregon, and in those areas dependent on agriculture related industries;

(b) Ongoing and long-term benefits to the state;

(c) Assurance that each project does not supplant private investment or duplicate similar efforts underway and available elsewhere;

(d) Encourage competition in national or international markets;

(e) Assurance that each project will not require continuing subsidies;

(f) Commitment of at minimum a one to one match to the grant of which at least 25% of the match must be "cash," the remaining may be provided with "in-kind" contributions.

(3) The following expenditures are not considered as eligible for funding through the Oregon Agricultural Opportunities Fund:

(a) Existing costs of operation;

(b) Debt service or debt retirement;

(c) Projects administered or managed primarily by for-profit organizations.

(4) The Director shall consider projects for funding and shall make grant awards as he determines appropriate, provided each project approved for funding includes a marketing plan which has also been reviewed and recommended for approval by staff of the Department. The marketing plan shall include:

(a) Identification of the industries, industry segments, geographic regions or other groups and factors to be targeted by the marketing program;

(b) A listing of the themes or advertising messages to be presented to the target audiences;

(c) Identification of the means to be used to communicate information to the target groups;

(d) Summary of the market research upon which the development of the marketing plan was based;

(e) Methods to be used to test the effectiveness of the program;

(f) An expenditure and implementation plan which specifies the cost and timetable for carrying out the proposed marketing program.

Stat. Auth.: ORS 561 & 576

Stats. Implemented: ORS 576.013

Hist.: AD 13-1989, f. & cert. ef. 9-18-89

603-009-0040

Application Procedures

(1) Application forms for the competitive statewide grants program will be made available and distributed by the Department.

(2) Each applicant shall submit its proposal for funding on the approved application form, including attachments as necessary.

Stat. Auth.: ORS 561 & 576

Stats. Implemented: ORS 576.013

Hist.: AD 13-1989, f. & cert. ef. 9-18-89

603-009-0050

Review of Applications

(1) Each application will first be screened by staff from the Department for completeness and accuracy. Applications not meeting these initial review standards may be returned for correction or completion, or may not be recommended for further consideration. In the latter case, applicants interested in reapplying will be advised on improvements essential for future proposals.

(2) During the review process, staff from the Department may engage other parties — such as advisory committees and representatives of other state agencies — to provide technical critiques of the proposed project and opinions on its potential economic benefits to Oregon.

Stat. Auth.: ORS 561 & 576

Stats. Implemented: ORS 576.013

Hist.: AD 13-1989, f. & cert. ef. 9-18-89

603-009-0060

Grant Awards

(1) The Director will review the recommendations of staff as well as current information on available lottery revenues.

(2) The Director will review those proposals that have been recommended by staff from the Department and will make one of the following decisions for each proposal.

(a) Approval of project and grant award for the full amount requested;

(b) Approval of project and grant award of partial amount requested. In this instance, the Director may elect to fund a portion or a phase of a project;

(c) Deferral of proposal for further consideration based upon submission of additional information;

(d) Denial of request. Applicants whose proposals are denied may reapply at subsequent deadlines.

(3) The Director may invite applicants to make presentations on behalf of their proposals at review meetings.

(4) Any funds not allocated within the current quarter may be carried forward into the next quarter.

(5)(a) Generally, the Director will obligate only those revenues available in the current quarter and will not obligate lottery revenues from future quarters to grants under consideration;

(b) In some instances, project scope and duration may justify allocations of funds before collection. When this condition arises, the Director may make a commitment to an applicant based on forecasted and anticipated lottery revenues, provided:

(A) The commitment clearly explains that any ultimate grant award is contingent upon actual lottery collections; and

(B) The commitment provides options for both the applicant and the Director should the forecasted revenues fail to materialize. Options shall range from full award of the identified amount, a partial award based on proportions of lottery revenues (or other calculations), to cancellation of the commitment if revenues are too far below the forecasted levels.

Stat. Auth.: ORS 561 & 576

Stats. Implemented: ORS 576.013

Hist.: AD 13-1989, f. & cert. ef. 9-18-89

603-009-0070

Grant Administration

(1) The Director and the grant recipient will enter a grant agreement that provides:

(a) Incorporation of the full proposal as an integral part of the agreement;

(b) The grant will be disbursed according to an approved payment schedule, which shall also be incorporated as an integral part of the grant agreement. Prior to each subsequent grant payment, or upon request by the Department, the grantee will submit an interim report for evaluation by the Department. This report shall include:

(A) Documentation of project results to date;

(B) Projections of short-range and long-range results;

(C) Discussion of project benefits;

(D) Estimates of final results.

(c) In the event an interim report is deemed unsatisfactory by the staff of the Department, the Director will withhold the relevant payment pending resolution of the identified deficiencies. Grantees consistently unable to meet performance standards as agreed upon will be subject to review by the Director and, if necessary, cancellation of the grant agreement.

(2) Within six months of the official close of the project, each recipient shall submit a final report to the Department. This report will provide the most current and detailed information on project benefits as compared with the original criteria.

(3) Grantees must give credit to the Department of Agriculture and the Oregon State Lottery in all project publicity.

(4) Grantees must maintain project records sufficient for monitoring by the Department.

(5) Grantees that cannot complete their projects within the contractual timelines must so inform the Department and request a formal extension to the project.

(6) Unexpended grant funds not used by the grantee will be reverted to the Oregon Agricultural Opportunities Fund for reallocation.

(7) Grantees are responsible for having their projects audited annually for program and financial compliance. Audits may coincide with the grantee's normal fiscal year audit cycle. A copy of the audit is to be forwarded to the Department of Agriculture.

Stat. Auth.: ORS 561 & 576

Stats. Implemented: ORS 576.013
 Hist.: AD 13-1989, f. & cert. ef. 9-18-89

ANIMAL INDUSTRY

DIVISION 10

GENERAL

603-010-0052

Open Cattle Range

No person shall turn upon, or allow to run upon the open range, any bull other than a purebred bull of the following recognized beef breeds:

- (1) Angus.
- (2) Shorthorn.
- (3) Hereford.
- (4) Charolais.
- (5) Santa Gertrudis.
- (6) Galloway.
- (7) Devon.
- (8) Limousin.
- (9) Simmental.
- (10) Beefmaster.
- (11) Gelbvieh.
- (12) Saler.
- (13) Brangus.

Stat. Auth.: ORS 561.180, 604.027 & 607.261
 Stats. Implemented: ORS 607.261
 Hist.: AD 607, f. & cert. ef. 2-11-59; AD 777, f. 1-20-64, cert. ef. 2-15-64; AD 6-1992, f. & cert. ef. 6-3-92

603-010-0053

Definition

As used in ORS Chapter 607, "swine" means a breed of domestic pig that is used for food production, but does not include any breed used primarily as a pet (e.g., pot-bellied pig).

Stat. Auth.: ORS 561.190
 Stats. Implemented ORS 607.005
 Hist.: AD 7-1997, f. & cert. ef. 6-10-97

603-010-0055

Feral Swine

Feral swine are animals of the genus *Sus* which meet the following conditions:

- (1) The animals are free roaming on public or private lands and not being held under domestic management confinement;
- (2) No notification to the land owner, manager, or occupant has been made by the swine owner or their representative of specifically identified and described swine having escaped domestic management confinement within a radius of five (5) miles during the past five (5) days;
- (3) The swine under consideration do not appear to be domesticated and are not tame; and
- (4) The swine under consideration do not meet the identification and description of escaped swine in section (2) above.

Stat. Auth.: ORS 561 & 610
 Stats. Implemented: ORS 561 & 610
 Hist.: DOA 10-2001(Temp), f. & cert. ef. 6-6-01 thru 11-28-01; DOA 23-2001, f. & cert. ef. 10-4-01

603-010-0056

Fee for Determining Adequacy of a Fence

(1) If requested to, or when cattle or equines break through a fence on the open range and a determination of the adequacy of the fence is necessary in order to determine whether the cattle or equines are unlawfully trespassing, the State Department of Agriculture shall make the determination of the adequacy of the fence and shall consider, among other things, the customs and practices of good animal husbandry in the particular area with reference to fences.

(2) The charge for such service shall be the sum of the mileage to and from the site of the fence in question, at the state mileage charge, plus \$30.00 per hour for the time spent traveling to and from

the site and time for the determination of the adequacy of the fence in question.

Stat. Auth.: ORS 607
 Stats. Implemented: ORS 607
 Hist.: DOA 1-2010, f. & cert. ef. 1-7-10

Permits for Airborne Hunting of Coyotes

603-010-0100

Restrictions; Airborne Hunting

(1) The Department is authorized to regulate the control of predatory animals and to regulate the control of animals that are a menace pursuant to ORS Chapters 610 and 570. The federal Fish and Wildlife Act of 1956 as amended (**16 U.S.C. Section 742 et seq.**) allows for airborne hunting under certain circumstances. Pursuant to this Act, airborne hunting or shooting of animals is prohibited without a permit being issued by a state authority. The Department has agreed to act as such state authority under the provisions of said federal Act, for the issuance of such permits. Coyotes and feral swine located in an established control area shall be the only animals that may be the target of the permitted airborne hunting. The protection of livestock, domesticated animals and natural resources shall be the only purpose for which a permit may be issued or used.

(2) Unless otherwise provided by law, any airborne hunting or harassment of other species of animals, or of coyotes or feral swine without a permit being obtained under the provisions of OAR 603-010-0105 and 603-010-0110, or for purposes other than the protection of livestock, domesticated animals or natural resources shall subject the hunter, his pilot and assistants, and his equipment to the forfeiture and penalty provisions of the federal Fish and Wildlife Act of 1956 as amended.

Stat. Auth.: ORS 561 & 610
 Stats. Implemented: ORS 610.005
 Hist.: AD 11-1979, f. & ef. 9-7-79; DOA 5-2000(Temp), f. & cert. ef. 1-24-00 thru 7-21-00; DOA 15-2000, f. 5-31-00, cert. ef. 6-1-00

603-010-0105

Permits and Applications; Airborne Hunting

(1) Application for permit to engage in airborne hunting to protect livestock, domesticated animals or natural resources shall be made to the Department by the affected livestock or land owner or designated agent on forms prescribed by the Department. Should the Department determine there are circumstances resulting in insufficient time to mail the application to the Department, the application may be made by facsimile or telephone. The application shall contain the following:

- (a) The name and address of the applicant and of the person who is to do the airborne hunting;
- (b) The make, number and base-location of the aircraft to be used;
- (c) The geographic description of the area in which the airborne hunting is proposed to take place and in the event part of the area is not owned by the applicant, whether the owners have agreed to the airborne hunting, whether the nonowned land is contiguous to that of the applicant, and whether the offending animals could reside on such nonowned land,
- (d) The description and location of the livestock, domesticated animals or natural resources intended to be protected;
- (e) A statement describing the extent of claimed losses of livestock, domesticated animals or natural resources attributable to coyote depredation or feral swine existence, including the time periods thereof, the locations thereof and the methods used in verification thereof; and
- (f) A statement describing the prior efforts to control coyote depredation, including the time periods thereof, the methods and types of devices used, and the apparent effectiveness thereof.

(2) Upon receipt of an application described in section (1) of this rule, the Department shall:

- (a) Investigate the claimed losses of livestock, domesticated animals or natural resources, and determine the authenticity of such claim;
- (b) Determine the necessity of using airborne hunting to control depredation or natural resource destruction rather than other

acceptable methods therefore, including whether airborne hunting under the animal damage control program under the U.S.D.A.-A.P.H.I.S. Wildlife Services is available;

(c) Determine the time periods and geographic areas for which airborne hunting should be permitted;

(d) Establish any special restrictions or conditions to the permitted airborne hunting, considering the particular circumstances; and

(e) Issue or deny the requested permit.

(3) Permits shall be on forms prescribed by the Department and shall include a permit number, dates of issuance and expiration, name and address of applicant, make and number of aircraft to be used, geographic areas within which the airborne hunting is authorized, and any special restrictions or conditions to the permitted airborne hunting. The Department may periodically review the permit and the use thereunder in order to determine whether necessity continues to exist for the permitted airborne hunting. Upon a determination that such necessity has ceased to exist, the permit may be revoked, notwithstanding any stated date of expiration thereon. In any event, a permit issued for airborne hunting of feral swine in any established control area shall expire upon revocation of the control area. The permittee shall notify the Department within seven days of the taking of the target coyotes or feral swine, so as to assist the Department in this determination.

(4) Violation of any of the conditions of the permit, or a finding by the Department of falsification of any matters contained in the application for such permit, shall be grounds for immediate revocation of the permit without prior notice to the permittee. In such an event, the provisions of OAR 603-010-0100(2) shall thereafter apply.

Stat. Auth.: ORS 561 & 610

Stats. Implemented: ORS 610.005

Hist.: AD 11-1979, f. & ef. 9-7-79; DOA 5-2000(Temp), f. & cert. ef. 1-24-00 thru 7-21-00; DOA 15-2000, f. 5-31-00, cert. ef. 6-1-00

603-010-0110

Records and Reports; Airborne Hunting

(1) The permittee shall make, and maintain for a least one year after the cessation of the permitted airborne hunting, the records prescribed by the Department, including the following:

(a) The species and numbers of animals taken through airborne hunting, with the indication as to whether coyotes or feral swine taken were target or nontarget animals;

(b) The dates and areas of the taking of the coyotes or feral swine; and, if applicable

(c) The disposition of any pelts obtained from the coyotes, or any part of a feral swine and the values received therefore.

(2) The records required to be made and maintained by section (1) of this rule shall be made available to the Department for inspection and verification. Upon request of the Department, such record information shall be submitted to the Department in the form of a report.

Stat. Auth.: ORS 561 & 610

Stats. Implemented: ORS 610.005

Hist.: AD 11-1979, f. & ef. 9-7-79; DOA 5-2000(Temp), f. & cert. ef. 1-24-00 thru 7-21-00; DOA 15-2000, f. 5-31-00, cert. ef. 6-1-00

DIVISION 11

LIVESTOCK HEALTH AND SANITATION

Vaccines

603-011-0053

Hazardous Animal Vaccines

In addition to the hazardous vaccines and products identified in ORS 596.065(1)(a), i.e., Brucella abortus vaccine, Hog cholera vaccine, Rabies vaccine and biologics not approved by the U.S. Department of Agriculture for general use, and as provided in subsection (1)(b) of this statute, Pseudorabies vaccine is declared a hazardous vaccine and subject to the prohibitions on uses set forth in ORS 596.075, unless the use is subject to a written permit issued by the Department under ORS 596.065(3).

Stat. Auth.: ORS 561 & 596

Stats. Implemented: ORS 596.065

Hist.: AD 2-1985, f. & ef. 1-18-85

Veterinarian

603-011-0201

Veterinarian's Inspection Fees

The fees for the inspection, testing, treating or examination, pursuant to the provisions of ORS 596.225, of any animals that are to remain within the state or to be removed to states where the sanitary laws require such inspection, testing, treating or examination and where performed at the request of the owner, shall be in accordance with the current schedule approved or published by the Department.

Stat. Auth.: ORS 561 & 596

Stats. Implemented: ORS 596.225

Hist.: AD 2-1985, f. & ef. 1-18-85

603-011-0212

Diseases Reportable by Veterinarians

Any person practicing veterinary medicine in this state shall immediately notify the department by telephone of observing the following abnormalities:

(1) Any unidentified vesicular disease;

(2) Any exotic disease or foreign animal disease, even if only suspected;

(3) Any disease of unknown etiology exhibiting highly pathogenic or lethal effect; or

(4) Any person practicing veterinary medicine in this state shall immediately notify the department by telephone of clinical evidence of any of the following diseases:

Multi Species Diseases

- Anthrax
- Babesiosis/Piroplasmosis
- Bluetongue
- Brucellosis (abortus, mellitensis, suis)
- Foot and mouth disease
- Pseudorabies
- Rabies
- Vesicular Stomatitis

Cattle Diseases

- Bovine spongiform encephalopathy
- Bovine tuberculosis
- Malignant catarrhal fever
- Trichomoniasis

Equine Diseases

- Contagious equine metritis
- Equine encephalomyelitis (WEE, EEE, VEE and WNV)
- Equine infectious anemia
- Equine viral arteritis

Sheep and Goat Diseases

- Scrapie

Swine Diseases

- Classical swine fever
- Swine Influenza

Poultry Diseases

- Avian chlamydiosis
- Avian infectious laryngotracheitis
- Exotic Newcastle disease
- Notifiable avian influenza
- Pullorum disease
- Salmonella enteritidis

Stat. Auth.: ORS 561.190, 596.321 & 596.341

Stats. Implemented: ORS 596.321

Hist.: AD 2-1985, f. & ef. 1-18-85; AD 1-1995, f. & cert. ef. 2-3-95; DOA 14-2010, f. & cert. ef. 8-31-10

Importation of Livestock into the State of Oregon

603-011-0250

Definitions

As used in ORS 596 and OAR 603-011-0250 to 603-011-0725 the following definitions apply:

(1) "Approved Veterinarian" means a licensed graduate veterinarian accredited by the federal authorities in the state of origin or an authorized veterinarian of the U.S. Government or of the state government of state of origin.

(2) “Dairy Cattle” means cattle of the recognized dairy breeds or crosses of such breeds.

(3) “Beef Cattle” means cattle of the recognized beef breeds or crosses of such breeds and also cattle of mixed dairy and beef breeds.

(4) “Livestock” as used in ORS 596.010, except as provided in ORS 596.615 to 596.681 includes, but is not limited to, horses, mules, jennies, jackasses, cattle, sheep, dogs, hogs, goats, domesticated fowl, psittacines, ratites, domesticated fur-bearing animals, bison, cats, poultry, and any other vertebrate in captivity. Fish are not “livestock”.

(5) “Livestock Auction Market” means an Oregon licensed livestock auction market or stockyard where animal health inspection is continually maintained by the Department and Oregon import requirements for imported livestock may be completed before the animals leave the market.

(6) “Official Test” means any test to determine qualitatively or quantitatively the presence or absence of disease and performed by a laboratory, or by specific personnel, approved by the Chief Livestock Health Official of the state of origin.

(7) “Certificate of Veterinary Inspection” means a legible record complying with the animal health requirements of the State of Oregon, from the state of origin, approved and issued by the Livestock Health Official of that state, or an equivalent form from the U.S. Government, and issued by an approved veterinarian. Such certificates shall be void 30 days after the date of issuance. The form shall contain, in addition to such information as may be hereinafter required for a particular species of livestock the following information:

- (a) Complete name and address of consignor and consignee;
- (b) Physical address of both the origin and destination location of the livestock in of the shipment;
- (c) The date of issuance;
- (d) A description or identification of the livestock to be shipped, including the age, sex, breed, brands, or marks, tags, or official identification devices;
- (e) Visible signs of clinical disease in the livestock being shipped;
- (f) Results and dates of required tests and vaccinations.

(8) “Import Permit” means an authorization in writing, or by facsimile or telephone from the Department, permitting the doing of the acts recited therein. All import permits shall be void 15 days after date of issuance, unless specified otherwise at time of issuance. Request for an import permit shall set forth the following information:

- (a) Number and kind of livestock;
- (b) Complete name and address of consignor, and physical address of origin of shipment, if different from consignor address;
- (c) Proposed date of shipment;
- (d) Complete name and address of consignee and physical address of destination location of livestock in the shipment;
- (e) Intended purpose of shipment.

(9) “Person” means partnerships, individuals, corporations, or associations.

(10) “Poultry” includes, but is not limited to, chickens, turkeys, waterfowl, pheasants, quail, partridges, grouse, guineas, and peafowl of all ages and their hatching eggs. Other avian species includes all birds not defined as poultry whether to be held in captivity or released from captivity.

(11) “Quarantined Herd or Area” means a herd or area, county, or state quarantined by either the U.S. Department of Agriculture or by a state for any reason.

(12) “Slaughtering Establishment” means an establishment as defined in OAR 603-012-0001.

Stat. Auth.: ORS 561 & 596
 Stats. Implemented: ORS 596.341
 Hist.: AD 890(20-68), f. 10-28-68, ef. 11-1-68; AD 1074(37-74), f. 9-20-74, ef. 10-11-74; AD 1-1981, f. & ef. 1-9-81; AD 3-1984, f. & ef. 1-20-84; DOA 2-2002(Temp), f. & cert. ef. 1-18-02 thru 7-4-02; DOA 15-2002, f. & cert. ef. 6-13-02; DOA 4-2011, f. & cert. ef. 1-7-11

603-011-0255

Importation of Animals Into Oregon; General Provisions

(1) No livestock that are affected with or that have been known to be exposed to any infectious, contagious, or communicable disease, shall be shipped or in any manner moved or transported into Oregon except as authorized in following sections.

(2) Except as otherwise provided in this rule, all livestock transported or moved in any manner into Oregon are required to obtain an import permit from the Department before entry. The permit number shall be recorded on the grazing permit or Certificate of Veterinary Inspection document, and be in the possession of the driver of the vehicle or person in charge of the animals.

(3)(a) At the time an import permit is requested, the Department may require that a Certificate of Veterinary Inspection or Grazing Permit be obtained at the point of origin and shall accompany the applicable livestock into Oregon.

(b) The State Veterinarian may allow any livestock import requirements to be completed at the first point of destination within this state, on a case-by case basis, if it is determined by the State Veterinarian, that such action will not create a disease hazard to the livestock of this state;

(4) No livestock may be imported into Oregon that are specifically prohibited from interstate movement by the U.S. Department of Agriculture.

(5) The following are exempted from the requirement to obtain an Oregon import permit:

- (a) Animals being moved or transported directly (without diversion) to a licensed Oregon slaughtering establishment. Animals consigned for slaughter and received in such slaughtering establishments may not be released from such establishments except by special permission from the State Veterinarian;
- (b) Livestock originating in other states and shipped to a state-federal approved livestock auction market in Oregon. Such livestock shall be required to comply with all other applicable administrative rules for import into Oregon;
- (c) Livestock being transported through the state without interruption, other than stops for feed, water and rest;
- (d) Any resident animal leaving and returning to Oregon within 30 days; and
- (e) Dogs, cats, reptiles, and non-poultry birds traveling interstate.

(6) Requirements for the exhibition of livestock shall comply with the directives of the Department for that specific exhibit.

(7)(a) Canadian cattle imported into Oregon must be born after 1999, individually identified by an official Canadian ear tag, applied before the animal’s arrival at the port of entry into the United States, that is traceable to the premises of Canadian origin of the animal and be listed on the Certificate of Veterinary Inspection.

(b) Canadian cattle imported into Oregon must have a hot iron brand of CAN properly applied and easily visible on the live animal and on the carcass before skinning. The CAN brand must be not less than 2 inches nor more than 4 inches high, and must be applied to each animal’s right hip, high on the tail-head (over the junction of the sacral and first coccygeal vertebrae).

(8) Livestock being transported or moved, in any manner, into Oregon without an import permit and a Certificate of Veterinary Inspection or grazing permit, when required, shall be held in quarantine at the owner’s risk and expense until released by the Department. This section shall not be construed as a waiver of enforcing the provisions of ORS 596.990 for violation of regulations relating to importation of livestock.

Stat. Auth.: ORS 561 & 596
 Stats. Implemented: ORS 596.341
 Hist.: AD 890(20-68), f. 10-28-68, ef. 11-1-68; AD 1047(37-74), f. 9-20-74, ef. 10-11-74; AD 9-1977, f. & ef. 4-6-77; AD 7-1981, f. & ef. 5-13-81; AD 3-1984, f. & ef. 1-20-84; DOA 1-2000, f. & cert. ef. 1-4-00; DOA 18-2007(Temp), f. 11-9-07, cert. ef. 11-15-07 thru 5-10-08; Administrative correction 5-20-08; DOA 17-2008, f. & cert. ef. 7-15-08; DOA 1-2011, f. & cert. ef. 1-6-11

603-011-0256

Importation of Animals; Preventing Vesicular Stomatitis

(1) In addition to the requirements of OAR 603-011-0255 and all other import requirements, animals listed in section (2) of this rule which are shipped from any state or area with confirmed cases of vesicular stomatitis shall not be imported into Oregon unless:

(a) An import permit is obtained from the Department before movement, including animals moving to an approved livestock market in Oregon; and

(b) The animals show no clinical signs of vesicular stomatitis on the day of shipment; and

(c) The animals have not originated from a premises or area under quarantine for vesicular stomatitis; and

(d) A Certificate of Veterinary Inspection issued within 24 hours of movement shall accompany the animals, which states: The animals represented on this Certificate of Veterinary Inspection have not originated from a premises or area under quarantine for vesicular stomatitis.

(2) The following animals are subject to the requirements of section (1) of this rule:

(a) Horses;

(b) Cattle;

(c) Bison;

(d) Sheep;

(e) Goats;

(f) Swine; and

(g) Other susceptible animals associated with the animals listed above.

(3) The Department may require serological testing for vesicular stomatitis of any animal imported into the state. If an animal shows a positive response, the Department may deny entry into Oregon.

(4) The Department may require that any animals originating in or traveling through states where vesicular stomatitis has been confirmed be quarantined on the premises of destination for a minimum of 21 days. The Department may also require that a representative of the Department inspect quarantined animals before release of quarantine.

(5) The Department may deny entry into the state of any animal that has been vaccinated with vesicular stomatitis vaccine.

(6) The Department may require the inspection of individual animals at any gathering, including fairs, shows, rodeos, sales, auctions, and similar events, if the Department has reason to believe the animals have been exposed to vesicular stomatitis.

(7) If the Department has reason to believe that animals have been exposed to vesicular stomatitis, the Department may require inspection of the animals, the documents associated with the animals and the vehicles used to haul the animals. However, the Department may only inspect that portion of the vehicle associated with the animals.

(8) The Department may remove these requirements from any state, after the last confirmed case in that state is released from quarantine and when the decision is supported by consultation with the Oregon United States Department of Agriculture Area Veterinarian in Charge and epidemiological investigation.

Stat. Auth.: ORS 183.335(5), 561.190, 561.192, 561.605, 596.020(1)(a)(b), 596.341, 596.351, 596.392 & 604.046(4)

Stats. Implemented: ORS 596.020, 596.341, 596.351, 596.392 & 604.046(4)

Hist.: AD 14-1995(Temp), f. & cert. ef. 7-27-95; AD 17-1995, f. & cert. ef. 12-14-95; DOA 5-2011, f. & cert. ef. 1-7-11

Cattle Grazing Permits

603-011-0263

Grazing Permit for Oregon Cattle

(1) For the purpose of this rule and OAR 603-011-0264, "Grazing Permit" means a document issued by the Department at or before the time an identified person moves a specific herd of cattle from this state to a specific location in another state for grazing as a usual part of the person's ranching operations, which authorizes the re-entry of the same cattle herd to the place of origin in this state within a specified period of time without the need for an additional permit at the time of the re-entry.

(2) In order to qualify for the issuance of a grazing permit, the following conditions shall be met:

(a) The cattle shall be a part of an established breeding herd in this state which had been assembled (other than births in the herd)

more than four months prior to the submission of an application for a grazing permit;

(b) The cattle shall have been officially vaccinated against brucellosis if this would be required for entry of the cattle into this state, or officially tested negative for brucellosis, within 30 days prior to the submission of an application for a grazing permit, and if the alternative is testing, shall not have been exposed thereafter to any other cattle known to be infected with brucellosis; and

(c) The out-of-state location for the grazing or feeding of the cattle shall be owned or leased by the owner of the cattle herd, and shall be so situated as to prevent the herd from commingling with other cattle in the area.

(3) An application for a grazing permit shall be on a form prescribed by the Department, shall be submitted to the Department at least 14 days prior to the intended movement of the cattle herd, and shall include:

(a) The name and address of the applicant, and the Oregon location of the cattle herd;

(b) The number, gender, breed, approximate average age, and brand identification (if any) of the cattle in the herd;

(c) The specific location and state to which the cattle herd is to be moved, the description of conditions that are intended to prevent co-mingling of the herd with other cattle, the intended length of time before the herd would be returned to this state; and intended date of movement to the out-of-state location;

(d) The evidence of the official vaccination against brucellosis, or of the official test(s) negative for brucellosis of the cattle herd, including the date(s) thereof; and

(e) The declarations, upon which the department is to rely, stating when the cattle herd had been finally assembled, and stating the reasons the intended movement of the cattle herd should be considered a usual part of the applicant's ranching operations.

(4) A grazing permit shall expire six months after its date of issuance. Prior to the expiration date, a grazing permit may be revoked or suspended by the Department if it determines that:

(a) Any of the evidence or declarations in the application for a grazing permit has been determined to be false or misleading;

(b) Any of the circumstances or conditions specified in section (2) of this rule has been determined to be non-existent or falsely stated; or

(c) After the cattle herd has been moved to the authorized out-of-state location, the cattle have thereafter been moved to a location other than authorized in the permit, or cattle have been added to or inserted as replacement in the herd, or the cattle in the herd have been allowed to commingle with other cattle.

(5) The grazing permit may be revoked or suspended by personally serving, or mailing by certified mail to, the permittee a written determination and order, which order shall be effective immediately. If the grazing permit is revoked or suspended while the cattle herd is out of state, the cattle shall not be allowed re-entry into this state unless the person having custody of the cattle complies with all of the regular requirements for the importation of cattle into this state.

Stat. Auth.: ORS 561 & 596

Stats. Implemented: ORS 596.341

Hist.: AD 6-1987, f. & ef. 5-5-87; DOA 3-2011, f. & cert. ef. 1-6-11

603-011-0264

Grazing Permit for Cattle From Other States

(1) In lieu of meeting all of the requirements for the issuance of a permit by this Department for the importation of cattle into this state, a person desiring to transport cattle into this state for the purpose of grazing for a limited time period may apply to the Department for recognition of a grazing permit issued to the person by the state in which the cattle are situated. If the Department determines recognition is appropriate, it shall issue a permit for the importation of the cattle into this state.

(2) In order to qualify for recognition of an out-of-state grazing permit, the following conditions shall be met:

(a) The grazing permit must be based upon the same or equivalent conditions and requirements for the issuance of an Oregon grazing permit, as set forth in OAR 603-011-0263;

(b) The grazing permit must have been issued to the person requesting its recognition and apply to the cattle desired to be transported into this state; and

(c) A written agreement must be in effect between this Department and the comparable agency of the state issuing the grazing permit, wherein reciprocal recognition is given to the grazing permits of the respective states and their administrative requirements and conditions for the issuance of the permits.

(3) An application for recognition of an out-of-state grazing permit shall be on a form prescribed by the Department, shall be submitted to the Department at least 14 days prior to the intended movement of the cattle herd, and shall be accompanied by a certified or duplicate-original copy of the out-of-state grazing permit issued to the applicant.

Stat. Auth.: ORS 561 & 596
 Stats. Implemented: ORS 596.341
 Hist.: AD 6-1987, f. & ef. 5-5-87; DOA 3-2011, f. & cert. ef. 1-6-11

603-011-0265

Importation of Cattle; Tuberculosis Testing Requirements

In addition to an import permit and other disease control requirements, the following requirements must be met regarding bovine tuberculosis. Cattle that have had physical contact within the past 12 months with cattle originating in Mexico must be treated as cattle originating in Mexico.

(1) Cattle originating from within the United States:

(a) Tuberculosis testing is not required for:

(A) Cattle of beef breeds originating from states classified or areas designated as USDA accredited-free of bovine tuberculosis. Such cattle must be born in or resident in such a state for at least the previous 12 months;

(B) Cattle of any breed originating from herds classified USDA accredited-free of bovine tuberculosis. The accredited herd number and date of latest herd test must be shown on the health certificate.

(C) Cattle imported for slaughter:

(i) By direct delivery to a federally inspected slaughter establishment.

(ii) By direct consignment to an auction market to be sold for slaughter only.

(D) Cattle of any beef breed or cattle of dairy breeds that are sexually neutered, imported to be fed for slaughter from a state which is not classified USDA accredited-free of bovine tuberculosis: If the herd of origin is not under hold order, quarantine, or epidemiological study for tuberculosis, and has had no laboratory confirmed case or other epidemiological evidence of tuberculosis in the previous 12 months, and there has been no contact with any such herd which has; or

(E) Cattle of beef breeds imported for breeding purposes from a state which is not classified USDA accredited-free of bovine tuberculosis if the state of origin has had no laboratory confirmed case or other epidemiological evidence of tuberculosis in the previous 12 months and the herd of origin is not under hold order, quarantine, or epidemiological study for tuberculosis;

(F) Cattle of beef breeds imported for breeding from a state which is not classified USDA accredited-free of bovine tuberculosis and which has had a laboratory confirmed case or other epidemiological evidence of tuberculosis in the previous 12 months, if the area or herd from which they originate has been exempted from testing by the Oregon State Veterinarian in consultation with livestock health officials of the state of origin.

(b) Tuberculosis testing is required for:

(A) Cattle of beef breeds imported for breeding purposes from a state which is not classified USDA accredited-free of bovine tuberculosis and which has had a laboratory confirmed case or other epidemiological evidence of tuberculosis in the previous 12 months, except as exempted in paragraph (1)(a)(F) of this rule;

(B) Cattle of dairy breeds imported for breeding and/or dairy purposes, over 2 months of age, within the 60-day period before entering the state.

(C) A retest at 60 to 120 days from date of first test may in some cases be required. The imported cattle may be retested in the state

of origin or imported into Oregon and held under quarantine subject to retest;

(D) Cattle imported as transient rodeo stock must have had one negative tuberculosis test within 12 months before entry.

(c) Appeals of exemption decisions: Appeals of exemption decisions made under paragraph (1)(a)(F) of this rule must be filed with the Director of the Oregon Department of Agriculture within 10 working days of the decision. Review will be completed within 10 working days of the appeal. Review will include consultation with at least the Oregon State Veterinarian, the USDA Area Veterinarian in Charge for Oregon, and livestock health officials of the exporting state or country.

(2) Cattle originating in Canada: The regulations for importation of cattle from within the United States shall apply to areas of equivalent tuberculosis classification status as determined by the Ministry of Agriculture of Canada.

(3) Cattle originating in Mexico:

(a) Sexually neutered cattle must:

(A) Bear official Mexican government identification; and

(B) Be negative to a tuberculosis test upon crossing the border into the United States; and

(C) If imported for feeding purposes, be imported under prior written agreement with the Oregon State Veterinarian directly to a "Tuberculosis Qualified Pasture" (TQP) after proof is provided of a negative tuberculosis test administered no less than 60 days after the initial test and after importation into the U.S. Movement out of the TQP may be to another TQP, direct to slaughter, or to an out of state destination. The TQP must have fencing adequate to prohibit commingling with breeding animals; or

(D) If imported for rodeo and recreational purposes, be held separate and apart from native cattle and retested negative 60 to 120 days following the first test. Such cattle that have been resident in another state for more than 60 days shall require evidence of a second negative retest for tuberculosis before entry into Oregon.

(b) Sexually intact cattle of beef breeds must:

(A) Be negative to the tuberculosis test upon crossing the border into the United States; and

(B) Be retested negative within 60 to 120 days following the first test; and

(C) Be retested negative within 360 to 420 days following the first test; and

(D) Be held separate and apart from native cattle until completion of all tests; and

(E) Not be imported for feeding purposes.

(c) Cattle originating on Mexican dairies shall not be imported for any purpose.

Stat. Auth.: ORS 596.341
 Stats. Implemented: ORS 596.341
 Hist.: AD 890(20-68), f. 10-28-68, ef. 11-1-68; AD 1047(37-74), f. 9-20-74, ef. 10-11-74; AD 1108(29-76), f. & ef. 9-21-76; AD 3-1984, f. & ef. 1-20-84; AD 9-1993(Temp), f. & cert. ef. 7-23-93; AD 7-1994, f. & cert. ef. 7-12-94; DOA 12-2003(Temp), f. & cert. ef. 3-17-03 thru 9-1-03; DOA 33-2003, f. & cert. ef. 9-18-03; DOA 14-2005, f. & cert. ef. 5-31-05; DOA 20-2008(Temp), f. 9-10-08 cert. ef. 9-15-08 thru 3-10-09; Administrative correction 3-18-09; DOA 15-2010, f. & cert. ef. 8-31-10

603-011-0270

Importation of Cattle: Brucellosis Testing and Vaccination Requirements

(1) Definitions: As used in this rule:

(a) "Eligible Cattle" means all sexually intact cattle over 18 months of age, including pregnant heifers or those that have calved under 18 months of age;

(b) "Non-vaccinated" means all sexually intact female cattle over four months of age not vaccinated for brucellosis;

(c) "Vaccinated" means all female cattle vaccinated for brucellosis;

(d) "Designated Area" means an area, herd or herds described by USDA and/or the State Animal Health Official/State Veterinarian of the state-of-origin as containing cattle potentially infected with or exposed to brucellosis and thereby subject to movement restrictions and/or additional brucellosis testing;

(e) "Registered Dry Feedlot" means an area, approved and registered by the Department, surrounded by a cattle-tight fence in which livestock are confined and wherein they must be supplied both feed and water for their survival, but does not mean any pasture or corral wherein livestock are only fed occasionally or as a supplement to natural forage growing in the pasture or corral;

(2)(a) In addition to the permit requirements for importation of livestock into Oregon, official vaccination for brucellosis (either calfhood or mature) is required for the importation of all female cattle over four months of age for any purpose other than directly to slaughter or to be fed in a registered dry feedlot or a licensed terminal feedlot (not pasture) and then sent directly to slaughter from that facility. Evidence of such vaccination shall be by an official tattoo in the right ear of the animal.

(b) All eligible cattle not originating in a Designated Area are specifically exempt from brucellosis testing before entry into the State of Oregon; or

(c) All eligible cattle not originating in a Designated Area may enter Oregon directly to a licensed slaughtering establishment or to an approved state-federal market and then to a licensed slaughter plant if the identity to the out-of-state herd of origin is maintained.

(d) All sexually intact cattle over 4 months not originating from a Designated Area and consigned to an approved state-federal market which, upon sale, are to go to ranches/farms in Oregon for breeding and/or dairy purposes, must be vaccinated for brucellosis. Evidence of such vaccination is an official tattoo and/or official vaccination tag in the right ear of the animal. The cost of vaccination at the market, if required, shall be the responsibility of the buyer.

(e) All sexually intact cattle originating in a Designated Area may be imported on a case-by-case basis as determined by the State Veterinarian, based on an assessment of risk to the cattle of the state. The cattle must be officially and individually identified. The official identification, identity to the out-of-state herd of origin and its physical location must be maintained.

(3) Registered Dry Feedlot: Cattle may be imported into the State of Oregon, consigned to a registered dry feedlot subject to the following conditions:

(a) Cattle may be of any age, vaccinated or not vaccinated, but may not originate from a Designated Area without specific permission from the State Veterinarian before entry;

(b) On movement from registered dry feedlots, non-vaccinated cattle may move to slaughter or to another registered feedlot only. There are no restrictions on steers and spayed heifers, vaccinated heifers under 18 months old or eligible vaccinated cattle.

(c) No illegally imported cattle are permitted entry to registered dry feed lots. Records of cattle entering and leaving feedlot shall be available to Departmental personnel at all reasonable times.

Stat. Auth.: ORS 561 & 596.341
Stats. Implemented: ORS 596.341

Hist.: AD 890(20-68), f. 10-28-68, ef. 11-1-68; AD 1047(37-74), f. 9-20-74, ef. 10-11-74; AD 1082(5-76), f. & ef. 3-1-76; AD 1095(16-76), f. & ef. 4-26-76; AD 9-1977, f. & ef. 4-6-77; AD 9-1978, f. & ef. 7-3-78; AD 8-1979, f. 8-8-79, ef. 9-1-79; AD 1-1981, f. & ef. 1-9-81; AD 2-1981, f. & ef. 1-12-81; AD 8-1981(Temp), f. & ef. 5-18-81; AD 9-1981, f. & ef. 6-9-81; AD 3-1984, f. & ef. 1-20-84; AD 11-1984, f. & ef. 8-28-84; AD 16-1986, f. & ef. 12-31-86; AD 12-1987, f. & ef. 11-19-87; AD 1-1993, f. & cert. ef. 1-7-93; DOA 21-2011, f. & cert. ef. 10-14-11

603-011-0275

Importation of Bison

In addition to the general provisions for importation of livestock into Oregon (OAR 603-011-0255) which also apply to importation of bison, the following requirements regarding bison shall also be followed and observed:

(1) A permit shall be obtained from the Department before bison can enter Oregon.

(2) An official health certificate may be required for all bison before they are imported into Oregon.

(3) Tuberculosis: All bison shall originate from herds not known to be infected or exposed to reactor animals or herds and if over two years of age shall be tested negative for tuberculosis within 30 days of importation, except:

(a) Bison originating in an accredited free herd with the herd accreditation numbers shown on the accompanying permits or health certificates;

(b) Bison originating in a state or geographically defined area (recognized by the Department) which has not had an *M. bovis* infected animal or herd within the past year;

(c) Bison imported to a dry feedlot which when removed will go direct to slaughter. Bison may be removed from feed lots for breeding purposes with permission of the State Veterinarian and if they are tested as free within 10 days of removal;

(d) Bison imported for slaughter if such are slaughtered within eight days thereof.

(4) Brucellosis: A negative official test for brucellosis is required of all bison within 30 days prior to entry into Oregon except as follows:

(a) Official vaccinates under 24 months of age;

(b) Calves under eight months of age;

(c) Bison consigned directly to a slaughtering establishment, for immediate slaughter, and slaughtered within eight days of arrival.

Stat. Auth.: ORS 561 & 596

Stats. Implemented: ORS 596.341

Hist.: AD 890(20-68), f. 10-28-68, ef. 11-1-68; AD 1047(37-74), f. 9-20-74, ef. 10-11-74; AD 3-1984, f. & ef. 1-20-84

603-011-0281

Importation of Cattle; Movement From A Scabies Infection Area

(1) "Scabies" means a contagious skin disease of cattle caused by mites (Acaridae) of the genera *Psoroptes*, *Chorioptes*, or *Sarcoptes*.

(2) "Ivermectin" means a proprietary product authorized and approved by the U.S. Department of Agriculture for the treatment, control or eradication of scabies in cattle.

(3) No person shall ship, trail, drive or otherwise move into Oregon any cattle which have been exposed to scabies infection or are infected with scabies or originate in a scabies quarantined area unless such movement is in compliance with the provisions of the Code of Federal Regulations (9 CFR 73) and the applicable provisions of OAR 603-011-0250 and 603-011-0255.

(4) Cattle or bison moving to Oregon from a scab infected area or state must be treated with Ivermectin or other effective treatment as approved in the Code of Federal Regulations within 10 days before entry;

(5) Treatment of cattle for scabies infection shall be under the direction of a representative of the U.S. Department of Agriculture or the origin state Department of Agriculture.

Stat. Auth.: ORS 561 & 596

Stats. Implemented: ORS 596.341

Hist.: AD 6-1985, f. & ef. 7-17-85; DOA 6-2011, f. & cert. ef. 1-7-11

603-011-0305

Importation of Horses, Mules, and Asses or Other Equidae: Equine Infectious Anemia (EIA)

In addition to OAR 603-011-0255(1) through (7), (General Importation Requirements), which also apply to the importation of horses, mules, asses, or other equidae, the following shall apply to such importation:

(1) All equidae to be imported into Oregon shall be accompanied by a Certificate of Veterinary Inspection (Health Certificate) attesting to a negative official test for equine infectious anemia (EIA) within the prior six months, except:

(a) Equidae imported into the State of Oregon for slaughter, within 8 days, at an approved slaughter facility;

(b) For the sole purpose of treatment by a graduate veterinarian, immediately after which such equidae are returned directly to place of origin;

(c) If such equidae originated in Oregon and were transported out of state for the exclusive purpose of working on a ranch and returning directly therefrom, without commingling with other equidae. This exemption does not apply to equidae taken to shows, rodeos, competitions, or similar public gatherings;

(d) Suckling foals under six months of age, traveling with their dams are exempted from the EIA test requirement;

(e) As exempted by written agreement with state veterinarians in other states.

(2) Except for travel to states exempted from EIA test requirements by written agreement in subsection (1)(e) of this rule, equidae owned and stabled in Oregon, which were transported out of state and returned, must have a negative test for EIA either:

(a) Before the end of the calendar year after returning from their last trip out of state; or

(b) Within the six months prior to returning from their last trip out of state. This does not exempt Oregon equidae from the import requirements of the state of destination.

(3) Any equidae found positive to an official test for EIA shall be handled in the manner prescribed by OAR 603-011-0606.

Stat. Auth.: ORS 561.190 & 596.341

Stats. Implemented: ORS 596.341

Hist.: AD 890(20-68), f. 10-28-68, ef. 11-1-68; AD 1047(37-74), f. 9-20-74, ef. 10-11-74; AD 1077(1-76)(Temp), f. & ef. 1-20-76 thru 5-18-76; AD 1099(20-76), f. & ef. 7-1-76; AD 1111(32-76), f. & ef. 11-15-76; AD 1-1981, f. & ef. 1-9-81; AD 3-1984, f. & ef. 1-20-84; AD 9-1992(Temp), f. & cert. ef. 7-29-92; AD 11-1993(Temp), f. 8-19-93, cert. ef. 8-20-93; AD 10-1994, f. & cert. ef. 8-12-94

603-011-0310

Importation of Swine

Swine includes all porcine species. Oregon is currently Validated Swine Brucellosis Free and Stage V (Free) in the Pseudorabies Eradication Program. If Oregon’s status in either of these joint state/federal programs changes, these rules will be modified to reflect those changes. In addition to the general import provisions of OAR 603-011-0255, the following are required:

(1) Slaughter swine:

(a) Infected with or exposed to pseudorabies or brucellosis may only be shipped into Oregon with an Import Permit number and only directly to an approved slaughter establishment;

(b) Imported from states or areas with a Pseudorabies Program status below Stage V may go only directly to an approved slaughter establishment.

(2) Breeder swine:

(a) Must have an import permit from the department;

(b) Must have a Certificate of Veterinary Inspection verifying such swine:

(A) Were inspected within 30 days before shipment;

(B) Are free from evidence of infectious, contagious or communicable disease or known exposure thereto;

(C) Have not been fed raw or cooked garbage; and

(D) Have not been vaccinated against pseudorabies.

(c) Must have been vaccinated against erysipelas with an inactivated product in dosage as recommended by the manufacturer within four months before entry into Oregon;

(d) Must have been vaccinated against all serotypes of leptospirosis for which a vaccine has been licensed for general use, in dosages as recommended by the manufacturer, before entry into Oregon;

(e) Six months of age and older and must have a negative test for swine brucellosis within 30 days prior to entry into Oregon, or originate from a Validated, Brucellosis Free herd or state. If from a Validated Brucellosis Free herd, the herd number and date of last herd test must appear on the health certificate;

(f) Must originate from a Pseudorabies Free state.

(3) Feeding swine:

(a) Must have an import permit from the department;

(b) May be required to have a Certificate of Veterinary Inspection verifying such swine:

(A) Were inspected within the 30 days before shipment;

(B) Are free from evidence of infectious, contagious or communicable diseases or known exposure thereto;

(C) Have not been fed raw or cooked garbage; and

(D) Have not been vaccinated for pseudorabies.

(c) Must be imported from a Pseudorabies Free state.

(4) Exhibition swine: Swine imported for exhibition must meet normal import requirements. Shows and fairs are free to make more stringent requirements.

(5) Feral Swine: Feral swine may not be imported into Oregon for any purpose.

Stat. Auth.: ORS 561.190, 596.321 & 596.341

Stats. Implemented: ORS 596.341

Hist.: AD 890(20-68), f. 10-28-68, ef. 11-1-68; AD 932(2-71), f. 3-18-71, ef. 4-15-71; AD 1047(37-74), f. 9-20-74, ef. 10-11-74; AD 9-1977, f. & ef. 4-6-77; AD 1-1981, f. & ef. 1-9-81; AD 3-1984, f. & ef. 1-20-84; AD 6-1985, f. & ef. 7-17-85; AD 1-1993, f. & cert. ef. 1-7-93; Renumbered from 603-011-0321, 603-011-0326, 603-011-0328 & 603-011-0329; AD 1-1995, f. & cert. ef. 2-3-95; DOA 16-2010, f. & cert. ef. 8-31-10

603-011-0340

Importation of Sheep and Goats

In addition to the requirements of OAR 603-011-0255, relating to the importation of animals into Oregon, a Certificate of Veterinary Inspection shall be required certifying the animals being imported are free from clinical signs of disease and have no known exposure to scrapie.

(1) All sheep and goats being imported into Oregon shall be individually identified as specified by OAR 603-011-0388.

(2) Exceptions to the requirement for a Certificate of Veterinary Inspection or for any tests required due to disease conditions in state of origin may be made under agreements between the Oregon State Veterinarian and Chief Animal Health Official of reciprocating states.

Stat. Auth.: ORS 561.190, 596.020, 596.392 & 596.412

Stats. Implemented: ORS 596.341

Hist.: AD 890(20-68), f. 10-28-68, ef. 11-1-68; AD 1047(37-74), f. 9-20-74, ef. 10-11-74; AD 3-1984, f. & ef. 1-20-84; AD 5-1993(Temp), f. & cert. ef. 5-26-93; AD 13-1993, f. & cert. ef. 10-6-93; DOA 2-2011, f. & cert. ef. 1-6-11

603-011-0345

Importation of Sheep; General Provisions

All trucks or cars moving or transporting sheep infected with infectious or transmissible diseases into Oregon, may be required to be immediately cleaned and disinfected after unloading and before being used again for moving or transporting livestock.

Stat. Auth.:

Stats. Implemented: ORS 596.341

Hist.: AD 890(20-68), f. 10-28-68, ef. 11-1-68; AD 1047(37-74), f. 9-20-74, ef. 10-11-74; AD 3-1984, f. & ef. 1-20-84

Oregon Scrapie Management Program

603-011-0370

Importation of Dogs and Cats

In addition to the general provisions for the importation of livestock, an official health certificate for dogs and cats shall be provided and contain the certification:

(1) That such dogs and cats are visually free from infectious, contagious, or communicable disease.

(2) That such dogs and cats have been vaccinated against rabies in accordance with the recommendations set forth in the “Compendium of Animal Rabies Vaccines,” issued by the National Association of Public Health Veterinarians, Inc., at the time of entry of the dog or cat into Oregon. Each dog or cat must be identified by a dated vaccination certificate. Puppies or kittens under four months of age are not required to be vaccinated unless they originate in a quarantined area.

(3) That such dogs and cats do or do not originate from an area under quarantine for rabies. (Only with special consideration will a permit for entry be issued by the State Veterinarian for dogs and cats originating in a rabies quarantine area.)

Stat. Auth.: ORS 561 & 596

Stats. Implemented: ORS 596.341

Hist.: AD 890(20-68), f. 10-28-68, ef. 11-1-68; AD 1007(21-73), f. 12-5-73, ef. 12-25-73; AD 1047(37-74), f. 9-20-74, ef. 10-11-74; AD 3-1984, f. & ef. 1-20-84; AD 6-1985, f. & ef. 7-17-85

603-011-0375

Importation of Poultry

(1) A valid permit shall be obtained from the Department before any person may ship, transport, or import poultry or other avian species into Oregon (poultry includes, but is not limited to, chickens and turkeys of all ages and their hatching eggs). The permit may be issued for a time period determined by the Department, and may be renewed, suspended, or revoked by the Department. If poultry qualifies under subsection (2)(a) of this rule, the form of the U.S. Department of Agriculture, may substitute for the permits.

(2) Poultry shall not be shipped, transported, or imported into Oregon, unless they:

(a) Have originated from pullorum-typhoid clean flocks under the supervision of the National Poultry Improvement Plan;

(b) Have originated from flocks which are in compliance with an equivalent program to subsection (a) of this section under the supervision of the Livestock Health Official of the state of origin; or

(c) Have passed a negative blood test for pullorum disease under the supervision of the proper State Livestock Health Official within 30 days prior to such importation into Oregon.

(3) No permit is necessary if poultry are shipped, transported, or imported direct, without diversion, to a slaughtering establishment:

(a) By common carrier;

(b) Covered by an accompanying waybill which shows the name and address of the consignee, the number of birds in the shipment, and the name and address of the destination slaughtering establishment; and

(c) A prior permit issued by the Department is necessary even though the birds are going directly to slaughter, if all the provisions of this subsection are not (or cannot be) strictly complied with.

(4) If any imported poultry or other avian species, in the opinion of the Department is, or may be, diseased, contaminated, unwholesome, or in any manner presents a threat to human or animal health, the entire lot, shipment, or birds may be quarantined by the Department and such birds or eggs:

(a) Ordered returned to the state of origin; or

(b) Disposed of as the Department deems necessary.

Stat. Auth.: ORS 561 & 596

Stats. Implemented: ORS 596.341

Hist.: AD 890(20-68), f. 10-28-68, ef. 11-1-68; AD 1047(37-74), f. 9-20-74, ef. 10-11-74; AD 3-1984, f. & ef. 1-20-84

603-011-0376

Exotic Newcastle Disease, Emergency Quarantine and Movement Restrictions

This section applies to all avian species and commercial traffic involved with avian species originating from areas under state or federal quarantine for Exotic Newcastle Disease and to bird exhibits, shows, auctions, public displays and competitions held in Oregon. It also applies to importation of all birds from states in which a state or federal quarantined area due to Exotic Newcastle Disease exists.

(1) Areas under restriction. The emergency quarantine includes all areas of any state in which a state or federal quarantine for Exotic Newcastle Disease exists.

(2) Items under restriction, except as specifically exempted in (3)(b) and (c) and (4)(b) and (c) below, include birds, poultry, poultry products, poultry waste, or vehicles, equipment or materials of any type that could transmit Exotic Newcastle Disease. Included in the restriction are vehicles that make deliveries of live birds, feed, or equipment to poultry operations of any sort in quarantined areas and then travel into the state of Oregon.

(3)(a) Except as exempted in (b) or (c) below, no live or dead birds, poultry, poultry products, poultry waste, or vehicles, equipment or materials of any type that could transmit Exotic Newcastle Disease may be moved into Oregon from areas under quarantine.

(b) From areas under state or federal quarantine for END, commercial pet birds, pet birds originating from USDA Quarantine Facilities and birds being individually imported, all of which have fulfilled all stipulations of USDA Policies for movement out of the quarantined areas, may be imported into Oregon subject to protocols established by the State Veterinarian.

(c) From areas under state or federal quarantine for END, table eggs which have fulfilled all stipulations of USDA Policies on Movement of Table Eggs out of quarantined areas may be considered for importation into Oregon. If so considered, they will be subject to protocols established by the State Veterinarian.

(4)(a) Except as exempted in (b) or (c) below, no equipment used for the processing of eggs or for the housing, feeding, watering, handling, or otherwise caring for birds of any type may be moved into Oregon from areas under quarantine

(b) Equipment used to house, water, feed, or care for commercial pet birds, pet birds originating from USDA Quarantine Facilities and pet birds being individually legally imported under authority of section (3)(b) above, all of which have fulfilled all stipulations of USDA Policies for movement out of the quarantined areas, may be imported into Oregon subject to protocols established by the State Veterinarian.

(c) Equipment used to transport, house, water, feed, handle, or otherwise care for commercial poultry which has fulfilled all stipulations of USDA Policies for Movement of Conveyances from Quarantined Areas may be considered for importation into Oregon. If so considered, they will be subject to protocols established by the State Veterinarian.

(5) Any commercial vehicle originating from an area under quarantine and which has transported feed, eggs, or equipment or other materials that could transmit Exotic Newcastle Disease must carry proof of the cleaning and disinfection of the vehicle and trailer performed immediately prior to traveling to Oregon. This proof must be provided in writing and demonstrate that the cleaning and disinfection was performed according to protocol established by the USDA.

(6) Birds of any species which originate in states with quarantined areas due to Exotic Newcastle Disease but which come from areas outside of the quarantined area must be accompanied by a Certificate of Veterinary Inspection issued within twenty four (24) hours prior to departure for Oregon by an accredited veterinarian stating the birds are healthy and free of any signs of Exotic Newcastle Disease and do not originate from a quarantined area except as exempted in (3)(b) above, and an Oregon Import Permit number obtained from the office of the Oregon State Veterinarian. Photocopies of Certificates of Veterinary Inspection are not acceptable. National Poultry Improvement Plan forms for movement of poultry may be used by members of National Poultry Improvement Plan with written certification on the form that the shipment did not originate from inside a quarantined area.

(7) A promoter of any event in Oregon which involves birds, such as an exhibit, show, auction, competition, or other public display of birds of any type shall immediately inform the Oregon State Veterinarian by mail, facsimile, or electronic mail of a scheduled event. The notification shall include the contact name, mailing address, physical address of the event, and daytime telephone number.

(8) A promoter of an event in Oregon which involves birds originating in another state, such as an exhibit, show, auction, competition, or other public display of birds of any type, shall inform the event exhibitors and vendors in writing of this Oregon Administrative Rule, the current areas under quarantine for Exotic Newcastle Disease, and the risk of introducing Exotic Newcastle Disease into Oregon. The promoter also shall require each event exhibitor and vendor, prior to the event, to attest in writing that they are not in violation of this Oregon Administrative Rule. The signed document shall be forwarded to the Oregon State Veterinarian within one week after conclusion of the event.

Stat. Auth.: ORS 561 & 596

Stats. Implemented: ORS 561.510, 596.020, 596.341, 596.351 & 596.355

Hist.: DOA 10-2003(Temp), f. & cert. ef. 1-17-03 thru 7-16-03; DOA 13-2003(Temp), f. & cert. ef. 3-27-03 thru 7-16-03; DOA 20-2003, f. & cert. ef. 6-20-03

603-011-0380

Importation of Domestic Fur-Bearing Animals and Animals in Captivity

No person shall ship, move, or import domesticated fur-bearing animals, or animals in captivity, into Oregon, without first obtaining a permit from the Department.

Stat. Auth.: ORS 561 & 596

Stats. Implemented: ORS 596.341

Hist.: AD 890(20-68), f. 10-28-68, ef. 11-1-68; AD 1047(37-74), f. 9-20-74, ef. 10-11-74; AD 3-1984, f. & ef. 1-20-84

603-011-0381

Importation of Nonhuman Primates

(1) In addition to the requirements of OAR 603-011-0255, relating to the importation of animals into Oregon, no person shall ship, move, or import into this state any nonhuman primates (including, but not limited to, monkeys, baboons, gibbons, chimpanzees, and marmosets) without first obtaining a permit from the Department.

(2) All nonhuman primates shipped, moved, or imported into this state shall also be accompanied by an official health certificate as defined in OAR 603-011-0250(8), certifying that said animals are free from the following human pathogenic agents, as indicated by:

- (a) Skin tests for tuberculosis; and
- (b) Actual examination and laboratory tests for Salmonella, Arizona, Shigella, and internal and external parasites.

(3) In addition to the requirements of sections (1) and (2) of this rule, all nonhuman primates shall be shipped, moved, or otherwise transported into this state only upon having been handled in accordance with the standards and guidelines for procuring, compounding, holding, and transporting such primates as published in 9 CFR 1.1-3.142.

(4) Permits for importation of nonhuman primates may be issued to zoos, zoological gardens, research laboratories or centers, fairs, circuses, other shows or exhibitions, or individuals upon investigation and the finding of the Department that such facility has the necessary personnel, equipment, and physical facilities to maintain such animals under conditions which contribute to the animals' general health and well-being, and that such animals will not come in contact with the general public.

Stat. Auth.: ORS 561 & 596
 Stats. Implemented: ORS 596.341
 Hist.: AD 979(12-72), f. 8-31-72, ef. 9-15-72; AD 1047(37-74), f. 9-20-74, ef. 10-11-74; AD 3-1984, f. & ef. 1-20-84

603-011-0382

Importation of Wildlife and Cervids

This rule applies to all wildlife and cervid species whether raised in captivity or wild captured, excluding domesticated fur bearing animals as defined in ORS 596.020(2). In addition to the requirements of OAR 603-011-0255 relating to the importation of animals into Oregon, no person shall ship, move, or import any wildlife into this state without complying with the following:

(1) Coordinating rules with Oregon Department of Fish and Wildlife (ODF&W) Species prohibited under authority of ODF&W may not be imported. If a special exemption is granted and signed by the Director of ODF&W, Oregon Department of Agriculture may issue an import permit, if the animal(s) meet health requirements.

- (2) Rabies.
 - (a) Except as noted in (b) below, mammals other than ungulates (hoofed animals) must originate from a licensed or otherwise officially recognized facility where the animals are all captive-bred and reared.

(b) Mammals captured from the wild may be imported only with specific permission from the State Veterinarian and must meet one of the following conditions:

- (A) The individual animal must have been kept as a private pet by the importer for a minimum of one year as certified by veterinary records and/or a signed, notarized affidavit from the importer; or
- (B) The importer must be a United States Department of Agriculture (USDA) Registered facility, or accredited by the American Zoo and Aquarium Association.

(3) Brucellosis. Non-livestock ruminants, native or exotic (excluding South American camelids) over six months of age shall test negative for brucellosis no more than 30 days prior to entry into Oregon. When brucellosis infection is confirmed in a herd, the entire herd shall be denied entry into Oregon.

(4) Tuberculosis. Non-livestock ruminants, native or exotic (excluding South American camelids) over six months of age shall test negative for tuberculosis no more than 30 days prior to entry into Oregon. When tuberculosis infection is confirmed in a herd, the entire herd shall be denied entry into Oregon.

(5) Parasites. Ungulates shall be treated no more than 30 days prior to entry into Oregon with a parasiticide approved by the Oregon State Veterinarian.

(6) Importation of Cervids. Coordinating rules with Oregon Department of Fish and Wildlife.

(a) Cervids prohibited by ODF&W may not be imported. If a special exemption is granted and signed by the Director of ODF&W, Oregon Department of Agriculture (ODA) may issue an import permit, if the animal(s) meet health requirements.

(b) Genetic testing of elk to be imported shall be carried out in accordance with ODF&W rules.

- (7) Brucellosis.
 - (a) Wild captured cervids over six months of age shall test negative for brucellosis no more than 30 days prior to entry into Oregon. When brucellosis is confirmed in a herd, the entire herd shall be denied entry into Oregon.

(b) United States Department of Agriculture (USDA) has established qualifications for two brucellosis classifications of cervid herds. When brucellosis is confirmed in any privately owned herds, the entire herd shall be denied entry into Oregon.

(A) Privately owned cervids originating in a herd classified by USDA as a Certified Brucellosis-Free Cervid Herd are exempt from the brucellosis test.

(B) Privately owned cervids originating in a herd classified by USDA as a Brucellosis monitored Cervid Herd must test negative for brucellosis no more than 90 days prior to entry into Oregon.

(C) Privately owned cervids originating in any other herd shall test negative for brucellosis no more than 30 days prior to entry into Oregon.

- (8) Tuberculosis.
 - (a) Wild captured cervids over six months of age shall test negative for tuberculosis no more than 30 days prior to entry into Oregon. When tuberculosis is confirmed in any herd, the entire herd shall be denied entry into Oregon.

(b) USDA has established qualifications for three tuberculosis classifications of cervid herds: Accredited herd; Qualified herd; monitored herd. When tuberculosis is confirmed in any privately owned herd, the entire herd shall be denied entry into Oregon.

(A) Privately owned cervids originating in a USDA Accredited cervid herd are exempt from the tuberculosis test.

(B) Privately owned cervids originating in a USDA Qualified cervid herd or a USDA Monitored cervid herd shall test negative for tuberculosis no more than 90 days prior to entry into Oregon.

(C) Privately owned cervids originating in any other herd shall test negative for tuberculosis twice, no less than 90 days apart. The second test must be conducted no more than 90 days prior to entry into Oregon. The animals must be isolated from all other members of the herd during the testing period.

(9) Parasites. All wild captured and privately owned cervids shall be treated no more than 30 days prior to entry into Oregon with a parasiticide approved by the Oregon State Veterinarian.

- (10) Meningeal worm (*Parelaphostrongylus tenuis*)
 - (a) Except by special permit from the Director of ODF&W and special permission from the Oregon State Veterinarian, white-tailed deer are prohibited entry into Oregon.

(b) Except as provided in (c) below, importation or cervids that have ever been in meningeal worm enzootic areas is prohibited. All states and provinces east of the western boundaries of Manitoba, Minnesota, Iowa, Missouri, Oklahoma, and Texas shall be considered meningeal worm enzootic areas.

(c) Importation of cervids from a meningeal worm enzootic area may be allowed, if they test negative or are treated by a method approved by the Oregon State Veterinarian.

- (11) Chronic Wasting Disease (CWD).
 - (a) Importation of privately owned cervids from herds which are under quarantine or epidemiologic investigation for CWD is prohibited. Importation of wild cervids from any state where CWD exists in wild populations is prohibited.

(b) Importation of privately owned cervids from a premises or herd where CWD has been diagnosed within the past 60 months is prohibited.

(c) Any privately owned herd from which elk are imported into Oregon must have a CWD surveillance program approved by the Oregon State Veterinarian. Minimum requirements for a CWD surveillance program are:

(A) Complete records of animal movement and CWD testing results may be required for review by the Oregon State Veterinarian.

(B) The elk must have permanent identification of a type approved by the Oregon State Veterinarian and that allows for both individual animal and premises identification. Approved identification includes, but is not limited to, tamper proof ear tags approved by the North American Elk Breeders Association, tattoos, microchips, and steel identification ear tags.

(C) The minimum time requirements for being under surveillance shall be twelve months at time of enactment of this rule and shall be increased by six months annually to a minimum of sixty months after eight years.

(d) The following statement by the inspecting veterinarian shall be written on the required Certificate of Veterinary Inspection. "I certify that to the best of my knowledge the herd of origin of these cervids has had no known involvement with Chronic Wasting Disease."

Stat. Auth.: ORS 561 & 596
 Stats. Implemented: ORS 596.341 & 596.020
 Hist.: AD 9-1977, f. & ef. 4-6-77; AD 3-1984, f. & ef. 1-20-84; AD 6-1985, f. & ef. 7-17-85; DOA 10-2000(Temp), f. 4-13-00, cert.ef. 4-14-00 thru 10-11-00; Administrative correction 11-17-00; DOA 2-2001, f. & cert. ef. 1-5-01

603-011-0384

Definitions

For purposes of OAR 603, division 11:

(1) "Animal(s)" means domestic or captive sheep and/or goat(s).

(2) "APHIS" means the Animal and Plant Health Inspection Service of the United States Department of Agriculture (USDA).

(3) "Director" means the Director of the Oregon Department of Agriculture, or a duly authorized representative.

(4) "Department" means the Oregon Department of Agriculture.

(5) "Exposed Flock" means a flock which has received female animals from an infected or source flock or that contains or contained a suspect female animal.

(6) "Flock" means a group of two or more sheep or goats which are kept, fed, and herded together as a management unit. The term "flock" is interchangeable with the term "herd" and applies to all categories and breeds of sheep and goats.

(7) "Flock Management Plan" means a written scrapie flock management agreement which is signed by the flock owner and a Department or APHIS representative

(8) "Infected Flock" means a flock in which there has been at least one animal with laboratory confirmed diagnosis of scrapie, including "source" flocks.

(9) "Official Individual Identification" means the unique identification of individual animals with a device determined to be appropriate by the Department and the USDA. Such identification may include, but is not limited to, official identification tags, tattoos, and electronic devices.

(10) "Quarantine" means a movement restriction imposed by the Department under authority of ORS Chapters 561 and 596.

(11) "Scrapie" means a transmissible spongiform encephalopathy of sheep and goats.

(12) "Source Flock" means a flock in which a State or APHIS representative has determined that at least one animal was born that was diagnosed as scrapie positive at an age of 72 months or less or in which a scrapie-positive animal has resided throughout its life. The determination that an animal was born in a flock must be based either on the presence of official identification on the animal traceable to the flock, the presence of other identification on the animal that is listed on the bill of sale, or other evidence, such as registry records, to show that a scrapie-positive animal originated from the flock combined with the absence of records indicating that the animal was purchased and added to the flock. If DNA from the animal was collected when the animal resided in the flock of birth by an accredited vet-

erinarian and stored at an approved genotyping laboratory, or if DNA collection and storage is required for breed registration and the breed registration has appropriate safeguards in place to ensure the integrity of the banking process, the owner may request verification of the animal's identity based on DNA comparison if adequate records and identification have been maintained by the owner and the repository to show that the archived DNA is that of the animal that has been traced to the flock. A flock will no longer be a source flock after it has completed the requirements of a flock plan.

(13) "USDA" means the United States Department of Agriculture.

Stat. Auth.: ORS 561.190, 596.020, 596.392 & 596.412
 Stats. Implemented: ORS 596.392
 Hist.: AD 5-1993(Temp), f. & cert. ef. 5-26-93; AD 13-1993, f. & cert. ef. 10-6-93; DOA 25-2004, f. & cert. ef. 11-8-04; Renumbered from 603-011-0367 by DOA 17-2010, f. & cert. ef. 8-31-10

603-011-0386

Scrapie Program Standards: Adoption of References

The USDA Scrapie Control and Flock Certification Program Standards found at 9 CFR Parts 54 (Control of Scrapie) and 79 (Scrapie in Sheep and Goats) are adopted by reference as the basic standards for the scrapie control and eradication program in Oregon.

Stat. Auth.: ORS 561.190, 596.020, 596.392 & 596.412
 Stats. Implemented: ORS 596.392
 Hist.: DOA 25-2004, f. & cert. ef. 11-8-04; Renumbered from 603-011-0369 by DOA 17-2010, f. & cert. ef. 8-31-10

603-011-0388

Identification of Sheep and Goats

All sexually intact sheep and goats of any age leaving the flock of origin which are not in slaughter channels and all sheep over 18 months of age in slaughter channels must have official identification in accordance with 9 CFR Part 79 prior to leaving the farm of origin for intrastate or interstate movement for any purpose. All sexually intact sheep and goats for exhibition must bear official individual identification in accordance with 9 CFR Part 79.

Stat. Auth.: ORS 561.190, 596.020, 596.392 & 596.412
 Stats. Implemented: ORS 596.392
 Hist.: DOA 25-2004, f. & cert. ef. 11-8-04; DOA 21-2006, f. & cert. ef. 12-4-06; Renumbered from 603-011-0371 by DOA 17-2010, f. & cert. ef. 8-31-10

603-011-0392

Importation of Scrapie Infected, Exposed, Suspect, or High Risk Animals

As defined in 9 CFR Parts 54 and 79, and excepting animals determined by genetic testing to be resistant to scrapie infection, animals determined to be genetically susceptible and infected, exposed, suspect, or high risk, or genetically susceptible animals from scrapie infected, source, trace, or exposed flocks shall not be imported into Oregon.

Stat. Auth.: ORS 561.190, 596.020, 596.392 & 596.412
 Stats. Implemented: ORS 596.392
 Hist.: DOA 25-2004, f. & cert. ef. 11-8-04; Renumbered from 603-011-0373 by DOA 17-2010, f. & cert. ef. 8-31-10

603-011-0394

Reporting Scrapie Positive Tests

(1) Suspected or confirmed cases of scrapie must be reported by telephone or fax to the Department by an owner, manager, or veterinarian within one (1) working day of determination of a positive scrapie test in an animal.

(2) It is unlawful for any owner or manager of sheep or goats to attempt to conceal or fail to report the existence of suspected or confirmed scrapie in such animals under control of that person.

Stat. Auth.: ORS 561.190, 596.020, 596.392 & 596.412
 Stats. Implemented: ORS 596.392
 Hist.: DOA 25-2004, f. & cert. ef. 11-8-04; Renumbered from 603-011-0374 by DOA 17-2010, f. & cert. ef. 8-31-10

603-011-0396

Condemnation and Destruction of Scrapie Infected or Exposed Animals

(1) Individual animals or flocks of animals determined by the Department or representatives of USDA/APHIS to be infected with

or exposed to scrapie may be condemned and destroyed by order of the Director under ORS 596. Disposal of such condemned and destroyed animals shall be under direction of the Department.

(2) Owners of animals destroyed by order of the Department may be eligible for indemnification as determined under authority of ORS 596.

Stat. Auth.: ORS 561.190, 596.020, 596.392 & 596.412
 Stats. Implemented: ORS 596.392
 Hist.: DOA 25-2004, f. & cert. ef. 11-8-04; Renumbered from 603-011-0377 by DOA 17-2010, f. & cert. ef. 8-31-10

603-011-0398

Management of Exposed or Infected Flocks

These procedures shall be followed for managing flocks determined to be infected with scrapie or which have received animals from a flock determined to be infected:

(1) All animals in the flock shall be quarantined by the Department under ORS 561 or 596 subject to disease status evaluation to determine risk status of the animals involved.

(2) After a disease status evaluation determines risk levels of specific animals in an infected flock or animals received from a flock determined to be infected, a Flock Management Plan shall be written in accordance with 9 CFR Part 54 and signed by the flock owner and the Director or representative. The Department may require destruction of high risk, exposed, and infected animals under ORS 596.

(3) The quarantine shall be removed after the department approved flock management plan has been implemented and completed.

(4) Animals from an exposed or infected flock may not be exhibited at public gatherings in Oregon until completion of the flock management plan.

(5) Animals from an exposed or infected flock may not be sold for breeding purposes in Oregon until the flock owner has completed a flock management plan consistent with 9 CFR Part 54.

Stat. Auth.: ORS 561.190, 596.020, 596.392 & 596.412
 Stats. Implemented: ORS 596.392
 Hist.: DOA 25-2004, f. & cert. ef. 11-8-04; Renumbered from 603-011-0378 by DOA 17-2010, f. & cert. ef. 8-31-10

603-011-0402

Cleaning and Disinfection

The Department may require any premises, facility or equipment used in housing, handling, feeding, or transporting any animals infected with or exposed to scrapie to be cleaned and disinfected under supervision of Department appointed personnel. The owner of the premises, facilities or equipment shall be responsible for the costs of cleaning and disinfection.

Stat. Auth.: ORS 561.190, 596.020, 596.392 & 596.412
 Stats. Implemented: ORS 596.392
 Hist.: DOA 25-2004, f. & cert. ef. 11-8-04; Renumbered from 603-011-0379 by DOA 17-2010, f. & cert. ef. 8-31-10

Importation and Sale of Turtles

603-011-0420

Turtles

(1) No turtles shall be imported into the State of Oregon with carapace lengths of less than four inches except:

- (a) Any governmental agency;
- (b) Any privately financed research group;
- (c) Zoos and wildlife exhibits.

(2) The Department may take samples of turtles, tankwater or other appropriate samples from turtles sold, distributed or given away and cause laboratory examinations to be made. In the event turtles, so sampled, are found contaminated with Salmonella the Department may order the immediate humane destruction of any or all of the lot of turtles from which the samples were obtained.

Stat. Auth.: ORS 561 & 596
 Stats. Implemented: ORS 596.341
 Hist.: AD 3-1984, f. & ef. 1-20-84; AD 6-1985, f. & ef. 7-17-85

Brucellosis Control

603-011-0500

Definitions

As used in OAR 603-011-0500 to 603-011-0570:

(1) "State Classification" has the meaning set forth in the Uniform Methods and Rules (UM&Rs) determining the standards to be attained by each state for classification.

(2) "Beef Cattle" means all bovine animals which are not dairy cattle.

(3) "Dairy Cattle" means animals showing the predominant characteristics of the Ayrshire, Brown Swiss, Guernsey, Holstein, Jersey, Milking Shorthorn and crosses of such breeds; and all other cattle producing milk for human consumption.

(4) "Dairy Herd" is a herd consisting mainly of dairy cattle.

(5) "Beef Herd" means a herd consisting mainly of beef cattle.

(6) "Brucellosis-Free Herd" has the meaning set forth in the Uniform Methods and Rules (UM&Rs).

(7) "Brucellosis-Infected or Reactor Herd" has the meaning set forth in the Uniform Methods and Rules (UM&Rs).

(8) "Brucellosis Reactor" has the meaning set forth in the Uniform Methods and Rules (UM&Rs).

(9) "Brucellosis Suspect" has the meaning set forth in the Uniform Methods and Rules (UM&Rs).

(10) "Cattle of Unknown Status" means cattle, the brucellosis status of which cannot be readily or positively determined.

(11) "Eligible Cattle" shall include all cattle or bison over six months of age, except steers and spayed heifers, official calfhood vaccinates of the beef breeds or bison under 24 months of age (as evidenced by the presence of the first pair of permanent incisor teeth) which are not parturient (springers) or post-parturient.

(12) "Official Blood Test" means a test for brucellosis:

- (a) Completed in the state animal health laboratory; or
- (b) Completed in a laboratory approved by the Department.

(13) "Official Veterinarian" means a veterinarian employed by the Department, a veterinarian employed by the U.S. Department of Agriculture or a deputy state veterinarian.

(14) "Uniform Methods and Rules" or "UM&Rs" means the standards and procedures promulgated by the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture (and approved by the U.S. Animal Health Association) as in existence and amended as of the date of this order.

(15) "Current Classification" as used in OAR 603-011-0500 to 603-011-0570 means in existence and valid as of date of action to be taken.

Stat. Auth.: ORS 561 & 596
 Stats. Implemented: ORS 596.040 & 596.392
 Hist.: AD 858(30-67), f. 12-8-67, ef. 12-15-67; AD 932(2-71), f. 3-19-71, ef. 4-15-71; AD 1000(14-73), f. 11-20-73, ef. 12-11-73; AD 1-1981, f. & ef. 1-9-81; AD 3-1984, f. & ef. 1-20-84; AD 4-1991(Temp), f. & cert. ef. 4-17-91

603-011-0505

Maintaining Certification for Brucellosis-Free Area

State classification is maintained by compliance with the standards described in the UM&Rs as a minimum requirement. These standards relate to surveillance, herd infection rate and MCI reactor prevalence rate.

Stat. Auth.: ORS 561 & 596
 Stats. Implemented: ORS 596.040 & 596.392
 Hist.: AD 858(30-67), f. 12-8-67, ef. 12-15-67; AD 1000(14-73), f. 11-20-73, ef. 12-11-73; AD 3-1984, f. & ef. 1-20-84

603-011-0510

Special Provisions Relating to Brucellosis

In the event of an unusual or substantial increase in the occurrence of brucellosis infection the Department may in addition to the provisions of OAR 603-011-0505 to 603-011-0510 require the implementation of additional testing or other procedures.

Stat. Auth.: ORS 561 & 596
 Stats. Implemented: ORS 596.040
 Hist.: AD 858(30-67), f. 12-8-67, ef. 12-15-67; AD 1000(14-73), f. 11-20-73, ef. 12-11-73; AD 3-1984, f. & ef. 1-20-84

603-011-0515

Procedure for Brucellosis Testing

(1) The procedures for brucellosis testing shall be those set forth in the UM&Rs.

(2) No person shall remove an animal from a quarantined dairy or beef herd without first obtaining written approval from the Department.

(3) All unvaccinated female cattle over six months of age, and all vaccinated female cattle over 20 months of age, entering a stationary or mobile custom slaughtering establishment, shall have blood samples drawn by the establishment operator and forwarded to the Department for brucellosis testing.

Stat. Auth.:
 Stats. Implemented: ORS 596.040 & 596.394
 Hist.: AD 858(30-67), f. 12-8-67, ef. 12-15-67; AD 932(2-71), f. 3-19-71, ef. 4-15-71; AD 1000(14-73), f. 11-20-73, ef. 12-11-73; AD 1-1981, f. & ef. 1-9-81; AD 2-1981, f. & ef. 1-12-81

603-011-0525

Brucellosis Vaccination Procedure

(1) As used in this rule “UM&Rs” means the most current version of Brucellosis Eradication: Uniform Methods and Rules produced by the United States Department of Agriculture. Brucellosis vaccination procedures, identification of vaccinated animals, and dosage for official calfhood vaccination and adult vaccination shall be those set forth in the UM&Rs.

(2) Brucellosis vaccination shall be performed by an official veterinarian.

(3) Veterinarians performing brucellosis vaccination must complete a Brucellosis Vaccination Record furnished by the Department, the original of which shall be mailed to the Department within 15 days of the date of vaccination, the second copy of which shall be given to the owner, and the third copy of which shall be retained by the veterinarian.

(4) Official Calfhood Vaccinates are female cattle and bison vaccinated against brucellosis when more than four months of age and less than 12 months of age (120 days to 365 days) with an official dose of approved brucellosis vaccine as set forth in the UM&Rs.

(5) “Official Oregon Mature Vaccinates” shall be vaccinated for brucellosis when aged more than 12 months.

(6) **Mature Vaccination Protocol**

(a) A blood sample shall be drawn at time of vaccination and sent for brucellosis testing at an official laboratory.

(b) Mature vaccination dosage shall be 1cc (one cubic centimeter) of normally reconstituted RB51 brucellosis vaccine.

(c) An official brucellosis vaccination steel identification tag shall be applied to the right ear of the vaccinated animal.

(d) An official brucellosis tattoo shall be applied to the right ear of the vaccinated animal. The tattoo shall be the letter “M” followed by the official USDA vaccination shield followed by the last digit of the year of vaccination.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561 & 596
 Stats. Implemented: ORS 596.040 & 596.460
 Hist.: AD 858(30-67), f. 12-8-67, ef. 12-15-67; AD 866(2-68), f. & ef. 1-22-68; AD 879(9-68), f. & ef. 5-24-68; AD 1000(14-73), f. 11-20-73, ef. 12-11-73; AD 1-1981, f. & ef. 1-9-81; AD 3-1981, f. & ef. 3-26-81; AD 3-1984, f. & ef. 1-20-84; AD 11-1984, f. & ef. 8-28-84; AD 12-1987, f. & ef. 11-19-87; DOA 7-2000, f. & cert. ef. 3-17-00; DOA 14-2001, f. & cert. ef. 7-9-01; DOA 18-2010, f. & cert. ef. 8-31-10

603-011-0530

Brucellosis Testing Procedure for Goats

(1) Milk goat herds may be tested for brucellosis by an official veterinarian at the request of the owner. Blood tests with the Buffered Brucella Antigen (Card) test will be conducted by the Animal Health laboratory. Licensed goat dairies are required to blood test their herds at intervals when deemed epidemiologically necessary by the Department. Retesting of infected milk goat herds may be at Department expense in the same manner as infected dairy cattle herds.

(2) Brucellosis reactor goats shall be immediately slaughtered on the premises and may be:

- (a) Buried on the premises;
- (b) Disposed of by licensed rendering plant;

(c) Slaughtered and used for human consumption.

(3) The premises where brucellosis reactor goats are found shall be cleaned and disinfected as provided in these regulations for dairy herds.

(4) Proof that a reactor goat has been slaughtered, disposed of as provided in section (2) of this rule, and the premises cleaned and disinfected, shall be furnished the Department in writing by:

- (a) The veterinarian performing the test revealing the reactor;
- or
- (b) By means of a notarized affidavit from the owner.

Stat. Auth.: ORS 561 & 596
 Stats. Implemented: ORS 596.040 & 596.392
 Hist.: AD 858(30-67), f. 12-8-67, ef. 12-15-67; AD 1000(14-73), f. 11-20-73, ef. 12-11-73; AD 3-1984, f. & ef. 1-20-84

603-011-0535

Tuberculosis Testing Procedure

(1) All dairy cattle over two years of age shall be tested for tuberculosis by an official veterinarian once every six years.

(2) Herds tested for tuberculosis in which animals are found showing a classification of reactor or suspect shall be handled in accordance with the applicable section of USDA/APHIS VS publication **Bovine Tuberculosis Eradication, Uniform Methods and Rules** current as of the date of disclosure of the reactors or suspects to the tuberculosis test.

(3) An area may be designated by the Department by regulation as a test area. All cattle over two years of age in all herds must be tested by an official veterinarian in such a designated area and within the time limits set by the Department.

(4) If a tuberculosis infected bovine animal is found post mortem inspection at slaughter, the source herd will be identified and tested by the assistant state veterinarians or USDA Veterinary medical officers in accordance with the procedures of the applicable sections of USDA/APHIS VS publication **Bovine Tuberculosis Eradication, Uniform Methods and Rules** current.

(5) Upon reading the test for tuberculosis on any livestock, the veterinarian shall:

- (a) Notify the owner of the test results of the herd;
- (b) Brand and tag with a reactor eartag any reactors to the test;
- (c) Quarantine the herd if the test reveals reactors, or individual animals if suspect.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561 & 596
 Stats. Implemented: ORS 596.040 & 596.392
 Hist.: AD 858(30-67), f. 12-8-67, ef. 12-15-67; AD 1000(14-73), f. 11-20-73, ef. 12-11-73; AD 3-1984, f. & ef. 1-20-84

603-011-0540

Paratuberculosis (Johne’s Disease) Testing Procedure

(1) The Department may test and retest bovine animals for paratuberculosis and take such other action as it deems necessary for the detection, eradication, and control of the disease.

(2) When any bovine animal is found to be infected with paratuberculosis, the Department may require it to be branded and tagged in the same manner as animals reacting to the tuberculosis test.

(3) Any bovine animal found to be infected with paratuberculosis may be required to be slaughtered, and its owner may be indemnified in accordance with the provisions of ORS Chapter 596 and regulations promulgated thereunder, relating to the slaughter and indemnification of animals found to be infected with paratuberculosis at the discretion of the Department.

Stat. Auth.:
 Stats. Implemented: ORS 596.392
 Hist.: AD 858(30-67), f. 12-8-67, ef. 12-15-67; AD 1000(14-73), f. 11-20-73, ef. 12-11-73

603-011-0545

Procedure for Identification of Animals Tested for Brucellosis, Tuberculosis and Paratuberculosis

(1) Animals tested for brucellosis or tuberculosis shall be identified by placing in the right ear an Oregon Identification Tag at the time of testing except that a vaccination tag, registration tattoo, breeder’s tag, or previously placed identification tag may be used in lieu of placing a new tag in the ear.

(2) In the case of animals being tested for brucellosis, the number on each identification tag must be entered on the test chart together with the number placed on the tube holding the blood sample from each animal in such a manner that positive identification is assured.

(3) Within 15 days after testing any cattle for brucellosis or tuberculosis the veterinarian conducting or supervising the test, or the Department, shall deliver to the herd owner a copy of the test chart showing the test results.

Stat. Auth.: ORS 561 & 596

Stats. Implemented: ORS 596.040 & 596.460

Hist.: AD 858(30-67), f. 12-8-67, ef. 12-15-67; AD 3-1984, f. & ef. 1-20-84

603-011-0550

Procedure for Handling Bovine and Bison Reactor or Suspect Animals

(1) If a reactor animal is confirmed by any official brucellosis test, the reactor animal must be identified, branded, tagged, and slaughtered as provided by law or regulations promulgated thereunder. No owner, of such reactor animal, who is eligible and who desires to receive indemnity shall receive such indemnity unless the reactor is identified, branded, tagged, appraised, and slaughtered. All brucellosis reactors shall be branded with a "B" on the left jaw. The brand must be at least two inches in height, and shall be a hot iron brand. In addition to the brand, the reactor shall be tagged in the left ear with a reactor tag.

(2) Except as provided in this section, a reactor animal to the brucellosis test must be sold by the owner for immediate slaughter to a slaughter establishment, having federal meat inspection, either direct or through a state-federal approved licensed auction market, having federal meat inspection within 15 days from the date of the written notice of such infection to the herd owner, or killed and buried, or sent to a rendering plant.

(3) If the owner of the reactor animals claims indemnity for the slaughter of such animals, as provided by law, the reactor shall be slaughtered at a slaughter establishment having federal meat inspection within 15 days of the date of appraisal.

(4) With the written approval of the Department and USDA, a reactor may be retained by the owner for an additional 15 days provided the animal is slaughtered in not more than 30 days from the date the owner received notice the animal was infected, or the date the reactor animal was appraised, as the case may be. No reactor animal may be retained unless it can be effectively isolated from all non-infected animals and the reason for retention is deemed justifiable by the Department and federal officials.

(5) It shall be unlawful for any person or owner to slaughter or dispose of any reactor animal in any way except to sell such animal direct to slaughter as authorized by law or regulations promulgated thereunder, or unless disposal of such animal has otherwise been approved by the Department. In the event brucellosis reactors are killed on the ranch for the owner's consumption, proof of slaughter must be provided to the Department.

(6) Reactors to the brucellosis test shall not be retested without specific approval of the Department.

(7) Suspects to the brucellosis blood test shall be quarantined and shall be retested between 30 to 60 days after the last test. If retest is negative, the quarantine on such suspect shall be released. If after at least two retests, the titer to brucellosis test continues, the Department may determine disposition of this animal.

(8) Animals identified as suspects, as a result of a blood test at an auction market, will be handled in accordance with Uniform Methods and Rules, current.

(9) At the discretion of the Department, it may pay indemnity on vaccinated animals showing a suspicious reaction to the official blood test for brucellosis, provided such animals are from a brucellosis-infected herd and their removal will facilitate eradication of disease from the herd.

Stat. Auth.: ORS 561 & 596

Stats. Implemented: ORS 596.040 & 596.620

Hist.: AD 858(30-67), f. 12-8-67, ef. 12-15-67; AD 1000(14-73), f. 11-20-73, ef. 12-11-73; AD 1-1981, f. & ef. 1-9-81; AD 3-1984, f. & ef. 1-20-84; AD 4-1991(Temp), f. & cert. ef. 4-17-91

603-011-0551

Procedure for Brucellosis Testing of Swine

Brucellosis testing and retesting of swine, validation of herds or areas and the proper handling of swine brucellosis reactors shall be conducted as provided in USDA, APHIS 91-1, "Recommended Uniform Methods and Rules, Brucellosis Eradication."

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561.190 & 596

Stats. Implemented: ORS 596.040 & 596.392

Hist.: AD 1000(14-73), f. 11-20-73, ef. 12-11-73

603-011-0555

Procedure for Disinfecting Premises Following Removal of Reactor Animals

(1) In barns or other buildings in which infected animals have been allowed access or housed, the owner shall:

(a) Sweep down the walls;

(b) Remove all litter and debris;

(c) Scrub and clean the mangers, feed racks, floors, and walls.

Spray the entire inside of the building or barn with a disinfectant approved by the Department. Dilution directions relating to the disinfectant shall be carefully observed and followed.

(2) In such other buildings, barns, or places on the premises, the owner, after thoroughly and completely draining all water troughs shall clean, scrub, and disinfect the same. Thereafter the troughs shall be well rinsed and shall not be used for livestock purposes for several hours.

Stat. Auth.: ORS 561.190 & 596

Stats. Implemented: ORS 596.392

Hist.: AD 858(30-67), f. 12-8-67, ef. 12-15-67; AD 1000(14-73), f. 11-20-73, ef. 12-11-73

603-011-0560

Quarantined Herds: Brucellosis

(1) Any herd in which reactors are discovered shall be quarantined at the time the results of the test are known. Unless otherwise specified, a dairy herd shall be quarantined to the premises on which the herd was located at the time of the test, and a beef herd shall be quarantined to the area in which the herd was located at the time of the test. The quarantine shall be issued by an official veterinarian, or other person authorized by the Department, at the time the test results are delivered to the owner or owners of the reactor cattle, or their representative. The Department in its discretion may issue and serve such quarantine by registered or certified mail, attached to the test chart.

(2) The reactor animals shall be branded and tagged by the official veterinarian or other persons authorized by the Department.

(3) No animal from a herd quarantined for brucellosis may be removed from such quarantined herd without the prior written approval of the Department.

(4) In determining if written approval of a request for removal of an animal from a quarantined herd should be given, the Department shall consider:

(a) Whether the animal is to be sold directly to a slaughtering establishment, in which case the slaughtering establishment shall slaughter such animal within eight days from the date of purchase; or

(b) Whether the animal is to be sold at a livestock auction market only for the purpose of immediate slaughter, in which case the requester must agree that the status of the animal will be made known to all persons before sale, and that it will be consigned to the slaughtering establishment on a Form 1-27 in accordance with the applicable section of the UM&Rs, current.

Stat. Auth.: ORS 561 & 596

Stats. Implemented: ORS 596.040 & 596.392

Hist.: AD 858(30-67), f. 12-8-67, ef. 12-15-67; AD 1000(14-73), f. 11-20-73, ef. 12-11-73; AD 1-1981, f. & ef. 1-9-81; AD 3-1984, f. & ef. 1-20-84

603-011-0565

Procedure for Handling and Processing Claims for Indemnity to Be Paid on Reactor Animals

Claims for indemnity for brucellosis or tuberculosis must be completed by the official veterinarian or the person designated by the Department doing the appraising. The claim must be signed by the

claimant or his authorized representative and must be forwarded to the Department at the earliest possible date.

Stat. Auth.: ORS 561 & 596
 Stats. Implemented: ORS 596.625
 Hist.: AD 858(30-67), f. 12-8-67, ef. 12-15-67; AD 1000(14-73), f. 11-20-73, ef. 12-11-73; AD 3-1984, f. & ef. 1-20-84

603-011-0570

Miscellaneous Provisions

(1) Restraining of bovine animals:

(a) A person owning or having custody of a bovine animal required to be tested, vaccinated, branded, marked, or appraised by the Department, shall confine and restrain such animal for such testing, vaccinating, branding, marking, or appraising upon reasonable notice from the Department;

(b) It shall be the owner's responsibility to restrain each animal by placing it in a stanchion, holding chute, or by otherwise immobilizing it to permit safe access to the animal by the veterinarian or authorized representatives of the Department for performance of such duties as may be required by the Department of its representative.

(2) Utilization of blood samples. The Department may utilize any blood samples sent to the state animal health laboratory by an official veterinarian, or other authorized personnel in slaughter houses, for survey purposes, and/or diagnosis of and eradication of any livestock diseases.

(3) In connection with notices, orders or similar documents relating to livestock disease procedures, problems or requirements, which the Department under ORS Chapter 596 is required to mail or give to persons owning or allegedly owning livestock at the farm, ranch or place where the livestock will be, were, or are located, shall constitute a valid or legal notice or order as required under law or regulation. The Department in addition thereto, or in lieu of the above procedures relating to handling of notices or orders, may mail or give such notice, order or document to the person on a ranch, farm or other place, who is in control or possession of livestock. Such notice or order shall constitute a valid and legal notice to the owner or alleged owner of the livestock.

(4) The State Brucellosis Classification, assigned to the State of Oregon by the U.S. Department of Agriculture, is dependent upon the effective control and eradication of brucellosis in the state's cattle, swine and goats. In OAR 603-011-0500 to 603-011-0570, the Department has adopted the Uniform Methods and Rules as the minimum standards for maintaining the effective control and eradication of brucellosis in this state, and the Department from time to time will adopt any subsequent changes made to the federal rules. However, should any of the provisions of OAR 603-011-0500 to 603-011-0570 be more restrictive or exacting than the Uniform Methods and Rules, such provisions shall take precedence over the federal rules.

Stat. Auth.: ORS 561 & 596
 Stats. Implemented: ORS 596.040 & 596.392
 Hist.: AD 858(30-67), f. 12-8-67, ef. 12-15-67; AD 1000(14-73), f. 11-20-73, ef. 12-11-73; AD 16-1982, f. & ef. 11-1-82

Eradication and Control of Equine Infectious Anemia

603-011-0601

Definitions

(1) "Official test" means a test officially recognized by the department and performed by a state/federal approved laboratory to determine qualitatively the presence or absence of equine infectious anemia.

(2) "Quarantine" means the summary confinement of animals, as authorized by ORS 596.392(4), to premises or areas designated or prescribed by the Department until released therefrom by order of the Department.

Stat. Auth.: ORS 561.190 & 596.341
 Stats. Implemented: ORS 596.020
 Hist.: AD 6-1985, f. & ef. 7-17-85; AD 10-1994, f. & cert. ef. 8-12-94; AD 10-1994, f. & cert. ef. 8-12-94

603-011-0606

Procedure for Official Test and Quarantine

When, as a result of official tests, it is determined that any equidae is infected with equine infectious anemia, or that any equidae is a carrier of such disease, the following procedures shall immediately be carried out:

(1) The equidae determined to be infected, or suspected to be infected, shall be:

(a) Completely segregated from all other equidae in a secure stall or enclosure at a sufficient distance so as to prevent infection of other equidae by biting insects and shall be deemed to be quarantined and subject to the provisions of ORS 596.331; or in the alternative;

(b) Put to death by humane methods and the carcass disposed of as the Department directs, or

(c) Delivered for slaughter, within 8 days, to an approved slaughtering establishment.

(2) At the time and in the event the provisions of section (1) of this rule are utilized such equidae shall be branded on either the left side of the neck or the left shoulder with the number "92" followed by the letter "A" in figures not less than two inches in height.

(3) All other equidae exposed to any equidae which has been determined to be infected or suspected to be infected, shall be subjected to an official test.

(4) If at the time a quarantine under this section is affected the equidae is located on premises other than those of the owner, the Department may authorize removal of such equidae to the owner's premises for further quarantine in accordance with the provisions of subsection (1)(a) of this rule.

(5) Any offspring produced by a mare after determination that she is positive to an official test for EIA will be considered as positive and subject to the provisions of sections (1) and (2) of this rule.

(6) No genetic material originating from an equidae of either sex determined by official test to be positive may be used for reproductive purposes.

Stat. Auth.: ORS 561.190 & 596.341
 Stats. Implemented: ORS 596.020 & 596.392
 Hist.: AD 6-1985, f. & ef. 7-17-85; AD 10-1994, f. & cert. ef. 8-12-94

Bovine Trichomoniasis Test Positive Response Program

603-011-0610

Definitions

(1) "Bovine trichomoniasis" is a sexually transmitted disease of cattle caused by the parasitic protozoan organism *Tritrichomonas foetus*.

(2) "The Department" is the Oregon Department of Agriculture (ODA).

(3) "Virgin bull" is a sexually intact male bovine less than 18 months of age that is certified by the owner/manager as having had no potential breeding contact with females.

(4) "Exposed herds" are cattle herds which have had, within twelve months, direct commingling or cross fence contact with positive herd during a time of potential breeding activity.

(5) "Permanent Identification" is a USDA steel alphanumeric ear tag provided as official identification to accredited veterinarians, or breed registry tattoos, or other means of identification established by the Department after review by the Trichomoniasis Advisory Panel.

(6) "Herd" is a group of cattle managed as a separate unit and not mixed with other cattle under the same ownership.

(7) "Test positive herd" is a defined herd of cattle in which a diagnosis of trichomoniasis has been made by a certified, licensed veterinarian.

(8) "Trich-year" is the period from September 1st to August 31st of any given year.

(9) "qPCR Assay" is a laboratory test based on the amplification and quantification of target DNA molecules. The quantitative polymerase chain reaction is also called real-time polymerase chain reaction (qPCR).

Stat. Auth.: ORS 591 & 596
 Stats. Implemented: ORS 596.392

Hist.: DOA 9-2000, f. & cert. ef. 4-4-00; DOA 11-2005, f. & cert. ef. 2-17-05; DOA 19-2007, f. & cert. ef. 11-28-07; DOA 15-2008, f. 6-12-08, cert. ef. 9-1-08; DOA 13-2009(Temp), f. 8-28-09 cert. ef. 9-1-09 thru 2-28-10; DOA 9-2010, f. & cert. ef. 2-26-10; DOA 5-2015, f. & cert. ef. 2-23-15

603-011-0615

Importation Requirements

In addition to an import permit and other disease control requirements, the following requirements must be met regarding bovine trichomoniasis.

(1) Any non-virgin bull of any age with known breeding contact with female cattle or each bull 18 months of age and over shall have all of the following:

(a) Individual negative qPCR trichomoniasis test results within 60 days preceding entry into Oregon performed by a certified veterinarian at an official laboratory and

(b) A Certificate of Veterinary Inspection that states:

(A) The bulls represented on this Certificate of Veterinary Inspection have been tested for and found to be negative for trichomoniasis pursuant to subsection (1)(a) above and have been confined and have not had sexual contact with females since their last negative test; and

(B) Trichomoniasis has not been diagnosed in the herd of origin within the past 24 months and

(c) Permanent identification

(2) Any bull originating from a herd in which trichomoniasis has been diagnosed within the past 24 months shall have all of the following:

(a) Three (3) consecutive negative trichomoniasis culture tests conducted at least seven (7) days apart, but not more than 28 days apart, or one (1) negative qPCR Assay with the last test conducted within 60 days preceding entry; and

(b) A Certificate of Veterinary Inspection that states that the requirements, set forth in subsection (2)(a) above, have been met; and

(c) Permanent identification.

(3) All breeding bulls, 18 months of age and over, entering Oregon as part of a herd that has an authorized Out-of-State Grazing permit pursuant to section 603-011-0264, do not require a Certificate of Veterinary Inspection but are required to have one negative qPCR trichomoniasis test within the 12 months preceding entry. However, all bulls from a herd in which trichomoniasis has been diagnosed within the past 24 months must comply with (2)(a) above to qualify the herd for an Out-of-State Grazing permit. All Out-of-State Grazing permits shall include an attached copy of the test record, that includes the permanent identification number of the bull(s) tested and the name and telephone number of the testing certified veterinarian.

(4) Bulls may be exempt from the trichomoniasis test requirements for entry into Oregon under any one or all of the following conditions:

(a) Used solely for exhibition purposes and remain under confinement at the location of the exhibition without having access to or allowed to commingle with sexually mature female cattle; or

(b) Used solely for artificial insemination using semen extension and preservation protocols that meet Certified Semen Services standards; or

(c) Consigned directly to slaughter without unloading before the arrival at the slaughter plant.

Stat. Auth.: ORS 596

Stats. Implemented:

Hist.: DOA 15-2008, f. 6-12-08, cert. ef. 9-1-08; DOA 13-2009(Temp), f. 8-28-09 cert. ef. 9-1-09 thru 2-28-10; DOA 9-2010, f. & cert. ef. 2-26-10; DOA 5-2015, f. & cert. ef. 2-23-15

603-011-0620

Procedures

(1) The Department shall establish a Bovine Trichomoniasis Advisory Panel, whose membership shall be:

(a) Five voting members who are representatives of the cattle industry, recommended by the Animal Health Committee of the Oregon Cattlemen’s Association; and

(b) Four non-voting advisory members who are; the OSU Extension Veterinarian, two practicing veterinarians appointed by the

Advisory Panel, and one representative of the office of the ODA State Veterinarian.

(2) Duties of the Advisory Board shall be to:

(a) Advise the Department on management of issues related to the program; and

(b) Advise the Department on preferred policies and processes for resolution of disputes related to the program.

(3) Certified veterinarians, as described in 603-011-0630, must report a positive test result of *Tritrichomonas foetus* to the Department on a form supplied by the Department within 24 hours of determining the result.

(4) In response to a positive bovine trichomoniasis test the Department shall:

(a) Conduct an investigation to identify herds that were potentially exposed to the infected herd.

(b) Require that any further bovine trichomoniasis testing be performed by a certified veterinarian, and accept the results of a retest by a certified veterinarian, if the original test was performed by a non-certified veterinarian; and

(c) Require permanent identification and testing of all bulls, excepting virgin bulls, in the test-positive herd and exposed herds.

(5) All bulls in herds required to be tested must be withdrawn from breeding contact and tested between 14 and 90 days after withdrawal.

(6) All bulls in test-positive herds must each have three consecutive negative culture test results with each test event separated by at least seven days and no more than 28 days, or one (1) negative qPCR Assay result completed at least seven (7) days after initial diagnosis is made. Bulls that have a positive test result shall be considered infected and be handled as described in 603-011-0620(8).

(a) Test-positive herds with valid Out-of-State Permit will have all bulls restricted in place until negative test results are complete as described in (6) above. Bulls that have a positive test result shall be considered infected and be handled as described in 603-011-0620(8); or

(b) Return all herdmate bulls from Out-of-State Permit affected herds to their state of origin to complete negative trichomoniasis testing as described in (6) above. The Department shall release the herdmate bulls from restriction when the State Veterinarian from the state of origin notifies the Department that the required testing is complete. Test-positive bulls shall not return.

(c) Out-of-State Permit herds exposed to trichomoniasis will have all bulls restricted in place until one negative trichomoniasis qPCR test is complete. Any cattle determined to be infected will be restricted and the herd status will be changed to a test-positive herd and subject to the requirements of subsection (6)(a) or (b); or

(d) Return all herdmate bulls to their state of origin to complete one negative qPCR trichomoniasis test. The Department shall release the herdmate bulls from restriction when the State Veterinarian from the state of origin notifies the Department that the required testing is complete. Any bull that has a positive test result shall cause the herd to be classified as test-positive and treated as in (6)(a) or (b).

(7) All bulls from a test-positive herd must be re-tested every trich-year until every remaining bull tests negative during the same test period.

(a) All bulls from a test-positive herd must be re-tested before February 1 of the following year.

(b) All bulls removed or culled from a test-positive herd are to be tested before removal or culling.

(8) Test-positive bulls shall be held under quarantine separate and apart from other cattle or shall comply with one of the following:

(a) Culture test-positive bulls may be retested and, if found negative on qPCR Assay completed at least seven (7) days after initial diagnosis is made may be considered test-negative and released from quarantine; or

(b) Test-positive bulls moving into feeding channels shall be castrated before moving from the ranch; or

(c) Test-positive bulls moving out of the infected herd into commercial slaughter-marketing channels, including collection points, shall be identified before moving with an “S” brand applied to both

sides of the tailhead and shall move only to slaughter under authority of a VS Form 1-27 Permit for Movement of Restricted Animals; or

(d) Test-positive bulls moving out of the infected herd directly to slaughter shall do so with:

(A) A VS Form 1-27 Permit for Movement of Restricted Animals; and

(B) Prior notification of the State Veterinarian; and

(C) Record of their permanent identification on the VS Form 1-27 under which authority they move.

(9) Failure to comply with the above provisions for response to a positive bovine trichomoniasis test shall result in quarantine of all cattle in the non-compliant herd under provisions of ORS 596.392(4).

Stat. Auth.: ORS 591 & 596

Stats. Implemented: ORS 596.392

Hist.: DOA 9-2000, f. & cert. ef. 4-4-00; DOA 11-2005, f. & cert. ef. 2-17-05;

DOA 19-2007, f. & cert. ef. 11-28-07; DOA 15-2008, f. 6-12-08, cert. ef. 9-1-08;

DOA 13-2009(Temp), f. 8-28-09 cert. ef. 9-1-09 thru 2-28-10; DOA 9-2010, f.

& cert. ef. 2-26-10; DOA 5-2015, f. & cert. ef. 2-23-15

603-011-0630

Certification for Testing and Diagnosis

(1) All persons engaged in testing and diagnosis for bovine trichomoniasis shall be certified by the Department after having completed an appropriate training program.

(2) Applicants for certification must meet the following criteria:

(a) All applicants for certification in specimen collection must hold a valid license to practice veterinary medicine in Oregon; and

(b) All applicants for certification in handling, culture, and diagnostic techniques must pass a qualification test which includes laboratory techniques related to trichomoniasis diagnostics and identification of certifications shall be subject to periodic review and check testing at intervals of no more than five years. The Department shall determine time periods between check tests and recertification depending on availability of new diagnostic techniques.

(3) All persons engaged in testing and diagnosis for bovine trichomoniasis shall use only official laboratories approved by the Department for testing trichomoniasis samples. Quantitative polymerase chain reaction (qPCR) is the test method for official tests. Culture testing and pooling of laboratory samples is allowed on a case-by-case basis by permission of the State Veterinarian.

Stat. Auth.: ORS 561 & 596

Stats. Implemented: ORS 596.392

Hist.: DOA 9-2000, f. & cert. ef. 4-4-00; DOA 11-2005, f. & cert. ef. 2-17-05;

DOA 5-2015, f. & cert. ef. 2-23-15

Exotic Animals

603-011-0700

Definitions

As used in ORS 609.335(3) and in OAR 603-011-0705 to 603-011-0725, unless the context requires otherwise:

(1) "Exotic animal" has the meaning given by ORS 609.305.

(2) "Facility" means the cage(s), compound(s), room(s), building(s), or other premises specified in a Permit in which the exotic animal(s) is/are to be confined or maintained.

(3) "Keep" does not include the temporary holding of an exotic animal at an animal shelter operated by a city or county, or the immediate transportation of an abandoned, neglected or abused exotic animal to such a Facility.

(4) "Permit" means a document issued by the Department which authorizes (subject to other laws) the Permittee to keep one or more specified exotic animals in captivity at a Facility for a stated period of time.

(5) "Permittee" means the person authorized by a Permit to keep an identified species of exotic animal.

(6) "Species" means the class of an exotic feline, non-human primate, exotic canine, or any exotic bear or any crocodylian.

(7) "Hybrid" means any animal that is produced by crossing at least one exotic animal with any other species of subspecies.

(8) "Domestic animal" means domestic cat (*Felis catus*), domestic dog (*Canis familiaris*) and does not include livestock as defined in ORS 607.125

Stat. Auth.: ORS 561 & 609

Stats. Implemented: ORS 609.305 & 609.335

Hist.: AD 9-1986, f. & cert. ef. 5-27-86; AD 18-1997(Temp), f. & cert. ef. 12-8-97 thru

6-5-98; DOA 8-1998, f. & cert. ef. 9-14-98; DOA 30-2000, f. & cert. ef. 11-6-00;

DOA 8-2010, f. & cert. ef. 2-10-10

603-011-0701

Hybrid Crossed Animals

For the purposes of OAR 603-011-0705–603-011-0725, any hybrid animal that is produced by crossing a domestic animal and an exotic animal shall be regulated according to the laws governing domestic animals and not subject to exotic animal permit by the Department.

Stat. Auth.: ORS 561 & 609

Stats. Implemented: ORS 609.305 & 609.335

Hist.: DOA 8-2010, f. & cert. ef. 2-10-10

603-011-0705

Permit Application, Issuance, and Renewal

(1) A person intending to keep an exotic animal in captivity shall before acquiring the animal, apply to the Department for the issuance of a Permit by submitting an application therefore to the Animal Health Division of the Department at its address of Agriculture Building, 635 Capitol Street N.E., Salem, OR 97301, accompanied by a permit fee. Holders of a valid license or registration from the U.S. Department of Agriculture under the federal Animal Welfare Act of 1970, or holders of a valid permit from the Oregon Department of Fish and Wildlife to operate a wildlife rehabilitation facility are not subject to OAR 603-011-0700 through 603-011-0725, including the requirement to obtain a Permit from the Department. Permit fees shall be:

(a) \$100 for Class 1 and 2 felines, Class 1 and 2 primates, bears and Class 1 canines;

(b) \$75 for crocodylians;

(c) \$50 for all other exotic animal classes.

(2) Before the stated date of expiration of a Permit, the holder of the Permit may apply to the Department for a renewal thereof for an additional term of up to two years from the stated expiration date, and thereafter for additional two-year renewals of the permit. Notwithstanding the term of the Permit, the Department may modify in writing the conditions and/or limitations of the Permit at any time. Renewal fees shall be:

(a) \$100 for Class 1 felines, Class 1 primates and bears.

(b) \$50 for crocodylians.

(c) \$25 for all other exotic animal classes.

(3) An application for a Permit shall be on a form prescribed by the Department, shall be signed by the Permittee, and shall include:

(a) The name, address and telephone number of the Permittee, and the owner of the animal(s) if different than the Permittee;

(b) The specific location and nature of the proposed Facility. If the real property containing the proposed Facility is leased, the application shall also include the name and written consent of the owner to the keeping of the exotic animals on the property. For Class 1 and 2 exotic felines, Class 1 and 2 non-human primates, bears, and Class 1 exotic canines the application shall include a sketch map of the premises owned or leased by the Permittee with dimensions of the real property and description of all adjacent properties;

(c) The species of exotic animals for which the Permit is sought;

(d) A certification by the Permittee that all federal, state, county and city permitting requirements have been met, including copies of each relevant permit;

(e) The name, address and telephone number of the veterinarian intended to provide medical care for the exotic animal(s);

(f) The documented experience, training and education of the Permittee relating to the care and keeping of the particular species of exotic animal(s) for which application is being made;

(g) A written plan for nutrition, health maintenance, and general welfare of the animal which has been prepared by or approved by an authoritative reference person. Such approval or plan shall include the name, title, position, qualification, address and telephone

number of the reference person. The plan will be reviewed by the Department prior to approval; and

(h) The date upon which the proposed Facility will be available for inspection by the Department, which shall be not less than 7 days prior to the time the exotic animal(s) is/are kept at the proposed Facility.

(4) The Department shall review the permit application and in determining whether to issue or renew the Permit shall consider factors relating to public safety and health, welfare and safety of the animal. Such factors include but are not limited to:

(a) Proximity of the Facility to public routes of travel, residential neighborhoods, schools, and other public gathering places;

(b) Potential for unintended or accidental public access to the Facility;

(c) Potential for vandalism that compromises the security of the Facility; and

(d) Potential for willful harassment or disturbance of the animal(s).

(e) Whether, based on the Permittee's certification and any other evidence received by the Department in connection with the proposed Facility, all federal, state, county and city laws applicable to the Facility have been met.

(5) The Department shall conduct an interview with the Permittee to determine if the Permittee is likely to be able to keep the exotic animal(s) so as to assure the health, welfare and safety of the animal(s) and the security of the proposed Facility so as to avoid undue risk to the public. In determining whether to issue or renew the Permit, the Department shall also consider whether:

(a) The Permittee has adequate knowledge, experience and training to maintain the health, welfare and safety of the animal(s), and to handle the animal(s) with safety and competence. This will include review of the written plan for nutrition and health maintenance and consideration for the needs of infant animal(s). Approval of permits for Class 1 & 2 exotic felines, Class 1 non-human primates, and bears shall require a minimum of 500 hours of hands-on experience including nutrition, feed preparation, safe handling, transportation, and general welfare and maintenance of the animal type involved or of other species of exotic felines, non-human primates, or bears. Fewer hours of hands-on-experience are required for permitting other classes or species. At least one-half of such experience must be with animals of the classification for which the permit is sought. Such experience may be documented by a log book, employment records, or other means by which experience may be authenticated; and

(b) The Facility is adequately designed, constructed, and is likely to be managed to protect the public from escape of the confined animal(s) including when the Permittee is not on the premises.

(6) Before issuing a Permit the Department may perform an inspection of the Facility to determine its design, construction and proposed operation is consistent with the applicable provisions of OAR 603-011-0700 to 603-011-0725 and ORS 609.309.

(7) Following its review of the application and any other relevant information, the Department shall either issue the Permit or deny the application and notify the applicant. If the Department issues the Permit, it may include any conditions intended to ensure the health, welfare and safety of the animal(s) covered by the Permit and, where the Department finds it necessary, conditions intended to assure the security of the Facility so as to avoid undue risk to the public. Such conditions may include limitations on the number of animals that can be kept at the Facility.

Stat. Auth.: ORS 561 & 609

Stats. Implemented: ORS 609.205 - 609.335

Hist.: AD 9-1986, f. & ef. 5-27-86; AD 18-1997(Temp), f. & cert. ef. 12-8-97 thru 6-5-98; DOA 8-1998, f. & cert. ef. 9-14-98; DOA 30-2000, f. & cert. ef. 11-6-00; DOA 30-2000, f. & cert. ef. 11-6-00; DOA 8-2010, f. & cert. ef. 2-10-10

603-011-0706

Crocodilians — Special Requirements

(1) Animal Classification:

(a) Exotic crocodilians include all individuals of the order Crocodylia including but not limited to American Alligators and Crocodile Hybrids.

(2) Inside enclosure: The indoor enclosure should be constructed in such a way as to prevent escape of the animal. Latching clips and/or locks are required on doors and windows that open. The lid to the enclosure shall be well ventilated and may be covered with wire mesh, appropriate to the size of the animal, to prevent its escape. The enclosure area shall consist of a dry area and a water area. Both areas must be easily accessible by the animal. The area of the enclosure must be large enough such that the animal can turn around without its body touching any side and can perch its entire body on dry surface. The depth of the water shall be enough to fully submerge the animal. The temperature on the dry surface in the enclosure must be maintained between 75–90 degrees F. Ambient air temperature shall be kept between 75 to 90 degrees F. The water temperature must be maintained between 75–85 degrees F at all times.

(3) Outside enclosure: Crocodilians may be kept outside if weather conditions and ambient temperatures meet minimum temperatures as described for indoor enclosures, otherwise may only be outside during exercise regiment. When transporting the animal to and from outside it is required that the animal be carried in a secure portable container that encloses the animal completely. Fencing for outside enclosures must be of sufficient strength and height to prevent escape of the animal. Bottom of the fence must also be secure enough to prevent escape of the animal. Fencing must also prevent unauthorized persons and animals from entering the enclosure.

(4) Feeding: Owners must demonstrate knowledge of crocodilian nutrition. Exotic crocodilians must be fed a balanced diet sufficient to their needs but such food items may not include live animals.

(5) No exotic crocodilian may be restrained by a harness or muzzle as primary means of confinement.

(6) Security: In order to provide for the safety of the public, exotic crocodilians shall be handled in accordance with the following:

(a) All outside enclosures for exotic crocodilians shall be kept separate from the public in a way that prevents contact with animals or persons outside the enclosure.

(b) Exotic crocodilians shall be confined within their enclosures (inside and/or outside) and only allowed outside them for medical treatment or for removal to another approved facility. When being transported, the animal must be secured in a portable container within the vehicle.

(7) Sanitation: Excreta, uneaten food and any type of algae or debris shall be removed from enclosures (including the water pond) as often as necessary to prevent contamination of the food or water, reduce disease hazards and reduce odors.

Stat. Auth.: ORS 561 & 609

Stats. Implemented: ORS 609.305 & 609.335

Hist.: DOA 8-2010, f. & cert. ef. 2-10-10

603-011-0710

Felines — Special Requirements

(1) Animal Classification:

(a) Class 1 exotic felines shall include all individuals of the genus Panthera, including lions, tigers, leopards, snow leopards, jaguars; ligers or any other hybrids of genus Panthera; and individuals of any other non-indigenous feline species not listed in Class 1 or Class 2 that weigh 100 pounds or more when fully mature;

(b) Class 2 exotic felines shall include cheetahs, clouded leopards, and individuals of any other non-indigenous felines not listed in Class 3 that weigh more than 50 pounds but less than 100 pounds when fully mature; and

(c) Class 3 exotic felines shall include wild cat, jungle cat, desert cat, sand cat, black-footed cat, Pallas's cat, caracal, serval, marbled cat, golden cat, leopard cat, rusty-spotted cat, fishing cat, flat-headed cat, iriomote cat, pampas cat, ocelot, margay, Geoffroy's cat, kodkod, mountain cat, jaguarundi, caucasus cat, and other such species of small exotic cats that weigh 50 pounds or less when fully mature.

(2) Any Facility for Class 1 and Class 2 exotic felines shall comply with one or more of the following:

(a) Outdoor Facilities — Cages: If exotic felines are maintained in cages, the cage shall include adequate-size loafing shelves, den boxes, and shelter(s) from adverse weather conditions, and shall pro-

vide sufficient space for the animals to make normal postural and social adjustments with freedom of movement. Provisions for shade shall be made so that shade is available somewhere in the cage during all daylight hours, preferably over the den box, loafing shelves, or shelter. The floor of the cage shall not be constructed of wood or uncovered wire materials. Floors of chain link or woven wire must be covered a minimum depth of four inches with dirt, pea gravel, and/or sand. Excepting concrete slab floors, a strip of 14 gauge or heavier chain link fencing extending to the interior of the cage at least two feet and to the exterior of the cage at least one foot shall be laid around the perimeter, shall be buried to a minimum depth of four inches, and shall be securely attached to the bottom retaining rail. Concrete slab floors must incorporate the chain link fencing into the concrete slab or otherwise be firmly anchored. Aluminum wire is not acceptable for use in anchoring the chain link fencing. The cage shall include a suitable drainage system for the rapid elimination of excess water. The top of the cage shall be securely covered. There shall be a double-gate safety entrance installed in each cage which will not reduce the required minimum size of the cage. A ground-level retaining rail, or equivalent barrier, shall be provided around each cage. The cage shall be securely locked except during cleaning. The structure shall be designed and constructed so as to prevent escape by the animal(s) or entrance by the public, and shall be located consistent with any applicable local setback requirements but in any case no closer than six feet from the nearest public access or the nearest property line unless an impervious wall on the property line is used as a wall of the primary enclosure.

(A) The cage for Class 1 exotic felines shall be constructed of at least 9-gauge chain link fencing or equivalent. The cage of an individual animal shall be minimally six feet in height, 400 square feet area (800 square feet area for a pair of animals), and be securely covered.

(B) The cage for Class 2 animals shall be constructed of at least 14-gauge chain link fencing or equivalent, having not more than 2 x 4-inch openings. The cage for an individual animal shall be minimally six feet in height, 200 square feet area (400 square feet for a pair of animals), and be securely covered.

(b) Outdoor Facilities — Range Areas: If exotic felines are maintained in large areas simulating natural surroundings of a park-like nature, the areas need not be roofed, but shall have perimeter fencing constructed of chain link fencing of a gauge required for the class of exotic felines to be maintained in the area, and of a height required for this class of exotic felines, which fencing shall be topped with an internal overhang of three feet in width so as to prevent the escape by the animal(s). The exterior fencing of the Facility shall be embedded to a depth of at least six inches in either concrete or other material that cannot be destroyed or removed by the exotic felines. The Facility shall include shelters from adverse weather conditions which shall include sufficient space for the animals to make normal postural and social adjustments with freedom of movement. Provisions for shade shall be made so that shade is available somewhere in the Facility during all daylight hours.

(c) Indoor Facilities: If exotic felines are maintained in a structure with a solid roof and walls, the Facility shall be designed and constructed so as to prevent the escape of the animal(s). The window openings of the Facility, other than openings directly to adjacent cages, shall be covered with wire mesh or gratings made of the same materials as the cage for the class of exotic felines to be maintained. The Facility shall be adequately ventilated, through the installation and use of windows, vents, doors or air conditioning, so as to minimize drafts, odors and moisture condensation. The Facility shall be sufficiently lighted, either through natural or artificial means, so as to permit thorough inspection and cleaning of the Facility and so as to protect the animal(s) from excessive illumination. The Facility shall be structurally sound and maintained in good repair so as to protect the animal(s) from injury, to keep the animal(s) dry and clean, to contain the animal(s), and to restrict entry of other animals. The Facility shall also be supplied with adequate electrical power, potable water, and equipment for the removal and disposal of animal excreta and debris.

(3) The primary enclosure for Class 3 exotic felines shall be no less than 10 times the area occupied by the animal when standing on four feet.

(4) No exotic feline may be restrained by a tether as primary means of confinement.

(5) Security: In order to provide for the safety of the public, exotic felines shall be handled in accordance with the following:

(a) Cages and outdoor Facilities for Class 1 and 2 exotic felines shall be surrounded by a fence or wall that is of sufficient strength and construction so as to prevent entrance by the public. The fence shall be at least six feet in height and six feet distant from the cage. Impervious walls on the outside perimeter of the property used as wall(s) of the primary enclosure do not require the additional perimeter fence. The area enclosed by the fence or wall required by this section is not part of the Facility for purposes of the confinement area requirement; and

(b) All classes of exotic felines shall be confined inside the permitted Facility and shall only be allowed outside the Facility for medical treatment or for removal to another approved Facility. When being transported the animal(s) shall be restrained inside a cage within the vehicle so as to prevent escape from, or interference with, the operator of the vehicle.

(6) Sanitation: Excreta and debris shall be removed from indoor and outdoor Facilities as often as necessary to prevent contamination of the food or water supplies, reduce disease hazards, and reduce odors.

(7) The Department may modify or waive the confinement requirements established in sections (2), (3), and (5) of this rule subject to the following:

(a) The animal is determined by the Department to be less than 180 days of age;

(b) The Department's approval to modify or waive the requirements must be in writing and must include an expiration date; and

(c) The Department may impose reasonable conditions on such approval.

Stat. Auth.: ORS 561 & 609

Stats. Implemented: ORS 609.205 - 609.335

Hist.: AD 9-1986, f. & ef. 5-27-86; AD 18-1997(Temp), f. & cert. ef. 12-8-97 thru 6-5-98; DOA 8-1998, f. & cert. ef. 9-14-98

603-011-0715

Bears — Special Requirements

Any Facility for bears shall comply with the following:

(1) Outdoor Facilities — Cages: An area of at least 400 square feet shall be provided for each animal, so as to provide sufficient space for the animal(s) to make postural and social adjustments with freedom of movement. The floor shall be four-inch reinforced concrete, sloped for free drainage, and provided with a drainage grating of adequate strength to prevent removal by a bear. The floor shall be surrounded by a curb of six-inch reinforced concrete, not less than 12 inches in height. Each pen or cage shall be at least six feet in height and be roofed to prevent escape of the bears, and areas of shade shall be provided for the animal(s).

(2) Cage construction: Securely attached to cage, there shall be at least one feed trough, not less than 12 inches in depth with a capacity of not less than three cubic feet; at least one water trough, not less than 18 inches in depth with a capacity of not less than three cubic feet; and at least one den box for each animal, emplaced not less than six inches above floor level of the cage, which provides 15 square feet of floor area and at least 30 inches of inside height, with a floor sloped to provide free drainage. If of frame and mesh construction, the cage shall consist of a support framework, top and sides of steel pipes or beams equivalent in strength to 1-1/2 inch steel pipe, securely welded, bolted or threaded together, with framework members at intervals of no more than five feet. The wire mesh covering shall be five-gauge chain link fencing or equivalent, securely bolted together and to the framework. If a bar-type construction, the cage shall consist of steel pipes or bars equivalent in strength to 3/4-inch steel pipe, spaced at intervals not to exceed six inches, supported at intervals not to exceed 36 inches with 3/8 x 2-inch steel bars drilled to receive the vertical boards at the support intervals, with all joints or points of meeting securely bolted or welded at the top and sides. The

skirt of the cage shall be embedded in a concrete curb to a depth of not less than six inches.

(3) Security: In order to provide for the safety of the public, bears shall be handled in accordance with the following:

(a) A gate to the main cage shall be installed and constructed so as to provide strength equivalent to the rest of the cage, and the hinges and fasteners shall be adequate to provide strength equivalent to the rest of the cage;

(b) The animal(s) shall be confined inside the permitted Facility and shall only be allowed outside the Facility for medical treatment or for removal to another approved Facility. The animal(s) shall be restrained inside a cage within the vehicle so as to prevent escape from, or interference with the operator of, the vehicle; and

(c) The cage shall be securely padlocked except during cleaning. An additional fence of sturdy construction, not less than six feet in height and not less than six feet removed from the cage shall be erected and maintained. Impervious walls on the outside perimeter of the property used as wall(s) of the primary enclosure do not require the additional fence. No person except the keeper of the bears shall be allowed to approach the cage beyond this fence.

(4) Sanitation: Excreta and debris shall be removed from the facilities as often as necessary to prevent contamination of the food or water supplies, reduce disease hazards, and reduce odors.

(5) The Department may modify or waive the confinement requirements established in sections (1), (2), and (3) of this rule subject to the following:

(a) The animal is determined by the Department to be less than 180 days of age;

(b) The Department's approval to modify or waive the requirements must be in writing and must include an expiration date; and

(c) The Department may impose reasonable conditions on such approval.

Stat. Auth.: ORS 561 & 609

Stats. Implemented: ORS 609.305 - 609.335

Hist.: AD 9-1986, f. & ef. 5-27-86; AD 18-1997(Temp), f. & cert. ef. 12-8-97 thru 6-5-98; DOA 8-1998, f. & cert. ef. 9-14-98; DOA 30-2000, f. & cert. ef. 11-6-00

603-011-0720

Non-Human Primates — Special Requirements

(1) Animal Classification:

(a) Class 1 non-human primates shall be all great apes and larger primates of infraorder Catarrhini, including but not limited to gorillas, chimpanzees, orangutans, baboons, and gibbons;

(b) Class 2 non-human primates shall be all old-world monkeys of infraorder Catarrhini, including but not limited to macaques of all subclassifications (pig-tailed, rhesus, Japanese, cynomolgus, crab-eating, long-tailed, java, Barbary, and any other macaques), all guenons (African Green monkey grouping), patas monkeys, and mangabeys; and

(c) Class 3 non-human primates shall include all old-world primates of the suborder Prosimii (prosimians) and all new-world monkeys of infraorder Platyrrhini, including but not limited to squirrel monkeys and all other Saimiri species, spider monkeys and all other Ateles species, capuchins and all other Cebus species, marmosets and tamarinds of all subclassifications, owl monkeys, howler monkeys, and wooley monkeys.

(2) Any Facility for Class 1 non-human primates shall comply with the following provisions for Outdoor Facilities. The cage shall include sufficient shade areas so as to protect the animal(s) from direct sunrays; provide the animal(s) with access to shelter which will allow the animal(s) to remain dry and comfortable during inclement weather; include a suitable drainage system for the rapid elimination of excess water; provide sufficient space for the animal(s) to make normal postural and social adjustments; include apparatus for normal behavioral activities, and have a minimum floor space equal to 10 times the area occupied by each animal when it is standing on four feet. Any indoor Facility for Class 1 non-human primates shall be in compliance with the caging requirements stipulated in (5)(b) below. Outdoor facilities for Class 2 non-human primates are optional, but if provided must meet the specifications of this section.

(3) Any Facility for Class 1 and Class 2 non-human primates shall comply with the following provisions for Indoor Facilities: The

indoor facilities shall be heated so as to protect the animal(s) from cold, with an ambient temperature of not less than 50°F; be adequately ventilated through the installation and use of windows, vents, doors, or air conditioning, so as to minimize drafts, odors, and moisture condensation, and have auxiliary ventilation provided when the ambient temperature exceeds 85°F; be sufficiently lighted, through either natural or artificial means, so as to permit thorough inspection and cleaning of the facilities and so as to protect the non-human primate from excessive illumination; be structurally sound and maintained in good repair, so as to protect the animal(s) from injury and to keep the animal(s) dry and clean, to contain the animal(s), and to restrict entry of other animal(s); to be supplied with adequate electrical power, potable water; and to have disposal facilities for the sanitary removal and disposal of animal waste, bedding, dead animals, and debris. Any indoor Facility for Class 1 non-human primates shall be in compliance with the primary caging space requirements as stipulated in (5)(b) below. Any indoor Facility for Class 2 non-human primates shall be in compliance with the caging requirements as stipulated in (5)(c) below.

(4) The primary enclosure for Class 3 non-human primates shall be in compliance with requirements as stipulated in (5)(c) below.

(5) Security:

(a) In order to provide reasonable precautions for the safety to the public, all classes of non-human primates shall be confined inside the permitted Facility and shall only be allowed outside the Facility for medical treatment or for removal to another approved Facility. When being transported, the animal(s) shall be restrained inside a cage within the vehicle so as to prevent escape from, or interference with the operation of, the vehicle;

(b) Minimum caging space for Class 1 non-human primates shall be: up to 44 lbs., floor space 10 sq. feet, minimal height 55 in.; from 45 to 77 lbs, floor space 15 sq. feet, minimal height 60 in.; more than 78 lbs, floor space 25 sq. feet, minimal height 84 in.;

(c) Minimum caging space for Class 2 and 3 non-human primates shall be: up to 2.2 lbs, floor space 1.6 sq. feet, minimal height 20 in.; from 2.3 to 6.6 lbs., floor space 3.0 sq. feet, minimal height 30 in.; from 6.7 to 22 lbs, floor space 4.3 sq. feet, minimal height 30 in.; from 23 to 33 lbs., floor space 6.0 sq. feet, minimal height 32 in.; from 34–55 lbs., floor space 8.0 sq. feet, minimal height 36 in.; from 56–66 lbs., floor space 10.0 sq. feet, minimal height 46 in.; more than 67 lbs., floor space 15.0 sq. feet, minimal height 46 in.

(6) No non-human primate may be restrained by a tether as primary means of confinement.

(7) Sanitation: Excreta and debris shall be removed from the facilities as often as necessary to prevent contamination of the food or water supplies, reduce disease hazards, and reduce odors.

(8) The Department may modify or waive the confinement requirements established in sections (2), (3), (4), and (5) of this rule subject to the following:

(a) The animal is determined by the Department to be less than 180 days of age;

(b) The Department's approval to modify or waive the requirements must be in writing and must include an expiration date; and

(c) The Department may impose reasonable conditions on such approval.

Stat. Auth.: ORS 561 & 609

Stats. Implemented: ORS 609.205 - 609.335

Hist.: AD 9-1986, f. & ef. 5-27-86; AD 18-1997(Temp), f. & cert. ef. 12-8-97 thru 6-5-98; DOA 8-1998, f. & cert. ef. 9-14-98

603-011-0725

Exotic Canines — Special Requirements

(1) Animal Classification:

(a) Class 1 exotic canines shall include any non-indigenous, non wolf canine whose weight is 50 pounds or more; and

(b) Class 2 exotic canines shall include all non-indigenous canines whose weight is less than 50 pounds.

(2) Any Facility for Class 1 exotic canines shall comply with the following:

(a) Outdoor and Indoor Facilities: Outdoor and indoor facilities shall be constructed and maintained so as to provide sufficient space for each animal to make normal postural and social adjustments with

freedom of movement; to keep the animal(s) clean, dry, and safe from injury; and to provide the animal(s) ready access to clean water and wholesome food. All outdoor pens shall have an exterior fence of such height and construction so as to prevent the animal(s) within to surmount it, and to prevent entry of the public;

(b) Security: In order to provide reasonable precautions for the safety of the public, all classes of exotic canines shall be confined inside the permitted Facility and shall only be allowed outside the Facility for medical treatment or for removal to another approved Facility. When being transported the animal(s) shall be restrained inside a cage within the vehicle so as to prevent escape from, or interference with the operator of the vehicle;

(c) All exotic canines that are held within a single enclosure shall be selected so as to be compatible with each other and shall not be housed near other animals whose presence may cause them stress or other discomfort; and

(d) Sanitation: Excreta and debris shall be removed from the Facility as often as necessary to prevent contamination of the food or water supplies, reduce disease hazards, and reduce odors.

(3) The primary enclosure or caging for Class 2 exotic canines shall be no less than 10 times the area occupied by the animal when standing on four feet.

(4) No exotic canine may be restrained by a tether as primary means of confinement.

(5) The Department may modify or waive the confinement requirements established in sections (2) and (3) of this rule subject to the following:

(a) The animal is determined by the Department to be less than 180 days of age;

(b) The Department's approval to modify or waive the requirements must be in writing and must include an expiration date; and

(c) The Department may impose reasonable conditions on such approval.

Stat. Auth.: ORS 561 & 609

Stats. Implemented: ORS 609.205 - 609.335

Hist.: AD 9-1986, f. & ef. 5-27-86; AD 18-1997(Temp), f. & cert. ef. 12-8-97 thru 6-5-98; DOA 8-1998, f. & cert. ef. 9-14-98; DOA 30-2000, f. & cert. ef. 11-6-00; DOA 8-2010, f. & cert. ef. 2-10-10

DIVISION 12

LIVESTOCK AUCTION MARKETS

603-012-0001

Definitions

As used in OAR 603-012-0003 to 603-012-0027:

(1) "Form 1-27" is a document prescribed by the Department which includes the description and identification of livestock, the name of the buyer of the livestock, the destination of the livestock for slaughter, and an acknowledgment from the designated slaughtering establishment that the described livestock had been received.

(2) "Slaughtering establishment" means an establishment as defined in ORS 603.010(5), required to be licensed under ORS 603.025(4)(c) or (d).

Stat. Auth.: ORS 561 & 596

Stats. Implemented: ORS 596.331

Hist.: AD 850(22-67), f. 9-5-67, ef. 9-13-67; AD 902(8-69), f. 7-15-69, ef. 8-1-69; AD 1-1981, f. & ef. 1-9-81; AD 3-1984, f. & ef. 1-20-84

603-012-0003

State Bonds: When Required by Livestock Auction Markets

(1) The provisions of this section which are required by House Bill 1242 (also cited as Chapter 368, Oregon Laws 1967) apply only to those livestock auction markets that have not as yet qualified under or are subject to the provisions of laws or regulations of the federal Packers and Stockyards Act and who have not obtained and are maintaining the federal bonds required thereunder.

(2) Except as hereinafter otherwise provided, the owner or operator of a livestock auction market shall obtain and maintain a state bond with the Department, the amount or size of which shall be not less than the next multiple of \$2,000 above the average amount of sales of livestock by such market during a period equivalent to two (2) business days based on the total number of business days, and the

total amount of such transactions in the preceding 12 months or in such substantial part thereof in which such market did business, if any.

(3) For the purpose of such computation, 260 shall be deemed the number of business days in any year. The amount of the bond shall be determined by dividing the total value of the livestock sold by the livestock auction market, during the preceding 12 months or any substantial part thereof as the market was engaged in business, by the actual number of sales by auction or on commission at which livestock was sold, but in no instance shall the divisor be greater than 130.

(4) Bonds in an amount above \$26,000 shall be not less than the next multiple of \$5,000 above the average amount of sales of livestock, computed as set forth above in this section.

(5) When the amount of a bond for any livestock auction market, calculated as set forth above in this section exceeds \$50,000, the amount of the bond need not exceed \$50,000 plus 10 percent of the excess, unless the Department pursuant to OAR 603-012-0005, has reason to believe a bond in the computed amount is inadequate.

(6) Notwithstanding the other provisions of this rule, in no case shall a bond for a livestock auction market be less than \$10,000.

(7) If an applicant for a license to operate a livestock auction market has been licensed during the past three years and has engaged in the operation of a livestock auction market in Oregon, the value of the livestock sold, at such previous other location, may be used by the Department in computing the bond (providing the previous operation or amount of business is representative of the future business or operation). If the applicant for a license and bond is a successor in business to an owner or operator of an existing livestock auction market, the bond of the applicant shall be in an amount not less than that required of the prior licensee, unless otherwise determined by the Department.

Stat. Auth.: ORS 596, 597 & 599

Stats. Implemented: ORS 599.245

Hist.: AD 850(22-67), f. 9-5-67, ef. 9-13-67

603-012-0005

State Bonds: In Special Circumstances

Whenever the Department has reason to believe that any bond filed or maintained under OAR 603-012-0003 is inadequate to secure the performance of the obligations or responsibility of an owner or operator of such market under ORS 599.245, the Department shall in writing give such owner or operator at least 20 days prior notice of the need to obtain a larger bond. Failure to obtain the increased or larger bond in the amount established by the Department, may in the option of the Department be grounds for suspension of the license issued to such owner or operator, or other legal action, until such time as the required bond is obtained.

Stat. Auth.: ORS 596, 597 & 599

Stats. Implemented: ORS 599.245

Hist.: AD 850(22-67), f. 9-5-67, ef. 9-13-67

603-012-0007

Furnishing of Financial Statements

(1) The provisions of this section do not apply to a livestock auction market operating under the federal Packers and Stockyards Act.

(2) A complete and accurate financial statement shall be furnished to the Department by an owner or operator of a livestock auction market:

(a) At the time an application for a license is furnished to the Department by an applicant desiring to operate a new market, or to take over or operate an existing livestock auction market;

(b) At the time an application for renewal of a license is forwarded to the Department;

(c) At such other times as the Department deems necessary to enable it to carry out its duties and responsibilities under ORS Chapter 599.

Stat. Auth.: ORS 561 & 596

Stats. Implemented: ORS 599.406

Hist.: AD 850(22-67), f. 9-5-67, ef. 9-13-67; AD 3-1984, f. & ef. 1-20-84

603-012-0009

Chutes for Inspecting Livestock for Brands or Marks of Identification

(1) Chutes for the inspecting of livestock for brands or marks of identification, as authorized or required under ORS Chapter 604 or other laws enforced by the Department, shall be constructed so that inspection of animals can be made from either side. Solid walls on chutes shall not extend higher than 30 inches above the floor of the chute. The portion of the chute above 30 inches shall be constructed of either cable, pipe, or poles.

(2) Drop gates shall be provided in chutes for stopping animals. The first gate at the head of the chute shall be spaced to handle one animal and additional gates shall be spaced no farther than 22 feet apart. Adequate lighting shall also be provided.

(3) Where a roof is deemed necessary by the Department to protect its employees or others who are required to work around the chute, or to protect the equipment or materials used by them, the roof shall be built over the chute. Electrical outlets for the use of electric clippers shall be provided at intervals along the chute.

(4) Chutes for inspecting livestock for brands or marks of identification shall be thoroughly cleaned after each sale.

Stat. Auth.: ORS 596, 597 & 599

Stats. Implemented: ORS 599.305

Hist.: AD 850(22-67), f. 9-5-67, ef. 9-13-67; AD 959(25-71), f. 11-29-71, ef. 12-15-71

603-012-0011

Catching Chutes for Livestock Disease Purposes

(1) Each livestock auction market shall maintain one or more catching chutes for testing, treating, or examining livestock for disease purposes.

(2) Chutes shall be constructed of strong materials equipped for segregation of livestock, headed by a stanchion, permitting free access to livestock and constructed to provide shelter from the elements as well as prevent danger of physical injury to employees or veterinarians.

(3) Chutes and access alleys to the chutes shall be floored with concrete or other impervious material and otherwise constructed to permit thorough cleaning, drainage, and disinfecting thereof, and shall be thoroughly cleaned and disinfected after each sale. The construction of floors of catching chutes and access alleys shall be approved by the Department.

(4) Chutes shall be lighted sufficiently to permit the proper examination and treatment of livestock.

(5) Chutes shall be of such number and so located within the market area to permit ready access by livestock at all times.

Stat. Auth.: ORS 596, 597 & 599

Stats. Implemented: ORS 599.305

Hist.: AD 850(22-67), f. 9-5-67, ef. 9-13-67; AD 959(25-71), f. 11-29-71, ef. 12-15-71; AD 1-1981, f. & ef. 1-9-81

603-012-0012

Animal Health Inspection — General Rules

(1) Inspection of animals at livestock auction markets is for the purpose of assuring that such animals will not knowingly be a source of infection to other animals in Oregon or other states to which they may be exported.

(2) The inspection of animals for the purpose of section (1) of this rule will be under the supervision of the livestock auction yard management.

(3)(a) The operator of the livestock auction yard shall employ a Deputy State Veterinarian for the inspection of livestock presented for sale; except

(b) If the auction yard operator is unable to obtain the services of the Deputy State Veterinarian and the Department after thorough investigation determines that the operator has tried in good faith to obtain such services, the Department may furnish a qualified person to make an initial inspection of livestock presented for sale. When the qualified person determines there is doubt of the health status of an animal, he will at once require the operator to obtain the services of a qualified veterinarian as required by ORS 599.335. The animal or animals determined by the qualified person to need veterinarian inspection will be placed in isolation pens and will remain there until

disposition is determined by the veterinarian. The auction yard operator will be responsible for all costs incurred by the Department through use of the qualified person and the veterinarian.

(4) The auction yard operator or his employees shall notify the Deputy State Veterinarian of any sick, injured or dying animals (including "cancer-eye" cattle).

(5) The auction yard operator shall consult with the Deputy State Veterinarian when the Deputy State Veterinarian exercises his authority to deny access to the auction yard of sick, injured or dying animals.

(6) The auction yard operator or his employees will assist the Deputy State Veterinarian and Department Brand Inspectors in assuring that all animals originating in other states have complied with Oregon import regulations or with regulations imposed by the **Code of Federal Regulations (9 CFR)**.

(7) Any authorized agent or employee of the Department may at any reasonable time enter any livestock auction yard and examine it or the livestock therein to determine compliance with applicable regulations of ORS Chapters 596, 603, 604, or 619.

(8) The responsibility for compliance with the laws relating to livestock auction markets and for the regulations promulgated thereunder relating to livestock disease, sanitation, inspection, and other regulations promulgated under the provisions of ORS Chapters 596, 599, and 604 is the responsibility of, and rests with the livestock auction market licensee.

Stat. Auth.: ORS 561 & 596

Stats. Implemented: ORS 599.335

Hist.: AD 1-1981, f. & ef. 1-9-81; AD 3-1984, f. & ef. 1-20-84

603-012-0013

Quarantine Areas and Pens

A quarantine area shall be constructed and maintained in each livestock auction market as follows:

(1) A pen or pens shall be so located within the market area or zone and so constructed as to prevent direct physical contact between quarantine animals and healthy animals.

(2) The pens in the quarantine area shall be floored with concrete or other impervious material and have at least two degree slope to a drain. The drain shall be so constructed that all fluids collected in the quarantine pen shall flow out of the pens into a confined area that will prevent contamination of any other area.

(3) Each such pen shall be surrounded by an impervious wall at least five feet in height covered where the floor and the wall meet, to prevent pools of liquid from collecting. The door into such pens shall be solid, close fitting, and constructed at the opening to prevent liquids from flowing from the pen into access alleys or other parts of the market area or zone.

(4) No livestock excreta from quarantine areas or pens shall be disposed of in any place or in any manner which may contaminate other livestock.

Stat. Auth.: ORS 596, 597 & 599

Stats. Implemented: ORS 599.295

Hist.: AD 850(22-67), f. 9-5-67, ef. 9-13-67

603-012-0015

Cleaning and Disinfecting Livestock Auction Markets

(1) Pens and alleyways in the livestock auction markets shall not contain accumulations of manure, trash, and other extraneous material and shall be kept clean. Pens and alleyways shall be kept free of accumulations of mud and standing water. No unconfined animals or poultry shall be allowed within the confines of a livestock auction market:

(a) In carrying out and enforcing the intent and purpose and provisions of this subsection, the Department will do so by inspection of each such market and the inspection reports and/or orders relating to and covering each such market on its own merits. This is necessary as it is recognized by the Department, the auction market industry, and the livestock owners that many unforeseen or unusual conditions or extenuating circumstances may exist. The owner or operator of each such market shall comply with the requests and orders of the Department;

(b) In making its inspections of market pens and alleyways, in writing its inspection reports, and/or the issuance of applicable orders, the Department will take into consideration:

(A) Existing and immediately past weather or unusual unforeseen conditions;

(B) The type of surfacing of pens and alleyways, such as hard materials (cement, asphalt, etc.) or nonhard materials (ground, gravel, sawdust, etc.);

(C) The use to which a pen or alleyway is put; to contain animals which are destined for sale, or used only for holding purposes, or any other customary use; and

(D) Other reasonable factors or conditions.

(2) All pens used in livestock auction markets for holding dairy cattle and hogs and all alleyways between such pens shall be floored with concrete or some other impervious material. All such pens and alley shall be sloped or otherwise constructed to permit adequate drainage. Such pens and alleyways and also fences, food racks, and watering troughs shall be constructed so as to allow proper cleaning and sanitation. After each use, all dairy, hog, baby calf pens, and all quarantine, testing, and treating pens shall be thoroughly cleaned, and all such places or areas shall be disinfected with a disinfection solution approved by the Department. Materials for disinfecting and the labor and other work involved in such cleaning and disinfecting, shall be furnished and paid for by the licensee owning or operating the livestock auction market.

(3) All livestock watering facilities in use at a livestock auction market in the market area or zone, shall be drained and cleaned to assure maintenance in a sanitary manner. The area immediately surrounding watering tanks shall be drained or filled to avoid accumulation of water.

Stat. Auth.: ORS 561 & 596
Stats. Implemented: ORS 599.285
Hist.: AD 850(22-67), f. 9-5-67, ef. 9-13-67; AD 902(8-69), f. 7-15-69, ef. 8-1-69; AD 959(25-71), f. 11-29-71, ef. 12-15-71; AD 3-1984, f. & ef. 1-20-84

603-012-0017

Livestock Placed in Quarantine Pens

All livestock placed in quarantine pens shall be handled as follows:

(1) Such livestock shall be sold at the end of the sale without contamination or contact by such livestock with healthy livestock. Before and during the sale, each such animal shall be clearly and legibly marked with the letter "S" (for slaughter only) by means of crayon or other substance.

(2) The purchaser of livestock sold for immediate slaughter shall deliver them or cause them to be delivered to a slaughtering establishment where such livestock shall remain until slaughtered. This delivery shall be accompanied by Form 1-27 (or its equivalent Departmental form) in the same manner as prescribed for "slaughter only" livestock in OAR 603-012-0024(1).

Stat. Auth.: ORS 596, 597 & 599
Stats. Implemented: ORS 599.295
Hist.: AD 850(22-67), f. 9-5-67, ef. 9-13-67; AD 902(8-69), f. 7-15-69, ef. 8-1-69; AD 959(25-71), f. 11-29-71, ef. 12-15-71; AD 1-1981, f. & ef. 1-9-81

603-012-0019

Identification and Disposition of Brucellosis Reactors

Brucellosis reactors at a livestock auction market shall be branded and tagged and sold only for immediate slaughter to a slaughtering establishment. The Form 1-27 (or its equivalent departmental form) shall accompany such animals to slaughter as prescribed in the UM&Rs.

Stat. Auth.: ORS 561 & 596
Stats. Implemented: ORS 599.490
Hist.: AD 850(22-67), f. 9-5-67, ef. 9-13-67; AD 902(8-69), f. 7-15-69, ef. 8-1-69; AD 959(25-71), f. 11-29-71, ef. 12-15-71; AD 1019(9-74), f. 2-20-74, ef. 3-11-74; AD 1-1981, f. & ef. 9-1-81; AD 3-1984, f. & ef. 1-20-84

603-012-0021

Backtagging

Eligible cattle destined for slaughter at all livestock auction markets must be identified by a Department approved backtag applied by auction market personnel under the supervision of a brand inspector or other authorized Department representative before such cat-

tle leave the market zone. Backtags shall be applied in such a manner and location as specified by the Department. The backtags and glue for application may be furnished by the Department at no cost to the livestock auction market.

Stat. Auth.: ORS 596, 597 & 599
Stats. Implemented: ORS 599.490
Hist.: AD 850(22-67), f. 9-5-67, ef. 9-13-67

603-012-0023

Duties of Market Veterinarians

(1) The Deputy State Veterinarian will inspect animals presented at markets for the purpose of determining the disposition of sick, injured or dying animals including those showing lesions indicative of cancer-eye (epithelioma).

(2) The Deputy State Veterinarian will consult with the livestock market operator when he/she determines that an animal should be denied access to the market. Diagnostic determinations of conditions causing denial of access or other handling of sick, injured or dying animals are not required for the exercise of authority by the Deputy State Veterinarian.

(3) The Deputy State Veterinarian will assure that all livestock consigned to slaughter (for any reason) are marked in accordance with the applicable administrative rule and that the required form/forms is/are properly completed and copies distributed. Particular attention will be paid to the execution of USDA/APHIS Form 1-27.

(4) The Deputy State Veterinarian shall be responsible for all official inoculations, tests and health inspections required of livestock entering the livestock auction market facilities.

(5) The Deputy State Veterinarian shall complete forms and reports as required by the Department including copies of all brucellosis test charts issued at each sale, showing the number of cattle tested, the number negative the number of suspects and the number of reactors, including the reactor tag numbers, and certifying that all reactors and suspects were handled in compliance with the UM&Rs. All forms and reports shall be forwarded to the State Veterinarian within 48 hours of the completion of the sale.

Stat. Auth.: ORS 561 & 596
Stats. Implemented: ORS 599.335
Hist.: AD 850(22-67), f. 9-5-67, ef. 9-13-67; AD 902(8-69), f. 7-15-69, ef. 8-1-69; AD 959(25-71), f. 11-29-71, ef. 12-15-71; AD 1006(20-73), f. 12-5-73, ef. 12-25-73; AD 1-1981, f. & ef. 1-9-81; AD 3-1984, f. & ef. 1-20-84

603-012-0024

Miscellaneous Auction Market Requirements

(1) Livestock specifically consigned for "slaughter only" by the seller shall be so designated by the livestock auction yard operator at the time of brand inspection or time of consignment for sale in a manner approved by the Department. The Deputy State Veterinarian shall be advised of this designation by the livestock auction market employees or by the Departmental brand inspector. The Deputy State Veterinarian shall be responsible for the preparation of Form 1-27 on all of such livestock. (Placards notifying patrons of the designation and meanings of "S" markings and "slaughter only" shall be posted at each livestock auction yard.)

(2) Female bison over 24 months of age shall be tested for brucellosis at the consignor's expense unless consigned for slaughter only.

Stat. Auth.: ORS 596, 597 & 599
Stats. Implemented: ORS 599.490
Hist.: AD 1-1981, f. & ef. 1-9-81

603-012-0027

Dairy Cattle and Hogs Retained in Separate Pens

(1)(a) "Dairy cattle" for the purposes set forth in ORS 599.275 and 599.285, and for the purposes of this section means and applies only to milk cows sold and described at the livestock auction market as a milk producing animal to be moved to a farm or ranch primarily for milk production for human consumption;

(b) All other cattle of the recognized breeds used primarily for milk production and crosses of such breeds, including crosses with beef type animals, should be considered as being held for sale, sold, or purchased only for slaughter purposes.

(2) All dairy cattle entering a livestock auction market, or the market zone of such market, shall be placed and retained before and after sale in clean, disinfected, and segregated pens kept solely for that purpose. This requirement however does not apply to:

- (a) Cattle defined and set forth in subsection (1)(b) of this rule;
- (b) Dairy cattle under six months of age;
- (c) Steers or spayed females; or
- (d) Any other dairy animal which by reason of age, disease, or other condition is to be handled, sold, and purchased only for slaughter purposes.

(3) All hogs entering the market zone of a livestock auction market shall be placed and retained before and after sale in clean, disinfected, and segregated pens kept solely for that purpose.

Stat. Auth.: ORS 596, 597 & 599

Stats. Implemented: ORS 599.275

Hist.: AD 850(22-67), f. 9-5-67, ef. 9-13-67; AD 902(8-69), f. 7-15-69, ef. 8-1-69

Temporary or "One Day" Horse Sales

603-012-0205

Temporary or "One Day" Horse Sales

(1) As used in sections (1) to (4) of this rule:

- (a) "Department" means the Oregon State department of agriculture;
- (b) "Equine Animal" means any animal belonging to the genus *Equinus* including horses, asses, and mules;
- (c) "Licensee" means any person, lessee, partnership, or corporation applying for and receiving a license to conduct a temporary horse sale;
- (d) "Temporary horse sale" or "one day horse sale" means the sale of horses, mules, or asses, as authorized by ORS 599.610 to 599.640;
- (e) "Livestock" means cattle, horses, mules, asses, and swine.

(2) Application to hold a temporary horse sale shall be made to Department at least 30 days prior to the date the sale is to be held.

(3) Temporary horse sales may be conducted at such times and places as the licensee desires subject to the approval of the Department. If the sale is to be held at a yard or place not specifically constructed for the sale of animals, the Department before approving a license will require at least the following minimum facilities:

- (a) Enclosures must be provided of such size and construction as to adequately restrain all animals congregated for sale;
- (b) A separate pen shall be provided for animals showing symptoms of infectious or contagious diseases. This pen shall be so located, and so constructed that no direct contact with other animals is possible;
- (c) All stalls, pens, and water tanks will be maintained in a sanitary condition.

(4) The licensee shall employ and pay a deputy state veterinarian on a private fee basis:

(a) The deputy state sale veterinarian shall have authority and responsibility for the direction and control of the sanitary practices and examinations of horses at the sale;

(b) All equine animals to be sold shall be examined for evidence of infectious and contagious disease;

(c) Any equine animal showing symptoms of an infectious or contagious disease shall not be sold or offered for sale;

(d) Diseased equines described in subsection (c) of this section shall be immediately isolated from other livestock in pens provided for this purpose and shall be returned to the premises of origin. The deputy state sale veterinarian shall report the disease to the Department if it is one covered by or listed in a regulation promulgated under ORS 596.321.

(5) All of the applicable provisions of ORS Chapter 604, relating to brand inspection, including, but not limited to, subsection (2) of ORS 604.360 shall apply to temporary horse sales.

(6) The provisions of sections (1) to (4) of this rule are in addition to, and not in lieu of, other applicable provisions of ORS Chapter 596 relating to diseases of livestock and 599.610 to 599.640 relating to temporary horse sales.

(7) After the Department receives an application referred to in section (2) of this rule and before it is authorized to issue a license, the Department must inspect the proposed yard, place, or premises where the temporary or one day horse sale is proposed to be held. The Department is not authorized to issue the license until or unless the licensee is in compliance with the provisions of this rule and has met all the requirements or procedures which the Department deems necessary for the applicant to hold such sale. No person shall hold, carry out, or engage in holding a temporary or one day horse sale without first having received a license therefor.

Stat. Auth.: ORS 561.190 & 599

Stats. Implemented: ORS 599.610

Hist.: AD 619, f. 10-12-59; AD 850(22-67), f. 9-5-67, ef. 9-13-67; AD 902(8-69), f. 7-15-69, ef. 8-1-69

Registration of Animal Remedies, Veterinary Biologics and Pharmaceuticals

603-012-0210

Definitions

In addition to the definitions set forth in Senate Bill 1222, the following shall apply:

(1) "Product" means an animal remedy, pharmaceutical or veterinary biologic readily distinguishable from any other animal remedy, pharmaceutical or veterinary biologic by its content, brand name, trade name, manufacturer, use as specified in labeling, or other distinction, but not including size or quantity of packaging.

(2) "Animal remedy" means any product labeled for veterinary/animal use to prevent, inhibit or cure or enhance or protect the health or well-being of animals, but does not include food, surgical instruments or accessories.

(3) "Pharmaceutical" means drug products labeled for veterinary/animal use by the U.S. Food and Drug Administration.

(4) "Veterinary biologic" means biological products licensed for veterinary/animal use by the U.S. department of agriculture, Animal and Plant Health Inspection Service.

(5) "Autogenous biologic" means a product derived from a source within the individual animal(s), or its confines, upon which it is to be used.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 561.190 & 584

Hist.: AD 6-1991(Temp), f. & cert. ef. 7-19-91; AD 2-1992, f. & cert. ef. 2-11-92

603-012-0220

Exemptions

(1) Animal remedy products compounded by Oregon licensed veterinarians for use in the course of their practice are exempt from the registration required in Chapter 584, 1991, Oregon Laws.

(2) Sale, offering for sale, or delivery to a user, of an unregistered animal remedy, pharmaceutical or veterinary biologic owned by a person prior to July 1, 1991 shall not constitute a violation.

Stat. Auth.: ORS 561.190 & 584

Stats. Implemented: ORS 561.190 & 584

Hist.: AD 6-1991(Temp), f. & cert. ef. 7-19-91; AD 2-1992, f. & cert. ef. 2-11-92; AD 10-1993(Temp), f. 8-4-93, cert. ef. 8-5-93; AD 4-1994, f. & cert. ef. 3-31-94

603-012-0230

Fees

(1) The registration fee for each animal remedy, pharmaceutical or veterinary biologic product shall be \$75.

(2) Manufacturers of autogenous biologics shall pay \$75 annually for all autogenous products formulated.

Stat. Auth.: ORS 561.190 & 584

Stats. Implemented: ORS 584

Hist.: AD 6-1991(Temp), f. & cert. ef. 7-19-91; AD 2-1992, f. & cert. ef. 2-11-92; AD 10-1993(Temp), f. 8-4-93, cert. ef. 8-5-93; AD 4-1994, f. & cert. ef. 3-31-94; DOA 9-1999, f. 5-14-99, cert. ef. 6-1-99; DOA 31-2003, f. & cert. ef. 9-12-03

603-012-0240

Enforcement

The following procedures will be followed when enforcement action is undertaken:

(1) Manufacturers will be notified when unregistered products are identified in the marketplace, and will be given 30 days in which to register the product.

(2) If products remain unregistered after the 30 days notice, the seller of the product will be notified that product is unregistered, and given a period of 30 days in which to work with the manufacturer to secure registration.

(3) If the product continues to be unregistered after the expiration of the second 30-day period, the seller will be directed to remove the product from sale. The product will not be eligible to be offered for sale until it is registered.

(4) Unless the seller refuses to remove the unregistered product from sale, all subsequent enforcement action will be taken against the manufacturer.

Stat. Auth.: ORS 561.190 & 584
 Stats. Implemented: ORS 584
 Hist.: AD 10-1993(Temp), f. 8-4-93, cert. ef. 8-5-93; AD 4-1994, f. & cert. ef. 3-31-94

DIVISION 13

SLAUGHTERING ESTABLISHMENTS

Slaughter of Animals and Processing of Animal Products for Animal or Pet Foods

603-013-0600

Definitions

As used in OAR 603-013-0600 through 603-013-0616:

(1) "Department" means the State Department of Agriculture.

(2) "Establishment" means any building, plant, establishment, vehicle, or structure movable or stationary wherein animals or poultry are slaughtered, prepared, processed, or offered for sale or sold in any manner intended for or to be used as animal food. Establishment also includes the ground adjacent thereto.

(3) "Licensee" means any person licensed to operate a pet or animal food slaughtering establishment as authorized by ORS 619.031 or regulations promulgated thereunder.

(4) "Pet or Animal Food" means any meat, meat food product, carcass, or any part thereof including viscera of a slaughtered animal or poultry that is intended to be used, sold, or offered for sale as pet or animal food as authorized by ORS 619.031.

Stat. Auth.: ORS 603
 Stats. Implemented: ORS 603
 Hist.: AD 636, f. 3-15-60; DOA 6-2004, f. & cert. ef. 2-13-04

603-013-0602

Licenses

(1) No person shall operate a pet or animal food slaughtering or processing establishment without first obtaining a license therefor from the Department as required by ORS 619.031.

(2) Notwithstanding the provisions of section (1) of this rule, a person holding a meat food animal slaughterhouse license, or a person licensed to slaughter poultry and rabbits, or a person holding a non-slaughtering processing license may, without being required to obtain additional license, also sell or dispose of meat or meat products as pet or animal food providing that such licensees also comply with the special provisions of law or regulations thereunder which apply to the operation of an animal food and slaughtering establishment as required by ORS 619.031 and the provisions of OAR 603-013-0600 to 603-013-0616.

(3) No person shall operate an establishment or slaughter or process any animal for animal food except as authorized and provided by ORS 619.031 and the provisions of OAR 603-013-0600 to 603-013-0616.

(4) No person shall slaughter or process an animal which is intended for or offered for sale or sold for human consumption, in a pet and animal food slaughtering establishment. No person shall keep or maintain an animal carcass or any part thereof in an animal food slaughtering establishment except such carcasses or parts thereof which are intended for use or sale as pet or animal food.

Stat. Auth.: ORS 603
 Stats. Implemented: ORS 603
 Hist.: AD 636, f. 3-15-60; DOA 6-2004, f. & cert. ef. 2-13-04

603-013-0604

Construction

Pet food or animal food slaughtering establishments are subject to the provisions specified in OAR 603-025-0020.

Stat. Auth.: ORS 603
 Stats. Implemented: ORS 603
 Hist.: AD 636, f. 3-15-60; DOA 6-2004, f. & cert. ef. 2-13-04

603-013-0606

Sanitation

(1) A pet or animal food slaughtering establishment, tools, and equipment therein shall be operated and maintained in a sanitary manner. Ample pressure and supply of hot and cold water shall be available in the establishment. While the Department recognizes the fact that the same high degree of sanitation procedures and standards as are required in establishments slaughtering livestock for human consumption are not necessary in establishments slaughtering animals for animal or pet food, the Department will require, and the animal food slaughtering establishments shall comply with, applicable provisions of ORS Chapters 616 and 619 to the extent that animal or pet food is free from disease and is not injurious to the welfare and health of the animals that will be fed such food. Such procedures and standards also shall be used that will protect the health and welfare of the people of this state.

(2) "Offal" or any part of carcass, viscera, or organic material not used for pet or animal food shall not be stored or held for a period longer than 24 hours without refrigerated facilities.

(3) The accumulation of refuse and debris is prohibited in an establishment and the premises adjacent to an establishment shall be maintained in such a manner as not to promote the harboring of insects, rodents, or vermin.

Stat. Auth.: ORS 616 & 619
 Stats. Implemented: ORS 603
 Hist.: AD 636, f. 3-15-60

603-013-0608

Separation of Facilities

In a slaughterhouse wherein meat is slaughtered and sold for human consumption and one which also processes, handles, offers, or sells pet or animal food; then such facilities and equipment relating to the pet or animal food operation must be all located in a separate room from all the operations of the edible food or meat operations, as approved by the Department. Such pet or animal food procedures and operation shall not interfere with the proper required functions of the operation of the edible food operations.

Stat. Auth.: ORS 561.190 & 603
 Stats. Implemented: ORS 603
 Hist.: AD 636, f. 3-15-60

603-013-0610

Decharacterizing of Pet or Animal Food

All meat or meat products from animals slaughtered for pet food or animal food shall be decharacterized with either a harmless dye or powdered charcoal approved by the Department. Such decharacterizing shall be carried out to the extent that such meat or meat products can be readily distinguished from edible meat or meat products intended for human consumption.

Stat. Auth.: ORS 561.190 & 603
 Stats. Implemented: ORS 603
 Hist.: AD 636, f. 3-15-60

603-013-0612

Labeling

All packaged pet or animal food shall be labeled. Such label shall contain at least the following information.

- (1) The name and address of the establishment.
- (2) The words "Pet Food," "Animal Food," or "Dog and Cat Food," and the additional wording "Not For Human Consumption." The letters in such wording shall be placed conspicuously on the package and be of such size as to be readily and easily readable to prospective purchasers or users.
- (3) The net weight of the product in the package.
- (4) The contents in order of their predominance.

(5) Labeling of hermetically sealed, retort processed, conventional retail size containers shall conform with this section except the wording "Not For Human Consumption" need not appear on label. If not in such containers, the product must not only be properly identified, but it must be of such character or so treated (denatured or decharacterized) as to be readily distinguishable from an article of human food.

Stat. Auth.: ORS 561.190 & 603
Stats. Implemented: ORS 603
Hist.: AD 636, f. 3-15-60

603-013-0614

Reports and Records

A report form, which shall be furnished by the Department upon request, shall be forwarded to the Department by the licensee of each establishment not later than the 20th of each month covering the prior operations of such establishment. Such report shall be completely filled out and signed by the licensee.

Stat. Auth.: ORS 561.190 & 603
Stats. Implemented: ORS 603
Hist.: AD 636, f. 3-15-60

603-013-0616

Records

The licensee shall keep daily records as required by ORS 619.031.

Stat. Auth.: ORS 603
Stats. Implemented: ORS 603
Hist.: AD 636, f. 3-15-60; DOA 6-2004, f. & cert. ef. 2-13-04

603-013-0618

Definitions

In addition to the definitions set forth in ORS 601.010, the following shall apply:

(1) "Conduct of the business" means the disposal of raw material according to a license issued pursuant to ORS 601.040.

(2) "Raw material" means the body, carcass or all parts, including viscera, of an animal.

Stat. Auth.: ORS 561.190 & 601.120
Stats. Implemented: ORS 601.120
Hist.: AD 12-1995, f. & cert. ef. 6-30-95

603-013-0620

Construction of Building and Conduct of Business

Every person licensed pursuant to ORS 601.040 shall conduct the business and shall construct, arrange and keep the premises on which the business is conducted according to the following requirements:

(1) All interior surfaces within areas used in the conduct of the business shall be of impervious materials.

(2) All areas of the building and equipment used in the conduct of the business shall be maintained in a clean and sanitary condition. The following minimum requirements shall be met:

(a) Areas and equipment, including storage pits and transfer augers, are to be cleaned at the end of every work day, and a log kept;

(b) Floors, walls and ceilings shall be free of any observable raw material.

(c) Liquid shall not be allowed to collect or pool;

(d) Sanitary drainage shall be provided leading to a sewage disposal system approved by the appropriate authorities, which allows areas to be maintained in a clean and sanitary condition;

(e) Hot water and steam shall be available to maintain the areas and equipment in a clean and sanitary condition;

(f) The outside premises shall be maintained free of raw material, any dried liquid matter from animal parts and litter.

(3) All reasonable measures shall be taken to prevent the entrance of and control of flies, insects, rodents and vermin. Such measures shall include, but are not limited to, closing off cracks, openings or other entry points which have developed in the building and the use of screens where appropriate.

(4) Immediately after unloading for processing or into transfer pits, raw material shall be sprayed with an odor control spray.

(5) Raw material for rendering shall not remain longer than eight hours on the premises of a business without being refrigerat-

ed, processed or transferred to a processing site. If circumstances arise outside the control of the business which prevent action within eight hours, the business shall maintain the raw material in such a manner that no public annoyance shall be caused by the unsightly appearance or odor of the raw material.

(6) The cooking area must be separate from the storage area and the area where raw materials are skinned, butchered or dismembered. The latter two areas shall also be separate from each other.

(7) The cooking, loading and unloading areas shall be enclosed.

(8) Pressure control shall be automatic, and checked daily. Pressure control shall also be calibrated, and tested annually.

(9) Traps capable of preventing odor in the disposal of steam or exhaust shall be installed on steam vents.

Stat. Auth.: ORS 561.190 & 601.120
Stats. Implemented: ORS 601.120
Hist.: AD 12-1995, f. & cert. ef. 6-30-95

603-013-0625

Vehicles and Transportation

Every person licensed pursuant to ORS 601.050 or 601.080 shall transport raw material in a manner that no public annoyance shall be caused by the unsightly appearance of such material and according to the following requirements:

(1) Vehicles shall be maintained to prevent drippings or seepings. The following minimum requirements shall be met:

(a) Industrial grade seals shall be used;

(b) Seals shall be inspected regularly, and shall be maintained to prevent drippings or seepings;

(c) Seals shall be replaced when necessary;

(d) An inspection log shall be kept.

(2) Vehicle sides shall be high enough to hide raw material and to prevent spilling during transportation.

(3) Each vehicle shall contain an odor control spray, and raw material within the vehicle which emanates an odor shall be sprayed.

(4) Vehicles and containers shall be maintained clean. They shall be cleaned after every work day ensuring that no raw material, liquids or scraps remain, and a log kept.

Stat. Auth.: ORS 561.190 & 601.120
Stats. Implemented: ORS 601.120
Hist.: AD 12-1995, f. & cert. ef. 6-30-95

Civil Penalties

603-013-0905

Purpose

The Oregon Department of Agriculture Food Safety Program licenses and inspects all facets of Oregon's food distribution system, except restaurants, to ensure food is safe for consumption. Education and technical assistance are vital to the prevention, correction, and abatement of food safety violations, and are preferred over regulatory action. However, regulatory action may be necessary to deter violations of food safety laws and rules, to educate persons about the consequences of such violations, and to compel compliance with food safety laws for the protection of consumers. The Department intends to initiate civil penalty actions when educational measures, technical assistance, warning letters, compliance agreements or other remedial measures fail to achieve compliance.

Stat. Auth.: ORS 561.190, 603.995 & 619.996
Stats. Implemented: ORS 603.995 & 619.996
Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

603-013-0910

Definitions

As used in OAR 603-013-0920 through 603-100-0930, unless otherwise required by the context, the following terms will be construed to mean:

(1) "Department" means the Oregon Department of Agriculture.

(2) "Interference" means hindering or impeding an activity or process, which includes, but is not limited to any harassment, unreasonable delay, threat, concealment, deceit, or obstruction.

(3) "Major," with respect to violations, means an incident, or series of incidents that cause a reasonable probability that serious adverse health consequences or death will occur.

(4) “Minor,” with respect to violations, means an incident, or series of incidents that are not likely to cause adverse health consequences.

(5) “Moderate,” with respect to violations, means an incident, or series of incidents that may cause temporary or medically reversible adverse health consequences, or where the probability of serious adverse health consequences is remote.

(6) “Repeat violation” means the recurrence of the same violation for each 24-hour period after a notice of noncompliance or assessment of civil penalty was issued within the preceding three years. It does not include a violation if the previous notice is the subject of a pending appeal or if the notice has been withdrawn or successfully appealed.

(7) “Same,” with respect to violations, means an identical recurrence, exact repetition, or a continuation of a previous violation.

(8) “Violation” means the failure to comply with any requirement of ORS Chapter 603 or 619 or any rule adopted thereunder.

Stat. Auth.: ORS 561.190, 603.995 & 619.996

Stats. Implemented: ORS 603.995 & 619.996

Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

603-013-0920

Schedule of Civil Penalties

(1) Operating an animal food slaughtering establishment or processing establishment without first obtaining a license therefor from the Department as required in ORS 619.031. Penalty — \$5,000 to \$10,000.

(2) Violation of ORS 619.031(7) by a person licensed under ORS 619.031(1)–(5). Penalties:

(a) Minor — \$1,000 to \$4,000;

(b) Moderate — \$4,001 to \$7,000;

(c) Major — \$7,000 to \$10,000.

Stat. Auth.: ORS 561.190, 603.995 & 619.996

Stats. Implemented: ORS 603.995 & 619.996

Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

603-013-0932

Penalty Factors; Procedure

(1) In imposing a penalty pursuant to OAR 603-013-0910, the Department shall consider the following factors, which are listed in prioritized order:

(a) The immediacy and extent to which the violation threatens the public health or safety.

(b) Any prior violations of statutes, rules or orders pertaining to meat or meat related activities.

(c) The past history of the person incurring the penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(d) The economic and financial conditions of the person incurring the penalty, including any financial gains resulting from the violation.

(2) Each 24-hour period a violation continues after the period of time established for compliance will be considered a separate violation unless the Department finds a different period of time is more appropriate to describe the specific violation event.

(3) Repeat violations of OAR 603-013-0910 will be assessed as three times the penalty amount in OAR 603-013-0910, not to exceed \$10,000.

(4) A civil penalty imposed under this rule will comply with ORS 183.745, except that the written application for a hearing must be received by the Department no later than 10 days after the mailing or personal service of the notice of civil penalty.

Stat. Auth.: ORS 561.190, 603.995 & 619.996

Stats. Implemented: ORS 603.995 & 619.996

Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

DIVISION 14

LIVESTOCK IDENTIFICATION AND THEFT PREVENTION

Brand Recording

603-014-0010

Size of Brand and One Impression Limitation

All brands shall be a single stamp impression of such size that the entire design can be placed within a circle one foot in diameter.

Stat. Auth.: ORS 561

Stats. Implemented: ORS 604.027

Hist.: AD 585, f. 7-15-58, ef. 7-11-58; AD 22-1981, f. & ef. 10-7-81

603-014-0012

Authorized Methods or Processes of Applying Brands

(1) Cattle, horses, mules and asses. The only methods or processes of applying brands to cattle, horses, mules, or asses (and the only methods or processes which shall be legal in Oregon), are:

(a) By the use of a hot iron; or

(b) By the use of a super-chilled or freeze iron; or

(c) By the use of caustic chemicals.

(2) Sheep. The only methods or processes of applying brands to sheep (and the only methods or processes which shall be legal in Oregon) are:

(a) By the use of paint;

(b) By the application of tattoos;

(c) By the use of a hot iron or fire-brand;

(d) By the use of a super-chilled or freeze iron or instrument;

(e) By the use of caustic chemicals.

Stat. Auth.: ORS 561

Stats. Implemented: ORS 604.005

Hist.: AD 849(21-67), f. 9-5-67, ef. 9-13-67; AD 1003(17-73), f. 12-5-73, ef. 12-25-73; AD 22-1981, f. & ef. 10-7-81

603-014-0016

Location of Brands on Certain Animals

(1) Cattle. Brands can only be recorded with the Department under the provisions of ORS chapter 604, in the following locations:

(a) Right hip, right ribs, right shoulder, right neck, right jaw;

(b) Left hip, left ribs, left shoulder, left neck, left jaw.

(2) Horses, mules or asses. Brands can only be used or placed on horses, mules or asses and can only be recorded with the Department under the provisions of ORS chapter 604, in the following locations:

(a) Right hip, right stifle, right shoulder, and right jaw;

(b) Left hip, left stifle, left shoulder, and left jaw.

(3) Sheep. Brands can only be used or placed on sheep and can only be recorded with the Department under the provisions of ORS chapter 604, in the following locations for the branding method identified:

(a) Paint brands shall be located on either of two locations on the back of the animal such locations being defined as:

(A) Withers area: From the spinous process of the first thoracic vertebrae posteriorly to the posterior border of the eighth rib, extending on each side to lines parallel to the back line from one-half the distance from the spinous process to the shoulder joint; and

(B) Mid-back area: From the posterior border of the above described withers area posteriorly along the spinous process to the fourth lumbar vertebrae, extending on each side to lines parallel to those side lines described in the withers area.

(b) Such brands shall be situated so that the top of the brand faces toward the head of the animal:

(A) Tattoo brands shall be located on the inside of either of the front legs on the wool-free area above the knee;

(B) Firebrands, freeze brands, or caustic chemical brands shall be located on either nose, left jaw, or right jaw.

Stat. Auth.: ORS 561 & 604

Stats. Implemented: ORS 604.021

Hist.: AD 647, f. & ef. 11-18-60; AD 849(21-67), f. 9-5-67, ef. 9-13-67; AD 1003(17-73), f. 12-5-73, ef. 12-25-73; AD 1092(15-76), f. & ef. 4-16-76; AD 22-1981, f. & ef. 10-7-81; DOA 2-2004, f. & cert. ef. 1-23-04; DOA 6-2008, f. & cert. ef. 2-6-08

603-014-0017

Location of Herd or Breed Identification Markings

As provided by ORS 604.021(2), the following areas and markings may be used for herd or breed identification:

(1) The gaskins of cattle, on either side, may be used for herd identification markings. Such identification markings shall consist of three letters or figures, or any combination thereof, and may be placed either vertically or horizontally. No designs or connected figures may be used.

(2) The necks of horses, on either side, may be used for breed association identification markings.

Stat. Auth.: ORS 561 & 604

Stats. Implemented: ORS 604.021

Hist.: AD 13-1983, f. 10-19-83, ef. 11-1-83

603-014-0030

No Ear or Flesh Marks Not Entitled to Be Recorded

No ear or flesh marks shall be recorded for any species of livestock. However, the Department encourages the owner of recorded brands to submit such marks with the application for recording of brand.

Stat. Auth.: ORS 561

Stats. Implemented: ORS 561.190

Hist.: AD 585, f. 7-15-58, ef. 7-11-58; AD 22-1981, f. & ef. 10-7-81

603-014-0035

Adjustment of Conflicting Brands

Should the Department deem it necessary to adjust conflicting brands, such adjustment will be made on the basis of priority of continuous record; provided, however, that the owners of conflicting brands may make such adjustments between themselves if satisfactory to the Department.

Stat. Auth.: ORS 561.190 & 604.021

Stats. Implemented: ORS 604.021

Hist.: AD 585, f. 7-15-58, ef. 7-11-58

603-014-0045

Application and Activation Fees for New Certificates of Recordation of Brands

(1) If a person desires to record a distinctive brand on a location on a species of livestock, the person may apply for a certificate of recordation as provided in this section.

(2) To receive a certificate of recordation, the person shall submit a written application, submit all other requested documents, and pay an application fee plus an activation fee.

(a) The person may submit a written application for a certificate of recordation. The application fee must accompany the application. The amount of the application fee is \$25 for each location on each species of livestock.

(b) If the department determines after a review of the application that the requested brand is available, the department will project an expiration date for a certificate of recordation, inform the applicant of the projected expiration date and of the amount of the activation fee, and may request additional documents from the applicant.

(c) The amount of the activation fee for each certificate of recordation will be calculated based on the livestock species and on the number of days between the date that the department determined that the requested brand is available and the projected expiration date. For all livestock species except sheep, the activation fee for a certificate of recordation shall be \$.07 per day, up to a maximum of \$100. For sheep, the activation fee for a certificate of recordation shall be \$.03 per day, up to a maximum of \$40.

(d) Upon receiving the information described in paragraph (B), the applicant may submit the activation fee to the department. If the applicant does not submit the activation fee and all requested documents to the department so that the department receives them within three months of the date that the department determined that the requested brand is available, then the department's determination will be deemed rescinded without further action.

(3) Upon receipt of a written application, the application fee, the activation fee, and all other requested documents as provided in this section, the department will issue a certificate of recordation for the

distinctive brand on the location on the species of livestock. The certificate shall allow use of the brand until the expiration date.

Stat. Auth.: ORS 561.180, 604.027 & 607.261

Stats. Implemented: ORS 604.027

Hist.: AD 615, f. 7-23-59, ef. 7-23-59 and 8-5-59; AD 849(21-67), f. 9-5-67, ef. 9-13-67; AD 1026(16-74), f. 4-30-74, ef. 5-25-74; AD 1068(14-75), f. 9-5-75, ef. 10-1-75; AD 2-1980, f. 2-20-80, ef. 4-1-80; AD 22-1981, f. & ef. 10-7-81; AD 6-1992, f. & cert. ef. 6-3-92; DOA 27-2003(Temp), f. & cert. ef. 8-4-03 thru 11-1-03; DOA 32-2003, f. & cert. ef. 9-12-03

603-014-0046

Establishing Expiration Dates for Certificates of Recordation of Brands

(1) Except as provided in subsection (2), when issuing a new certificate of recordation or when renewing an existing certificate of recordation, the department may establish or adjust the expiration date of the certificate as the department considers necessary to ensure that an approximately equal number of certificates will expire in each year of a four-year cycle.

(2) Every certificate of recordation must have at least one expiration date in each four-year cycle.

Stat. Auth.: ORS 561

Stats. Implemented: ORS 604.027(1) & 604.027(2)

Hist.: DOA 27-2003(Temp), f. & cert. ef. 8-4-03 thru 11-1-03; DOA 32-2003, f. & cert. ef. 9-12-03

603-014-0047

Renewal Fees for Certificates of Recordation of Brands

(1) All certificates of recordation expire on their expiration dates, unless the department receives the renewal fee by the first January 4th that follows an attempt by the department to notify the holder of the need to renew.

(2) The department will attempt to notify the holder during the September that precedes the expiration date of the certificate of recordation that the certificate needs to be renewed.

(3) The amount of the renewal fee depends on whether the new expiration date will be adjusted under OAR 603-014-0046.

(a) If the new expiration date will not be adjusted, the certificate of recordation will be effective for four years and the amount of the renewal fee will be based on the species of livestock. For all livestock species except sheep, the renewal fee shall be \$100. For sheep, the renewal fee shall be \$40.

(b) If the new expiration date will be adjusted, the department will attempt to notify the holder of the adjusted expiration date and of the amount of the renewal fee. The amount of the renewal fee will be calculated based on the number of years that the certificate of recordation will be effective and on the species of livestock. For livestock species except sheep, the renewal fee shall be \$25 per year. For sheep, the renewal fee shall be \$10 per year.

(4) The department will mail the notifications described in this section to a holder of a certificate of recordation at the holder's last known address as shown on the department's records.

Stat. Auth.: ORS 561

Stats. Implemented: ORS 604.027(1) & 604.027(2)

Hist.: DOA 27-2003(Temp), f. & cert. ef. 8-4-03 thru 11-1-03; DOA 32-2003, f. & cert. ef. 9-12-03

603-014-0048

Reactivation Fees for Expired Certificates of Recordation of Brands

(1) If a certificate of recordation has expired, the person who held the certification of recordation may reactivate the certificate as provided in this section within one year of the date the certificate expired.

(2) Within 60 days of the expiration, the department will provide written notice of the expiration to the person who held the certificate.

(3) To reactivate a certificate of recordation, the person who held the certificate shall submit a written request, submit all other requested documents, and pay a reactivation fee plus a renewal fee.

(a) The person who held the certificate of recordation may request in writing that the department reactivate the certificate. The reactivation fee must accompany the request. The amount of the reactivation fee is \$25 for each certificate.

(b) If the department determines that the certificate of recordation may still be reactivated, the department will inform the person who held the certificate of the amount of the renewal fee and may request additional documents from the person.

(c) The amount of the renewal fee for each certificate of recordation will be calculated based on the livestock species and on the number of days between the date that the department determined that the certificate may still be activated and the new expiration date. For all livestock species except sheep, the renewal fee for a certificate of recordation shall be \$.07 per day, up to a maximum of \$100. For sheep, the renewal fee for a certificate of recordation shall be \$.03 per day, up to a maximum of \$40.

(d) Upon receiving the information described in paragraph (b), the person who held a certificate of recordation may submit the renewal fee to the department. If the person does not submit the renewal fee so that the department receives it within three months of the date that the department determined that the certificate of recordation may be reactivated or within one year of the date that the certificate expired, whichever occurs first, then the department's determination will be deemed rescinded without further action.

(e) Upon receipt of a written request, the reactivation fee, the renewal fee, and all requested documents as provided in this section, the department will reactivate the certificate of recordation. The reactivation shall allow use of the brand between the date that the department determined that the certificate of recordation may be reactivated and the new expiration date. The reactivation does not allow use of the brand between the date the certificate or recordation expired and the date that the department determined that the certificate of recordation may be reactivated.

(4) If the person who held a certificate of recordation does not reactivate an expired certificate of recordation within one year of the date that the certificate expired and as otherwise provided in this section, then the certificate is considered abandoned and any other person may apply for recordation of the distinctive brand.

(5) The department will mail the notifications described in this section to a person who held a certificate of recordation by addressing the notification to the person and use the person's last known address as shown on the department's records.

Stat. Auth.: ORS 561
 Stats. Implemented: ORS 604.027(1) & 604.027(2)
 Hist.: DOA 27-2003(Temp), f. & cert. ef. 8-4-03 thru 11-1-03; DOA 32-2003, f. & cert. ef. 9-12-03

603-014-0055

Service Fee

(1) The service fee provided for in ORS 604.046(2) shall apply any time a livestock inspector travels specifically with the intent to conduct a brand inspection.

(2) The service fee is \$25 per travel location.
 Stat. Auth.: ORS 561.190
 Stats. Implemented: ORS 604.046(2)
 Hist.: DOA 14-1999, f. & cert. ef. 6-30-99; DOA 12-2006, f. 6-7-06 cert. ef. 7-1-06; DOA 10-2007(Temp), f. 6-20-07, cert. ef. 7-1-07 thru 12-21-07; Administrative Correction 1-24-08; DOA 6-2008, f. & cert. ef. 2-6-08

603-014-0065

Service Fee Exemptions

The service fee required by OAR 603-014-0055 shall not apply to the following:

(1) Cattle and equine that are presented for inspection at place where a livestock inspector is present and the owner or occupant of that place allows the use of their property to conduct the inspection. The service charge may or may not have already been paid by the person who caused the inspector to be at that place.

(2) At auction markets where multiple inspectors are required to adequately inspect cattle prior to their sale, only one service fee will be charged per sale.

Stat. Auth.: ORS 561.190
 Stats. Implemented: ORS 604.046(2)
 Hist.: DOA 14-1999, f. & cert. ef. 6-30-99; DOA 10-2007(Temp), f. 6-20-07, cert. ef. 7-1-07 thru 12-21-07; Administrative Correction 1-24-08; DOA 6-2008, f. & cert. ef. 2-6-08

603-014-0095

Brand Inspection Fee

(1) The brand inspection fee for cattle, as provided by ORS 604.066(2), shall be \$1.00 per head.

(2) The brand inspection fee for cattle hides shall be \$1.50 per hide.

(3) The brand inspection fee for self-inspection (E certificates) on cattle shall be \$1.00 per head.

(4) The charge for cattle transportation certificates, as authorized by ORS 561.180(4), shall be \$1.50 per book.

Stat. Auth.: ORS 561.180, 604.027 & 607.261
 Stats. Implemented: ORS 604.066
 Hist.: AD 15-1982, f. & ef. 11-1-82; AD 13-1983, f. 10-19-83, ef. 11-1-83; AD 3-1985, f. 1-23-85, ef. 2-1-85; AD 12-1989, f. & cert. ef. 9-1-89; AD 6-1992, f. & cert. ef. 6-3-92; DOA 8-2003, f. 1-14-03 cert. ef. 1-15-03; DOA 10-2007(Temp), f. 6-20-07, cert. ef. 7-1-07 thru 12-21-07; Administrative Correction 1-24-08; DOA 6-2008, f. & cert. ef. 2-6-08; DOA 19-2008, f. 9-10-08, cert. ef. 9-12-08

603-014-0135

Brand Inspection System for Cattle Hides

As provided by ORS 604.046(6), the system for brand inspection of cattle hides resulting from custom slaughtering operations shall be as follows:

(1) Custom slaughtering establishments shall prepare the certificates and reports required by ORS 603.045. All hides shall be identified by application of a back tag or other identification device approved in writing by the Department. The back tag or device must be affixed to the hide with back tag glue or other manner approved in writing by the Department.

(2) Custom slaughtering establishments shall disclose to the Department the identities and locations of the rendering plants or hide buyers to which they sell or deliver cattle hides resulting from their slaughtering operations. Brand inspection of cattle hides may then be performed at these identified places. In the event custom slaughtering establishments retain the cattle hides resulting from their slaughtering operations, or in the event the cattle hides are disposed of to tanneries, or to rendering plants or tanneries located outside this state, brand inspection of cattle hides shall then be performed at the custom slaughtering establishments with the fees therefore based upon the number of cattle hides inspected. The brand inspection of cattle hides may be random, select or complete, depending upon the number of hides available for inspection and the degree of ownership verification, but not less than 25% annually.

(3) As provided by ORS 561.275, all rendering plants licensed under ORS 601.050, hide buyers, and all custom slaughtering establishment licensed under ORS 603.025, shall make their records relating to their acquisition and disposition of cattle hides available to the Department upon its request.

(4) The fee for brand inspection of cattle hides shall be that set forth in OAR 603-014-0095. The fee for such inspections performed at rendering plants identified under section (2) of this rule shall be deducted from the sales prices due the custom slaughtering establishments from whom the cattle hides were obtained, and remitted to the Department on or before the fifth day of the month following the acquisition of such cattle hides.

Stat. Auth.: ORS 561 & 604
 Stats. Implemented: ORS 604.071(5)
 Hist.: AD 13-1983, f. 10-19-83, ef. 11-1-83; AD 9-1987, f. & ef. 6-24-87; DOA 15-1999, f. & cert. ef. 6-30-99; DOA 26-2000, f. & cert. ef. 10-6-00; DOA 10-2007(Temp), f. 6-20-07, cert. ef. 7-1-07 thru 12-21-07; Administrative Correction 1-24-08; DOA 6-2008, f. & cert. ef. 2-6-08

Change of Ownership

603-014-0205

Inspection Requirements

Subject to OAR 603-014-0210, all cattle shall be inspected at any time there is a transfer of ownership in said cattle, by sale or otherwise. However, the buyer and seller of cattle may agree to have inspection of groups of cattle at a designated collection point at any time within 48 hours after the sale or other form of transfer of ownership has taken place.

Stat. Auth.: ORS 561 & 604

Stats. Implemented: ORS 604.046
 Hist.: AD 1022(12-74), f. 4-12-74, ef. 5-11-74; AD 1110(31-76), f. & ef. 10-4-76; AD 22-1981, f. & ef. 10-7-81

603-014-0210

Inspection Exemptions

The brand inspection required by OAR 603-014-0205 shall not apply to the following:

(1) Cattle that are:

(a) Transported or moved directly (without diversion) to a licensed slaughtering establishment, licensed feedlot, or a licensed auction yard, where the regular brand inspection will be performed upon said cattle; and

(b) Sold directly to the person causing such transportation or movement and such brand inspection referred to in subsection (a) of this section; and

(c) The subject matter of an assurance given to the seller that such cattle are to be so brand inspected and transported or moved within eight days of the transfer of ownership.

(2) Cattle, not to exceed fifteen head, that are sold by seller to the same person during a consecutive eight-day period, and for which an exemption certificate, prescribed by and obtained from the Department, has been issued to said purchaser with the fee paid therefore. An executed copy of said exemption certificate shall be submitted to the Department within eight days of the execution thereof.

(3) Cattle that are handled by a custom slaughtering establishment wherein hide inspection and other requirements are performed.

(4) Calves up to 30 days of age.

Stat. Auth.: ORS 561 & 604

Stats. Implemented: ORS 604.046

Hist.: AD 1022(12-74), f. 4-12-74, ef. 5-11-74; AD 1057(3-75), f. 4-17-75, ef. 5-11-75; AD 1110(31-76), f. & ef. 10-4-76; AD 22-1981, f. & ef. 10-7-81; DOA 12-2002, f. 4-5-02, cert. ef. 4-16-02

603-014-0310

Permits to Use Out-of-State Livestock Brands and the Conditions and Fees for Such Use

(1) When an out-of-state brand is unavailable for recording due to its similarity to other brands recorded in Oregon, a permit to use such a brand shall be required.

(2) A permit to use a brand not recorded in Oregon shall be issued by the Department of Agriculture, acting through the Livestock Health and Identification Division, under the following conditions:

(a) The brand to be used must be currently registered in another state;

(b) The applicant must submit a facsimile (tracing) of the branding iron to be used;

(c) Permits shall be valid for eight months from the date of issue. A permit may be renewed once for a period of no greater than four months. In no event will permits be valid for longer than 12 months. Thereafter, continued use of the brand will require a new permit;

(d) Animals to be branded must be brand inspected before the out-of-state brand is applied. The usual brand inspection fee shall apply;

(e) If animals are branded at an auction market where brand inspection has occurred, no additional brand inspection fee shall be charged;

(f) Change of ownership brand inspection is required within eight days of the transfer. If rebranding takes place when its inspection occurs, no additional brand inspection shall be charged. However, if cattle are branded at a later time, another inspection shall be required and the usual fee shall apply;

(g) A \$60 processing fee shall be charged for a permit; a \$5 fee shall be charged for processing a renewal of the permit.

(3) A permit shall not be issued to an out-of-state brand owner pasturing livestock in the same Oregon county as the owner of the Oregon conflicting brand.

(4) A Supervising Livestock Brand Inspector may authorize the use of an out-of-state brand at the time of brand inspection. Upon verifying the brand is currently registered in another state, the inspec-

tor will collect the \$60 fee, brand facsimile and permit application and forward these items to the Brand Recorder for processing. If the brand is available for recording in Oregon, registration documents will be issued. If the brand is not available for recording in Oregon, the out-of-state brand permit will be issued.

Stat. Auth.: ORS 561.190 & 604.071

Stats. Implemented: ORS 604.071

Hist.: AD 4-1988, f. 4-5-88, cert. ef. 4-15-88; AD 23-1993, f. & cert. ef. 12-21-93

DIVISION 15

CARE OF PET AND CAPTIVE ANIMALS

603-015-0025

Definitions

As used in OAR 603-015-0025 to 603-015-0060:

(1) "Animal Pounds" or "Animal Shelters" means any establishment maintained by public funds, private funds, or a combination of public and private funds, that uses such establishment for holding pet or captive animals for disposition by gift, treatment and care, euthanasia, sale, or exchange.

(2) "Boarding Kennels" means an establishment operated and maintained for the care or custody of pet animals for boarding, training, or similar purposes, for varying periods of time, for profit or compensation.

(3) "Commercial Kennels" means an establishment operated and maintained for the purpose of breeding, buying, selling, or bartering of pet animals for profit or compensation.

(4) "Establishment" includes, in connection with the operation or ownership of a business of a boarding kennel, commercial kennel, grooming parlor, pet shop, animal pound, or animal shelter:

(a) Any room, building, structure, or place; and

(b) All equipment, machinery, fixtures, articles, and materials; and

(c) The ground upon which such place or business is located and such ground or area which is a part of the business, or used by the owner or operator in carrying out such business.

(5) "Grooming Parlor" means any establishment that bathes, clips, pedicures, or grooms any pet or captive animal for profit or compensation.

(6) "Pet Animal" or "Pet Animals" means any animal held, maintained, or kept in captivity.

(7) "Pet Shop" or "Animal Dealer" means an establishment operated and maintained for buying or receiving pet animals, and thereafter exhibiting or offering for sale, or selling, trading, or bartering such animals.

Stat. Auth.: ORS 561 & 596

Stats. Implemented: ORS 596.020

Hist.: AD 8-1984, f. & ef. 5-23-84

603-015-0030

Intent and Purpose

It is the intent and purpose of the provisions of OAR 603-015-0025 to 603-015-0060 to verify and require that all measures and procedures are maintained and taken to eradicate and control diseases in pet animals, and/or the diseases in pet animals which may be transmissible or transmissible from pet animals to other animals or persons.

Stat. Auth.: ORS 561 & 596

Stats. Implemented: ORS 596.020

Hist.: AD 8-1984, f. & ef. 5-23-84

603-015-0035

General Requirements

(1) Any person who is engaged in the business of a boarding kennel, commercial kennel, pet shop, animal pounds, animal shelters, or grooming parlors, shall comply with the provisions of OAR 603-015-0025 to 603-015-0060. All such provisions apply to such businesses and to the owners or operators thereof.

(2) An individual, family, or groups of associations who do not fall within the meaning and definition of a boarding kennel, commercial kennel, pet shop, animal pound, or animal shelter or grooming parlor, owner or operator, shall also reasonably comply with the

provisions or OAR 603-015-0025 to 603-015-0060, in the handling, care, and keeping of pet animals under their ownership care, or custody.

Stat. Auth.: ORS 561 & 596
 Stats. Implemented: ORS 596.020
 Hist.: AD 8-1984, f. & ef. 5-23-84

603-015-0040

Facilities — Indoors

(1) Structural strength of facilities for housing pet animals shall be sound, in good repair to prevent injuries, contain the animal, and prevent the entrance of other animals.

(2) Electric power and a potable water supply shall be available. Lighting, artificial and natural, shall be of good quality and well distributed.

(3) Isolation — Facilities must be available for the isolation and treatment of pet animals suspected of harboring communicable diseases.

(4) Storage — Facilities shall be provided for the storage of equipment and to protect food and bedding against vermin infestation and contamination.

(5) Waste Disposal: Provision for the removal and disposal of excreta, bedding, dead animals, shall be made. Disposal facilities shall be constructed and operated in such manner as to minimize disease hazards, offensive odors, and vermin infestation.

(6) Facilities for wash rooms: Basins and sinks shall be provided for cleanliness of caretakers, and sanitization of feeding utensils.

(7) Ventilation: Provisions and facilities for adequate ventilation to insure the exhausting of stale air, excess humidity, and kennel odors, shall be made and maintained. Temperatures of 70°F to 75°F are recommended within practical limits.

Stat. Auth.: ORS 561 & 596
 Stats. Implemented: ORS 596.020
 Hist.: AD 8-1984, f. & ef. 5-23-84

603-015-0045

Facilities — Outdoors

Shall offer shade against sun, shelter against rain, snow, and wind; sufficient protection for pet animals against cold and inclement weather, and adequate drainage to eliminate excessive water in the runs. Adequate space should be allowed in outside houses and cages to permit the animal to stand, turn around, and lie down, without obstructing freedom of movement.

Stat. Auth.: ORS 561 & 596
 Stats. Implemented: ORS 596.020
 Hist.: AD 8-1984, f. & ef. 5-23-84

603-015-0050

Health and Husbandry Practices

(1) Pet animals shall be fed a food that is palatable, wholesome, and meets minimal daily nutritional requirements. Ground or kennel surface feeding is not permitted. Feed pans and receptacles shall be washed and sanitized after each feeding. Self feeders will be cleaned and sanitized as often as necessary to prevent molding or deterioration of the contents.

(2) Fresh potable water will be offered at least twice daily and more often if weather conditions warrant. More water is required in hot weather.

(3) Sanitation: Excreta will be removed from runs, cages, pens, daily and more often if necessary. Runs and enclosures will be sanitized once weekly by cleaning and using a safe and effective disinfectant and changing soil or litter as often as it becomes soiled. Premises will be kept clean and free from trash and facilities will be maintained in good order to prevent injury to animals and offer them proper protection against inclement weather.

(4) Sick animals. Pet animals that are quarantined or under treatment for communicable diseases shall be isolated in such place that healthy animals are not exposed.

(5) Importation: In accordance with OAR 603-011-0250 through 603-011-0382 and ORS 596.341 and other laws or regulations thereunder.

Stat. Auth.: ORS 561 & 596
 Stats. Implemented: ORS 596.020
 Hist.: AD 8-1984, f. & ef. 5-23-84

603-015-0055

Animals in Transit

(1) Pet animals when required to be shipped in crates shall be transported in crates constructed of a smooth, durable material which is easily cleaned and shall:

(a) Have a solid floor which may have a false bottom;

(b) Be so constructed as to provide maximum safety for the particular animal or animals being transported;

(c) Have openings on two sides to assure adequate ventilation;

(d) Crates shall be so constructed that food or water may be put through a small-type door without removing the animal from the crate in order that caretakers may feed and water when required;

(e) Care and feeding instructions should be written out by the shipper and attached to the crate. Other precautions in handling the animal should also be given in case it becomes necessary to move the animal from the crate.

(2) In all cases the crates shall be large enough to provide space for the pet animals to lie down in extended position and to allow ease of movement when standing or turning around. When the temperature is over 85°F, increased space shall be provided to within reason.

(3) The crate shall be cleaned before use for each trip.

(4) Food and water containers shall be cleaned and sanitized before each trip.

(5) If bedding is used it shall be clean, dry, and dust free.

(6) The person or persons responsible for the welfare of the pet animal or animals while in transit shall:

(a) Offer the pet animal food at least once every 24 hours;

(b) Offer all pet animals water at 12 hour intervals at least, except that water shall be offered at four-hour intervals when the temperature reaches 90°F or above;

(c) Inspect each pet animal at four-hour intervals or oftener.

Stat. Auth.: ORS 561 & 596
 Stats. Implemented: ORS 596.020
 Hist.: AD 8-1984, f. & ef. 5-23-84

603-015-0060

Records

(1) A record of each sale shall be maintained by the owner or operator of each boarding kennel, commercial kennel, pet shop, animal pound, or animal shelter, for a minimum period of 12 months after date of sale or transfer of a pet animal and shall include the date of sale, age, breed, indication of sex of animal sold, name and address of the purchaser, source, and breeder.

(2) If records of prophylactic medication are used in advertising or are furnished the purchaser or person acquiring a pet animal, specific information regarding type, amount, and date of prophylactic medication shall be kept by the owner or operator of each boarding kennel, commercial kennel, pet shop, animal pound, or animal shelter, and shall become a part of the sales record.

(3) Upon request from the purchaser, such owner or operator of each boarding kennel, commercial kennel, pet shop, animal pound, or animal shelter, or his representative, shall furnish the purchaser with a record as outlined in section (2) of this rule.

Stat. Auth.: ORS 561 & 596
 Stats. Implemented: ORS 596.020
 Hist.: AD 8-1984, f. & ef. 5-23-84

603-015-0065

Penalties

Applicable penalties as set forth in ORS 596.990 apply to any person violating the provisions of OAR 603-015-0025 to 603-015-0060.

Stat. Auth.: ORS 561 & 596
 Stats. Implemented: ORS 596.990
 Hist.: AD 8-1984, f. & ef. 5-23-84

DIVISION 17

REFRIGERATED LOCKERS

Recording Thermometers and Charts

603-017-0010

Statement of Purpose

Pursuant to authority vested in the Department of Agriculture under ORS 628.350, the following rules and regulation for the purpose of OAR 603-025-0020 to 603-025-0050 are for the purpose of regulating and licensing the operation of refrigerated locker plants.

Stat. Auth.: ORS 628
 Stats. Implemented: ORS 628.350
 Hist.: AD 286, f. 7-9-47, ef. 7-10-47

603-017-0020

Recording Thermometer

Recording thermometer shall be of the electric self-starting type enclosed in a moisture-proof case, permanently fastened to the substantial wall in vestibule or waiting room, five feet from the floor so that the recording chart is visible at all times. Instrument must be kept locked at all times except for changing the dial, inking, or repairing.

Stat. Auth.: ORS 628
 Stats. Implemented: ORS 628.350
 Hist.: AD 286, f. 7-9-47, ef. 7-10-47

603-017-0030

Sensitive Bulb

The sensitive bulb shall be located in the locker room not less than eight feet from any door or blower, not less than 15 inches from any wall, not less than 30 inches from any plates or coils, and at least 12 inches from the ceiling. The bulb shall not be directly in front of any door or blower.

Stat. Auth.: ORS 628
 Stats. Implemented: ORS 628.350
 Hist.: AD 286, f. 7-9-47, ef. 7-10-47

603-017-0040

Chart

The chart shall make one complete revolution in seven days, shall be graduated hourly and daily and must be not less than 10 inches in diameter.

- (1) Lowest temperature reading must be on the outer edge of the chart.
- (2) Accuracy. Zero shall be within one degree plus or minus.
- (3) Charts must be changed each week, properly dated, signed by Plant Manager, and be made available for inspection for at least one year.

Stat. Auth.: ORS 628
 Stats. Implemented: ORS 628.350
 Hist.: AD 286, f. 7-9-47, ef. 7-10-47

603-017-0050

Chart Rotating Device

Chart rotating device shall be fitted with perforating pins preventing rotation except by means of the electric clock in the case.

Stat. Auth.: ORS 628
 Stats. Implemented: ORS 628.350
 Hist.: AD 286, f. 7-9-47, ef. 7-10-47

Civil Penalties

603-017-0900

Purpose

The Oregon Department of Agriculture Food Safety Program licenses and inspects all facets of Oregon's food distribution system, except restaurants, to ensure food is safe for consumption. Education and technical assistance are vital to the prevention, correction, and abatement of food safety violations, and are preferred over regulatory action. However, regulatory action may be necessary to deter violations of food safety laws and rules, to educate persons about the consequences of such violations, and to compel compliance with food safety laws for the protection of consumers. The Department intends to initiate civil penalty actions when educational measures,

technical assistance, warning letters, compliance agreements or other remedial measures fail to achieve compliance.

Stat. Auth.: ORS 561.190, 628.350, 628.995
 Stats. Implemented: ORS 628.995
 Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

603-017-0910

Definitions

As used in OAR 603-017-0920 through 603-017-0930, unless otherwise required by the context, the following terms will be construed to mean:

- (1) "Department" means the Oregon Department of Agriculture.
 - (2) "Interference" means hindering or impeding an activity or process, which includes, but is not limited to any harassment, unreasonable delay, threat, concealment, deceit, or obstruction.
 - (3) "Major," with respect to violations, means an incident, or series of incidents that cause a reasonable probability that serious adverse health consequences or death will occur.
 - (4) "Minor," with respect to violations, means an incident, or series of incidents that are not likely to cause adverse health consequences.
 - (5) "Moderate," with respect to violations, means an incident, or series of incidents that may cause temporary or medically reversible adverse health consequences, or where the probability of serious adverse health consequences is remote.
 - (6) "Repeat violation" means the recurrence of the same violation for each 24-hour period after a notice of noncompliance or assessment of civil penalty was issued within the preceding three years. It does not include a violation if the previous notice is the subject of a pending appeal or if the notice has been withdrawn or successfully appealed.
 - (7) "Same," with respect to violations, means an identical recurrence, exact repetition, or a continuation of a previous violation.
 - (8) "Violation" means the failure to comply with any requirement of ORS 628.210 to 628.370 or any rule adopted thereunder.
- Stat. Auth.: ORS 561.190, 628.350, 628.995
 Stats. Implemented: ORS 628.995
 Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

603-017-0920

Schedule of Civil Penalties

In addition to any penalty available under ORS 561.190 or 628.990, the Department may impose a civil penalty with respective amounts for:

- (1) Owning, operating, or offering the services of any refrigerated locker plant without obtaining a license as explained in ORS 628.220 for each place of business from the Department. Penalty — \$5,000 to \$10,000.
- (2) Failure to conspicuously display the license in the licensed plant at all times pursuant to ORS 628.220. Penalty — \$100.
- (3) Operating a refrigerated locker business at any address other than the address stated in the application submitted pursuant to ORS 628.230. Penalties:
 - (a) Minor — \$100 to \$3,500;
 - (b) Moderate — \$3,501 to \$7,000; or
 - (c) Major — \$7,001 to \$10,000.
- (4) Permitting a person who has a communicable or infectious disease to work in or about any refrigerated locker plant, or to handle any food in connection with the operation of such plant in violation of ORS 628.270(2). Penalty — \$500 to \$5,000.
- (5) Interference with a lawful inspection under authority of ORS 628.280. Penalty — \$5,000 to \$10,000.
- (6) Failure to maintain sanitary and safety requirements of ORS 628.290. Penalties:
 - (a) Minor — \$1,000 to \$4,000;
 - (b) Moderate — \$4,001 to \$7,000; or
 - (c) Major — \$7,001 to \$10,000.
- (7) Failure to maintain adequate equipment, temperatures, or records as required in ORS 628.300. Penalty — \$500 to \$5,000.
- (8) Failure to use nontoxic ink or other harmless substance to apply marks directly to meat or other food products as explained in ORS 628.310. Penalty — \$100 to \$5,000.

(9) Failure to identify any fresh carcass meats with a suitable tag or stamp, and place all meats that have not been previously chilled in a chill room for at least 24 hours before removal to the cutting room as explained in ORS 628.330. Penalty — \$100 to \$5,000.

(10) Failure to handle fish and wild game consistent with the provisions of ORS 628.340. Penalty — \$500 to \$5,000.

Stat. Auth.: ORS 561.190, 628.350, 628.995

Stats. Implemented: ORS 628.995

Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

603-017-0930

Penalty Factors; Procedure

(1) In imposing a penalty pursuant to the schedule adopted pursuant to ORS 628.995, the Department shall consider the following factors, which are listed in prioritized order:

(a) The immediacy and extent to which the violation threatens the public health or safety.

(b) Any prior violations of statutes, rules or orders pertaining to refrigerated locker plants.

(c) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(d) The economic and financial conditions of the person incurring the penalty, including any financial gains resulting from the violation.

(2) Each 24-hour period a violation continues after the period of time established for compliance will be considered a separate violation unless the Department finds a different period of time is more appropriate to describe the specific violation event.

(3) Repeat violations of OAR 603-017-0910 will be assessed as three times the penalty amount in OAR 603-017-0910, not to exceed \$10,000.

(4) A civil penalty imposed under this rule will comply with ORS 183.745, except that the written application for a hearing must be received by the department no later than 10 days after the mailing or personal service of the notice of civil penalty.

Stat. Auth.: ORS 561.190, 628.350, 628.995

Stats. Implemented: ORS 628.995

Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

DIVISION 18

RULES FOR EGG-LAYING HENS HOUSED IN CAGES

603-018-0000

Definitions

For purposes of OAR 603-018-0005 to 603-018-0025:

(1) “Commercial egg-laying farm” means any commercial farm as defined in Oregon Laws 2011 Chapter 436 that has caged egg-laying hens at any one location or in multiple locations.

(2) “Director” means the Director of the Oregon Department of Agriculture or the Director’s authorized deputies or officers.

(3) “Distribute” means to import, consign, sell, offer for sale, barter, exchange or otherwise facilitate the supplying of eggs or egg products into or within Oregon.

(4) “Distributor” means the first person that distributes egg or egg products into or within Oregon.

(5) “Enforcement” means any documented action taken by the department to address a violation.

(6) “Person” includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies.

(7) “Sell” or “Sale” means to sell, offer for sale, expose for sale, or have in possession for sale.

(8) “Violation” is an act or omission that does not comply with a provision of Oregon Laws 2011 Chapter 436 or the administrative rules developed thereunder.

(9) “House Average” means a method of determining space allowance for hens by taking the total square inches of cage floor space within a layer house, divided by the number of hens in that house at the time of housing.

Stat. Auth.: ORS 632.840

Stats. Implemented: ORS 632.835 - 632.850

Hist.: DOA 20-2012, f. & cert. ef. 7-3-12

603-018-0005

Poultry Husbandry, Cage Size Standards for Egg Laying Hens

An owner or operator of a commercial egg-laying farm in Oregon may not confine an egg-laying hen in an enclosure that fails to comply with the following standards:

(1) Any enclosure constructed or otherwise acquired prior to December 31, 2003 must provide a minimum “house average” space allowance of 67 square inches of floor space per hen for White Leghorns, and 76 square inches of floor space per hen for Brown Egg Layers.

(2) Any enclosure constructed or otherwise acquired after December 31, 2003, but prior to January 1, 2012 must provide a minimum of 67 square inches of floor space per hen for White Leghorns, and 76 square inches of floor space per hen for Brown Egg Layers.

(3) Any enclosure constructed or otherwise acquired after January 1, 2012 must meet, or be convertible into enclosures that provides a minimum space allowance as follows:

(a) Enclosures must provide a minimum of 67 square inches of floor space per hen for White Leghorns, and 76 square inches of floor space per hen for Brown Egg Layers; and

(b) Must be convertible to an enclosure that allows a minimum of 116.3 square inches of floor space per hen, including nest, and not less than 17.7 inches of height; or

(c) Must allow a minimum of 116.3 square inches of floor space per hen, including nest, and not less than 17.7 inches of height.

Stat. Auth.: ORS 632.840

Stats. Implemented: ORS 632.835 - 632.850

Hist.: DOA 20-2012, f. & cert. ef. 7-3-12

603-018-0010

Standards for, and Documentation of, Production and Distribution of Eggs and Egg Products

(1) All eggs produced in a commercial egg-laying farm in Oregon or eggs or egg products distributed into or within Oregon must be from hens, that if confined during the production of the eggs, where in an enclosure that complies with OAR 603-018-0000 through 603-018-0010.

(2) Prior to distributing any eggs or egg products into, or within, this state, any person other than the retail end-user of shell eggs, must provide documentation to the ODA that the eggs or egg products originated from hens confined in an enclosure during the production of the eggs complies with OAR 603-018-0010(1). This documentation may include a copy of current UEP certification, AHA certification, or certification by an independent third party approved by the Director and show that the eggs or egg products were produced consistently with 603-018-0005.

(3) If the documentation required in OAR 603-018-0010(2) of this section is not on file with ODA as a part of a Farm Business Plan as required in 603-018-0015, then prior to distributing any eggs or egg products in Oregon, a distributor of eggs or egg products must complete and submit to the ODA documentation establishing current UEP certification, AHA certification, or a notarized letter from an independent third party approved by the Director, certifying that the eggs or egg products were produced consistently with 603-018-0005.

(4) The documentation required by OAR 603-018-0010(2) must be submitted annually to the ODA.

(5) Any Oregon purchaser, other than the retail end-user of shell eggs, of eggs or egg products must maintain receipts or other documentation identifying each and every distributor from whom they received eggs, or egg products. Receipts or other documentation must be maintained for a period of three (3) years and made available to the ODA upon request.

(6) Eggs or egg products that are certified per section OAR 603-018-0010(2) of this section may not be sold in Oregon if they are comingled with non-certified eggs or egg products.

(7) A person may not fail, or refuse to submit documentation that eggs, or egg products sold in Oregon were produced consistently with the requirements in OAR 603-018-0000 through 603-018-0010.

Failure, or refusal to submit documentation to the department may result in an enforcement action including civil penalty.

(8) A person may not fail to possess, or refuse, to possess or maintain records as required in OAR 603-018-0010(4) of this section. Failure to possess, or refusal to possess and maintain documentation as required may result in an enforcement action including civil penalty.

(9) A person may not distribute eggs or egg products into or within Oregon that the person knows, or reasonably should know are a product of an egg-laying hen that has been confined in an enclosure that fails to comply with Oregon Laws 2011 Chapter 436 or OAR 603-018-0005. Any such distribution may result in an enforcement action including civil penalty.

Stat. Auth.: ORS 632.840
Stats. Implemented: ORS 632.835 - 632.850
Hist.: DOA 20-2012, f. & cert. ef. 7-3-12

603-018-0015

Commercial Egg-Laying Farm Business Plans

(1) Beginning July 1, 2012, upon renewal of an annual “Egg Breaker” or “Egg Handler” license issued by the ODA, all commercial egg laying farms in Oregon must submit to the department a Farm Business Plan describing the manner by which they intend to comply with 2026 conversion goals as outlined in Section 9 of Oregon Laws 2011 Chapter 436.

(2) If a commercial egg-laying farm in Oregon does not hold an “Egg Breaker” or “Egg Handler” license, a Farm Business Plan may be submitted to the department annually beginning July 1, 2012.

(3) A Farm Business Plan must include:

(a) Identification of the commercial egg-laying farm location(s) including address, contact information, signature of principal owner(s) or their authorized representative.

(b) The date the plan was written.

(c) A copy of a current UEP or AHA certification, or a notarized letter of certification by an independent third party approved by the Director that verifies that the eggs, or egg products are produced from hens, that if confined during the production of the eggs, where in an enclosure that complies with OAR 603-018-0000 through 603-018-0010.

(d) Percentage of total egg-laying hen capacity that currently meet, or exceed, UEP standards or standards described in OAR 603-018-0000 through OAR 603-018-0010.

(e) Percentage of total egg-laying hen capacity that meet, or exceed, AHA Enriched Colony Housing standards. The sum of (d) and (e) must equal 100%.

(f) Brief narrative explaining how the farm intends to meet the anticipated replacement timeline for the conversion of enclosures to enclosures that provide at a minimum 116.3 square inches of floor space per hen, including nest, and not less than 17.7 inches of height.

(4) Each person submitting a Farm Business Plan must maintain adequate documentation to support the information provided in the plan. These documents must be made available to the ODA upon its request.

(5) Verification of the information contained in a Farm Business Plan may be accomplished by physical inspection of the commercial egg-laying farm by the Director.

(6) A person may not fail or refuse to submit a Farm Business Plan as required in this section. Failure or refusal to submit a Farm Business Plan as required in this section is a violation subject to enforcement actions, up to and including civil penalty.

(7) A person may not fail or refuse to maintain adequate documentation to substantiate information contained in a Farm Business Plan. Failure or refusal to maintain, or provide, such documentation is a violation subject to enforcement actions, up to and including civil penalty.

(8) The department may request information to be included in a Farm Business Plan as deemed necessary to administer and enforce Oregon Laws 2011 Chapter 436 and the rules adopted thereunder.

Stat. Auth.: ORS 632.840
Stats. Implemented: ORS 632.835 - 632.850
Hist.: DOA 20-2012, f. & cert. ef. 7-3-12

603-018-0020

Department Access, Subpoena Authority

(1) As authorized by ORS 561.275 the State Department of Agriculture may have access at reasonable times to records, premises, materials or conveyances as necessary for the purpose of administering and enforcing Oregon Laws 2011 Chapter 436 and rules adopted thereunder.

(2) The department may obtain a subpoena to require the production of pertinent records related to the administration and enforcement of Oregon Laws 2011 Chapter 436 and rules adopted thereunder.

Stat. Auth.: ORS 632.840
Stats. Implemented: ORS 632.835 - 632.850
Hist.: DOA 20-2012, f. & cert. ef. 7-3-12

603-018-0025

Enforcement and Civil Penalties Generally

(1) In addition to any other penalty provided by law, the Director may assess a civil penalty not to exceed \$2,500 for each violation of any provision of Oregon Laws 2011 Chapter 436 and rules adopted thereunder.

(2) In addition to a civil penalty or any other penalty provided by law, the department is not precluded from utilizing other enforcement alternatives. Enforcement alternatives may include, but are not limited to, letter of advisement, notice of violation, or other non-civil penalty action as authorized by law and as deemed necessary to attain compliance.

(3) Civil penalties are subject to ORS 183.745 and shall be due and payable ten (10) business days after the order becomes final by operation of law or on appeal.

Stat. Auth.: ORS 632.840
Stats. Implemented: ORS 632.835 - 632.850
Hist.: DOA 20-2012, f. & cert. ef. 7-3-12

DIVISION 19

WOLF DEPREDATION COMPENSATION AND FINANCIAL ASSISTANCE GRANT PROGRAM

603-019-0001

Definitions

As used in 603-019-0001 to 603-019-0040, unless the context requires otherwise:

(1) “Livestock” means, ratites, horses, mules, jackasses, cattle, llamas, alpacas, sheep, goats, swine, bison, domesticated fowl and any fur-bearing animal bred and maintained commercially, or otherwise, within pens, cages or hutches.

(2) “Working dog” means any animal of the species *Canis familiaris* used to aid in the herding or guarding of livestock.

(3) “Department” means the State Department of Agriculture.

(4) “Trust Fund” means the Wolf Management Compensation and Proactive Trust Fund

(5) “County Program” means an established county government wolf depredation compensation and financial assistance program meeting all of the requirements established under this rule.

(6) “Attributed to wolf depredation” means a finding by the Oregon Department of Fish and Wildlife (ODF&W) or a designated agent for ODF&W, that wolf depredation was the probable cause of the death or injury.

(7) “Area of known wolf activity” means an area of known wolf activity that is designated as such by the ODF&W.

Stat. Auth.: ORS 690
Stats. Implemented: ORS 690
Hist.: DOA 25-2011, f. & cert. ef. 12-28-11

603-019-0005

Purpose

The purpose of these rules is to provide criteria and procedures for implementation and administration of the Wolf Depredation Compensation and Financial Assistance Grant Program. Grant funds will be awarded to qualified county programs for;

(a) Compensation to persons who suffer death of or injury to livestock or working dogs that is attributed to wolf depredation as well as compensation for certain missing animals that qualify and/or;

(b) Financial assistance to persons who implement livestock management techniques or nonlethal wolf deterrence techniques designed to discourage wolf/livestock interactions and reduce wolf depredations.

(c) Expenses associated with up to 90% of the implementation of a county program as defined in 603-019-0015(g).

Stat. Auth.: ORS 690
Stats. Implemented: ORS 690
Hist.: DOA 25-2011, f. & cert. ef. 12-28-11

**603-019-0010
Eligible Applicants**

Eligible applicants are county governments that have established an advisory committee and otherwise met the requirements listed in OAR 603-019-0015 and are prepared to assess applications from persons who are eligible to apply for grant funds from the county.

Stat. Auth.: ORS 690
Stats. Implemented: ORS 690
Hist.: DOA 25-2011, f. & cert. ef. 12-28-11

**603-019-0015
Standards to Determine Grant Award Eligibility**

(1) The Department will consider applications for funds from the Trust Fund from county programs that meet the stated purpose of this rule and contain the elements specified in this section.

(2) Grants are subject to available funding in the Trust Fund. A county may qualify for a grant if a county has a county program that meets the following requirements:

(a) A county must establish a county advisory committee to oversee the county program.

(A) Advisory committee membership shall include:

- (i) One county commissioner;
- (ii) Two members who own or manage livestock; and
- (iii) Two members who support wolf conservation or coexistence with wolves.

(B) Once established, the county advisory committee shall agree upon two county business representatives to serve as additional county advisory committee members.

(b) A county must establish a procedure by which livestock owners and managers experiencing above expected death or injury to livestock or working dogs attributed to wolf depredation shall be given priority by the committee for grant moneys received under the County Program.

(c) A county program must require that an advisory committee must establish compensation rates for death or injury to livestock or working dogs attributable to wolf depredation, that are based on fair market value. Compensation for death or injury of livestock or working dogs takes priority over compensation for missing livestock.

(d) A county program must require that within an area of known wolf activity, a county advisory committee must establish compensation rates for missing livestock attributable to wolf depredation. To qualify for compensation for missing livestock producers must document that other possible causes for their animals to be missing, not including wolf depredation, have been eliminated for the number of missing animals they are claiming. Compensation for missing livestock may be at a lower value than compensation for death or injury as allowed in 603-019-0015(2)(c) at the discretion of the county advisory committee. Losses confirmed as due to wolf depredation shall be given priority over losses for missing livestock.

(e) A county program must establish eligibility requirements for compensation that ensures, contingent upon available funds, that:

(A) In order to consider awarding any compensation for death or injury to livestock or working dogs, or missing livestock and working dogs attributed to wolf depredation, the county advisory committee must determine that the person did not unreasonably or purposefully create circumstances that attract wolves or encourage conflict between wolves and livestock or working dogs, excluding accepted normal husbandry and grazing activities.

(B) Compensation for documented death or injury to livestock or working dogs that is attributed to wolf depredation that occurred

outside an area of known wolf activity shall be compensated regardless of the preexistence of wolf deterrence techniques.

(C) Compensation for documented death or injury to livestock or working dogs that is attributed to wolf depredation that occurred within an area of known wolf activity shall be compensated if owners have demonstrated implementation of best management practices to deter wolves including reasonable non-lethal methods when practicable.

(D) Compensation for missing livestock or working dogs that is attributed to wolf depredation that occurred within an area of known wolf activity may be granted if owners document that other possible causes for their animals to be missing, not including wolf depredation, have been eliminated for the number of missing animals they are claiming.

(f) A county program must distribute grant program funds, to the extent possible, in an equal and balanced manner between payments to compensate for death or injury to livestock or working dogs attributed to wolf depredation and payments to implement livestock management techniques or nonlethal wolf deterrence techniques designed to discourage wolf depredation of livestock, with a minimum of 30% of a county's grant funds, as distributed by the Department to that county, distributed for livestock management techniques or nonlethal wolf deterrence techniques designed to discourage wolf depredation of livestock.

(g) The county must contribute an amount of money equal to 10% of the allowable expenditures necessary to implement the county program during the calendar year. Allowable expenditures are:

(A) Establishing a county advisory committee.

(B) Establishing a procedure by which persons applying for compensation will provide sufficient evidence of actual livestock and/or working dog losses attributed to wolf depredation.

(C) Establishing a procedure by which persons applying for financial assistance for the cost of livestock management or nonlethal deterrence provides an estimate of the potential cost.

(D) Establishing compensation rates for livestock or working dog losses from death, injury or missing all of which are attributed to wolf depredation.

(E) Distributing grant program funds.

(F) Preparation of an annual report to the Department.

Stat. Auth.: ORS 690
Stats. Implemented: ORS 690
Hist.: DOA 25-2011, f. & cert. ef. 12-28-11

**603-019-0020
Distribution of Grant Funds by County Advisory Committees**

Grant funds received by a county program from the Department may only be used to reimburse the following expenses or losses:

(1) Compensation for documented death or injury to livestock and working dogs determined as attributed to wolf depredation.

(2) Compensation for missing livestock or working dogs only when the animals in question became missing from within an area of known wolf activity and the livestock owner or manager has satisfied the requirements described in 603-019-0015.

(3) Compensation for death, injury or missing livestock or working dogs within a known area of wolf activity requires the livestock owner or manager to demonstrate to the county advisory committee, that they implemented best management practices to deter wolves, including reasonable use of nonlethal methods when practicable.

(4) Compensation for the cost of livestock management techniques or nonlethal wolf deterrence techniques designed to limit wolf/livestock interactions and discourage wolf depredation of livestock. These funds must amount to at least 30% of the total grant funds distributed by the Department to a county program.

(5) A county may submit up to 90% of expenses incurred by implementation of a county program meeting the requirements specified in OAR 603-019-0015. The county must make a money contribution equaling at least 10% of the expenses for one calendar year for implementation of a county program.

Stat. Auth.: ORS 690
Stats. Implemented: ORS 690
Hist.: DOA 25-2011, f. & cert. ef. 12-28-11

603-019-0025

Application Procedures

(1) Grant application forms will be made available and distributed by the Department.

(2) Each county shall submit its proposal for funding on the Department's application form, including attachments as necessary.

(3) Applications for grant funds may be submitted to the Department by February 15th of each year. Late submissions may be accepted in the discretion of the Department as is consistent with law.

(4) Grant applications may be made for:

(a) Funds to compensate for the loss or injury of livestock or working dogs due to wolf depredation;

(b) Funds to compensate for missing livestock consistent with OAR 603-019-0015;

(c) Funds for financial assistance for the implementation of non-lethal management techniques designed to discourage wolf depredation of livestock; and

(d) For up to 90% of the expense for one calendar year of implementing a county program as described in 603-019-0015.

Stat. Auth.: ORS 690

Stats. Implemented: ORS 690

Hist.: DOA 25-2011, f. & cert. ef. 12-28-11

603-019-0030

Application Review

(1) The Department may process grant applications to evaluate the reasonableness of the amount of money requested. The Department may use formulas it may derive for allocating available funds equitably among grant requests.

(2) The Department will review each application for completeness, accuracy, and consistency with these rules. Incomplete applications may be returned for correction or completion. Applications not meeting the standards established in these rules may be denied. If an application is denied, the Department may identify standards necessary for approval of a future grant application.

Stat. Auth.: ORS 690

Stats. Implemented: ORS 690

Hist.: DOA 25-2011, f. & cert. ef. 12-28-11

603-019-0035

Grant Awards

(1) After reviewing a county application, the Department will make one of the following decisions for each county's grant request.

(a) Approval of grant award for the full amount requested;

(b) Approval of grant award of partial amount requested. In this instance, the Department may elect to fund a portion of grant request;

(c) Deferral of request for further consideration based upon submission of additional information;

(d) Denial of request. Applicants whose proposals are denied may reapply the following year.

(2) Any funds not allocated within the current calendar year by the Department shall be carried forward in the Trust Fund into the following year.

Stat. Auth.: ORS 690

Stats. Implemented: ORS 690

Hist.: DOA 25-2011, f. & cert. ef. 12-28-11

603-019-0040

Grant Administration

(1) The Department and the recipient county will enter a grant agreement that includes but is not limited to the following:

(a) A description of the county program and a description of the work elements for which grant funding is received. ;

(b) A payment schedule as determined by the Department.

(c) A condition requiring the participating county to prepare an annual report that specifies the actions taken, compensation paid and financial assistance provided under the grant. This report will be due to the Department on June 1st of each year beginning in the year 2012.

(d) A condition allowing the Department to withhold the relevant payment pending resolution of the identified deficiencies in grant administration or in the event the Department finds a report unsatisfactory.

(e) A condition allowing, termination of the grant agreement if a county is consistently unable to meet performance standards as identified in the grant or as consistent with law.

(2) A condition requiring each recipient to submit a final report to the Department within six months of the official close of the grant period. The final report must detail the actions taken consistent with the grant agreement, compensation paid and financial assistance provided under the grant.

(3) A condition requiring counties to maintain any and all records necessary to allow the Department to monitor administration of the grant.

(4) A condition specifying that grantees and the Department may amend timelines specified in the grant agreement provided such amendments are in writing and are mutually agreed to.

(5) A condition specifying that unexpended grant funds not used by the grantee must be returned to the Department for reallocation to the Trust Fund.

(6) A condition specifying that as part of its duty to monitor the county programs, the Department may audit and review county program grant application documents, subsidiary record documentation, and source documents, including but not limited to, invoices, cost computations by the county or by a County Advisory committee and all other instruments and documents upon which expenditure of grant funding was determined and which the Department ascertains is necessary to determine compliance with a county program.

(7) A condition specifying that any grant moneys disbursed to a county that remain unobligated or unexpended as of the termination date of a grant agreement must be returned to the Department.

Stat. Auth.: ORS 690

Stats. Implemented: ORS 690

Hist.: DOA 25-2011, f. & cert. ef. 12-28-11

FOOD SAFETY DIVISION

DIVISION 21

BAKERIES

Definitions and Standards of Identity for Bread

603-021-0005

Definitions

In addition to the definitions set forth in ORS Chapter 625, a bakery is subject to the definitions set forth in OAR 603-025-0010.

Stat. Auth.: ORS 561, 616 & 625

Stats. Implemented: ORS 625.150

Hist.: AD 829(1-67), f. 1-11-67, ef. 3-1-67; AD 915(1-70), f. 3-5-70, ef. 7-1-70; AD 1018(8-74), f. 2-14-74, ef. 3-11-74; AD 5-1988, f. & cert. ef. 5-5-88

603-021-0007

Domestic Kitchen Bakeries

In addition to the requirements of OAR 603-021-0010, a bakery in an area which is part of a domestic kitchen shall comply with the provisions of OAR 603-025-0200.

Stat. Auth.: ORS 561, 616 & 625

Stats. Implemented: ORS 625.150

Hist.: AD1018(8-74), f. 2-14-74, ef. 3-11-74; AD 5-1988, f. & cert. ef. 5-5-88

Modification to Bakery License Fees

603-021-0010

Construction and Sanitation Standards

(1) The construction and sanitation standards for retail bakeries are those specified in OAR 603-025-0020 and 603-025-0030.

(2) The construction and sanitation standards for wholesale bakeries are those specified in OAR 603-025-0020 and 603-025-0150.

Stat. Auth.: ORS 561, 616 & 625

Stats. Implemented: ORS 625.150

Hist.: AD 829(1-67), f. 1-11-67, ef. 3-1-67; AD 915(1-70), f. 3-5-70, ef. 7-1-70; AD 5-1988, f. & cert. ef. 5-5-88

603-021-0015

Labeling and Marking of Containers

(1) No person operating or participating in the operation of any bakery, or distributor, shall use as a part of this trade or corporate name, or as a name or description of bread, or use in or on his bread containers, or advertising matter or sales literature relating thereto the word or term "Big," "Giant," "Large," "Jumbo," "Colossal," "King Size," or any similar word or terms except as provided for in section (2) of this rule.

(2) The use of such words as are set out in section (1) of this rule on the container of a standard extra large loaf is permissible when not shown in conjunction with the net weight statement.

Stat. Auth.: ORS 561, 616 & 625

Stats. Implemented: ORS 625.150

Hist.: AD 829(1-67), f. 1-11-67, ef. 3-1-67; AD 5-1988, f. & cert. ef. 5-5-88

603-021-0021

Definitions and Standards for Bakery Products, Cereal Flours and Related Products — Labeling — Weight Standards

(1) The definitions, standards of identity and labeling for Bakery Products, cereal flours and related products are those specified in OAR 603-025-0190.

(2) Weight Standards — Bread: Each loaf and each unit of a twin or multiple loaf made or procured for sale, kept, offered, exposed for sale, or sold whether or not wrapped or sliced, shall have a weight per subsection (a) or (b) of this section; provided that the provisions of this section shall not apply to biscuits, buns or rolls of inch-pound sizes of 8 oz. or less or of metric sizes 250 grams or less or to "stale bread" sold and expressly represented at the time of sale as such, and when so sold, the wrappers shall be deemed not to be packages for labeling purposes:

(a) Inch-Pound Weights — 8–14 ounces, 15–17 ounces, 22-1/2–25-1/2 ounces and 30–34 ounces;

(b) Metric Weights — 250 grams, 500 grams, 750 grams, or a multiple of 500 grams.

Stat. Auth.: ORS 561, 616 & 625

Stats. Implemented: ORS 625.150

Hist.: AD 5-1988, f. & cert. ef. 5-5-88

603-021-0022

Bread Labeling at Retail

Bread made and sold in a retail bakery is exempt from the requirement for full and complete ingredient labeling provided:

(1) The bread is not displayed along side of or in competition with bread that is fully and completely labeled.

(2) The ingredients in each bread are available upon request by the consumer in a card file or other method approved by the Department. All other labeling requirements are applicable.

Stat. Auth.: ORS 561, 616 & 625

Stats. Implemented: ORS 625.150

Hist.: AD 5-1988, f. & cert. ef. 5-5-88

603-021-0030

Unwrapped Bread Labeling Exemption

The provisions of ORS 625.220 and these regulations do not apply in a bakery where unwrapped bread is on display and available for inspection by the prospective purchaser and where, after purchase, each loaf is immediately placed in a bag by bakery personnel for the convenience of such purchaser.

Stat. Auth.: ORS 561, 616 & 625

Stats. Implemented: ORS 625.150

Hist.: AD 915(1-70), f. 3-5-70, ef. 7-1-70; AD 5-1988, f. & cert. ef. 5-5-88

603-021-0612

Pan Sizes

The following pan sizes are applicable to "Enriched White Bread" sold in conventional and traditional loaves only: (i.e., rectangular open topped baking pans). Pans used for the baking of loaves of "enriched White Bread," in Oregon, shall not exceed the following dimensions (measurements are the inside measurements at the top of the pan): Length, Width and Depth respectively:

(1) "Standard Loaf" — 9.25 x 4.75 x 3.50 inches;

(2) "Standard Large Loaf" — 12.5 x 4.75 x 3.50 inches;

(3) "Standard Large Square Loaf" — 8.5 x 8.0 x 3.50 inches;

(4) "Standard Large Sandwich Loaf" — 13.0 x 4.5 x 4.5 inches;

(5) "Standard Extra Large Loaf" — 13.0 x 5.5 x 5.0 inches;

(6) "Standard Extra Large Sandwich Loaf" — 16.0 x 4.5 x 4.5 inches.

Stat. Auth.: ORS 561, 616 & 625

Stats. Implemented: ORS 625.150

Hist.: AD 5-1988, f. & cert. ef. 5-5-88

Modification to Non-Alcoholic Beverage Fees

603-021-0710

Sanitation Standards; Facilities

(1) Surroundings: The outer premises of every nonalcoholic beverage plant shall be reasonable clean and well drained, free from any material or condition that creates rodent and/or insect harborage, and free from other nuisances and sources of contamination.

(2) Building: The building or portion thereof employed for compounding flavored sirups and packaging carbonated beverages and similar beverages without carbonation shall be used for no other purposes, and shall be constructed of such material and design that it can be kept clean and maintained in a sanitary manner and condition. No domestic animals or birds shall be allowed in any portion of the building. Toilet room or living quarters shall not open directly into any room or area in which sirup or finished beverages are processed.

(3) Rooms: A separate room shall be provided for compounding and mixing sirups; it shall be separated from other areas of the plant by a solid wall construction. Separate areas from the sirup room shall be provided for bottle washing; filling operation; receiving, storing, and shipping; provided, however, that a separate partitioned room for filling beverage containers shall be required in all new construction on and after the effective date of this order. Sirup mixing and container filling operations may be located in the same room if approved by the Department.

(4) Floors: The floors of rooms where ingredients are handled, compounded, mixed, or processed or where containers or equipment are washed shall be constructed of concrete or other equally impervious material. They shall be smooth, easily cleaned, properly sloped, coved sealed walljoint, provided with trapped drains, and kept in good repair; provided that storage rooms for storing dry ingredients, packaging materials, containers, supplies, need not be provided with drain.

(5) Walls and ceiling: Walls and ceiling in the sirup room, filling and washing area, shall have a moisture resistant, smooth, washable, light colored surface and shall be kept clean and in good repair. Walls may be of a darker color up to not more than 60 inches from the floor. With the approval of the Department, walls in the filling and washing area above 60 inches from the floor may be constructed of sound retarding material that is not conducive to multiplication of microorganisms. When paint is used, it should be of the mold resistant type.

(6) Doors and windows: Effective means shall be provided to prevent access of insects and dust into sirup room or container filling area. Exterior hinged doors as well as door into sirup room shall be solid, tight, outward opening, and self-closing. Windows shall be glazed.

(7) Lighting: Lighting in all rooms and work areas shall be sufficient and adequate for the operation that is to be performed. Lights in processing areas where breakage may cause contamination of product or ingredients shall be of the safety type or equipped with protective shields.

(8) Ventilation: Natural or artificial ventilation shall be sufficient to prevent excessive condensation formation, mold, or objectionable odors and maintain sanitary conditions in the sirup room, container filling and washing areas, or any area where necessary. Artificial ventilating systems subject to Department approval.

(9) Water supply: Water supply shall be readily accessible, of sufficient quantity and temperature for the procedure or process intended, and of a safe, sanitary quality. There shall be no cross connections between the safe water supply and any unsafe or questionable water supply, nor with sewage disposal system. There shall be

evidence that the water supply has been approved by state or local authorities within past six months.

(10) Toilet Facilities: Toilet facilities shall be provided. The toilet room shall be kept clean, well lighted, and ventilated and plumbing shall meet the state code. Toilet room doors shall be solid, tight and self-closing. Hot and cold running water, soap, single service towels, or air dryer for hands shall be provided. A sign directing employees to wash their hands before returning to work shall be posted in all toilet rooms. Toilet soil lines shall be kept separate from industrial wastelines within plant.

(11) Waste disposal: Liquid waste from plant shall be conveyed to proper facilities in compliance with state plumbing code. Other waste shall be handled and removed at intervals of such frequency as to preclude infestations of insects or rodents and the development of odors and other nuisances. Only clean waste receptacles may be brought into food handling room.

Stat. Auth.: ORS 561.190 & 635.045

Stats. Implemented: ORS 635.045

Hist.: AD 851(23-67), f. & ef. 9-13-67

603-021-0715

Construction and Repair of Equipment

(1) All equipment, containers, and utensils used in the handling, processing, compounding, mixing, storage, or transporting of beverages or beverage ingredients shall be smooth, impervious, corrosion resistant, nontoxic, and in good repair and shall be constructed to permit adequate sanitation. Effective protection from contamination shall be maintained. Product-contact surfaces shall be self-draining. Equipment shall be free of sharp internal corners. Welded or soldered areas shall be smooth and similar to the parent metal. All joints shall be flush. Piping shall be of sanitary design and installation. All temperature-control equipment and control devices used on bottle washers shall be accurate and adequately maintained. The bottle washer shall be equipped with an indicating thermometer to record the temperature of the caustic wash solution. It shall be placed so as to be conveniently visible to the operator at all times.

(2) If the washing, filling, and crowning devices are not integral parts of one machine, but are performed by separate units of equipment, they shall be arranged to exclude manual contact with the necks or tops of the bottles between filling and crowning.

(3) Mixing and storage tanks, pipelines, filters, and other apparatus employed in the preparation and distribution of sirups shall be of sanitary construction and made of stainless steel or similar materials resistant to the action of sirup ingredients. All apparatus employed in sirup-making shall be free from recesses and so constructed that all parts may be easily sanitized. All permanent in place sirup lines shall be sloped to drain. All sirup tanks shall be self-draining and provided with suitable covers. Mixing shall be by mechanical means performed so as to prevent contamination of the sirup.

(4) Carbonated water shall not be conveyed in pipelines of galvanized iron, lead, zinc, copper, or other deleterious materials.

Stat. Auth.: ORS 561.190 & 635.045

Stats. Implemented: ORS 635.045

Hist.: AD 851(23-67), f. & ef. 9-13-67

603-021-0720

Processing Methods

(1) General sanitation: The operations of receiving, segregating, holding, compounding, mixing, packaging and packing, storing, transporting, and handling shall be conducted in a sanitary manner. There shall be no contamination, adulteration, or deterioration of the product or its ingredients. Every plant manufacturing bottled beverages shall be equipped with suitable mechanical bottle washing apparatus, and with approved machines for carbonating, filling, and crowning. Plant operations shall be performed in such a manner as to prevent the operator or his clothing from coming in contact with the beverages or sanitized product-contact surfaces.

(2) Bottle washing: Reusable glass containers used in the manufacture of soft drinks shall, before being refilled, be sanitized by being washed in an automatic washing machine. An indicating thermometer and caustic solution test equipment shall be used to ascertain the temperature and caustic strength of the washing solution. The washing solution shall consist of at least 3 percent caustic soda with

a minimum contact period of five minutes and a temperature of 130°F or an equivalent cleansing and sanitizing process. The bottles shall be rinsed free of washing solution with potable water. Single-service containers may be sanitized by air or water rinsing machines. One trip (single service) containers, such as bottles and cans, may be washed in a mechanical bottle washer, air or water rinsed. One trip containers that are not washed, air or water rinsed shall be stored in such manner as to protect such containers from airborne and manual contamination.

(3) Preparation of sirups: Sirups shall be prepared in a sanitary manner. Every precaution shall be taken against contamination, absorption, or deleterious substances during the preparation and subsequent storage. Sirup tanks and vats shall be covered and constructed of stainless steel or other suitable noncorrosive material. The tanks shall be free from defects, self-draining, free from seams, and shall be of such construction as to be readily flushed, cleaned, and sanitized. Galvanized iron, lead, zinc, copper, or brass-lined containers, pipelines, or apparatus of other deleterious materials shall not be used in preparation, storage, or conveyance of sirups. The sirup room shall be equipped with a wash sink and plumbed with a drain and hot and cold running water.

(4) Filling and crowning: Bottles shall be filled and capped by means of automatic machinery, and neither the operator nor his clothes shall come in contact with any part of the bottle or machinery that might result in contamination of the product. Removal of the crown of imperfectly crowned bottles and recrowning shall not be permitted. Crowns which have been touched on the inner side by the operator, as may occur while adjusting the crowner, shall be discarded. Returnable bottles shall be inspected for any abnormal condition immediately before or after being filled.

Stat. Auth.: ORS 561.190 & 635.045

Stats. Implemented: ORS 635.045

Hist.: AD 851(23-67), f. & ef. 9-13-67

603-021-0725

Cleaning and Bactericidal Treatments

Multiple-service containers, equipment, and utensils used in the handling, processing, storing, or transporting of beverages or beverage ingredients shall be thoroughly cleaned after use. They shall be subjected effectively to an approved bactericidal process prior to each usage. The methods used shall be such that soft drinks and their ingredients shall not be contaminated or adulterated. Chemicals used for cleaning and bactericidal treatments shall have labels which identify the contents and stored in an approved manner. All pipelines, apparatus, and containers used in the manufacturing processes shall be thoroughly sanitized at adequate intervals, but never less frequently than once weekly. Apparatus and containers shall be washed and rinsed before sanitization. Fillers shall be cleaned and sanitized at the end of each day's operation and flushed with potable water before beginning operations. Since accepted industry practice permits sirup to remain in the sirup tanks and lines between periods of processing operations, the sirup tanks and lines will be cleaned and sanitized when emptied, as scheduled by the plant. After scheduled cleaning and sanitation, the sirup tanks and lines shall be flushed with potable water before beginning processing operations. Hot water, chlorine, or equally effective bactericidal agents are permissible for sanitization.

Stat. Auth.: ORS 561.190 & 635.045

Stats. Implemented: ORS 635.045

Hist.: AD 851(23-67), f. & ef. 9-13-67

603-021-0730

Sanitary Controls

To assure adequate sanitary control every plant manufacturing bottled carbonated beverages shall be adequately provided with apparatus for ascertaining the sanitizing strength of the soaker solution used in bottle washing. An indicating thermometer shall be used at the bottle-washing machine. If pipelines and other equipment are sanitized by hot water, additional thermometers shall be available at convenient locations. Caustic solution test equipment or some other suitable index for determining the causticity of the soaker solution shall be available at all times.

Stat. Auth.: ORS 561.190 & 635.045

Stats. Implemented: ORS 635.045
 Hist.: AD 851(23-67), f. & ef. 9-13-67

603-021-0735
Control of Insects and Animals

The soft drink plant shall be free of rodents, rodent harborages, insects, and insect-breeding places. Effective measures shall be used to control and eliminate insects, vermin, rodents, and domesticated animals. Insecticides and rodenticides shall be properly identified, used, and stored in a safe and acceptable manner.

Stat. Auth.: ORS 561.190 & 635.045
 Stats. Implemented: ORS 635.045
 Hist.: AD 851(23-67), f. & ef. 9-13-67

603-021-0740
Storage Facilities

These facilities shall be clean, in good repair, and shall be provided with ample space for the storage of food substances, container closures, gaskets, cleaned utensils and equipment, so as to prevent contamination and deterioration. Conveyers and cases shall be maintained in a clean condition. It is recommended that an 18 inch space between the stored products and the wall be provided.

Stat. Auth.: ORS 561.190 & 635.045
 Stats. Implemented: ORS 635.045
 Hist.: AD 851(23-67), f. & ef. 9-13-67

603-021-0745
Vehicles and Transportation

Vehicles used to transport all products and materials shall be maintained in a clean condition to aid in protecting the product from contamination.

Stat. Auth.: ORS 561.190 & 635.045
 Stats. Implemented: ORS 635.045
 Hist.: AD 851(23-67), f. & ef. 9-13-67

603-021-0750
Personal Hygiene

All personnel in processing rooms and areas shall wear clean outer clothing, and head coverings; be free of communicable disease, and infected cuts, open sores, or other lesions on hands, arms, or head; and wash hands before starting or returning to work. All personnel in processing room or areas of the plant shall practice good sanitation and shall not smoke, chew tobacco, expectorate, or eat in processing areas.

Stat. Auth.: ORS 561.190 & 635.045
 Stats. Implemented: ORS 635.045
 Hist.: AD 851(23-67), f. & ef. 9-13-67

603-021-0755
Labeling

All carbonated beverages, still drinks, and mineral waters sold or offered for sale shall be plainly marked or labeled, capped, branded, or tagged with:

- (1) The name of the beverage.
- (2) The word "imitation" followed by the name of the natural fruit or product imitated, if the beverage is an imitation.
- (3) The words "artificially colored," "Artificially flavored," or "artificially colored and flavored" or with words equivalent thereto and acceptable to the Department, if the product is artificially colored or artificially flavored, or both.
- (4) An accurate statement of the net contents of each bottle, can, or other container in terms of fluid measure.
- (5) The common name of each ingredient used in its manufacture. Flavorings and coloring may be designated as such without specifically naming them. The requirements of this paragraph do not apply to a carbonated beverage the ingredients of which have been fully and correctly disclosed to the Department on a form which the Department shall furnish on request.
- (6) The name and principal place of business of the bottler or distributor responsible for placing the beverage on the market. This section does not apply to carbonated beverages or still drinks, the container or crown of which is permanently and distinctly branded with the trademark or brand of the distributor or bottler thereof, if the trademark or brand is registered with the Secretary of State or the

United States Government and a declaration is filed with the Department, affirming the name, trademark, or brand under which the beverage is to be sold, and giving a full description of the area of the state in which such beverage is to be distributed, and the name and address of the person responsible in such area for compliance with ORS Chapter 635 as amended by Chapter 154, Oregon Laws 1967.

Stat. Auth.: ORS 561.190 & 635.045
 Stats. Implemented: ORS 635.045
 Hist.: AD 851(23-67), f. & ef. 9-13-67

603-021-0760
Other Regulations Also Apply

OAR 603-021-0709 to 603-021-0755, relating to nonalcoholic beverages, are in addition to, and not in lieu of, other regulations relating to food and such beverages, and unless in conflict herewith, continue to apply to such beverages and the plants in which they are handled and manufactured.

Stat. Auth.: ORS 561.190 & 635.045
 Stats. Implemented: ORS 635.045
 Hist.: AD 851(23-67), f. & ef. 9-13-67

Civil Penalties

603-021-0900
Purpose

The Oregon Department of Agriculture Food Safety Program licenses and inspects all facets of Oregon's food distribution system, except restaurants, to ensure food is safe for consumption. Education and technical assistance are vital to the prevention, correction, and abatement of food safety violations, and are preferred over regulatory action. However, regulatory action may be necessary to deter violations of food safety laws and rules, to educate persons about the consequences of such violations, and to compel compliance with food safety laws for the protection of consumers. The Department intends to initiate civil penalty actions when educational measures, technical assistance, warning letters, compliance agreements or other remedial measures fail to achieve compliance.

Stat. Auth.: ORS 561.190, 625.995 & 635.995
 Stats. Implemented: ORS 625.995 & 635.995
 Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

603-021-0910
Definitions

A bakery is subject to the definitions set forth in ORS Chapter 625, and OAR 603-025-0010. As used in OAR 603-021-0920 through 603-021-0930, unless otherwise required by the context, the following terms will be construed to mean:

- (1) "Interference" means hindering or impeding an activity or process, which includes, but is not limited to any harassment, unreasonable delay, threat, concealment, deceit, or obstruction.
- (2) "Major," with respect to violations, means an incident, or series of incidents that cause a reasonable probability that serious adverse health consequences or death will occur.
- (3) "Minor," with respect to violations, means an incident, or series of incidents that are not likely to cause adverse health consequences.
- (4) "Moderate," with respect to violations, means an incident, or series of incidents that may cause temporary or medically reversible adverse health consequences, or where the probability of serious adverse health consequences is remote.
- (5) "Repeat violation" means the recurrence of the same violation for each 24-hour period after a notice of noncompliance or assessment of civil penalty was issued within the preceding three years. It does not include a violation if the previous notice is the subject of a pending appeal or if the notice has been withdrawn or successfully appealed.
- (7) "Same," with respect to violations, means an identical recurrence, exact repetition, or a continuation of a previous violation.
- (8) "Violation" means the failure to comply with any requirement of ORS 625.010 to 625.270 or Chapter 635, or any rule adopted thereunder.

Stat. Auth.: ORS 561.190, 625.995 & 635.995
 Stats. Implemented: ORS 625.995 & 635.995
 Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

603-021-0920

Schedule of Civil Penalties

In addition to any penalty available under ORS 561.190 or 635.991, the Department may issue civil penalties with respective amounts for:

(1) Operating or participating in the operation of any bakery within this state without a license for that bakery pursuant to ORS 625.020(1). Penalties:

- (a) Minor — \$2,000 to \$6,000;
- (b) Moderate — \$6,001 to \$8,000; or
- (c) Major — \$8,001 to \$10,000.

(2) Failure to display the numbered license certificate in a licensed bakery in accordance with ORS 625.070. Penalty — \$100.

(3) Engaging within this state in the sale or distribution of any bakery product, other than exclusively as a retail food store or otherwise at retail at a fixed place or places of business, without holding a license so to do issued to that person by the Department pursuant to ORS 625.080. Penalties:

- (a) Minor — \$2,500 to \$5,000;
- (b) Moderate — \$5,001 to \$7,500; or
- (c) Major — \$7,501 to \$10,000.

(4) Failure to display the numbered license certificate of a distributor licensed in accordance with ORS 625.120. Penalty — \$100.

(5) Interference with a lawful inspection authorized under ORS 625.140. Penalty — \$5,000 to \$10,000.

(6) Violation of ORS 625.215, relating to prohibited bakery products. Penalties:

- (a) Minor — \$100 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(7) Violation of labeling standards in OAR 603-021-0015. Penalties:

- (a) Minor — \$500 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(8) Failure to meet the standard of identity for Bakery Products, cereal flours and related products with an established state or federal standard of identity as explained in ORS 616.780. Penalties:

- (a) Minor — \$1,000 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(9) Operating or engaging in the business of a nonalcoholic beverage manufacturer without first obtaining and thereafter maintaining a license, or renewal thereof, from the Department pursuant to ORS 635.027. Penalty — \$5,000 to \$10,000.

(10) Failure to maintain adequate sanitation or other measures as described in OAR 603-021-0007, 603-021-0010, 603-021-0710, or 603-021-0720 to 603-021-0750. Penalty — \$500 to \$5,000.

(11) Failure to maintain adequate facilities as described in OAR 603-021-0715. Penalty — \$500 to \$5,000.

(12) Labeling carbonated beverages, still drinks, or mineral waters inconsistent with the provisions of OAR 603-021-0755. Penalties:

- (a) Minor — \$500 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

Stat. Auth.: ORS 561.190, 625.995 & 635.995
 Stats. Implemented: ORS 625.995 & 635.995
 Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

603-021-0930

Penalty factors; procedure

(1) In imposing a penalty pursuant to the schedule adopted under ORS 625.995 or 635.995, the Department shall consider the following factors, which are listed in prioritized order:

- (a) The immediacy and extent to which the violation threatens the public health or safety.
- (b) Any prior violations of statutes, rules or orders pertaining to Bakeries, Bakery Products, or Nonalcoholic Beverages.
- (c) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(d) The economic and financial conditions of the person incurring the penalty, including any financial gains resulting from the violation.

(2) Each 24-hour period a violation continues after the period of time established for compliance will be considered a separate violation unless the Department finds a different period of time is more appropriate to describe the specific violation event.

(3) Repeat violations of OAR 603-021-0910 will be assessed as three times the penalty amount in OAR 603-021-0910, not to exceed \$10,000.

(4) A civil penalty imposed under this rule will comply with ORS 183.745, except that the written application for a hearing must be received by the department no later than 10 days after the mailing or personal service of the notice of civil penalty.

Stat. Auth.: ORS 561.190, 625.995 & 635.995
 Stats. Implemented: ORS 625.995 & 635.995
 Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

DIVISION 22

EGGS

Oregon State Egg Seal; Printing, Imprinting, Sale, And Use

603-022-0005

Definitions

For the purpose of OAR 603-022-0010 to 603-022-0055:

(1) "Container" means any box, case, basket, carton, sack, bag, rack or other receptacle in which eggs are placed.

(2) "Fee" means the sum established by the Department as provided for by ORS 632.715 and prescribed by OAR 603-022-0010 for egg handlers first selling eggs in Oregon.

(3) "Oregon grading" means grading made on a lot of eggs at a plant where the eggs are graded and packed.

(4) "Permit Number" means an identification number issued by the Department or a USDA plant number issued to an egg handler to be placed on the container in which eggs are sold to the consumer.

Stat. Auth.: ORS 561 & 632
 Stats. Implemented: ORS 632.811
 Hist.: AD 800(7-65), f. 8-3-65, ef. 1-1-66; AD 1079(3-67), f. & ef. 2-3-76; AD 10-1988, f. 12-19-88, cert. ef. 1-1-89; DOA 24-2004, f. & cert. ef. 10-28-04

603-022-0010

Oregon State Egg Fee

A fee of 2-1/2 mills per dozen eggs is hereby established for eggs first sold in Oregon.

Stat. Auth.: ORS 561 & 632
 Stats. Implemented: ORS 632.811
 Hist.: AD 800(7-65), f. 8-3-65, ef. 1-1-66; AD 985(1-73), f. 1-5-73, ef. 2-1-73; AD 16-1977, f. 7-15-77, ef. 8-1-77; AD 10-1988, f. 12-19-88, cert. ef. 1-1-89

603-022-0025

Payment of Fees

Each handler first selling eggs in Oregon shall complete, sign, and forward to the Department, on forms provided by the Department, a monthly report showing the dozen eggs first sold to consumers in Oregon. The report for each month, along with the fees due as shown on the report, are due no later than the 30th days of the month following the month in which the eggs were first sold.

Stat. Auth.: ORS 561 & 632
 Stats. Implemented: ORS 632.811
 Hist.: AD 800(7-65), f. 8-3-65, ef. 1-1-66; AD 10-1988, f. 12-19-88, cert. ef. 1-1-89

603-022-0055

Display of Assigned Permit Number on Container

(1) The Department will assign each egg handler a permit number to be placed on egg containers that they first sell in Oregon. If the egg handler is located outside of Oregon and has been assigned a permit number by another state, the Department will accept that number as the assigned permit number.

(2) The assigned permit number must appear on the end or side of the consumer egg container in bold face letters at least 1/8 inch in height.

Stat. Auth.: ORS 561 & 632
 Stats. Implemented: ORS 632.811
 Hist.: AD 1079(3-76), f. & ef. 2-3-76; AD 10-1988, f. 12-19-88, cert. ef. 1-1-89

Definitions and Standards of Identity for Eggs

603-022-0101

Eggs and Egg Products

As provided in ORS 632.811, the regulations governing this subject matter, adopted by the Food and Drug Administration of the United States Department of Health, Education, and Welfare and in effect as of April 1, 2001, are hereby adopted as the rules governing this subject matter in Oregon. Such federal regulations are contained in Title 21, Chapter 1, Part 160 of the Code of Federal Regulations and entitled "Eggs and Egg Products."

Stat. Auth.: ORS 561 & 632
 Stats. Implemented: ORS 632.811
 Hist.: AD 1075(21-75), f. & ef. 12-31-75; AD 7-1982, f. & ef. 7-9-82; DOA 24-2004, f. & cert. ef. 10-28-04

Standards for Quality of Individual Shell Eggs

603-022-0300

Application

(1) The Oregon standards for quality of individual shell eggs contained in this subpart are applicable only to eggs that are the product of the domesticated chicken hen and are in the shell.

(2) Interior egg quality specifications for these standards are based on the apparent condition of the interior contents of the egg as it is twirled before the candling light. Any type or make of candling light may be used that will enable the particular grader to make consistently accurate determination of the interior quality of shell eggs.

Stat. Auth.: ORS 561.190 & 632.811
 Stats. Implemented: ORS 632.811
 Hist.: AD 977(10-72), f. 8-28-72, ef. 9-15-72

603-022-0305

Quality Grade Standards

(1) *AA Quality.* The shell must be clean, unbroken, and practically normal. The air cell must not exceed 1/8 inch in depth, may show unlimited movement, and may be free or bubbly. The white must be clear and firm so that the yolk is only slightly defined when the egg is twirled before the candling light. The yolk must be practically free from apparent defects.

(2) *A Quality.* The shell must be clean, unbroken, and practically normal. The air cell must not exceed 3/16 inch in depth, may show unlimited movement, and may be free or bubbly. The white must be clear and at least reasonably firm so that the yolk outline is only fairly well defined when the egg is twirled before the candling light. The yolk must be practically free from apparent defects.

(3) *B Quality.* The shell must be unbroken, may be abnormal and may have slightly stained areas. Moderately stained areas are permitted if they do not cover more than 1/32 of the shell surface if localized, or 1/16 of the shell surface if scattered. Eggs having shells with prominent stains or adhering dirt are not permitted. The air cell may be over 3/8 inch in depth, may show unlimited movement, and may be free or bubbly. The white may be weak so that the yolk outline is plainly visible when the egg is twirled before the candling light. The yolk may appear dark, enlarged and flattened, and may show clearly visible germ development but no blood due to such development. It may show other serious defects that do not render the egg inedible. Small blood spots or meat spots (aggregating not more than 1/8 inch in diameter) may be present.

Stat. Auth.: ORS 561 & 632
 Stats. Implemented: ORS 632.811
 Hist.: AD 977(10-72), f. 8-28-72, ef. 9-15-72; AD 1079(3-76), f. & ef. 2-3-76; AD 7-1982, f. & ef. 7-9-82

603-022-0310

Definitions

(1) "Adulterated" means eggs of possible edible quality that fail to meet the requirements of an official Oregon grade or that have been contaminated by smoke, chemicals, or other foreign material

which has seriously affected the character, appearance, or flavor of the eggs.

(2) *Dirty.* An individual egg that has an unbroken shell with adhering dirt or foreign material, prominent stains, or moderate stains covering more than 1/32 of the shell surface if localized, or 1/16 of the shell surface if scattered.

(3) *Check.* An individual egg that has a broken shell or crack in the shell but with its shell membranes intact and its contents do not leak. A "check" is considered to be lower in quality than a "dirty."

(4) "Inedible Eggs" means eggs of the following descriptions are classed as inedible: Black rots, yellow rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, eggs containing embryo chicks (at or beyond the blood ring state), and any eggs that are adulterated as such term is defined pursuant to the federal Food, Drug, and Cosmetic Act, 21 U.S.C. 342.

(5) "Leaker" means an individual egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exuding or free to exude through the shell.

(6) "Loss" means an egg that is inedible, smashed, or broken so that contents are leaking, cooked, frozen, contaminated, or containing bloody whites, large blood spots, large unsightly meat spots, or other foreign material.

(7) Terms descriptive of the shell:

(a) *Clean.* A shell that is free from foreign material and from stains or discolorations that are readily visible. An egg may be considered clean if it has only very small specks, stains or cage marks, if such specks, stains or cage marks are not of sufficient number or intensity to detract from the generally clean appearance of the egg. Eggs that show traces of processing oil on the shell are considered clean unless otherwise soiled;

(b) *Dirty.* A shell that is unbroken and that has dirt or foreign material adhering to its surface, which has prominent stains, or has moderate stains covering more than 1/32 of the shell surface if localized, or 1/16 of the shell surface if scattered;

(c) *Practically normal (AA or A quality).* A shell that approximates the usual shape and that is sound and is free from thin spots. Ridges and rough areas that do not materially effect the shape and strength of the shell are permitted;

(d) *Abnormal (B quality).* A shell that may be somewhat unusual or decidedly misshapen or faulty in soundness or strength or that may show pronounced ridges or thin spots.

(8) Terms descriptive of the air cell:

(a) *Depth of air cell (air space between shell membranes, normally in the large end of the egg).* The depth of the air cell is the distance from its top to its bottom when the egg is held air cell upward;

(b) *Free air cell.* An air cell that moves freely toward the uppermost point in the egg as the egg is rotated slowly;

(c) *Bubbly air cell.* A ruptured air cell resulting in one or more small separate air bubbles usually floating beneath the main air cell.

(9) Terms descriptive of the white:

(a) *Clear.* A white that is free from discolorations or from any foreign bodies floating in it. (Prominent chalazas should not be confused with foreign bodies such as spots or blood clots.)

(b) *Firm (AA quality).* A white that is sufficiently thick or viscous to prevent the yolk outline from being more than slightly defined or indistinctly indicated when the egg is twirled. With respect to a broken-out egg, a firm white has a Haugh unit value of 72 or higher when measured at a temperature between 45 degrees and 60 degrees F.

(c) *Reasonably firm (A quality).* A white that is somewhat less thick or viscous than a firm white. A reasonably firm white permits the yolk to approach the shell more closely which results in a fairly well defined yolk outline when the egg is twirled. With respect to a broken-out egg, a reasonably firm white has a Haugh unit value of 60 to 72 when measured at a temperature between 45 degrees and 60 degrees F.

(d) *Weak and watery (B quality).* A white that is weak, thin and generally lacking in viscosity. A weak and watery white permits the yolk to approach the shell closely, thus causing the yolk outline to appear plainly visible and dark when the egg is twirled. With respect

to a broken-out egg, a weak and watery white has a Haugh unit value lower than 60 when measured at a temperature between 45 degrees and 60 degrees F.

(e) Blood spots or meat spots. Small blood spots or meat spots (aggregating not more than 1/8 inch in diameter) may be classified as B quality. If larger, or showing diffusion of blood into the white surrounding a blood spot, the egg shall be classified as Loss. Blood spots shall not be due to germ development. They may be on the yolk or in the white. Meat spots may be blood spots which have lost their characteristic red color or tissue from the reproductive organs.

(10) Terms descriptive of the yolk:

(a) Outline slightly defined (AA quality). A yolk outline that is indistinctly indicated and appears to blend into the surrounding white as the egg is twirled.

(b) Outline fairly well defined (A quality). A yolk outline that is discernible but not clearly outlined as the egg is twirled.

(c) Outline plainly visible (B quality). A yolk outline that is clearly visible as a dark shadow when the egg is twirled.

(d) Enlarged and flattened (B quality). A yolk in which the yolk membranes and tissues have weakened and/or moisture has been absorbed from the white to such an extent that the yolk appears definitely enlarged and flat.

(e) Practically free from defects (AA or A quality). A yolk that shows no germ development but may show other very slight defects on its surface.

(f) Serious defects (B quality). A yolk that shows well developed spots or areas and other serious defects, such as olive yolks, which do not render the egg inedible.

(g) Clearly visible germ development (B quality). A development of the germ spot on the yolk of a fertile egg that has progressed to a point where it is plainly visible as a definite circular area or spot with no blood in evidence.

(h) Blood due to germ development. Blood caused by development of the germ in a fertile egg to the point where it is visible as definite lines or as a blood ring. Such an egg is classified as inedible.

Stat. Auth.: ORS 561 & 632

Stats. Implemented: ORS 632.811

Hist.: AD 977(10-72), f. 8-2-72, ef. 9-15-72; AD 1079(3-76), f. & ef. 2-3-76; AD 7-1982, f. & ef. 7-9-82; DOA 24-2004, f. & cert. ef. 10-28-04

603-022-0320

Summary of Oregon Standards for Quality of Individual Shell Eggs

Specifications for each quality factor are those set forth in **Table 1**.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 561 & 632

Stats. Implemented: ORS 632.811

Hist.: AD 977(10-72), f. 8-2-72, ef. 9-15-72; AD 1079(3-76), f. & ef. 2-3-76; AD 7-1982, f. & ef. 7-9-82

603-022-0325

General

(1) These grades are applicable to edible shell eggs in "lot" quantities rather than on an "individual" egg basis. A lot may contain any quantity of two or more eggs. Reference in these standards to the term "case" means 30 dozen egg cases as used in commercial practices in Oregon. The size of the sample used to determine grade shall be on the basis of the requirements as set out in **Table 2**. For each additional 50 cases, or fraction thereof, in excess of 600 cases, one additional case shall be included in the sample. A minimum of 100 eggs per sample case shall be examined. For lots which consist of less than one case, 50 eggs shall be examined and, in instances when there are less than 50 eggs in a lot, all eggs shall be examined.

(2) Terms used in this section that are defined in the Oregon standards for quality of individual shell eggs have the same meaning in this section as in those standards.

(3) Aggregate tolerances are permitted within each consumer grade only as an allowance for variable efficiency and interpretation of graders, normal changes under favorable conditions during reasonable periods between grading and inspection, and reasonable variation of graders' interpretation.

(4) Substitution of higher qualities for the lower qualities specified is permitted.

(5) The percentage requirements for grades as set forth in OAR 603-022-0330 and 603-022-0335 are applicable except that interior quality factors shall be determined in accordance with the definitions of OAR 603-022-0310(8), (9), and (10) when the lot is labeled.

[ED NOTE: Tables referenced in this rule are available from the agency.]

Stat. Auth.: ORS 561.190 & 632.811

Stats. Implemented: ORS 632.811

Hist.: AD 977(10-72), f. 8-2-72, ef. 9-15-72; AD 1079(3-76), f. & ef. 2-3-76; DOA 24-2004, f. & cert. ef. 10-28-04

603-022-0330

Oregon Consumer Grades for Shell Eggs

(1) At origin:

(a) Oregon Consumer Grade AA, or U.S. Consumer Grade AA (at origin), shall consist of eggs which are at least 87 percent AA quality. The maximum tolerance of 13 percent which may be below AA quality may consist of A or B quality in any combination, except that within the tolerance for B quality not more than one percent may be B quality due to air cells over 3/8 inch, blood spots (aggregating not more than 1/8 inch in diameter), or serious yolk defects. Not more than 5 percent (seven percent for Jumbo size) Checks are permitted and not more than 0.50 percent Leakers, Dirties or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(b) Oregon Consumer Grade A, or U.S. Consumer Grade A (at origin), shall consist of eggs which are at least 87 percent A quality or better. Within the maximum tolerance of 13 percent which may be below A quality, not more than one percent may be B quality due to air cells over 3/8 inch, blood spots (aggregating not more than 1/8 inch in diameter), or serious yolk defects. Not more than five percent (seven percent for Jumbo size) Checks are permitted and not more than 0.50 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(c) Oregon Consumer Grade B, or U.S. Consumer Grade B (at origin), shall consist of eggs which are at least 90 percent B quality or better, not more than ten percent may be Checks and not more than 0.50 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(2) At destination:

(a) Oregon Consumer Grade AA, or U.S. Consumer Grade AA (destination), shall consist of eggs which are at least 72 percent AA quality. The remaining tolerance of 28 percent shall consist of at least ten percent A quality and the remainder shall be B quality, except that within the tolerance for B quality not more than one percent may be B quality due to air cells over 3/8 inch, blood spots (aggregating not more than 1/8 inch in diameter), or serious yolk defects. Not more than seven percent (nine percent for Jumbo size) Checks are permitted and not more than 1 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(b) Oregon Consumer Grade A, or U.S. Consumer Grade A, (destination) shall consist of eggs which are at least 82 percent A quality or better. Within the maximum tolerance of 18 percent which may be below A quality, not more than one percent may be B quality due to air cells over 3/8 inch, blood spots (aggregating not more than 1/8 inch in diameter), or serious yolk defects. Not more than seven percent (nine percent for Jumbo size) Checks are permitted and not more than one percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(c) Oregon Consumer Grade B, or U.S. Consumer Grade B, (destination) shall consist of eggs which are at least 90 percent B quality or better, not more than ten percent may be Checks and not more than one percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such loss may not exceed 0.30 percent. Other types of Loss are not permitted.

(3) Additional tolerances:

(a) In lots of two or more cases:

(A) For Grade AA — No individual case may exceed ten percent less AA quality eggs than the minimum permitted for the lot average.

(B) For Grade A — No individual case may exceed ten percent less A quality eggs than the minimum permitted for the lot average.

(C) For Grade B — No individual case may exceed ten percent less B quality eggs than the minimum permitted for the lot average.

(b) For Grades AA, A, and B, no lot shall be rejected or downgraded due to the quality of a single egg except for Loss other than blood or meat spots.

Stat. Auth.: ORS 561 & 632

Stats. Implemented: ORS 632.811

Hist.: AD 977(10-72), f. 8-2-72, ef. 9-15-72; AD 7-1982, f. & ef. 7-9-82; DOA 24-2004, f. & cert. ef. 10-28-04

603-022-0335

Summary of Grade Tolerances

The Summary of Oregon Consumer Grades for Shell Eggs, and Tolerances for Individual Case Within a Lot, are set forth in **Tables 3 and 4**.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 561 & 632

Stats. Implemented: ORS 632.811

Hist.: AD 977(10-72), f. 8-2-72, ef. 9-15-72; AD 1079(3-76), f. & ef. 2-3-76; AD 7-1982, f. & ef. 7-9-82

603-022-0340

Weight Classes

(1) The weight classes for Oregon Consumer Grades for Shell Eggs shall be as indicated in **Table 5** and shall apply to all consumer grades.

(2) A lot average tolerance of 3.3 percent for individual eggs in the next lower weight class is permitted as long as no individual case within the lot exceeds five percent.

[ED NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 561.190 & 632.811

Stats. Implemented: ORS 632.811

Hist.: AD 977(10-72), f. 8-2-72, ef. 9-15-72; DOA 24-2004, f. & cert. ef. 10-28-04

603-022-0345

Labeling

Each egg container or subcontainer shall be plainly marked in boldface type letters which are in contrast with background color with:

(1) The name and address of the producer, wholesaler, or retailer by or for whom the eggs were packed; Oregon plant number or USDA plant number, marking required by ORS 616.800 et seq., and the full, correct, and unabbreviated designation of the grade and size in accordance with the provisions of ORS Chapter 632 and OAR 603-022-0305 and 603-022-0340.

(2) Grade and size marking shall appear on the outside top face of containers holding less than 15 dozen in lettering of not less than 1/4 of an inch in height.

(3) Grade and size marking shall appear on the end of container holding 15 dozen or more eggs in lettering of not less than 1/2 of an inch in height.

(4) Description and type of marking required by ORS 616.800 et seq., shall be approved by and placed on file with the Department.

(5) All labeling requirements of this section, with exception of sections (2) and (3) of this rule relating to grade and size labeling, shall appear prominently on the container with the exception of the marking required by ORS 616.800 et seq., which may appear on the end or back of the container.

(6) There shall be no abbreviation of correct grade and size designation on signs required by ORS Chapter 632 to be on bulk containers of eggs being held or offered for sale.

Stat. Auth.: ORS 561.190 & 632.811

Stats. Implemented: ORS 632.811

Hist.: AD 977(10-72), f. 8-2-72, ef. 9-15-72; AD 1079(3-76), f. & ef. 2-3-76; DOA 24-2004, f. & cert. ef. 10-28-04

603-022-0350

Advertisements

(1) No person shall in any manner advertise the price of any eggs for sale at retail without including in the advertisement a prominent statement of the correct grade and size of such eggs according to the grades and standards prescribed by this order.

(2) No eggs other than grade AA or A shall be sold, offered for sale, or advertised for sale in any manner as “fresh eggs,” “ranch eggs,” “farm eggs,” or to represent the same to be fresh.

(3) The provisions of section (1) and (2) of this rule do not apply to a producer selling ungraded eggs of his own production on the premises where such eggs are produced.

Stat. Auth.: ORS 561.190 & 632.811

Stats. Implemented: ORS 632.811

Hist.: AD 977(10-72), f. 8-2-72, ef. 9-15-72

Sanitation Standards for Egg Candling and Grading Facilities and Establishments

603-022-0500

Candling and Grading Room

(1) Size and location. A separate room shall be provided of adequate size and location to accommodate in a sanitary manner the equipment and volume of eggs being candled and graded for human consumption as shell eggs.

(2) Floor:

(a) Floor shall be constructed of washable materials, tight, reasonably smooth, and in good repair;

(b) Floor drains shall be provided where floors are subjected to flood type cleaning or where normal operations release or discharge water or liquid wastes on floor;

(c) Floor shall be kept clean.

(3) Walls and ceiling:

(a) Walls and ceiling shall be kept clean, in good repair, and free of cobwebs and dust;

(b) Ceiling shall be dust tight if space overhead is used for storage or other purposes.

(4) Doors and windows. Effective means shall be provided to prevent entrance insofar as practicable of insects, rodents, and dust.

(5) Lighting and ventilation:

(a) Ample natural and/or artificial lighting shall be provided for egg handling, cleaning, candling, and grading operations;

(b) Adequate ventilation shall be provided to maintain room reasonably free from strong and undesirable odors, dust, and excessive condensation.

Stat. Auth.: ORS 561.190 & 632.811

Stats. Implemented: ORS 632.811

Hist.: AD 811(18-65), f. 12-21-65, ef. 1-1-66

603-022-0505

Toilet Room and Waste Disposal

(1) The toilet room shall be conveniently located and constructed and plumbed to comply with Oregon State Health Division requirements. The toilet room shall not open directly into the candling and grading room.

(2) Toilet room, dressing room, and fixtures shall be kept in a clean condition, in good repair, and shall be well ventilated and lighted.

(3) Toilet room shall be also equipped with handwashing facilities including soap and sanitary towels. No person or employee shall resume work after going to the toilet without first washing his hands.

(4) A sanitary covered waste disposal container shall be provided where needed.

(5) Sewage and other liquid wastes disposal system shall comply with Oregon State Health Division requirements.

Stat. Auth.: ORS 561.190 & 632.811

Stats. Implemented: ORS 632.811

Hist.: AD 811(18-65), f. 12-21-65, ef. 1-1-66

603-022-0510

Supply Area

A room or storage space area shall be provided for empty egg cartons, fillers, flats, cases, and other supplies used in the grading,

packing, and storage of eggs. The storage area shall be kept clean, in good repair, and free of contaminating substances or products.

Stat. Auth.: ORS 561.190 & 632.811
Stats. Implemented: ORS 632.811
Hist.: AD 811(18-65), f. 12-21-65, ef. 1-1-66

603-022-0515

Holding or Cold Room

Graded and ungraded eggs shall be stored in a manner to that they prevent cross-contamination and shall be kept clean, free of mold and objectionable odors, and properly lighted. The room shall be so constructed and equipped so that a temperature not to exceed 45 degrees F. can be maintained.

Stat. Auth.: ORS 561.190 & 632.811
Stats. Implemented: ORS 632.811
Hist.: AD 811(18-65), f. 12-21-65, ef. 1-1-66; AD 1079(3-76), f. & ef. 2-3-76; DOA 24-2004, f. & cert. ef. 10-28-04

603-022-0520

Water Supply

Water under pressure shall be available to grading and candling area or room for cleaning purposes. Such water shall be from a supply properly located, protected, and operated, and shall be easily accessible, adequate, and of a safe, sanitary quality.

Stat. Auth.: ORS 561.190 & 632.811
Stats. Implemented: ORS 632.811
Hist.: AD 811(18-65), f. 12-21-65, ef. 1-1-66

603-022-0525

Cleaning Eggs

(1) Equipment and facilities shall be provided where necessary for cleaning eggs.

(2) Eggs may be dry cleaned or washed. If eggs are dry cleaned, the equipment shall be of a sanitary type, and kept clean and in good repair.

(3) The washing solution shall be changed with sufficient frequency to maintain it in reasonably clean condition.

(4) Temperature of the wash water shall be at least 20°F higher than the temperature of the eggs being washed.

(5) Cloth or wash rags shall not be used for cleaning eggs unless they are of a sanitary single service type. Single service paper toweling may be used.

Stat. Auth.: ORS 561.190 & 632.811
Stats. Implemented: ORS 632.811
Hist.: AD 811(18-65), f. 12-21-65, ef. 1-1-66

603-022-0530

Sanitizing Cleaned Eggs

All washed eggs shall be spray-rinsed with water containing an approved type sanitizing agent.

Stat. Auth.: ORS 561.190 & 632.811
Stats. Implemented: ORS 632.811
Hist.: AD 811(18-65), f. 12-21-65, ef. 1-1-66; DOA 24-2004, f. & cert. ef. 10-28-04

603-022-0535

Candling and Grading Eggs

Eggs shall be candled and graded in accordance with the provisions of OAR 603-022-0300 through 603-022-0350 relating to egg quality and size grade standards and tolerances.

Stat. Auth.: ORS 561.190 & 632.811
Stats. Implemented: ORS 632.811
Hist.: AD 811(18-65), f. 12-21-65, ef. 1-1-66; AD 1079(3-76), f. & ef. 2-3-76

603-022-0540

Packaging and Labeling Eggs

(1) Only clean fillers, flats, subcontainers, and containers shall be used for packaging eggs.

(2) Containers and subcontainers shall be labeled in accordance with the requirements of OAR 603-022-0345.

Stat. Auth.: ORS 561.190 & 632.811
Stats. Implemented: ORS 632.811
Hist.: AD 811(18-65), f. 12-21-65, ef. 1-1-66; AD 1079(3-76), f. & ef. 2-3-76

603-022-0545

Protection from Contamination

(1) Employees handling cleaned eggs shall keep hands clean.

(2) Sanitary metal containers shall be provided at candling station for disposal of leakers and inedible eggs. Such container shall be emptied at least daily, washed and sanitized prior to usage.

(3) Insecticides and rodenticides used shall be of an approved type, stored in a safe place, and used as directed.

(4) If eggs are oil treated, the oil used shall be clean, free of off odors, and protected from contamination.

(5) The entrance or harboring of all vermin including domestic pets shall be prevented insofar as practicable to the room and areas used for grading, storage of supplies, and eggs.

(6) All floors, candling, and grading equipment shall be thoroughly cleaned after each day's use or more frequently if necessary.

Stat. Auth.: ORS 561.190 & 632.811
Stats. Implemented: ORS 632.811
Hist.: AD 811(18-65), f. 12-21-65, ef. 1-1-66

Sanitary Standards for Egg Products and Egg Product Plant Facilities and Establishments

603-022-0600

Definitions

As used in OAR 603-022-0600 through 603-022-0710.

(1) "Department" means the State Department of Agriculture.

(2) "Egg Meats" or "Egg Products" means the white, yolk, or any part of eggs, in liquid, frozen, dried, or any other form, used, intended, or held for use in the preparation of, or to be a part of or mixed with, food or food products for human consumption.

(3) "Eggs" means eggs in the shell from chickens, turkeys, ducks, geese, or any other specie of fowl.

(4) "Egg Products Plant" or "Egg Breaking Plant" means any place or establishment where eggs or egg products are broken, processed, pasteurized, packaged, or prepared for distribution in liquid, frozen, or dried condition.

(5) The term "Pasteurization," "Pasteurized," or similar terms denoting pasteurization shall be taken to refer to heating every particle of egg or egg products to such temperature and holding at such temperature for a period of time sufficient for the purpose of rendering the eggs or egg products free of salmonella or other pathogenic micro-organisms in properly operated equipment as shall be approved by the Department; provided, that nothing contained in this definition shall be construed as disbaring any other process which has been demonstrated to be equally efficient and is approved by the Department.

(6) "Sanitize" or "Sanitizing" means to subject to a germicidal agent or bactericidal treatment process approved by the Department.

(7) "Stabilization" means the subjection of any egg product to a de-sugaring process.

Stat. Auth.: ORS 561.190 & 632.811
Stats. Implemented: ORS 632.811
Hist.: AD 811(18-65), f. 12-21-65, ef. 1-1-66; DOA 24-2004, f. & cert. ef. 10-28-04

603-022-0605

Plant Requirements

The sanitation standards for egg candling and grading facilities and establishments shall be those established in OAR 603-025-0020 and by the USDA Egg Products Inspection Act, 21 U.S.C. 1031, *et seq.*

Stat. Auth.: ORS 561.190 & 632.811
Stats. Implemented: ORS 632.811
Hist.: AD 811(18-65), f. 12-21-65, ef. 1-1-66; DOA 24-2004, f. & cert. ef. 10-28-04

Civil Penalties

603-022-0900

Purpose

The Oregon Department of Agriculture Food Safety Program licenses and inspects all facets of Oregon's food distribution system, except restaurants, to ensure food is safe for consumption. Education and technical assistance are vital to the prevention, correction,

and abatement of food safety violations, and are preferred over regulatory action. However, regulatory action may be necessary to deter violations of food safety laws and rules, to educate persons about the consequences of such violations, and to compel compliance with food safety laws for the protection of consumers. The Department intends to initiate civil penalty actions when educational measures, technical assistance, warning letters, compliance agreements or other remedial measures fail to achieve compliance.

Stat. Auth.: ORS 561.190, 632.995
 Stats. Implemented: ORS 632.995
 Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

603-022-0910

Definitions

As used in OAR 603-022-0920 through 603-022-0930, unless otherwise required by the context, the following terms will be construed to mean:

- (1) "Department" means the Oregon Department of Agriculture.
- (2) "Federal Act" has the meaning in ORS 632.705(12).
- (3) "Interference" means hindering or impeding an activity or process, which includes, but is not limited to any harassment, unreasonable delay, threat, concealment, deceit, or obstruction.
- (4) "Major," with respect to violations, means an incident, or series of incidents that cause a reasonable probability that serious adverse health consequences or death will occur.
- (5) "Minor," with respect to violations, means an incident, or series of incidents that are not likely to cause adverse health consequences.
- (6) "Moderate," with respect to violations, means an incident, or series of incidents that may cause temporary or medically reversible adverse health consequences, or where the probability of serious adverse health consequences is remote.
- (7) "Repeat violation" means the recurrence of the same violation for each 24-hour period after a notice of noncompliance or assessment of civil penalty was issued within the preceding three years. It does not include a violation if the previous notice is the subject of a pending appeal or if the notice has been withdrawn or successfully appealed.
- (8) "Same," with respect to violations, means an identical recurrence, exact repetition, or a continuation of a previous violation.
- (9) "Violation" means the failure to comply with any requirement of ORS 632.705 to 632.815, or any rules adopted thereunder.
 Stat. Auth.: ORS 561.190, 632.995
 Stats. Implemented: ORS 632.995
 Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

603-022-0920

Schedule of Civil Penalties

In addition to any penalty available under ORS 561.190, 632.990, or 619.993 the Department may impose a civil penalty with respective amounts for:

- (1) Violation of the licensing requirements of ORS 632.715(1). Penalties:
 - (a) Minor — \$1,000 to \$4,000;
 - (b) Moderate — \$4,001 to \$7,000; or
 - (c) Major — \$7,001 to \$10,000.
- (2) Failure to conspicuously display original or duplicate licenses as required in ORS 632.715(3). Penalty — \$100.
- (3) Engaging in the commercial breaking of eggs for the purpose of recovering therefrom, for human food, the whites, yolks or whole egg meats, or any part thereof, for resale as such, without first obtaining from the Department of Agriculture a permit to do so pursuant to ORS 632.730. Penalties:
 - (a) Minor — \$1,000 to \$4,000;
 - (b) Moderate — \$4,001 to \$7,000; or
 - (c) Major — \$7,001 to \$10,000
- (4) Failure to pay a fee or fees pursuant to ORS 632.741. Penalty — \$1,000 to \$5,000.
- (5) Failure to meet the invoicing requirements or record retention requirements of ORS 632.745. Penalty — \$500 to \$5,000.
- (6) Failure to construct, maintain and utilize plant facilities and equipment utilized in processing eggs or egg products in accordance

with the rules promulgated under the federal Act or promulgated by the Department. Penalties:

- (a) Minor — \$1,000 to \$4,000;
 - (b) Moderate — \$4,001 to \$7,000; or
 - (c) Major — \$7,001 to \$10,000
- (7) Interference with a lawful inspection authorized under ORS 632.761(1). Penalty — \$5,000 to \$10,000.
 - (8) Interference with the seizure, embargo or detention, in accordance with the provisions of ORS 561.605 to 561.630, of any eggs or egg products determined to be in violation of the provisions of ORS 632.705 to 632.815 or rules promulgated pursuant thereto. Penalty — \$5,000 to \$10,000.
 - (9) Interference with condemnation in accordance with the provisions of ORS 616.740, of any plant premises, facilities, equipment, containers or vehicles determined to be in violation of the provisions of ORS 632.705 to 632.815 or rules promulgated pursuant thereto. Penalty — \$5,000 to \$10,000.
 - (10) Violation of the labeling or advertising requirements of ORS 632.771. Penalties:
 - (a) Minor — \$500 to \$4,000;
 - (b) Moderate — \$4,001 to \$7,000; or
 - (c) Major — \$7,001 to \$10,000.
 - (11) Selling eggs for human consumption in previously used consumer containers bearing the brand, trademark or officially designated number of another egg handler, unless the same is removed or defaced as explained in ORS 632.786(1). Penalty — \$100 to \$5,000.
 - (12) As a retailer, selling eggs from a bulk display without displaying the placard required by ORS 632.771(3). Penalty — \$100 to \$5,000.
 - (13) Delivering or selling eggs for human consumption that have been incubated or have been in either an artificial or natural incubator as explained in ORS 632.786(6). Penalty — \$100 to \$5,000.
 - (14) Delivering or selling for human consumption ova from slaughtered birds of any species as explained in ORS 632.786(7). Penalties:
 - (a) Minor — \$1,000 to \$4,000;
 - (b) Moderate — \$4,001 to \$7,000; or
 - (c) Major — \$7,001 to \$10,000.
 - (15) Selling any eggs or egg products that are adulterated or misbranded as explained in ORS 632.786(8). Penalties:
 - (a) Minor — \$1,000 to \$4,000;
 - (b) Moderate — \$4,001 to \$7,000; or
 - (c) Major — \$7,001 to \$10,000.
 - (16) Selling any eggs as fresh eggs unless they are of the quality or grade prescribed for fresh eggs by the Department or the Federal Act as explained in ORS 632.786(9). Penalties:
 - (a) Minor — \$1,000 to \$4,000;
 - (b) Moderate — \$4,001 to \$7,000; or
 - (c) Major — \$7,001 to \$10,000.
 - (17) Selling egg products for human consumption that have not been pasteurized, or as a food processor purchasing egg products that have not been pasteurized as explained in ORS 632.786(10). Penalty — \$1,000 to \$5,000.
 - (18) Advertising eggs or egg products in violation of the standards or requirements prescribed by the Department as explained in ORS 632.786(11). Penalty — \$1,000 to \$5,000.
 - (19) Using containers in the bulk sale of eggs that bear the trademark of another egg handler without the consent of the registrant of such trademark as explained in ORS 632.786(12). Penalty — \$1,000 to \$5,000.
 - (20) Failure to maintain sanitation standards of OAR 603-022-0500 through 603-022-0545, relating to egg candling and grading facilities and establishments. Penalties:
 - (a) Minor — \$500 to \$4,000;
 - (b) Moderate — \$4,001 to \$7,000; or
 - (c) Minor — \$7,001 to \$10,000.
- Stat. Auth.: ORS 561.190, 632.995
 Stats. Implemented: ORS 632.995
 Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

603-022-0930

Penalty factors; procedure

(1) In imposing a penalty pursuant to the schedule adopted pursuant to ORS 632.995, the Department shall consider the following factors, which are listed in prioritized order:

(a) The immediacy and extent to which the violation threatens the public health or safety.

(b) Any prior violations of statutes, rules or orders pertaining to eggs.

(c) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(d) The economic and financial conditions of the person incurring the penalty, including any financial gains resulting from the violation.

(2) Each 24-hour period a violation continues after the period of time established for compliance will be considered a separate violation unless the Department finds a different period of time is more appropriate to describe the specific violation event.

(3) Repeat violations of OAR 603-022-0910 will be assessed as three times the penalty amount in OAR 603-022-0910, not to exceed \$10,000.

(4) A civil penalty imposed under this rule will comply with ORS 183.745, except that the written application for a hearing must be received by the department no later than 10 days after the mailing or personal service of the notice of civil penalty.

Stat. Auth.: ORS 561.190, 632.995

Stats. Implemented: ORS 632.995

Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

DIVISION 24

**DEFINITIONS AND STANDARDS OF IDENTITY,
LABELING AND OTHER REGULATIONS RELATING
TO FLUID MILK AND DAIRY PRODUCTS**

603-024-0017

Standards of Identity, Quantity and Labeling Requirements

(1) The weights and measures packaging and labeling requirements for butter, fluid milk and milk products shall be those specified in OAR 603-027-0105, and the weights and measures requirements as to the methods of sale of butter, milk and milk products shall be those specified in OAR 603-027-0206.

(2) Labeling, standards of identity and marking requirements for butter, fluid milk and milk products not provided for under section (1) of this rule, shall be those specified in the Grade "A" Pasteurized Milk Ordinance, 2013 Revision.

(3) Measuring devices used for determining weight by measuring quantity of milk in farm tanks shall be done in accordance with the requirements of OAR chapter 603, division 027, to effectuate the administration of ORS Chapter 618.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 651 & 621

Stats. Implemented:

Hist.: DOA 6-2002, f. & cert. ef. 1-28-02; DOA 8-2006, f. & cert. ef. 3-10-06;

DOA 6-2013, f. & cert. ef. 4-26-13; DOA 7-2015, f. & cert. ef. 4-3-15

603-024-0019

Definitions

As used in these rules, unless the context otherwise requires:

(1) "Authorized Persons" means persons licensed as a sampler-grader, or a pasteurizer operator under the provisions of ORS chapter 621.

(2) "Certified Laboratory" is an industry or commercial laboratory which has been certified to perform specified analyses of milk and dairy products described in these fluid milk regulations by the Department's chief laboratory officer or his or her official representative. Laboratory certifications may be limited by the Department to one or more specific tests, methods or products.

(3) "Condemned Container" means container deemed by Department as unfit for use because of dirt, rust, open seams, or other conditions that would or may contaminate fluid milk, milk or dairy

products, or would otherwise render them unfit for consumption by humans.

(4) "Container" means and includes milk cans, cream cans, farm-milk tanks, milk-tank trucks, pasteurizing vats, cheese vats, butter churns, butter tubs, cheese hoops, and any other receptacle designed for use or used as a container of fluid milk or dairy products.

(5) "Cream" means cream as defined in OAR 603-024-0017(2).

(6) "Dairy Operator" means a person licensed by the Department to conduct one or more of the following activities related to the operation of a milk distributor or dairy products plant. A separate license is required for each of these activities conducted by an individual:

(a) "Sampler-Grader" is a person responsible for the grading of milk received by a milk distributor or dairy products plant, and collecting regulatory samples of raw for pasteurization milk being received.

(b) "HTST Pasteurizer Operator" is a person responsible for the legal pasteurization of milk and/or dairy products utilizing "high temperature short time" (HTST) pasteurization equipment. This includes HHST and UHT pasteurization equipment.

(c) "Vat Pasteurizer Operator" is a person responsible for the legal pasteurization of milk and/or dairy products utilizing vat or batch pasteurization equipment.

(7) "Dairy Product" means dairy products defined in OAR 603-024-0017(2) and includes butter; all varieties of cheese, frozen desserts and frozen dessert mixes containing milk, cream or nonfat milk solids; and evaporated, condensed, concentrated, powdered, dried or fermented milk, whey, cream and skimmed milk.

(8) "Department" means the Department of Agriculture of the State of Oregon.

(9) "Distributor" means a person who purchases only unpasteurized milk and pasteurizes or otherwise processes that milk, then bottles and distributes the milk for human consumption.

(10) "Extra Rich Milk" is pasteurized fluid milk in which the milkfat content is not less than 5.0 percent. The term or label "extra rich" shall not be used in connection with the addition of vitamins, minerals, or milk solids-not-fat unless the milkfat content meets or exceeds 5.0 percent.

(11) "Fluid milk" means milk and any other product made by the addition of a substance to milk or to a liquid form of milk product if the milk or other product is produced, processed, distributed, sold or offered or exposed for sale for human consumption. Fluid milk includes sterilized fluid milk products and the fluid milk products for which the Department has established a standard of identity.

(12) "Lactose Reduced Milk Products", are milk products, such as pasteurized milk, lowfat milk or skim milk (nonfat milk) to which suitable enzymes have been added to convert lactose in the product to glucose or galactose, resulting in a lactose level in the milk product that is less than 30 percent of the natural level of lactose normally in the product.

(13) "Calcium Added" milk product are fortified with calcium carbonate, tricalcium phosphate or other additive approved by the Department, to a level of not less than 500 m.g. per eight ounce serving.

(14) "Milk" means the lacteal secretion of cows, sheep and goats.

(15) "Milkfat" means the natural fat of milk.

(16) "Milk solids" means the total constituents of milk less the water.

(17) Lactobacillus acidophilus or bifido bacterium milk products are milk products that have been pasteurized and inoculated with a strain of lactobacillus acidophilus or bifido bacterium to aid human digestion.

(18) "Milk Hauler" means a person who, in the course of employment, accepts bulk fluid milk and transports that commodity to a dairy products plant or a physical facility of a distributor or producer-distributor.

(19) "Multi-Vitamin Fortified" or "Multi-Mineral Fortified" means milk or milk products in which the vitamins or minerals con-

tent, other than vitamin D or vitamin A, have been increased by a method and in an amount approved by the Department.

(20) “Nonprocessing distributor” means a person who sells fluid milk in consumer-sized units under the person’s own brand or trade name after the milk has been processed and packaged by a distributor or producer-distributor.

(21) “Person” means any individual, partnership, association, or corporation and his or its agents.

(22) “Producer” means a person who engages in the production of unpasteurized milk on a dairy farm and does not bottle the milk on the premises where production occurs, in pasteurized or unpasteurized form and for human consumption.

(23) “Producer-distributor” means a person who bottles milk on the premises where production occurs, in pasteurized or unpasteurized form and for human consumption.

(24) “Raw Goat Milk” is unpasteurized milk from goats with a milkfat content of not less than 3.25 percent and a milk-solids-not-fat content of not less than 8.25 percent.

(25) “Whole Milk” is milk with milkfat greater or equal to 3.25 percent and milk solids-not-fat not less than 8.25 percent.

Stat. Auth.: ORS 651 & 621

Stats. Implemented:

Hist.: DOA 6-2002, f. & cert. ef. 1-28-02; DOA 6-2013, f. & cert. ef. 4-26-13

Product Standards

603-024-0022

Butter

“Butter” means the product made by gathering the fat of fresh or ripened cream into a mass, which also contains a small portion of other milk constituents, with or without salt or a harmless coloring matter. Butter shall be clean and nonrancid and shall contain not less than 80 percent of milk fat.

Stat. Auth.: ORS 651 & 621

Stats. Implemented:

Hist.: DOA 6-2002, f. & cert. ef. 1-28-02

603-024-0026

Standards for Lactobacillus Acidophilus or Bifido Bacterium Added Milk Products

(1) Milk products that have been pasteurized, cooled to a temperature not to exceed 45 degrees F., and afterwards inoculated with a pure, concentrated strain of lactobacillus acidophilus or bifido bacterium may be labeled “Milk with Lactobacillus Acidophilus Culture,” “Milk with Bifido Bacterium Added.”

(2) Lactobacillus acidophilus or bifido bacterium added milk products shall meet the bacterial requirements for fluid milk after pasteurization and prior to inoculation.

(3) After inoculation, the lactobacillus acidophilus or bifido bacterium added milk products shall contain at a minimum 2,000,000 viable lactobacillus acidophilus or bifido bacterium cells per milliliter as measured by the standard plate count, and shall contain not more than 10 coliform per milliliter.

(4) Lactobacillus acidophilus or bifido bacterium added milk products shall be maintained at a temperature of 45 degrees F. or less, until delivered to the consumer.

(5) Except for the bacterial count, lactobacillus acidophilus or bifido bacterium added milk products shall meet all other compositional requirements for fluid milk.

(6) All lactobacillus acidophilus or bifido bacterium added milk products shall be labeled as “milk with lactobacillus acidophilus or bifido bacterium culture added.”

(7) The method of manufacture and labeling of such fluid milk products containing lactobacillus, acidophilus or bifido bacterium culture shall be approved by the Department before offered for sale to the public.

Stat. Auth.: ORS 651 & 621

Stats. Implemented:

Hist.: DOA 6-2002, f. & cert. ef. 1-28-02

603-024-0031

Standards of Multi-Vitamin Fortified or Multi-Mineral Fortified Milk or Milk Products

The label of the milk or milk product shall include the specific vitamins or minerals added. The label of the milk or milk product shall bear the statement “mineral fortified” or similar statement approved by the Department. All additives shall be listed in the ingredient statement.

Stat. Auth.: ORS 651 & 621

Stats. Implemented:

Hist.: DOA 6-2002, f. & cert. ef. 1-28-02

603-024-0035

Definitions and Standards for Cheeses and Cheese Products

(1) The definitions and standards of identity, optional ingredients, and labeling requirements for cottage cheese, cottage cheese/dry curd, lowfat cottage cheese and other cheese and cheese products shall be those specified in OAR 603-024-0017.

(2) Coliform standards for cottage cheese, cottage cheese/dry curd and lowfat cottage cheese shall be determined by computing the number of coliform organisms by the Agar Plate Method upon examination of the last five samples taken on separate days during the sampling period. Compliance with the coliform standard shall be deemed to have been met if the number of coliform organisms do not exceed ten per gram per sample in more than two of the last five samples. No enforcement action is taken if the last sample is within the standard.

(3) The weights and measures packaging and labeling requirements for cheese, cheese products, cottage cheese and all types or varieties of cottage cheese shall be, those specified in OAR 603-027-0105, and the weights and measures requirements as to methods of sale of cheese, cheese products, cottage cheese and all types or varieties of cottage cheese shall be those specified in OAR 603-027-0206.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561.190, 621.060, 621.311 & 621.405

Stats. Implemented: ORS 616.230

Hist.: AD 946(13-71), f. & ef. 9-1-71; AD 1016(6-74), f. 1-30-74, ef. 12-31-74; AD 1075(21-75), f. & ef. 12-31-75; AD 8-1980, f. & ef. 11-20-80; AD 12-1984, f. & ef. 9-24-84; AD 21-1993, f. & cert. ef. 12-15-93; DOA 6-2002, f. & cert. ef. 1-28-02

Evaporated Milk and Concentrated Milk

603-024-0041

Standard for Grade A Raw Goat Milk

(1) “Grade A Raw Goat Milk” is fluid milk bottled on a dairy farm and must be produced by a disease-free herd in conformance with all of the sanitation specified in OAR 603-024-0605 to 603-024-0641, and 603-024-0211.

(2) As determined in accordance with OAR 603-024-0557 to 603-024-0594 for each sampling period, Raw Goat Milk may not exceed:

- (a) 80,000 bacteria count per milliliter;
- (b) 10 coliform per milliliter;
- (c) Cooling requirements covered in OAR 603-024-0211;
- (d) No. 2 sediment test; and
- (e) The somatic cell limit in OAR 603-024-0592.

(3) Grade A Raw Goat milk must test negative for drug residue.

Stat. Auth.: ORS 651 & 621

Stats. Implemented:

Hist.: DOA 6-2002, f. & cert. ef. 1-28-02; DOA 6-2013, f. & cert. ef. 4-26-13

603-024-0046

Breed Specific Labeling of Milk and Milk Products

In order to label milk or milk product “Ayrshire,” “Brown swiss,” “Guernsey,” “Holstein,” or “Jersey” milk or milk products, the milk or the products of the fluid milk must be derived exclusively from the breed of cows stated on the label. The individual animals from which the milk is derived must be indistinguishable in appearance from a purebred animal of the same breed.

Stat. Auth.: ORS 651 & 621

Stats. Implemented:

Hist.: DOA 6-2002, f. & cert. ef. 1-28-02

603-024-0051

Standard for Grade A Raw Milk

(1) "Grade A Raw Milk for Pasteurization" is fluid milk produced by a disease-free herd on a dairy farm in conformance with all the sanitation standards specified in OAR 603-024-0211.

(2) When delivered to the milk plant, all raw milk shall be examined and tested in accordance with OAR 603-024-0557 to 603-024-0594. As specified in 603-024-0557 to 603-024-0594, for each sampling period, Grade A Raw Milk for Pasteurization may not exceed:

- (a) 80,000 bacteria count per milliliter;
- (b) Cooling requirements covered in OAR 603-024-0211; and
- (c) The somatic cell limit in OAR 603-024-0592.

(3) Grade A Raw Milk must test negative for drug residue.

Stat. Auth.: ORS 651 & 621

Stats. Implemented:

Hist.: DOA 6-2002, f. & cert. ef. 1-28-02

603-024-0056

Standards for Lactose Reduced Milk Products

(1) "Lactose Reduced Milk Products," are created by adding suitable enzymes to pasteurized milk, lowfat milk or skim milk (non-fat milk) to convert lactose in the product to glucose or galactose, reducing the lactose level in the milk product to less than 30 percent of the normal level.

(2) The product shall be labeled "Lactose Reduced" with the blank being filled in with the name of the appropriate milk product, according to the standards of identity established by the Department for such products.

(3) Adding vitamin A or vitamin D to Lactose Reduced Milk Products is optional. If added, each quart of the milk product shall contain not less than 2,000 I.U. of Vitamin A and 400 I.U. of Vitamin D, within the limits of good manufacturing practices. The product shall be labeled in accordance with OAR 603-024-0017.

Stat. Auth.: ORS 651 & 621

Stats. Implemented:

Hist.: DOA 6-2002, f. & cert. ef. 1-28-02

Sterilized Products

603-024-0061

Standards for Calcium Added Milk Products

Milk products may be labeled "Lowfat Milk with Calcium Added," or "Nonfat (Skim) Milk with Calcium Added" or "Reduced Fat Milk with Calcium Added" if the fluid milk product meets the standard of identity set forth in Title 21, CFR, Chapter 1, Part 131.110, and it is fortified with calcium carbonate, tricalcium phosphate or other additive approved by the Department, to a level of not less than 500 m.g. per eight ounce serving. The milk product shall be labeled in accordance with OAR 603-024-0017 and in addition the principal display panel shall prominently bear the statement "A dietary supplement of calcium."

Stat. Auth.: ORS 651 & 621

Stats. Implemented:

Hist.: DOA 6-2002, f. & cert. ef. 1-28-02

603-024-0062

Sterilized Fluid Milk and Milk Products; Standards of Identity

The standard of identity for sterilized milk and milk products shall be the standards for fluid milk and fluid milk products as set forth in OAR 603-024-0017.

Stat. Auth.: ORS 561, 616 & 621

Stats. Implemented: ORS 621.060 & 621.405

Hist.: AD 806(13-65), f. 8-23-65, ef. 9-5-65; Renumbered from 603-024-0037; AD 1105(26-76), f. & ef. 9-15-76; DOA 6-2002, f. & cert. ef. 1-28-02

Imitation Milk and Imitation Milk Products

603-024-0080

Imitation Milk and Imitation Milk Products; Standards of Identity

The standards of identity for imitation milk and milk products shall be the standards for fluid milk and fluid milk products, as set forth in OAR 603-024-0017.

Stat. Auth.: ORS 561, 616 & 621

Stats. Implemented: ORS 621.418

Hist.: AD 910(16-69), f. 12-5-69, ef. 1-1-70; AD 1105(26-76), f. & ef. 9-15-76; AD 8-1980, f. & ef. 11-20-80; DOA 6-2002, f. & cert. ef. 1-28-02

603-024-0090

Standard of Quality

Imitation milk products when sold or offered for sale in the final delivery container shall not contain more than 20,000 bacteria per milliliter, 10 coliform per milliliter, and the temperature shall not exceed 45°F

Stat. Auth.: ORS 561.190 & 621.418

Stats. Implemented: ORS 621.418

Hist.: AD 910(16-69), f. 12-5-69, ef. 1-1-70

603-024-0095

Sanitation Standards

(1) Sanitation standards for building, equipment, and personnel involved in the manufacture and distribution of the imitation milk products for which a standard of identity has been established in OAR 603-024-0080 shall conform to the same sanitation requirements as established for Grade A pasteurized fluid milk and milk products in OAR 603-024-0211.

(2) Imitation milk products shall be pasteurized in equipment meeting the requirements for milk and dairy products, as set forth in OAR 603-024-0211, including subjecting imitation milk products to the appropriate equivalent pasteurization time and temperature standards set forth therein.

(3) Imitation milk products that are labeled sterilized shall be packaged in hermetically sealed containers and so processed in equipment approved by the Department by heat either before or after sealing so as to prevent spoilage.

Stat. Auth.: ORS 561, 616 & 621

Stats. Implemented: ORS 621.418

Hist.: AD 910(16-69), f. 12-5-69, ef. 1-1-70; AD 1105(26-76), f. & ef. 9-15-76; DOA 6-2002, f. & cert. ef. 1-28-02

Container Condemnation

603-024-0105

Identifying Condemned Containers

Containers as defined in OAR 603-024-0019(3) shall only be identified when condemned by the Department by attaching a tag thereto printed by the Department giving notice of fact of condemnation and reason therefor.

Stat. Auth.: ORS 621

Stats. Implemented: ORS 621.226

Hist.: AD 535, f. 9-6-56, ef. 9-5-56; DOA 6-2002, f. & cert. ef. 1-28-02

603-024-0110

Releasing Condemned Container for Use Following Repair

The Department may lift condemnation and release container for use after verifying acceptable repairs have been made.

Stat. Auth.: ORS 621

Stats. Implemented: ORS 621.226

Hist.: AD 535, f. 9-6-56, ef. 9-5-56; DOA 6-2002, f. & cert. ef. 1-28-02

Fluid Milk and Dairy Processing Plants

603-024-0210

Floor

The floors of all rooms in which milk or milk products are handled or stored shall be of concrete or other impervious surfaced materials, smooth, graded to drain and with drains trapped, and kept clean and in good repair. Floors shall be properly joined and coved with walls to form water tight joints.

Stat. Auth.: ORS 621

Stats. Implemented: ORS 621.176 & 621.181

Hist.: AD 471, f. 9-2-54, ef. 8-1-54

603-024-0211

Adoption of the Grade A Pasteurized Milk Ordinance (PMO) and Related Documents

On all dairy farms, plants, and transport tankers, the standards for building construction, equipment construction, sanitation, sampling, pasteurization, transportation and handling of milk and dairy products shall be those given in the Grade "A" Pasteurized Milk

Ordinance (PMO), 2013 Revision. This adoption shall also include the following related documents:

(1) 2013 Revision of the Methods of Making Sanitation Ratings (MMSR);

(2) 2013 Revision of Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the Conference on Interstate Milk Shipments; and

(3) The 2011 Revision of the Evaluation of Milk Laboratories (EML).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561.020 & 621

Stats. Implemented: 621.058

Hist.: DOA 6-2002, f. & cert. ef. 1-28-02; DOA 8-2006, f. & cert. ef. 3-10-06; DOA 9-2012, f. & cert. ef. 5-15-12; DOA 6-2013, f. & cert. ef. 4-26-13; DOA 7-2015, f. & cert. ef. 4-3-15

603-024-0234

License Fees

As provided in ORS 621.166, the license fees for mobile tankers are as follows:

(1) Bulk tank truck or other mobile equipment: \$25 for one mobile milk tanker and \$25 for each additional mobile milk tanker, not to exceed \$750 for total fleet owned by one entity.

(2) Dairy Products Plant, except those consisting of only bulk tank trucks or other mobile equipment, shall pay the license fee established in ORS 621 plus \$25 for each mobile milk tanker.

Stat. Auth.: ORS 183.335(5), 190, 561.190, 603, 616, 621 & 625

Stats. Implemented: ORS 621.176 & 621.181

Hist.: AD 6-1982, f. & ef. 5-20-82; AD 6-1989, f. & cert. ef. 5-11-89; AD 9-1990, f. & cert. ef. 5-7-90; AD 8-1991(Temp), f. & cert. ef. 7-29-91; AD 18-1991, f. & cert. ef. 12-5-91; DOA 6-2002, f. & cert. ef. 1-28-02; DOA 8-2006, f. & cert. ef. 3-10-06

Testing Equipment

603-024-0323

Testing Procedures and Equipment

All tests of milk and milk products shall be performed in accordance with standards established in Association of Agricultural Chemists (AOAC) or the 1992, 16th Edition of Standard Methods for the Examinations of Dairy Products, Chapter 5, 6, 10 & 12. Procedures or tests not found in AOAC or Standard Methods for the Examination of Dairy Products may only be used if approved by the Department.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 651 & 621

Stats. Implemented:

Hist.: DOA 6-2002, f. & cert. ef. 1-28-02

Grading of Milk and Cream (for Manufacturing Purposes)

603-024-0379

Grading Period; Regular and New Producers (non-grade A)

(1) The operator of a milk products plant or licensed grader in each plant, upon receiving the first shipment of milk from a new producer must:

(a) Immediately sample and test such milk for temperature as required under this rule; and

(b) Within 14 days shall sample and subject the milk from such producer to the bacteriological test and the abnormal milk test.

(2) No person and no producer may sell or offer for sale any milk, once his milk has been graded unlawful, until such milk has been released from such grade by compliance with applicable grade standard.

(3) All producers beginning operation after March 1, 2002, shall be licensed as a Grade A Producer and shall meet the requirements of a Grade A Producer as outlined in the PMO.

Stat. Auth.: ORS 561.190, 621.201 & 621.236

Stats. Implemented: ORS 621.201 & 621.236

Hist.: AD 899(19-68), f. 10-24-68, ef. 1-1-69; DOA 6-2002, f. & cert. ef. 1-28-02

Examination of Applicants for Dairy Operators' Licenses

603-024-0490

Qualifications

(1) Applicants for dairy operators' licenses shall be:

(a) Able to read and write legibly;

(b) At least 18 years of age;

(c) Free of communicable diseases.

(2) Applicants for a High Temperature Short Time (HTST) pasteurizer operator licenses shall be required to have at least two months practical experience in helping to operate pasteurization equipment. There shall be no waiting period for applicants for a vat pasteurizer license or sampler/grader license.

Stat. Auth.: ORS 621

Stats. Implemented: ORS 621.266

Hist.: AD 471, f. 9-2-54, ef. 8-1-54; DOA 6-2002, f. & cert. ef. 1-28-02

603-024-0492

Examination of Applicant

(1) Written examination shall include questions relating to:

(a) Knowledge of laws and regulations relating to activity for which the license is desired;

(b) Theory and practice involved in the performance of the licensed activity.

(2) Practical examination shall include demonstration of ability to:

(a) Make required quality control tests;

(b) Operate required equipment;

(c) Manufacture, grade, test, or pasteurize milk and milk products, as the case may be;

(d) Care, cleaning, and maintenance of equipment and utensils involved in the licensed activity.

Stat. Auth.: ORS 621

Stats. Implemented: ORS 621.266

Hist.: AD 471, f. 9-2-54, ef. 8-1-54

603-024-0494

Examination Grade Required for Licensing

(1) The examination shall have a total of 100 possible points, 50 of which shall be on the written examination, and the other 50 points on the practical examination.

(2) A total grade of at least 80 out of the 100 possible points is required to pass the examination for a dairy operators' lifetime license.

(3) A score of 40 or more is required for a passing grade on the written or practical examination.

Stat. Auth.: ORS 561 & 621

Stats. Implemented: ORS 621.266

Hist.: AD 471, f. 9-2-54, ef. 8-1-54; AD 8-1980, f. & ef. 11-20-80

Official Milk Fat Testing by the State Department of Agriculture

603-024-0500

Definitions

As used in OAR 603-024-0505 to 603-024-0535:

(1) "Licensed Sampler" means a person holding a valid license issued by the Department under ORS 621.072, to collect milk samples and to carry out other authority and duty as set forth by law and regulation.

(2) "Official Test" means milk sampled and tested for its milk fat content, as set forth in OAR 603-024-0323.

Stat. Auth.: ORS 561.190 & 621.750

Stats. Implemented: ORS 621.750

Hist.: AD 803(10-65), f. & ef. 8-16-65; AD 916(2-70), f. 3-5-70, ef. 4-1-70; DOA 6-2002, f. & cert. ef. 1-28-02

603-024-0505

Request for Official Testing

A request for official testing of milk shall only be made on forms furnished by the Department. The request must be received at least five days before the beginning date of the test period (test period used by dealer or handler) desired to be covered. Any request not

received within this period shall be considered to be a request for official testing of milk for the next test period.

Stat. Auth.: ORS 561.190 & 621.750
Stats. Implemented: ORS 621.750
Hist.: AD 803(10-65), f. & ef. 8-16-65

603-024-0510

Sampling and Testing of Milk; Producers

(1) The sampling and testing procedures to be followed by the Department and other persons affected thereby, shall be in accordance with the requirements and procedures set forth in OAR 603-024-0323, except as otherwise prescribed in 603-024-0500 to 603-024-0535.

(2) In the sampling of milk, at least four ounces of milk shall be drawn by a licensed sampler.

(3) The licensed sampler shall immediately divide (split) such sample with the producer whose milk is being sampled and tested, by placing approximately one-half of the milk in a separate jar containing a preservative tablet furnished by the Department for this specific purpose.

(4) The licensed sampler shall immediately fill out a sample form, furnished by the Department. Such form shall be signed by both the producer and the licensed sampler immediately after the sample is taken.

(5) The sample to be forwarded to the Department shall be placed in the shipping container furnished by the Department. The licensed sampler shall write the sample date, initial, or sign the seal, and then witness the act of the producer also placing his initial or signature thereon, as further provided or required by the Department.

(6) The producer shall, within 24 hours after the sample is taken as prescribed in this rule, mail the container and sample at his own expense, to the Department.

(7) The licensed sampler shall handle and dispose of the handler's or dealer's portion of the milk sampled, as prescribed and required in regulations OAR 603-024-0323.

Stat. Auth.: ORS 561.190 & 621.750
Stats. Implemented: ORS 621.750
Hist.: AD 803(10-65), f. & ef. 8-16-65; DOA 6-2002, f. & cert. ef. 1-28-02

603-024-0515

Adjustments Resulting From Testing

(1) If the official test performed and carried out by the Department varies by more than one-tenth of one percent from the test made by the dealer, handler, or purchaser, the Department shall forward the results of such test and an order to such dealer, handler, or purchaser and requiring such person to make adjustment or payment for the period during which such official tests were made. (Also refer to applicable law.)

(2) If the test or tests were made for milk sold or delivered by a producer to a dealer, handler, or purchaser, the adjustments or proper payment as ordered by the Department shall be made by the affected dealer, handler, or purchaser to the producer. Such adjustment or proper payment shall be made at the next time that producers are paid for milk delivered, or not less than 20 days after the date of the order, whichever date is the lessor.

Stat. Auth.: ORS 561.190 & 621.750
Stats. Implemented: ORS 621.750
Hist.: AD 803(10-65), f. & ef. 8-16-65

603-024-0520

Additional Instructions and Requirements

It must be recognized that in the implementation of Chapter 474, Oregon Laws 1965, and the fact that this is a new program, the Department, in the promulgation of regulations as set forth in OAR 603-024-0500 to 603-024-0535, cannot cover all the necessary details or provisions relating thereto. The Department, in addition to such rules, reserves the right to require other reasonable procedures relating to this program. Included in and accompanying the package unit and/or container or containers which will be forwarded to a producer for the purpose of placing samples of milk therein and mailing the same to the Department, will be further instructions as to the required sampling and handling of milk. The producer and the licensed sampler shall comply with such instructions.

Stat. Auth.: ORS 561.190 & 621.750
Stats. Implemented: ORS 621.750
Hist.: AD 803(10-65), f. & ef. 8-16-65

603-024-0525

Deduction and/or Payment for Sampling and Testing

(1) If, as a result of sampling and testing of milk, the Department, under the provisions of subsection (2) of Section 4 of Chapter 474, Oregon Laws 1965, forwards an itemized statement or other similar form covering the cost of sampling and testing, the first handler or licensee who receives such form shall make the deduction from the producer in the manner and at the time set forth in ORS 583.046. The first handler or licensee, on forms furnished by the Department for this purpose, shall transmit such amount to the Department as further set forth under ORS 583.046 or regulations thereunder.

(2) If there is no first handler or licensee available, the Department, in lieu thereof, or in its option in any other case, shall forward the itemized statement to the person who requested and received the services authorized by Chapter 474, Oregon Laws 1965. Payment by such person (due date) shall be made to the Department as required by law, ORS 561.410, and regulations thereunder.

Stat. Auth.: ORS 561.190 & 621.750
Stats. Implemented: ORS 621.750
Hist.: AD 803(10-65), f. & ef. 8-16-65

603-024-0530

Fees for Samples

A fee of \$10 per sample drawn, as provided in OAR 603-024-0510 or 603-024-0535, is hereby established to be paid to the Department to defray the cost thereof.

Stat. Auth.: ORS 561.190 & 621.750
Stats. Implemented: ORS 621.750
Hist.: AD 803(10-65), f. & ef. 8-16-65; AD 3-1987, f. & ef. 2-13-87

603-024-0535

Sampling and Testing of Milk; Other Than for Producers

(1) Special sampling and testing of milk for persons other than producers, as set forth in Chapter 474, Oregon Laws 1965, will be made by the Department at the request of such persons.

(2) The applicable provisions of OAR 603-024-0500 to 603-024-0535 apply, except where otherwise specified or set forth by the Department as special procedures and instructions. The payment for such services shall be made by the person requesting the service.

Stat. Auth.: ORS 561.190 & 621.750
Stats. Implemented: ORS 621.750
Hist.: AD 803(10-65), f. & ef. 8-16-65

Fluid Milk — Grade A Labeling, Advertising, and Display

603-024-0543

Labeling

All final delivery containers used for the sale of fluid milk or any product of fluid milk for which a standard of identity has been established shall be plainly labeled and marked as described in OAR 603-024-0017 and the requirements listed below:

(1) If the contents are raw:

(a) The words "This product has not been pasteurized, may contain disease producing organisms," immediately preceding or following the standard of identity name as set forth in OAR 603-024-0019(24);

(b) The wording prescribed in subsection (a) of this section shall be in bold-face type not less than one-fourth (1/4) inch in height; and

(c) The wording prescribed in subsection (a) of this section shall not be obscured either wholly or in part by the open date labeling (pull date) or the price declarations.

(2) Raw milk and raw milk products displayed for sale at retail shall not be commingled with pasteurized milk or pasteurized milk products and shall be physically separated therefrom.

(3) The phrase "within the limits of good manufacturing practice" refers to a reasonable deviation from the declared standard or label claim.

(4) Identity of the milk plant at which the contents are pasteurized and bottled. In case of a nonprocessing distributor, a code

number assigned by the department may be used in lieu of the name and address of the milk plant at which the milk is pasteurized and bottled.

(5) The label shall show the list of ingredients, including the common name of edible stabilizers or emulsifiers if stabilizers or emulsifiers have been added. When modified starch is added as an optional ingredient, the product name on the principal display panel shall be immediately followed by the terms “with starch” or “with starch added.” The following product grouping may be listed by their common name:

(a) Skim milk, concentrated skim milk, and nonfat dry milk may be declared as “skim milk”;

(b) Milk, concentrated milk, and dried milk may be declared as “milk”;

(c) Bacterial cultures may be declared by the word “cultured” followed by the name of the substrate; e.g., “made from cultured skim milk or cultured buttermilk”;

(d) Sweetcream buttermilk, concentrated sweetcream buttermilk, and dried sweetcream buttermilk may be declared as “buttermilk”;

(e) Cheese whey, concentrated cheese whey, and dried cheese whey may be declared as “whey”;

(f) Cream, dried cream, and plastic cream (sometimes known as concentrated milkfat) may be declared as “cream”;

(g) Butteroil and anhydrous butterfat may be declared as “butter”;

(h) Dried whole eggs, frozen whole eggs, and liquid whole eggs may be declared as “eggs”;

(i) Dried egg whites, frozen egg whites, and liquid egg whites may be declared as “egg whites”;

(j) Dried egg yolks, frozen egg yolks, and liquid egg yolks may be declared as “egg yolks”;

(k) Sugar (sucrose) shall be declared as “sugar,” and invert sugar may be declared as “sugar.”

(6) Sweeteners derived from corn may be declared as “corn sweeteners.”

(7) Labeled grade of milk product shall not be higher than the lowest grade of any one constituent of fluid milk of which it is composed.

(8) Any labeled statement and illustration on final delivery containers for comparing the mineral and vitamin nutritive value of fluid milk or milk products are identified in OAR 603-024-0017 with each other of other foods shall be accompanied by a statement identifying the source of the labeled nutritive comparison claims.

Stat. Auth.: ORS 561.190, 621.060, 621.311 & 621.405
 Stats. Implemented: ORS 621.060
 Hist.: AD 3-1987, f. & ef. 2-13-87; AD 21-1993, f. & cert. ef. 12-15-93; DOA 6-2002, f. & cert. ef. 1-28-02

603-024-0544

Advertising and Display

(1) Advertising of fluid milk products shall be deemed to be false if it is false or misleading in any particular;

(2) Advertising of fluid milk products as to price shall include quantity and the standard of identity name set forth in OAR 603-024-0017;

(3) Advertising of fluid milk products as to nutritional claims shall include the standard of identity name set forth in OAR 603-024-0017; and

(4) Violation of this section shall be deemed to be false advertising under ORS 616.060.

Stat. Auth.: ORS 561.616 & 621
 Stats. Implemented: ORS 621.060
 Hist.: AD 1044(34-74), f. 9-5-74, ef. 10-1-74; Renumbered from 603-024-0603.7; AD 18-1981, f. & ef. 7-23-81; DOA 6-2002, f. & cert. ef. 1-28-02

Licensing and Fees

603-024-0547

License Fees Relating to Fluid Milk

As provided in ORS 621.072, the license fees for the various categories of activities relating to fluid milk are as follows: Sampler and grader — \$25.

Stat. Auth.: ORS 183.335(5), 190, 561.190, 603, 616, 621 & 625
 Stats. Implemented: ORS 621.072
 Hist.: AD 6-1982, f. & ef. 5-20-82; AD 6-1989, f. & cert. ef. 5-11-89; AD 9-1990, f. & cert. ef. 5-7-90; AD 8-1991(Temp), f. & cert. ef. 7-29-91; AD 18-1991, f. & cert. ef. 12-5-91; DOA 8-2006, f. & cert. ef. 3-10-06

603-024-0554

Laboratory Certification

Certificate to perform specific tests or analyses on specific products shall be issued on receipt of application and \$50 fee for the first test and \$10 each for additional tests and following an approved survey or split sampling for such tests. The total fee shall not exceed \$100. Laboratories must apply for a license with the Department on the specified form in order to be certified. A certified laboratory may be limited to a specific test, to a specific method, and to specific products by the Department.

Stat. Auth.: ORS 561.190 & 621.072
 Stats. Implemented: ORS 621.072
 Hist.: AD 951(18-71), f. 9-27-71, ef. 10-15-71; Renumbered from 603-024-0611.5; DOA 6-2002, f. & cert. ef. 1-28-02

Standards for the Examination and Testing of Milk and Milk Products

603-024-0557

Sampling of Milk and Milk Products

The sampling and standards for the examination and testing of milk and milk products shall be as described in OAR 603-024-0211 and 603-024-0323.

Stat. Auth.: ORS 651 & 621
 Stats. Implemented:
 Hist.: DOA 6-2002, f. & cert. ef. 1-28-02

603-024-0572

Sampling Standard

Sampling standard means during any consecutive six months the collection and examination or testing of at least four samples of milk and milk products in at least four separate months. Except that when 3 months show a month containing 2 sampling dates separated by at least 20 days.

Stat. Auth.: ORS 561 & 621
 Stats. Implemented: ORS 621.060 & 621.261
 Hist.: AD 630, f. 1-19-60; AD 883(13-68), f. & ef. 7-1-68; AD 1044(34-74), f. 9-5-74, ef. 10-1-74; Renumbered from 603-024-0622.5; AD 8-1980, f. & ef. 11-20-80; DOA 6-2002, f. & cert. ef. 1-28-02

Procedures for the Examination and Testing of Milk and Milk Products; Enforcement

603-024-0580

The Collection, Transportation and Analysis of Milk Samples

Sampling, bacterial plate counts, coliform counts, temperature test, phosphatase test, somatic cell tests, and other laboratory tests used in the examination of milk and milk products to determine standards of quality shall conform to the procedures as contained in the latest edition of “Standard Methods for the Examination of Dairy Products” published by the American Public Health Association or to any other method approved by the Department. Such examination may include such other chemical and physical analyses as the Department may deem necessary.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561 & 621
 Stats. Implemented: ORS 621.060 & 621.261
 Hist.: AD 630, f. 1-19-60; AD 883(13-68), f. & ef. 7-1-68; AD 1044(34-74), f. 9-5-74, ef. 10-1-74; Renumbered from 603-024-0630.5; AD 8-1980, f. & ef. 11-20-80; DOA 6-2002, f. & cert. ef. 1-28-02

603-024-0581

Standards for Licensed Milk Samplers and Graders

Tank truck drivers and milk plant personnel licensed to officially sample milk from farm bulk milk tanks or producer containers at receiving plants shall use the procedures described in OAR 603-024-0211.

Stat. Auth.: ORS 561 & 621
 Stats. Implemented: ORS 621.060 & 621.261

Hist.: AD 630, f. 1-19-60; AD 1044(34-74), f. 9-5-74, ef. 10-1-74; Renumbered from 603-024-0631.5; AD 8-1980, f. & ef. 11-20-80; DOA 6-2002, f. & cert. ef. 1-28-02

603-024-0582

Bacteria, Coliform, and Temperature Tests

Whenever two of the last four consecutive bacteria counts, coliform determinations, or cooling temperatures, taken on separate days, exceed the limit of the standard for the milk or milk product, the Department shall send a written notice thereof to the person concerned. This notice shall be in effect so long as two of the last four consecutive samples exceed the limit of the standard. An additional sample shall be taken within twenty one days of the sending of such notice, but not before the lapse of three days. Immediate suspension of grade shall be instituted whenever the standard is violated by three of the last five bacteria counts, coliform determination, or cooling temperatures. No action is taken if the last test is within the grade limit. Cultured products are exempt from the standard plate count.

Stat. Auth.: ORS 561.190, 621.060 & 621.261
 Stats. Implemented: ORS 621.060 & 621.261
 Hist.: AD 630, f. 1-19-60; AD 1044(34-74), f. 9-5-74, ef. 10-1-74; Renumbered from 603-024-0632.5; DOA 6-2002, f. & cert. ef. 1-28-02

603-024-0584

Sediment Test

(1) If upon examination the Department or grader shall obtain a sediment test which is in excess of a No. 2 sediment standard, the Department shall give the licensee a written notice of such fact. An additional sample shall be taken after an interval of not less than three days and if the test of the additional sample is also in violation of the sediment standard of the licensed grade then held, the licensee shall be given a written notice to suspend the sale, exposure, or offering for sale of such grade of milk for a specified period, or until such time that another test of the milk shall show the sediment content within the standard for the licensed grade.

(2) Milk or cream showing a sediment test in excess of a No. 3 sediment standard is deemed to be unlawful milk and the grader shall immediately affix to the container thereof a condemnation tag, which shall be in such form as the Department may prescribe, and in addition thoroughly mix with that milk such harmless red food coloring matter as will prevent the same from being sold, offered, or exposed for sale for human consumption in accordance with ORS 621.085.

Stat. Auth.: ORS 561.190, 621.060 & 621.261
 Stats. Implemented: ORS 621.060 & 621.261
 Hist.: AD 630, f. 1-19-60; Renumbered from 603-024-0634.5

603-024-0585

Suspension Order

(1) Whenever the department is presented epidemiological evidence as determined by the Health Division of the Department of Human Resources which indicates that raw milk from a licensed raw milk producer-distributor is the suspected source of human infection, the department shall issue an order immediately suspending the sale of such milk unless it is first diverted to a pasteurization plant. In addition, the department shall order that all raw milk produced by the producer-distributor be immediately seized, detained or embargoed pursuant to ORS 561.605 to 561.620. The producer-distributor may appeal the department's order as provided in ORS 561.605 to 561.620.

(2) Unless otherwise directed, the order shall remain in effect until herd testing and genetic fingerprinting either support or are inconsistent with the epidemiological evidence. If subsequent herd testing supports the epidemiological link, the department's order suspending raw milk sales shall remain in effect until the producer-distributor satisfactorily documents that it has complied with the protocols in section (3) of this rule. If subsequent herd testing does not support the epidemiological link, the department shall lift the suspension order, allowing raw milk sales to resume.

(3) The protocols for re-establishing raw milk sales are:

(a) The entire dairy herd tested as appropriate at the dairy's expense;

(b) All samples must be collected by an accredited veterinarian and tested in a laboratory acceptable to the department.

Stat. Auth.: ORS 561.190, 561.605 - 561.620, 616.220 & 621.072
 Stats. Implemented: ORS 561.605 - 561.620, 616.220 & 621.072
 Hist.: AD 15-1994(Temp), f. & cert. ef. 9-9-94; AD 8-1995, f. & cert. ef. 4-14-95; DOA 6-2002, f. & cert. ef. 1-28-02

603-024-0586

Suspension for Violation

If a violation of the grade standard for bacteria, temperature or coliform occurs within six months of any prior suspension for violation of the same standard, the license may be resuspended without benefit of the notice of violation and additional sampling, and without benefit of the three-day waiting period, if notice has been given within the six months that further violation of the same character will be grounds for further suspension.

Stat. Auth.: ORS 561 & 621
 Stats. Implemented: ORS 621.060 & 621.261
 Hist.: AD 676, f. 7-18-61, ef. 8-11-61; Renumbered from 603-024-0635; AD 8-1980, f. & ef. 11-20-80; DOA 6-2002, f. & cert. ef. 1-28-02

Abnormal Milk Test

603-024-0589

Abnormal Milk Standard and Test

(1) The abnormal milk standards for milk for manufacturing purposes shall be determined by examination or testing for total somatic cells (leukocyte count) of at least four samples of milk from each producer during every six-month period. The leukocyte count shall be determined by a Direct Microscopic Somatic Cell Count, an electronic somatic cell count, or any other test which will give comparable results and is approved by the department.

(2) The abnormal milk standard shall be determined in the following manner:

(a) A Direct Microscopic Somatic Cell Count or Electronic Somatic Cell Count shall be conducted on each producer's milk at least four times in each six-month period;

(b) A milk sample having a leukocyte count of 500,000 or more per milliliter (ml.) shall be deemed to be violative of the abnormal milk standard;

(c) The three out of five compliance method shall apply in the case of all abnormal milk showing 1 million or more leukocytes per ml. except that a period of four weeks shall be allowed between warning notice and the taking of the next test;

(d) Whenever two of the last four consecutive leukocyte counts exceed the limit of the standards, the producer shall be given a warning letter which shall be in effect so long as two of the last four samples exceed the limit. An additional sample shall be taken but not before the lapse of four weeks. Milk shall be unlawful grade whenever the standard is violated by three of the last five leukocyte counts. No action is taken if the additional sample is within the standard (less than 500,000 cells per ml.). Release from unlawful grade is made with the first satisfactory sample.

(3) Cows which show an extensive induration of one or more quarters of the udder upon physical examination and/or secreting abnormal milk shall be temporarily excluded from the milking herd. Cows giving bloody, stringy, or abnormal milk shall be excluded from the herd until re-examination shall show that the milk has become normal.

(4) Milk from quarters of cow's udder treated with antibiotics for udder infection shall be withheld from the market according to manufacturer's recommendation.

Stat. Auth.: ORS 651 & 621
 Stats. Implemented:
 Hist.: DOA 6-2002, f. & cert. ef. 1-28-02; DOA 6-2013, f. & cert. ef. 4-26-13

603-024-0590

Dairy Farm and Milk Plant Inspection

(1) If, upon inspection of a dairy farm or milk plant by the Department, a violation of any item of sanitation as contained herein for the licensed grade then held is noted on two successive inspections made not less than three days apart, and notice has been given within six months of the second violation that further violation will be grounds for suspension, the license permitting use of the speci-

fied grade designation with milk or milk products may be suspended for a specific period of time which in no case shall exceed ten days.

(2) A copy of all inspection reports will be posted by the Department in a conspicuous place on an inside wall of the licensee's farm or milk plant, as the case may be, and shall not be defaced or removed without approval of the Department.

(3) A producer, producer-distributor, or distributor found in violation of any requirement(s) shall be notified by inspection report or in writing and given a reasonable time to correct such violation(s) before a second inspection is made. The requirement of giving written notice shall be deemed to have been satisfied by the handing to the operator, or by posting of, an inspection report required by this section. After receipt of a notice of violation, but before the allotted time has elapsed, the producer, producer-distributor, or distributor shall have an opportunity to contact the chief of the inspection agency to question the items marked in violation or for requesting an extension of the time allowed for correction.

(4) Whenever a producer, producer-distributor, or distributor ceases to operate under a current license, such license privileges are deemed suspended unless again authorized by an approval inspection.

Stat. Auth.: ORS 561 & 621
 Stats. Implemented: ORS 621.060 & 621.261
 Hist.: AD 630, f. 1-19-60; AD 676, f. 7-18-61, ef. 8-11-61; AD 883(13-68), f. & ef. 7-1-68; AD 1044(34-74), f. 9-5-74, ef. 10-1-74; Renumbered from 603-024-0638.5; AD 8-1980, f. & ef. 11-20-80; DOA 6-2002, f. & cert. ef. 1-28-02

**603-024-0592
 Examination for Somatic Cells**

Examination of milk and enforcement of the standard for Grade A milk and milk products shall be as follows:

(1) A Direct Microscopic Somatic Cell Count or Electronic Somatic Cell Count shall be conducted on each producer's or producer-distributor's raw milk at least four times during separate months in each six-month period.

(2) Except for the standard set forth in section (5) of this rule, a milk sample having a somatic cell count of 500,000 or more per milliliter (ml.) shall be deemed to be violative of the somatic cell standard.

(3) Except for the standard set forth in section (5) of this rule, the three-out-of-five compliance method shall apply in the case of all abnormal milk showing 500,000 or more somatic cells per ml. except that a period of no more than twenty one days shall be allowed between warning notice and the taking of the next official test.

(4) Except for the standard set forth in section (5) of this rule, whenever two of the last four consecutive somatic cell counts exceed the limit of the standard, the producer shall be given a warning letter which shall be in effect so long as two of the last four samples exceed the limit. An additional sample shall be taken but not before the lapse of twenty one days. Immediate suspension of the milk shall be instituted whenever the standard is violated by three of the last five somatic cell counts. No action shall be taken if the additional sample is within the standard (less than 500,000 cells per ml.). Release from suspension shall be made with first satisfactory sample.

(5) A sample of goat's milk having a somatic cell count of 1,500,000 or more per milliliter (ml.) shall be deemed to be violative of the somatic cell standard. Otherwise, the provisions of this section apply to goat's milk.

Stat. Auth.: ORS 561 & 621
 Stats. Implemented: ORS 621.060 & 621.261
 Hist.: AD 883(13-68), f. & ef. 7-1-68; AD 1044(34-74), f. 9-5-74, ef. 10-1-74; Renumbered from 603-024-0639.5; AD 10-1986, f. & ef. 6-11-86; DOA 6-2002, f. & cert. ef. 1-28-02; DOA 8-2012, f. 4-13-12, cert. ef. 7-1-12; DOA 6-2013, f. & cert. ef. 4-26-13

**603-024-0594
 Drug Residue Test**

(1) Antibiotic tests on each producer's milk or on commingled raw milk shall be conducted at least four times during any consecutive six months. When commingled milk is tested, all producers shall be represented in the samples. All individual sources of milk

shall be tested when test results on the commingled milk are positive.

(2) Violation of drug residue test shall be cause for immediate cease and desist (suspension), which shall be effective for 48 hours or four milkings and until a sample is received which shows a negative test result. This action shall not prevent the initiation of other enforcement actions as are available.

Stat. Auth.: ORS 561.190, 621.060 & 621.261
 Stats. Implemented: ORS 621.060 & 621.261
 Hist.: AD 883(13-68), f. & ef. 7-1-68; AD 1044(34-74), f. 9-5-74, ef. 10-1-74; Renumbered from 603-024-0640.5; DOA 6-2002, f. & cert. ef. 1-28-02

**603-024-0596
 Grading**

(1) Each shipment or pick-up of grade A fluid milk shall be graded as to its acceptable quality by a licensed sampler/grader. If it is not acceptable and is rejected as unfit for grade A use, a record (forms supplied by the Department) is to be made showing:

- (a) Producer's name and number;
- (b) Market or pooling agent;
- (c) Date and time;
- (d) Quantity;
- (e) Cause for rejection;
- (f) Disposition of the rejected milk.

(2) The original copy of the record is to be forwarded to the Department, Food and Safety Division, not later than seven days following the rejection.

Stat. Auth.: ORS 561.190, 621.060 & 621.261
 Stats. Implemented: ORS 621.060 & 621.261
 Hist.: AD 951(18-71), f. 9-27-71, ef. 10-15-71; AD 1044(34-74), f. 9-5-74, ef. 10-1-74; Renumbered from 603-024-0641.5; DOA 6-2002, f. & cert. ef. 1-28-02

**603-024-0598
 Tests and Analyses**

In addition to official laboratory results, certified laboratories using recognized standard methods may perform tests and analyses for standard plate count, coliform count, phosphatase, drug residues (antibiotics), added water (cryoscope), somatic cells, and potable water for which they are certified and such results may be acceptable as official. Tests and analyses of finished products performed by the processor of that product are not acceptable as official, unless approved by the Department.

Stat. Auth.: ORS 561.190, 621.060 & 621.261
 Stats. Implemented: ORS 621.060 & 621.261
 Hist.: AD 951(18-71), f. 9-27-71, ef. 10-15-71; Renumbered from 603-024-0642.5; DOA 6-2002, f. & cert. ef. 1-28-02

Grade A Producer Regulations

**603-024-0605
 Health of Cows, Goats, and Sheep and Abnormal Milk**

(1) In addition to the requirements of OAR 603-024-0211, all herds of cows goats and sheep producing milk for human consumption as defined in 603-024-0019 and for which a standard of identity has been established in 603-024-0017(2) shall be in compliance with the laws of the State of Oregon and regulations promulgated thereunder relating to tuberculosis and brucellosis.

(2) Raw Milk For Human Consumption: Goat and Sheep dairies selling raw milk for human consumption shall comply with the following:

- (a) Brucellosis: All animals in the herd that are more than 6 months of age shall be tested for brucellosis at a lab approved by the Department at intervals of no more than 12 months.
- (b) Tuberculosis: All animals in the herd that are more than 6 months of age shall be tested for tuberculosis at a lab approved by the Department at intervals of no more than 12 months.

(3) For other diseases such tests and examinations as the Department may require after consultation with the State Veterinarian shall be made at intervals and according to methods prescribed and any diseased animals shall be disposed of as may be required.

Stat. Auth.: ORS 561.190, 616.230 & 621.060
 Stats. Implemented: ORS 621.060 & 621.261
 Hist.: AD 883(13-68), f. & ef. 7-1-68; AD 1044(34-74), f. 9-5-74, ef. 10-1-74; Renumbered from 603-024-0656.01; AD 3-1993, f. & cert. ef. 1-28-93; DOA 6-2002, f. & cert. ef. 1-28-02; DOA 6-2013, f. & cert. ef. 4-26-13

Milk House or Room — Construction and Facilities

603-024-0613

Construction and Facilities of Milk House

A milk house shall be constructed and maintained in accordance with the following: The milk house used by retail raw milk dairies (producer-distributor) shall consist of two rooms separating the handling of milk and storage of cleaned utensils from the cleaning and other operations which shall be so located as to prevent any contamination of milk or of cleaned equipment. The facility shall comply with the requirements of OAR 603-024-0211. The milk house rooms shall be of adequate size subject to approval by the Department to satisfactorily handle the volume of milk to be cooled, bottled, capped, and the washing of utensils, containers, and equipment.

Stat. Auth.: ORS 561 & 621
 Stats. Implemented: ORS 621.060 & 621.261
 Hist.: AD 883(13-68), f. & ef. 7-1-68; AD 1044(34-75), f. 9-5-74, ef. 10-1-74; Renumbered from 603-024-0656.05; AD 8-1980, f. & ef. 11-20-80; AD 9-1983, f. & ef. 8-22-83; DOA 6-2002, f. & cert. ef. 1-28-02; DOA 6-2013, f. & cert. ef. 4-26-13

603-024-0621

Utensils and Equipment Construction, Installation, and Use

Farm tanks in all new or replacement installations shall be equipped with an approved type recording thermometer with a temperature range of 32 degrees F. to 180 degrees F. and interval timers for agitation of the milk.

(1) Accuracy of the recording thermometer shall be within plus or minus two degrees. The recording device should be installed in an area convenient to the milk storage tank and acceptable to the regulatory agency. The sensor bulb or device shall be located so as to record the temperature of the milk in the tank before it reaches ten percent of the tank volume;

(2) The interval timer shall be set and adjusted so that the milk will be agitated not less than a five minute period with a frequency of at least once every two hours.

Stat. Auth.: ORS 561.190, 621.060 & 621.261
 Stats. Implemented: ORS 621.060 & 621.261
 Hist.: AD 883(13-68), f. & ef. 7-1-68; AD 1044(34-74), f. 9-5-74, ef. 10-1-74; AD 1070, f. & ef. 11-20-75; Renumbered to 603-024-0621; DOA 6-2002, f. & cert. ef. 1-28-02

603-024-0640

Cooling

(1) Temperature recording charts approved by the Department shall be provided for farm tank recording thermometers. The pickup driver and licensed milk grader shall examine chart for temperature record and compliance with requirements at the time of receipt of the milk. He shall date, sign, and replace the old chart with a new one. The charts shall be kept for 90 days for observation by graders, sanitarians, and for other official purposes.

(2) Farm tanks in all new or replacement installations shall be equipped with approved type recording thermometers with a temperature range of 32 degrees F. to 180 degrees F. and interval timers for agitation of the milk:

(a) Accuracy of the recording thermometer shall be within plus or minus 2 degrees F. The recording device should be installed in an area convenient to the milk storage tank and acceptable to the regulatory agency. The sensor bulb or device shall be located so as to record the temperature of the milk in the tank before it reaches ten percent of the tank volume;

(b) The interval timer shall be set and adjusted so that the milk will be agitated not less than a five minute period with a frequency of at least once every two hours.

Stat. Auth.: ORS 561.190, 621.060 & 621.261
 Stats. Implemented: ORS 621.060 & 621.261
 Hist.: AD 883(13-68), f. & ef. 7-1-68; AD 1044(34-74), f. 9-5-74, ef. 10-1-74; Renumbered from 603-024-0656.19; DOA 6-2002, f. & cert. ef. 1-28-02; DOA 6-2013, f. & cert. ef. 4-26-13

603-024-0641

Transportation of Milk and Milk Products and Surroundings

All producer Grade A raw milk for pasteurization must be picked up at least once each 48 hour period. In addition, to facilitate

cleaning of the farm bulk tank, the tank shall be completely emptied once each 48 hour period.

Stat. Auth.: ORS 561 & 621
 Stats. Implemented: ORS 621.060 & 621.261
 Hist.: AD 883(13-68), f. & ef. 7-1-68; Renumbered from 603-024-0656.20; AD 9-1983, f. & ef. 8-22-83; DOA 6-2002, f. & cert. ef. 1-28-02

Frozen Desserts

603-024-0741

Definitions and Standards for Frozen Desserts

In accordance with ORS 621.311, definitions and standards for frozen desserts adopted by the Food and Drug Administration of the United States Department of Health, Education and Welfare are hereby adopted as the definitions and standards of identity for frozen desserts in the State of Oregon. These definitions and standards are set forth in OAR 603-024-0017(2). In addition, no wholesaler shall sell, offer for sale or have in his possession with intent to sell a frozen dessert or frozen dessert mix to a retailer which has a bacteria count in excess of 50,000 per gram. Frozen desserts in which cultured milk is an ingredient shall not be required to meet any minimum bacteria count standards.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561, 616 & 621
 Stats. Implemented: ORS 621.311
 Hist.: AD 1075(21-75), f. & ef. 12-31-75; AD 3-1979, f. & ef. 3-13-79; AD 10-1984, f. & ef. 7-6-84; AD 8-1985, f. & ef. 9-20-85; DOA 6-2002, f. & cert. ef. 1-28-02

603-024-0785

Frozen Yogurt Dessert Mix; Frozen Yogurt Dessert; Standards of Identity and Label Statements

In accordance with ORS 621.311, the following definitions and standards are established:

(1) "Frozen Yogurt Dessert Mix" or "Frozen Yogurt Mix" is the food prepared from the product identified in Title 21, CFR, Chapter 1, Section 131.200, except that the titratable acidity shall not be less than 0.20 percent, expressed as lactic acid, with or without added milk solids, flavoring, or seasoning, and which shall be free of molds, yeast, and other fungi, as well as other objectionable bacteria which may impair the quality of such product. Matured and wholesome fruit or approved flavors may be added for fruit, fruit flavored, or flavored yogurts. Addition of sugar is optional.

(2) "Frozen Yogurt Dessert" is a frozen product produced from a frozen yogurt dessert mix identified in section (1) of this rule and which complies with all the identity standards contained therein.

(3) Each of the products identified in sections (1) and (2) of this rule shall be labeled as provided in ORS 621.320.

(4) Compliance with the coliform standard shall be deemed to have been met if the number of coliform organisms does not exceed ten per gram per sample in more than two of the last five samples. No enforcement action shall be taken if the last sample is within the standard.

Stat. Auth.: ORS 561 & 621
 Stats. Implemented: ORS 621.311
 Hist.: AD 1104(25-76), f. & ef. 9-13-76; AD 5-1977, f. & ef. 3-14-77; AD 3-1987, f. & ef. 2-13-87; DOA 6-2002, f. & cert. ef. 1-28-02

603-024-0795

Nondairy Frozen Dessert: Identity

Nondairy Frozen Dessert is the food prepared in accordance with the requirements adopted under OAR 603-024-0741, except that:

(1) It contains no milk, milkfat or milk solids.
 (2) Its content of edible oil or fat is not less than two (2) percent.

(3) Its content of food solids is not less than 1.3 pounds per gallon.

(4) It may contain:
 (a) Harmless edible stabilizers and emulsifiers;
 (b) Nutritive carbohydrate sweeteners; or
 (c) Fruit or fruit juices, nut meats, harmless flavoring or harmless coloring.

(5) The name of the food is "Nondairy Frozen Dessert."

Stat. Auth.: ORS 561 & 621
 Stats. Implemented: ORS 621.311
 Hist.: AD 8-1985, f. & ef. 9-20-85

603-024-0796

Nondairy Frozen Dessert Mix: Identity

Nondairy Frozen Dessert Mix is the food, in a dry or concentrated form, used in the manufacture of a nondairy frozen dessert, which is prepared in accordance with the requirements of OAR 603-024-0795.

Stat. Auth.: ORS 561 & 621
 Stats. Implemented: ORS 621.311
 Hist.: AD 8-1985, f. & ef. 9-20-85

Civil Penalties

603-024-0900

Purpose

The Oregon Department of Agriculture Food Safety Program licenses and inspects all facets of Oregon’s food distribution system, except restaurants, to ensure food is safe for consumption. Education and technical assistance are vital to the prevention, correction, and abatement of food safety violations, and are preferred over regulatory action. However, regulatory action may be necessary to deter violations of food safety laws and rules, to educate persons about the consequences of such violations, and to compel compliance with food safety laws for the protection of consumers. The Department intends to initiate civil penalty actions when educational measures, technical assistance, warning letters, compliance agreements or other remedial measures fail to achieve compliance.

Stat. Auth.: ORS 561.190 & 621.995
 Stats. Implemented: ORS 621.995
 Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

603-024-0910

Definitions

As used in OAR 603-024-0920 through 603-024-0930, unless otherwise required by the context, the following terms will be construed to mean:

- (1) “Interference” means hindering or impeding an activity or process, which includes, but is not limited to any harassment, unreasonable delay, threat, concealment, deceit, or obstruction.
- (2) “Major,” with respect to violations, means an incident, or series of incidents that cause a reasonable probability that serious adverse health consequences or death will occur.
- (3) “Minor,” with respect to violations, means an incident, or series of incidents that are not likely to cause adverse health consequences.
- (4) “Moderate,” with respect to violations, means an incident, or series of incidents that may cause temporary or medically reversible adverse health consequences, or where the probability of serious adverse health consequences is remote.
- (5) “Repeat violation” means the recurrence of the same violation for each 24-hour period after a notice of noncompliance or assessment of civil penalty was issued within the preceding three years. It does not include a violation if the previous notice is the subject of a pending appeal or if the notice has been withdrawn or successfully appealed.
- (6) “Same,” with respect to violations, means an identical recurrence, exact repetition, or a continuation of a previous violation.
- (8) “Violation” means the failure to comply with any requirement of ORS 621.056, 621.057, 621.062, 621.070, 621.072, 621.076, 621.084, 621.088, 621.117, 621.122, 621.124, 621.161, 621.166, 621.183, 621.198, 621.207, 621.226, 621.259, 621.335, 621.340, 621.345, 621.418, 621.445 or 621.730, or any rules, regulations or standards adopted under ORS 621.060, 621.083, 621.096, 621.224 or 621.261.

Stat. Auth.: ORS 561.190 & 621.995
 Stats. Implemented: ORS 621.995
 Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

603-024-0920

Schedule of Civil Penalties

In addition to any penalty available under ORS 561.190 or 621.991, the Department may impose a civil penalty with respective amounts for:

- (1) Failure by a distributor, producer-distributor or dairy products plant licensee to employ a grader that accurately and impartially grades all milk or fluid milk purchased by the distributor, producer-distributor or licensee from producers before it is commingled with other milk or otherwise loses its identity pursuant to ORS 621.056. Penalty — \$1,000 to \$5,000.
- (2) Violation of the grader recording requirements in ORS 621.057. Penalty — \$100 to \$5,000.
- (3) The processing, distribution, sale or offer or exposure for sale fluid milk that does not conform to a standard of identity established by the Department as explained in ORS 621.062. Penalties:
 - (a) Minor — \$1,000 to \$4,000;
 - (b) Moderate — \$4,001 to \$7,000; or
 - (c) Major — \$7,001 to \$10,000.
- (4) The use of any grade designation on bottle caps, in advertising, on labels or in any other manner connected with the sale of fluid milk without a Department license for the person to use the grade designation as explained in ORS 621.070. Penalty — \$5,000 to \$10,000.
- (5) Failure to obtain a license as required in ORS 621.072(2). Penalty — \$5,000 to \$10,000.
- (6) Failure to obtain a license as required in ORS 621.072(4). Penalty — \$1,000 to \$5,000.
- (7) Interference with a lawful inspection as authorized under ORS 621.072(5). Penalty — \$5,000 to \$10,000.
- (8) Knowingly misrepresenting the annual gross dollar volume of sales and services by a license applicant within Oregon during the prior calendar year or, if the applicant maintains sales and service records on a fiscal basis, the prior fiscal year, for the requirements of ORS 621.072 or 621.166. Penalty — \$1,000 to \$5,000.
- (9) Violation of the requirements of ORS 621.076(1), relating to container labeling. Penalty — \$5,000 to \$10,000.
- (10) Bottling unpasteurized fluid milk off of the premises where it is produced as explained in ORS 621.076(2). Penalty — \$5,000 to \$10,000.
- (11) A producer or producer-distributor selling or offering for sale fluid milk during the period that the license of the producer or producer-distributor to use a grade designation on fluid milk has been suspended under ORS 621.072 or 621.073. Penalty — \$5,000 to \$10,000.
- (12) A distributor knowingly purchasing fluid milk from any person whose license to use a grade designation has been suspended under ORS 621.072 or 621.073. Penalty — \$5,000 to \$10,000.
- (13) A distributor knowingly purchasing fluid milk from any person other than a person licensed under ORS 621.072. Penalty — \$5,000 to \$10,000.
- (14) Violation of the labeling requirements of ORS 621.076(6). Penalty — \$1,000 to \$5,000.
- (15) A distributor, producer-distributor, dairy products plant licensee or any other purchaser of milk from producers failing to weigh, sample and test fluid milk purchased by them from producers in the same manner as milk and cream are weighed, sampled and tested under ORS 621.096. Penalty — \$1,000 to \$5,000.
- (16) Violation of ORS 621.088, relating to milk or cream to which water has been added. Penalty — \$5,000 to \$10,000.
- (17) Violation of ORS 621.117, relating to pasteurized milk and disease-free goat and sheep herds. Penalties:
 - (a) Minor — \$1,000 to \$4,000;
 - (b) Moderate — \$4,001 to \$7,000; or
 - (c) Major — \$7,001 to \$10,000.
- (18) Operating or permitting the operation of any pasteurization equipment except under the direct personal supervision of a person licensed as a pasteurizer operator under ORS 621.266. Penalties:
 - (a) Minor — \$1,000 to \$4,000;
 - (b) Moderate — \$4,001 to \$7,000; or
 - (c) Major — \$7,001 to \$10,000.

(19) A distributor, producer-distributor or dairy products plant licensee selling, offering or exposing for sale any milk or cream that has not been pasteurized or produced by a disease-free goat or sheep herd, except to another distributor, producer-distributor or dairy products plant licensee for the manufacture of milk, fluid milk or dairy products as explained in ORS 621.122(2). Penalties:

- (a) Minor — \$1,000 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(20) Except as permitted by ORS 621.003, 621.012, 621.060 and 621.076, a person knowingly selling, offering or exposing for sale any milk or cream that has not been pasteurized or produced by a disease-free goat or sheep herd, except to a distributor, producer-distributor or dairy products plant licensee for the manufacture of milk, fluid milk or dairy products as explained in ORS 621.122(3). Penalty — \$8,000 to \$10,000.

(21) A distributor, producer-distributor or dairy products plant licensee selling, offering or exposing for sale any milk, fluid milk or dairy product processed or manufactured by the distributor, producer-distributor or licensee without all of the milk or cream constituents from cows having been pasteurized and all milk or cream constituents from goats or sheep were produced by a disease-free herd or have been pasteurized as explained in ORS 621.122(4). Penalty — \$5,000 to \$10,000.

(22) A person knowingly selling, offering or exposing for sale any dairy product without all of the milk or cream constituents of the product from cows have been pasteurized and all constituents from goats or sheep were produced by a disease-free herd or have been pasteurized as explained in ORS 621.122(5). Penalty — \$8,000 to \$10,000.

(23) A person falsely representing by word, design, device or by any other means that any milk, cream, fluid milk, dairy product, frozen dessert mix or frozen dessert has been pasteurized as explained in ORS 621.122(7). Penalty — \$5,000 to \$10,000.

(24) A distributor, producer-distributor or dairy products plant licensee failing to provide for the grading of all milk transported, received or purchased by the distributor, producer-distributor or licensee as required by ORS 621.056, 621.057, 621.084 and 621.226 and regulations adopted under ORS 621.096. Penalty — \$1,000 to \$5,000.

(25) A person altering, removing or tampering with any condemnation tag affixed by the Department or a grader pursuant to the provisions of ORS 621.203 or 621.226. Penalties:

- (a) Minor — \$1,000 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(26) Violations of the requirements of ORS 621.122(10), relating to sampling, weighing, and testing milk or cream. Penalty — \$500 to \$5,000.

(27) A person selling or offering or exposing for sale any fluid milk with knowledge that the milk has been produced from a herd of cows, sheep or goats, one or more of which were infected with brucellosis at the time the milk was produced, or with knowledge that not all the animals in the herd have been tested or retested for brucellosis in a manner approved by the Department as explained in ORS 621.124. Penalties:

- (a) Minor — \$1,000 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(28) Operating a dairy products plant without a valid license for that plant as explained in ORS 622.161. Penalty — \$5,000 to \$10,000.

(29) Violation of the license requirements of ORS 621.166. Penalty — \$5,000 to \$10,000.

(30) A person operating a dairy products plant or a physical facility of a distributor or producer-distributor that fails to conform to the standards prescribed pursuant to ORS 621.176 and 621.181, relating to disease and contamination prevention. Penalties:

- (a) Minor — \$1,000 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(31) A producer storing milk that is to be sold to a dairy products plant or to be used at a physical facility of a distributor or producer-distributor, in bulk storage tanks, equipment, buildings or other facilities that do not conform to the standards prescribed pursuant to ORS 621.193. Penalties:

- (a) Minor — \$1,000 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(32) A distributor, producer-distributor or dairy products plant licensee receiving or purchasing milk from a producer, that is stored in bulk storage tanks, equipment, buildings or other facilities that do not conform to the standards prescribed pursuant to ORS 621.193. Penalties:

- (a) Minor — \$1,000 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(33) A person other than an authorized employee or agent of the Department removing a condemnation tag or marking from a container as explained in ORS 621.207(1). Penalties:

- (a) Minor — \$1,000 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(34) A person placing any fluid milk, cream, milk or dairy product in a container bearing a condemnation tag or marking as explained in ORS 622.207(2). Penalties:

- (a) Minor — \$1,000 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(35) A person using the contents of a container that has been condemned to manufacture, process or bottle fluid milk, cream, milk or dairy products as explained in ORS 622.207(3). Penalties:

- (a) Minor — \$1,000 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(36) Failure of a grader to affix a condemnation tag and mix sufficient harmless red coloring matter with any milk, cream, dairy product or fluid milk when the milk, cream, dairy product or fluid milk is unlawful as described in ORS 621.226(2). Penalty — \$500 to \$5,000.

(37) Operating pasteurization equipment used by a distributor or producer-distributor or at a dairy products plant, and the distributor, producer-distributor or dairy products plant licensee fails to ensure that the pasteurization process is under the direct supervision of a pasteurizer operator licensed under ORS 621.266. Penalties:

- (a) Minor — \$1,000 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(38) A person engaging in the business of freezing or making frozen desserts and then selling those frozen desserts at wholesale without a license to carry on that business from the Department. Penalty — \$5,000 to \$10,000.

(39) A frozen dessert wholesaler selling, offering for sale or possessing with intent to sell a frozen dessert or frozen dessert mix that has an excessive bacteria count as established by rule of the Department. Penalties:

- (a) Minor — \$1,000 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(40) A person selling or offering for sale any product that the person represents to be a frozen dessert or that simulates or imitates the taste, texture or general composition of a frozen dessert unless the product conforms to the standard of identity for that frozen dessert established by rule of the Department pursuant to ORS 621.311. Penalties:

- (a) Minor — \$1,000 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(41) A person selling or offering for sale an imitation milk product that does not conform to a standard of quality and identity established by the Department as explained in ORS 621.418. Penalties:

- (a) Minor — \$1,000 to \$4,000;

- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(42) Violation of ORS 621.445(1), relating to colored butter substitutes in any public eating place. Penalty — \$100 to \$500.

(43) A milk handler, dealer, licensee or purchaser of milk terminating or threatening to terminate the purchase of milk from a producer or seller, or taking or threatening to take other retaliatory action against a producer or seller of milk, because the producer or seller has exercised rights and privileges as authorized in ORS Chapter 621. Penalty — \$1,000 to \$5,000.

(44) Selling or offering for sale imitation milk products in the final delivery container that contain more than 20,000 bacteria per milliliter, 10 coliform per milliliter, or whose temperature exceeds 45 degrees Fahrenheit. Penalties:

- (a) Minor — \$1,000 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(45) Failure to maintain sanitation standards of OAR 603-024-0095. Penalties:

- (a) Minor — \$1,000 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(46) Violation of OAR 603-024-0379, relating to grading period of milk. Penalties:

- (a) Minor — \$500 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(47) Violation of OAR 603-024-0641, relating to transportation of milk and milk products. Penalties:

- (a) Minor — \$500 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

Stat. Auth.: ORS 561.190 & 621.995
 Stats. Implemented: ORS 621.995
 Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

603-024-0930

Penalty factors; procedure

(1) In imposing a penalty pursuant to the schedule adopted pursuant to ORS 621.995, the Department shall consider the following factors, which are listed in prioritized order:

- (a) The immediacy and extent to which the violation threatens the public health or safety.
- (b) Any prior violations of statutes, rules or orders pertaining to milk, dairy products or substitutes thereof.
- (c) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(d) The economic and financial conditions of the person incurring the penalty, including any financial gains resulting from the violation

(2) Each 24-hour a violation continues after the period of time established for compliance will be considered a separate violation unless the Department finds a different period of time is more appropriate to describe the specific violation event.

(3) Repeat violations of OAR 603-024-0910 will be assessed as three times the penalty amount in OAR 603-024-0910, not to exceed \$10,000.

(4) A civil penalty imposed under this rule will comply with ORS 183.745, except that the written application for a hearing must be received by the department no later than 10 days after the mailing or personal service of the notice of civil penalty.

Stat. Auth.: ORS 561.190 & 621.995
 Stats. Implemented: ORS 621.995
 Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

FOOD ESTABLISHMENT STANDARDS AND STANDARDS FOR RETAIL FOOD SERVICE ACTIVITIES

603-025-0010

Definitions

In addition to the definitions set forth in ORS Chapter 616, the following shall apply:

(1) “Bulk Food” means unpackaged or unwrapped, processed or unprocessed food in aggregate containers from which quantities desired by the consumer are withdrawn, but does not include fresh fruits, fresh vegetables, nuts in the shell, salad bar ingredients or potentially hazardous foods.

(2) “Corrosion-Resistant Materials” means those materials that maintain acceptable sanitary surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of usage.

(3) “Display Area” means a location, including physical facilities and equipment, where bulk food is offered for customer self-service.

(4) “Distressed Merchandise” means any food which has had the label lost or destroyed, or which has been subjected to possible damage due to accident, fire, flood, adverse weather, or to any other similar cause, and which may have been thereby rendered unsafe or unsuitable for human or animal consumption or use.

(5) “Easily Cleanable” means readily accessible and of such material, fabrication and finish that residues may be effectively removed by normal cleaning methods.

(6) “Employee” means any person working in a food establishment.

(7) “Equipment” means all display cases, storage cases, tables, counters, shelving, refrigerators, sinks, food processing preparation and packaging equipment, and any other items used in the operation of a food establishment.

(8) “Food Source” means food shall be in a sound condition and safe for human consumption and shall be produced in compliance with applicable laws relating to food safety.

(9) “Food-Contact Surfaces” means those surfaces of equipment and utensils with which food normally comes into contact, and those surfaces from which food may drain, drip, or splash back onto surfaces normally in contact with food.

(10) “Food Processing” means the cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing or otherwise manufacturing a food or changing the physical characteristics of a food, and the packaging, canning or otherwise enclosing of such food in a container, but does not mean the sorting, cleaning or water-rinsing of a food.

(11) “Food Retailing” or “Operating a Retail Food Store” means the preparing, packaging, storing, handling or displaying of food for sale at retail to the consumer or user, and may include produce trimming, processed meat slicing, cheese slicing, preparing gutted and filleted fish, and providing retail customer services to change the form of food such as juice squeezing or peanut grinding (if more than one of these customer services is made available, the activities shall then be considered food processing rather than food retailing).

(12) “Food Service Establishment” means any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided, whether consumption is on or off the premises and whether or not there is a charge for the food, and includes a delicatessen that offer prepared foods in individual service portions, but does not include a private home where food is prepared or served for individual family consumption, a retail food store, a food vending machine location or a supply vehicle.

(13) “Food Storage Warehouse” means any building or place where food is stored as a commercial venture or business, or stored in connection with or as a part of a commercial venture or business, but does not include a home, restaurant, rooming house, hotel or similar place where food is stored to be used or consumed by the owner or served to employees, customers, or guests, nor an establishment licensed by the department under other laws.

(14) "Hazardous Substance" means a substance or mixture of substances which is toxic, corrosive, an irritant, flammable, which generates pressure through heat, decomposition or other means, which has been designated by the U.S. Food and Drug Administration as a strong sensitizer or a radioactive material, or which may cause substantial personal injury or substantial illness during or as a proximate result of any reasonable foreseeable handling or use, including reasonably foreseeable ingestion by children.

(15) "Hermetically Sealed Container" means a container which is designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing.

(16) "Kitchenware" means all multi-use utensils other than tableware.

(17) "Non-Salvageable Merchandise" means distressed merchandise which cannot be safely or practically reconditioned.

(18) "Operator" means any person having the direct and primary responsibility for the construction, maintenance and operation of a food establishment.

(19) "Packaged" means bottled, canned, cartoned, bagged or completely wrapped.

(20) "Physical Facilities" means the structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

(21) "Plant" means the building or buildings or parts thereof, used for or in connection with the manufacturing, packaging, storing, labeling or holding of food for humans, dogs or cats.

(22) "Potentially Hazardous Food" means any food that consists whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms, but does not include food which has a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.

(23) "Product Module" means a food-contact container (multi-use or single-service) designed for customer self-service of bulk food by either direct or indirect means.

(24) "Reconditioning" means any appropriate process or procedure by which distressed merchandise can be brought into compliance with all federal or state requirements so as to make it suitable for consumption or for use as human or animal feed.

(25) "Retail Fruit and Vegetable Stand" means any place where fresh fruits or vegetables are offered for sale at retail to the user or consumer.

(26) "Safe Materials" means articles manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food, if they are food additives or color additives (as defined in Section 201(s) or (t) of the Federal Food, Drug, and Cosmetic Act), are used in conformity with the federal regulations adopted under Section 409 or 706 of the Federal Food, Drug, and Cosmetic Act, and if they are not food additives or color additives, are used in conformity with other applicable regulations of the U.S. Food and Drug Administration.

(27) "Safe Temperatures" as applied to potentially hazardous food, means air temperatures of 41°F or below and 130°F or above.

(28) "Salvage Dealer" or "Salvage Distributor" means any person who is engaged in selling or distributing salvaged merchandise.

(29) "Salvage Processing Facility" means an establishment engaged in the business of reconditioning distressed merchandise.

(30) "Salvage Processor" means any person who operates a salvage processing facility.

(31) "Salvaged Merchandise" means reconditioned distressed merchandise, and "salvageable merchandise" means distressed merchandise capable of being reconditioned.

(32) "Sanitize" or "Sanitization" means effective bactericidal treatment of physically clean surfaces of equipment and utensils by a process which has been approved by the department as being effective in reducing microorganisms, including pathogens, to a safe level.

(33) "Sealed" means free of cracks or other openings that permit the entry or passage of moisture.

(34) "Servicing Area" means a designated location equipped for cleaning, sanitizing, drying, refilling product modules, or preparing bulk food.

(35) "Single-Service Articles" means items used by the retailer or consumer such as cups, containers, lids, packaging materials, bags and similar articles, intended for contact with food and designed for one-time use, but does not include single use articles, such as No. 10 cans, aluminum pie pans, bread wrappers and similar articles, into which food has been packaged by the manufacturer.

(36) "Supplier" means any person who transfers distressed merchandise to a salvage processor.

(37) "Tableware" means multi-use eating and drinking utensils.

(38) "Transportation" means the movement of food, the delivery of food from one location to another location while under the control of an operator.

(39) "Utensil" means any food-contact implement used in the storage, preparation, transportation, or dispensing of food.

(40) "Vehicle" means any truck, trailer, car, bus, railcar, aircraft, boat, ship or barge by which food is transported from one location to another.

(41) "Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils.

(42) "Wholesome" means food found in sound condition, clean, free from adulteration and otherwise suitable for human consumption.

Stat. Auth.: ORS 561, 616 & 619

Stats. Implemented: ORS 616.230

Hist.: AD 2-1987, f. & ef. 1-30-87; AD 21-1990, f. & cert. ef. 11-27-90; DOA 13-1999, f. & cert. ef. 6-15-99; DOA 29-2002, f. 12-23-02, cert. ef. 1-1-03; DOA 6-2006, f. & cert. ef. 3-10-06

General Standards

603-025-0020

General Standards of Food Establishment Construction and Maintenance

(1) Buildings: Food establishment structures shall be suitable in size, construction, and design to facilitate maintenance and sanitary operations for food preparation or distribution purposes.

(2) Surroundings: The grounds around a food establishment that are under the control of the operator shall be free from conditions which may result in contamination of food, including the following:

(a) Improperly stored equipment, litter, waste, or refuse, and uncut weeds or grass, within the immediate vicinity of the establishment structures that may constitute an attractant, breeding place or harborage for rodents, insects, birds and other pests;

(b) Excessively dusty roads, yards or parking lots that may constitute a source of contamination in areas where food is exposed; or

(c) Inadequately drained areas that may constitute a source of contamination of food products through seepage or food-borne filth, or by providing a breeding place for insects or microorganisms.

(3) Floors: Floors in a food establishment shall be easily cleanable, smooth, and of tight construction. All new constructed, or reconstructed, floors shall be of nonabsorbent materials. When subject to flood-type cleaning, floors in new construction shall be sloped to drain and be provided with drains in compliance with state plumbing code standards. Joints at wall-floor junctions shall be covered and tight. The floors shall be kept clean and in good repair, and sweeping compounds (dust arrestors) shall be used when dry-sweeping floors.

(4) Walls and Ceilings: The surface of walls and ceilings of all display, storage and processing rooms in a food establishment shall be reasonably smooth and easily cleanable. All walls and ceilings shall be kept clean, in good repair and of a light color.

(5) Doors and Windows: All openings to the outside in a food establishment shall have tight-fitting doors, windows and effective screens. Properly operating air screens are acceptable. All doors used by the public shall be self-closing.

(6) Lighting: Adequate lighting shall be provided in hand-washing areas, dressing and locker rooms, toilet rooms, all areas

where food or food ingredients are examined, processed or stored, and areas where equipment and utensils are cleaned. Light bulbs, fixtures, skylights or other glass fixtures suspended over exposed food in any step of preparation shall be of the safety type or the food otherwise protected to prevent contamination in case of breakage.

(7) Ventilation: Adequate ventilation or control equipment shall be provided in order to minimize odors and noxious fumes or vapors (including steam) in areas where they may contaminate food. The ventilation or control equipment shall not create conditions that may contribute to food contamination by airborne contaminants, and shall be constructed and installed to comply with the State Fire Marshal codes.

(8) Water Supply: The water supply shall be sufficient for the operation intended and shall be derived from a source of adequate pressure and volume, be safe, be of sanitary quality, and comply with the State Plumbing Code. Running water at a suitable temperature and under needed pressure shall be provided in all areas where the processing of food, the cleaning of equipment, utensils or containers, or employee sanitary facilities takes place. Water used for washing, rinsing or conveying of food products shall be of adequate quality, and water shall not be re-used for washing, rinsing, or conveying products in a manner that may result in contamination of food products. There shall be no cross-connections between a safe water supply and any unsafe or questionable water supply. All private water supplies shall be inspected and approved before the water can be used. Where applicable, and for the manufacture of ice, a water supply shall comply with all requirements of the Oregon Drinking Water Quality Act, ORS 448.119 to 448.285, and the administrative rules adopted thereunder, OAR 333-061-0010 to 333-061-0095.

(9) Toilet and Handwashing Facilities: The toilet and handwashing facilities shall be plumbed to comply with the State Plumbing Code. The toilet and handwashing facilities must be adequate, clean, in good repair, and conveniently located. The door to the toilet room shall be tight, self-closing, and shall not open directly into any room where foods are exposed for sale. The toilet room shall be completely enclosed and any window openings screened to prevent entrance of insects. All handwashing facilities shall have hot and cold running water, a wash basin, soap, single-service towels, and a waste container. A handwashing notice shall be posted in each toilet room and handwashing facilities. Handwashing facilities shall be provided convenient to food packaging and preparation area.

(10) Waste Disposal: All liquid wastes resulting from cleaning and rinsing utensils, equipment and floors, from flush toilets, and from handwashing facilities, refrigeration devices and air conditioners, shall be disposed of into a public sewage system or by a method approved by the State Department of Environmental Quality or local health department having jurisdiction. All garbage and rubbish containing food wastes shall, prior to disposal, be kept in leak-proof, nonabsorbent, and easily cleanable containers, and be stored so as to be inaccessible to vermin. The containers, unless kept in a special vermin-proofed room or enclosure, shall be covered with tight-fitting lids. Disposable containers with leak proof liners may be used. Containers shall be provided for trash or rubbish. The establishment shall be free of unnecessary litter and rubbish, such as paper, empty containers or other material, that might serve as a place for rodent harborage or other vermin. The containers, and the room or area in which such containers are stored, shall be thoroughly cleaned and sanitized and shall be disposed of at regular intervals so as not to constitute being a nuisance or health hazard.

(11) Vermin Control: All reasonable measures shall be taken to protect the establishment against the entrance, breeding or presence of rodents, birds, flies, roaches, weevils and other vermin. Unwrapped food display items shall be covered when an aerosol method of applying approved pesticides is being used for vermin control in the establishment.

(12) Personnel Cleanliness:

(a) No person known to be affected with any disease in a communicable form, known to be a carrier of a communicable disease, known to be afflicted with boils, infected wounds or open sores, or known to have acute respiratory infection, shall work in any area of an establishment in any capacity in which there is a likelihood of the

person contaminating food or food-contact surfaces with pathogenic organisms, or of transmitting disease to other individuals. The operator of an establishment, when he knows or has reason to believe that any employee has contacted any disease in a communicable form transmissible through food, or has become a carrier of such disease, shall immediately notify the county health officer or the department. The department may require a person engaged in the production, manufacture, packing, storage or distribution of food products to be examined by a physician if there is reasonable cause to believe that such person is affected by communicable or infectious disease;

(b) All persons, while working in direct contact with food preparations, food ingredients or contact surfaces shall:

(A) Wear clean and suitable outer garments, maintain a high degree of personal cleanliness, and conform to hygienic practices, while on duty so as to the extent necessary to prevent contamination of food products;

(B) Wash their hands thoroughly (and sanitize if necessary to prevent contamination by undesirable microorganisms) in a handwashing facility before starting work, after each absence from the work station, and at any other time when the hands may have become soiled or contaminated;

(C) Remove all unsecure jewelry or jewelry that cannot be sanitized, during periods when food is manipulated by hand;

(D) If gloves are used in food handling, they should be of an impermeable material (except where their usage would be inappropriate or incompatible with the work involved) and maintained in an intact, clean and sanitary condition;

(E) Wear hairnets, headbands, caps or other effective hair restraints for both head and facial hair;

(F) Not store clothing or other personal belongings, eat food, drink beverages, or use tobacco in any form, in areas where food or food ingredients are exposed or in areas used for washing equipment or utensils;

(G) Take any other precautions required to prevent contamination of foods with microorganisms or foreign substances (including perspiration, hair, cosmetics, tobacco, chemicals or medicants).

(c) The establishment shall be responsible for the education of personnel, the training of food handlers and supervisors, and the appointment of competent supervisory personnel.

(13) Dressing and Locker Room Facilities: A room or enclosure separate from food display, packaging and preparation areas in an establishment shall be provided where employees may change clothes, store outer garments and eat lunches. Dressing rooms and lunch rooms shall be kept clean, in good repair and be provided with covered waste receptacles.

(14) Protection of Stored Foods Against Contamination: No dogs, cats, fowl, birds or other type animal shall be permitted in an establishment except for guide-dogs for blind or deaf persons, as authorized by ORS 346.620 and 346.650. All hazardous substances shall be stored in an area separate from food products so as to preclude any possible contamination of the stored foods. Rodenticides shall be placed in covered bait boxes, if necessary, to prevent spillage or possible contamination of stored food and danger to employees. The bait boxes shall be properly labeled with a warning notice. All rodenticide baits shall be applied so as to prevent contamination of stored food products. All pesticides used for control of vermin shall be of approved type and applied so as to protect stored foods from contamination and shall be applied in accordance with labeled instructions. Cleaning materials, pesticides, rodenticides or any other hazardous substances used in the operation of an establishment shall be stored in properly labeled containers, in a closed closet or cabinet, with a hazardous substance warning notice on the door. When a licensed pest control service is employed, it shall deliver to the establishment a diagram of the bait station locations and the rodenticides in use, or advise an employee of the establishment who has been designated by the operator to be responsible for the pest control program. There shall be no overhead waste drainpipes or other piping that may cause undue condensation problems unless equipped with protective shields to preclude possible contamination of foods stored below. Storage methods shall be used which will minimize deterioration and prevent contamination of stored food prod-

ucts. Shelves, cabinets, dunnage and pallets shall be used, if necessary, to protect stored food products from contamination or deterioration. Construction of shelving, cabinets, and storage methods shall permit ready access to cleaning and sanitary inspection. Bagged animal feeds shall be stored so as not to be intermingled with the storage of human food products. Storage on separate pallets is acceptable. Fixtures, ducts, pipes and catwalks shall not be suspended over working areas so that drip or condensate may contaminate foods, raw materials or food-contact surfaces. Only the toxic materials that are required to maintain sanitary conditions, for use in laboratory testing procedures, for maintenance and operation of equipment, or for manufacturing or processing operations, shall be used or stored in the establishment. These materials shall only be used in a manner and under conditions as will be safe for their intended uses.

(15) Transportation of Foods: All cars, trucks or other vehicles used in the transportation of food products shall be kept in a clean condition at all times. Refuse, dirt and waste products subject to decomposition shall be removed daily. Food products shall be handled so as to protect them from deterioration or contamination by hazardous substances while in transit.

(16) Protection of Food Quality: Potentially hazardous foods in food establishments shall be stored or displayed at a safe temperature in keeping with good manufacturing practices so as to insure that the food will reach the consumer in a condition that is safe and fit for human consumption. All refrigerated food display cases, food storage refrigerators and walk-in coolers shall be equipped with an accurate, visible thermometer located in the warmest storage areas. Frozen food shall be kept frozen and shall be stored in storage or display facilities capable of maintaining and having an air temperature of 0°F. or below, except during defrost cycles and brief periods of loading or unloading. All refrigerated food display cases, food storage refrigerators and walk-in coolers shall be kept clean and in good repair. Refrigerated food display cases shall not be filled above the load line.

(17) Labeling of Food Containers and Packages: Labels on closed food containers and packages shall be clearly legible and contain all the information required by the provisions of ORS Chapter 616, the administrative rules adopted thereunder, and the Federal Fair Packaging and Labeling Act.

(18) Distressed Merchandise: Distressed merchandise shall not be offered for sale for human food unless reconditioned and inspected by the department to determine if it complies with the requirements of the 1984 Model Food Salvage Code, Chapters 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, and the labeling and placard requirements of OAR 603-025-0160 and 603-025-0170.

(19) Variance clause: Upon written petition by the owner of a food establishment, the department may grant a variance to those sections of OAR 603-025-0020, 0030 or 0150 that regulate the physical facilities, equipment standards, and food source requirements when:

(a) No health or sanitation hazard would exist as a result of this action; and

(b) The variance is consistent with the intent of these regulations.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 561, 616 & 619
Stats. Implemented: ORS 616.700
Hist.: AD 2-1987, f. & ef. 1-30-87; AD 21-1990, f. & cert. ef. 11-27-90; DOA 13-1999, f. & cert. ef. 6-15-99; DOA 29-2002, f. 12-23-02, cert. ef. 1-1-03

Retail

**603-025-0030
Retail Food Code**

(1) In addition to the provisions of OAR 603-025-0020 a retail food establishment shall comply with the Oregon Department of Agriculture Retail Food Code, 2013. [Code not included. See ED. NOTE.]

(2) Retail Fruit and Vegetable Stands and Similar Outlets: Retail fruit and vegetable stands, and other similar unusual food sales outlets, are also subject to these retail food establishment provisions, except as follows:

(a) Fruit and vegetable stands located on a farmers own property, wherein only fruits and vegetables grown by the owner are sold, and no food processing is being done, are exempt from licensing;

(b) Food establishments that are exempt under OAR 603-025-0215 to 603-025-0275 (Farm Direct Marketing Rules), are exempt from licensing;

(c) Other fruit and vegetable stands may be exempted from certain retail food establishment requirements where the department determines that public health principles will not be compromised.

(3) New Establishment Construction or Remodeling:

(a) Prior to undertaking construction of a new retail food establishment, and as a condition to obtaining a license to operate the establishment, a copy of the construction plans and specifications, together with a statement of an expected completion date, shall be submitted to the department for review and comment as to sanitation and food maintenance;

(b) Prior to undertaking remodeling of an existing establishment in order to expand or add food processing or food service facilities, a copy of the construction plans and specifications, together with a statement of an expected completion date, shall be submitted to the department for review and comment as to sanitation and food maintenance.

[ED. NOTE: Code referenced is available from the agency.]
Stat. Auth.: ORS 561, 616 & 619
Stats. Implemented: ORS 616.700
Hist.: AD 2-1987, f. & ef. 1-30-87; AD 21-1990, f. & cert. ef. 11-27-90; DOA 29-2002, f. 12-23-02, cert. ef. 1-1-03; DOA 6-2006, f. & cert. ef. 3-10-06; DOA 30-2012, f. 12-17-12, cert. ef. 1-1-13

Open Dating

**603-025-0080
Foods Subject to Pull Date Labeling**

Unless otherwise provided, the following perishable foods shall be open date labeled with the pull date:

(1) Processed or cured meat and meat products including wieners, bologna, luncheon meat, liver sausage, salami, braunschweiger, hams and ham products, and bacon (tuck or vacuum packed).

(2) Fluid milk and cream products for which a standard of identity has been established under ORS Chapter 621, cottage cheeses, yogurts, cheeses with a moisture content of more than 50 percent, sour creams, and party dips.

(3) Bakery products as defined in subsection (2) of ORS 625.010, pastries, cookies, or crackers having a moisture content of 16 percent or more.

(4) Eggs in shell.

(5) Vegetable, macaroni, or potato salads that use mayonnaise or other acidic dressing as an ingredient or dressing, puddings, sandwiches, and other ready-to-eat products.

(6) Fowl, including chickens, fryers, turkeys, ducks, geese, and other domesticated birds.

(7) Fresh or raw packaged meat products, whether whole, ground, chopped or fabricated.

(8) Fresh sausage products.

(9) Fresh seafood products.

(10) Fresh fish products (not breaded or precooked).

Stat. Auth.: ORS 561 & 616
Stats. Implemented: ORS 616.835
Hist.: AD 1013(3-74), f. 1-18-74, ef. 7-1-74; AD 1045(35-74)(Temp), f. & ef. 9-16-74 - 1-13-75; AD 1058(4-75), f. 4-21-75, ef. 5-11-75; AD 27-1977, f. & ef. 11-30-77; AD 6-1984, f. & ef. 4-17-84; Renumbered from 603-023-0555; AD 7-1987, f. & ef. 1-30-87

**603-025-0090
Foods Exempt from Labeling**

The following foods shall be exempt from the open date labeling requirements:

(1) Candies, nuts, non-alcoholic beverages (soft drinks), and other fruit juices.

(2) Sterile dairy products; processed or natural cheddar cheese or other hard cheese varieties; margarine; butter and whipped butter.

(3) Pastries, cookies, and crackers having less than 16 percent moisture content; bread sticks; croutons; melba toast; stuffing mixes and other dry bakery products; bakery products otherwise required to be open date labeled which are sold or offered for sale at the same location where prepared or baked (in-store bakeries) and not commingled or displayed with bakery products required to be open date labeled.

Stat. Auth.: ORS 561.190 & 616.835
 Stats. Implemented: ORS 616.835
 Hist.: AD 1013(3-74), f. 1-18-74, ef. 7-1-74; Renumbered from 603-023-0570; AD 2-1987, f. & ef. 1-30-87

**603-025-0100
 Form of Labeling**

(1) The required open date shall be affixed, stamped, or imprinted on each retail package and on all closed shipping containers with the name of the month either by number (1 through 12) or three-letter abbreviation (January through December), followed by the numerical (1 through 31) day of said month. The year need not be stated except on foods having a projected shelf life of six months or more. In the event the month is designated numerically, it shall be separated from the day of the month by a space, a dash, or asterisk.

(2) In lieu of the requirements of section (1) of this rule, bakery products, fresh or raw meat products, fresh seafood products, and fresh fish products with a shelf life of seven days or less may be labeled with a two digit numerical (1 through 31) day of the then current month.

Stat. Auth.: ORS 561.190 & 616.835
 Stats. Implemented: ORS 616.835
 Hist.: AD 1013(3-74), f. 1-18-74, ef. 7-1-74; AD 6-1984, f. & ef. 4-17-84; Renumbered from 603-023-0575; AD 2-1987, f. & ef. 1-30-87

**603-025-0110
 Labeling Placement**

(1) The open date shall be affixed, stamped, or imprinted in a size, manner, and style clearly and easily legible and visible to the consumer.

(2) The open date shall not overlay other labeling matter or be of such a color as to be difficult to distinguish from such other labeling matter.

Stat. Auth.: ORS 561.190 & 616.835
 Stats. Implemented: ORS 616.835
 Hist.: AD 1013(3-74), f. 1-18-74, ef. 7-1-74; Renumbered from 603-023-0580; AD 2-1987, f. & ef. 1-30-87

**603-025-0120
 Identification After Pull Date Expiration**

Food required to be labeled with a pull date, and after the expiration of such pull date is found to be fit for human consumption, may be sold or offered for sale at retail if:

(1) It is segregated from like foods with unexpired pull dates, either by sorting and separating in the same retail display shelf or cabinet from like foods with unexpired pull dates, or by removal to a separate retail display shelf or cabinet.

(2) Each individual package is labeled or a conspicuous and visible placard is posted immediately adjacent to any display of such food, stating that the pull date of such food has expired. Any label or placard so utilized shall be in legible, boldface type in distinct contrast to the label or placard color.

Stat. Auth.: ORS 561.190 & 616.835
 Stats. Implemented: ORS 616.835
 Hist.: AD 1013(3-74), f. 1-18-74, ef. 7-1-74; Renumbered from 603-023-0585; AD 2-1987, f. & ef. 1-30-87

**603-025-0130
 Label Pull Date Information**

Upon the request of the department, a person required to label a perishable food with a pull date shall obtain from the food manufacturer, processor or packager recommending the pull date, data from recognized scientific sources substantiating the establishment and use of the recommended date.

Stat. Auth.: ORS 561 & 616
 Stats. Implemented: ORS 616.835
 Hist.: AD 6-1984, f. & ef. 4-17-84; Renumbered from 603-023-0590; AD 2-1987, f. & ef. 1-30-87

Warehouses

**603-025-0140
 Food Storage Warehouses**

In addition to the provisions of OAR 603-025-0020, a food storage warehouse shall comply with the following:

(1) Cold Storage: Each cold storage room in a food storage warehouse shall be equipped with an accurate and easily visible thermometer with the sensing element at least five feet above the floor.

(2) Morgue: The operator of a food storage warehouse shall provide an area for the accumulation and holding of all damaged foods or foods which are or may be unwholesome. The operator shall maintain a program of timely and proper disposal of damaged or unwholesome foods to prevent development of insanitary conditions or vermin breeding places and rodent harborage.

Stat. Auth.: ORS 561 & 616
 Stats. Implemented: ORS 616.700
 Hist.: AD 2-1987, f. & ef. 1-30-87

Food Processing

**603-025-0150
 Food Processing Establishments**

In addition to the provisions of OAR 603-025-0020, a food processing establishment shall comply with the following:

(1) Construction and Repair of Equipment and Utensils: All plant equipment and utensils shall be suitable for their intended use, so designed and of such material and workmanship as to be adequately cleanable, and properly maintained. The design, construction and use of such equipment and utensils shall preclude the adulteration of foods with lubricants, fuel, metal fragments, contaminated water or any other contaminants. All equipment shall be installed and maintained so as to facilitate the cleaning of the equipment and of all adjacent spaces. Aisle or working spaces between equipment and between equipment and walls shall be unobstructed and of sufficient width to permit employees to perform their duties without contamination of food or food contact surfaces with clothing or personal contact.

(2) Sanitary Maintenance and Methods:

(a) Separate rooms shall be provided for those operations which may cause contamination of food products with undesirable microorganisms, chemicals, filth or other extraneous material. Building, fixtures and other physical facilities of the establishment shall be kept in good repair and in a sanitary condition. Cleaning operations shall be conducted so as to minimize the danger of contamination of food and food-contact surfaces. Detergents, sanitizers and other supplies employed in cleaning and sanitizing procedures shall be free of significant microbiological contamination and shall be safe and effective for their intended uses. Cleaning and sanitizing agents shall be subject to approval by the department;

(b) All utensils and product-contact surfaces of equipment shall be cleaned as frequently as necessary to prevent contamination of food and food products. Nonproduct-contact surfaces of equipment used in the operation of food plants should be cleaned as frequently as necessary to minimize accumulation of dust, dirt, food particles, and other debris. Single-service articles (such as utensils intended for one-time use, paper cups, paper towels, etc.) should be stored in appropriate containers and handled, dispensed, and disposed of in a manner that prevents contamination of food or food-contact surfaces. Where necessary to prevent the introduction of undesirable microbiological organisms into food products, all utensils and product-contact surfaces of equipment used in the plant shall be cleaned and sanitized prior to such use and following any interruption during which such utensils and contact surfaces may have become contaminated. Where such equipment and utensils are used in a continuous production operation, the contact surfaces of such equipment and utensils shall be cleaned and sanitized on a predetermined schedule using adequate methods for cleaning and sanitizing. Sanitizing agents shall be effective and safe under conditions of use. Any facility, procedure, machine or device may be acceptable for cleaning and sanitizing equipment and utensils if it is established that such facil-

ity, procedure, machine, or device will routinely render equipment and utensils clean and provide adequate sanitizing treatment;

(c) All cleaned and sanitized portable equipment and utensils with product-contact surfaces should be stored in such a location and manner that product-contact surfaces are protected from splash, dust, and other contamination;

(d) Adequate and convenient facilities for handwashing and, where appropriate, hand sanitizing shall be provided at each location in the plant where good sanitary practices require employees to wash or sanitize and dry their hands. Such facilities shall be furnished with running water at a suitable temperature for handwashing, effective hand cleaning and sanitizing preparations, sanitary towel service or suitable drying devices and, where appropriate, easily cleanable waste receptacles;

(e) All operations in the receiving, inspecting, transporting, packaging, segregating, preparing, processing and storage of food shall be conducted in accordance with adequate sanitation principles. Overall sanitation of the plant shall be under the supervision of an individual assigned responsibility for this function. All reasonable precautions, including the following, shall be taken to assure that production procedures do not contribute contamination such as filth, harmful chemicals, undesirable microorganisms, or any other objectionable material to the processed product:

(A) Raw material and ingredients shall be inspected and segregated as necessary to insure that they are clean, wholesome, and fit for processing into human food and shall be stored under conditions that will protect against contamination and minimize deterioration. Raw materials shall be washed or cleaned as required to remove soil or other contamination;

(B) Containers and carriers of raw ingredients shall be inspected on receipt to assure that their condition has not contributed to the contamination or deterioration of the products. When ice is used in contact with food products, it shall be made from potable water and shall be used only if it has been manufactured in accordance with adequate standards and stored, transported, and handled in a sanitary manner;

(C) Food processing areas and equipment shall not be used to process animal feed or inedible products unless human food will not be contaminated thereby;

(D) Processing equipment shall be maintained in a sanitary condition through frequent cleaning, including sanitization where necessary. If necessary, equipment shall be taken apart for thorough cleaning. All food processing, including packaging and storage, shall be conducted under such conditions and controls as are necessary to minimize the potential for undesirable bacterial or other microbiological growth, toxin formation, or deterioration or contamination of the processed product or ingredients. This may require careful monitoring of such physical factors as time, temperature, humidity, pressure, flow-rate and such processing operations as freezing, dehydration, heat processing, and refrigeration to assure that mechanical breakdowns, time delays, temperature fluctuations and other factors do not contribute to the decomposition or contamination of the processed products;

(E) Chemical, microbiological, or extraneous material testing procedures shall be utilized where necessary to identify sanitation failures or food contamination, and all foods and ingredients that have become contaminated shall be rejected, treated or processed to eliminate the contamination where this may be properly accomplished;

(F) Packaging processes and materials shall not transmit contaminants or objectional substances to the products, shall conform to any applicable food additive rules, and shall provide adequate protection from contamination;

(G) Coding of products sold or otherwise distributed from a manufacturing, processing, packing or repacking activity should be utilized to enable positive lot identification so as to facilitate the segregation of specific food lots that may have become contaminated or otherwise unfit for their intended use. Records shall be retained for a period of time that exceeds the shelf life of the product, but need not be retained for more than two years.

(3) Processing Requirement for Retail Sale of Dehydrated Prunes: Dehydrated prunes shall not be sold at retail or offered or displayed for sale at retail, unless they have been subjected to heat treatment by water or steam to at least 180°F. long enough to remove adhering material and to obtain a uniform desired texture.

(4) Property Tax exemption for qualified machinery and equipment. The Oregon Department of Agriculture is authorized to certify qualified machinery and equipment for the purposes of ORS 307.453–307.457.

(5) Definitions:

(a) For the purposes of this section, the definitions in ORS chapter 307.455 apply, unless the context requires otherwise. In addition, the following definitions apply:

(A) “Newly acquired property” means new or used machinery and equipment that is first purchased or leased by a food processor not more than two years (24 months) prior to placing it into service. Leased equipment may be exempt only if the food processor is responsible for the payment of the property taxes under the terms of the lease agreement. Newly acquired property does not include existing equipment that has been refurbished or reconditioned in the time frame provided by this rule.

(B) “Placed into service” means the date the machinery and equipment is first used or in such condition that it is readily available and operational for its intended commercial use. It does not include property that is being tested or is in the process of being erected or installed on the January 1 assessment date.

(C) “Real Market Value of the Property” for the purpose of determining the late filing penalty pursuant to ORS 307.455, means the invoice cost of the machinery and equipment, installation, engineering, and miscellaneous costs including machinery process piping, foundations, power wiring, interest during installation, and freight.

(b) The process for application and determination of certification for qualified machinery and equipment is as follows:

(A) Any food processor requesting certification must make a request for certification in writing on a form provided by the Oregon Department of Agriculture. Certification request forms are available on the Oregon Department of Agriculture web site and the Oregon Department of Revenue web site, or are available by mail from either agency upon request.

(B) Upon receiving a completed certification request form, the Food Safety Division of the Oregon Department of Agriculture may schedule a visit to the processing site for the purpose of inspecting and verifying the eligibility of machinery requested for certification as qualified machinery or equipment.

(C) After inspecting the food processing equipment requested to be certified, the Oregon Department of Agriculture shall make a determination as to property that is qualified for certification. This determination of certification shall be in writing and include a schedule of all machinery or equipment the Oregon Department of Agriculture has certified.

(c) Following certification, a food processor seeking continued exemption as described at ORS 307.455 must annually verify that equipment previously certified still constitutes qualified machinery or equipment as follows:

(A) By January 30th of each year following certification a food processor must submit to the Food Safety Division of the Oregon Department of Agriculture a signed form that includes a schedule of all equipment previously certified and provides sufficient information to the Oregon Department of Agriculture such that it can determine whether previously-certified machinery or equipment continues to meet certification requirements.

(B) The Oregon Department of Agriculture may inspect any equipment or machinery previously certified for the purposes of determining continued certification pursuant to ORS 307.455.

(C) If a food processor seeks to add additional machinery or equipment not previously certified to its annual certification verification list then the food processor must apply for certification of this additional equipment pursuant to the process for certifying qualified machinery or equipment provided in these rules.

(d) Denial of certification of certain property by the Oregon Department of Agriculture is a contested case for the purpose of ORS Chapter 183.

Stat. Auth.: ORS 561 & 616
 Stats. Implemented: ORS 616.700
 Hist.: AD 2-1987, f. & ef. 1-30-87; DOA 19-2005(Temp), f. 12-23-05, cert. ef. 1-3-06 thru 5-31-06; DOA 13-2006, f. & cert. ef. 6-21-06

Salvage Food Labeling

603-025-0160

Package Labeling Requirements

The label of any food that has been salvaged, as defined in subsection (16) of ORS 616.250, shall comply with the following:

(1) The term “salvaged” shall appear on the principal display panel in the case of any food packaged in a firm (box, carton, or can) container, and either on the principal display panel or upon a firmly attached tag in the case of any food packaged in a soft (bag or sack) container. The labeling requirements shall only apply to the individual immediate container in which the food is packaged for retail or institutional sale, and shall only apply to the food containers actually requiring salvage activities. The term “salvaged” shall be conspicuous and of easily legible bold face print or type in distinct contrast to other matter on the label.

(2) In the event the salvager is other than an agent for the original manufacturer, packer, or distributor, the name and business address of the salvager shall appear in the manner and location prescribed in section (1) of this rule and shall include the city, state, and zip code.

Stat. Auth.: ORS 561.190, 616.230 & 616.700
 Stats. Implemented: ORS 616.230 & 616.700
 Hist.: AD 1053(42-74), f. 12-20-74, ef. 1-11-75; Renumbered from 603-023-0180; AD 7-1987, f. & ef. 1-30-87

603-025-0170

Bulk Placard Requirements

If in bulk display form for wholesale or retail sale (rather than packaged form) any food that has been salvaged, as defined in subsection (16) of ORS 616.250, shall be conspicuously and prominently displayed immediately adjacent to such bulk display. Such placard shall be of easily legible bold face print or type, of such color contrast that it may be easily read, and shall contain the statements required by OAR 603-025-0180.

Stat. Auth.: ORS 561.190, 616.230 & 616.700
 Stats. Implemented: ORS 616.230 & 616.700
 Hist.: AD 1053(42-74), f. 12-20-74, ef. 1-11-75; Renumbered from 603-023-0185; AD 2-1987, f. & ef. 1-30-87

603-025-0180

Responsibility

The responsibility for the salvage labeling required by OAR 603-025-0180 or 603-025-0170 shall be:

- (1) If in bulk display form, the person selling or offering to sell such food at wholesale or retail.
- (2) If salvaged within the State of Oregon, the person selling or offering to sell at retail or for institutional use.
- (3) If salvaged outside of the State of Oregon, the first person selling or offering to sell such food at wholesale or retail within the State of Oregon.

Stat. Auth.: ORS 561.190, 616.230 & 616.700
 Stats. Implemented: ORS 616.230 & 616.700
 Hist.: AD 1053(42-74), f. 12-20-74, ef. 1-11-75; Renumbered from 603-023-0190; AD 2-1987, f. & ef. 1-30-87; DOA 29-2002, f. 12-23-02, cert. ef. 1-1-03

Adoption of Federal Regulations

603-025-0190

Standards of Identity, Additives, Pesticide Standards, Food Labeling, Good Manufacturing Practice, Low Acid Canned Foods, and Acidified Foods

As provided in ORS 616.230, 616.780, 621.060, 621.311, 621.405, 625.160, and 635.045, the rules governing food identity, food color additives, food additives, pesticide tolerances, and labeling of or in food adopted by the Food and Drug Administration of the U.S. Department of Health and Human Services, are hereby

adopted as the rules governing this subject matter in Oregon. In addition the Good Manufacturing Practices, Fish and Fishery Products, Low Acid Canned Foods, Acidified Foods and other federal programs contained in the Code of Federal Regulations as specified below are adopted. The adopted federal programs and standards are those set forth in the 2010 version, Title 21, Chapter 1, Parts 1, 7, 70, 73, 74, 81, 82 and 100 through 199, of the Code of Federal Regulations.

Stat. Auth.: ORS 561.190, 561.605, 561.620 & 616.230
 Stats. Implemented: ORS 561.605 - 561.620 & 616.230
 Hist.: AD 2-1987, f. & ef. 1-30-87; AD 17-1993, f. & cert. ef. 11-26-93; AD 17-1997, f. & cert. ef. 10-23-97; DOA 13-1999, f. & cert. ef. 6-15-99; DOA 4-2000, f. & cert. ef. 1-18-00; Administrative correction 4-20-01; DOA 29-2002, f. 12-23-02, cert. ef. 1-1-03; DOA 6-2006, f. & cert. ef. 3-10-06; DOA 9-2013, f. & cert. ef. 9-4-13

Domestic Kitchens

603-025-0200

Establishments Utilizing Domestic Kitchen Facilities

(1) In addition to the provisions of OAR 603-025-0020 a food establishment in an area which is part of a domestic kitchen shall comply with the provisions of section (2) of this rule.

(2)(a) All domestic kitchen doors or openings to other rooms of the building or structure shall be kept closed during the processing, preparing, packaging, or handling of commercial foods;

(b) No person other than the food establishment licensee, or one under the direct supervision of such licensee, shall directly engage in the processing, preparing, packaging, or handling of commercial foods and no other person shall be allowed in the domestic kitchen during such periods of operation;

(c) No infants or small children shall be allowed in the domestic kitchen during the processing, preparing, packaging, or handling of commercial foods;

(d) No pets shall be allowed in the structure or building in which the domestic kitchen is located;

(e) No processing, preparing, packaging, or handling of commercial foods shall be carried on in a domestic kitchen while other domestic activities are being carried on in such domestic kitchen, including, but not limited to, family meal preparation, serving, eating, dishwashing, clothes washing and ironing, cleaning of floors, walls, cabinets and appliances, or entertaining guests;

(f) Each domestic kitchen shall include and be provided with the following:

(A) A separate closed storage space for ingredients, finished product containers, and labels for commercial foods;

(B) Separate refrigerated facilities for storage of perishable products or ingredients utilized in the processing, preparing, or handling of commercial foods;

(C) A separate storage area for household cleaning materials and other chemicals or toxic substances.

(g) Medical supplies or equipment shall not be stored or allowed in the domestic kitchen;

(h) All domestic kitchens shall be available for inspection by the department between the week-day hours of 8 a.m. to 5 p.m., and the department shall, if it deems it advisable or necessary, inspect such premises on Saturdays or holidays or other times commercial foods are being processed, prepared, packaged, or handled.

Stat. Auth.: ORS 561.190 & 616.700
 Stats. Implemented: ORS 616.700
 Hist.: AD 978(11-72), f. 8-28-72, ef. 9-15-72; Renumbered from 603-023-0396; AD 2-1987, f. & ef. 1-30-87

Farm Direct Marketing Rules

603-025-0215

Purpose

This administrative rule recognizes farm direct marketing, including consignment between farm direct marketers, as a modern and accepted method of producing and selling food products, and maintains the integrity of food safety principles as required by state and federal laws. These legislative mandates are accomplished by exempting from licensure and inspection only those that raise their own products, that limit their food processing activities to only those

identified by the Legislature as permissible without a license, and that sell to an end user a limited amount of products produced without a license and regulatory oversight.

Stat. Auth.: ORS 561.190, 616 & (Enrolled HB 2336)
 Stats. Implemented: ORS 616.230 & (Enrolled HB 2336)
 Hist.: DOA 14-2012, f. & cert. ef. 6-1-12

603-025-0225

Definitions

For purposes of this chapter:

(1) “Acidic foods” means a bottled, packaged or canned food product that meets any of the following requirements:

- (a) Having a naturally occurring equilibrium pH of 4.6 or below; or
- (b) Having been lacto-fermented to decrease the equilibrium pH of the food to 4.6 or below; or
- (c) Having a water activity (aw) greater than 0.85 and having been acidified to decrease the equilibrium pH of the food to 4.6 or below.

(2) “Address” means physical street address, city, county, state, and zip code.

(3) “Agricultural producer” means a person, including family members and employees, who grows, raises, and harvests agricultural products to the point at which the products are ready for sale.

(4) “Approved” means conforming to scientific principles, applicable federal laws, and generally recognized industry standards that protect public health.

(5) “Approved source” means a source that is licensed and inspected by a recognized regulatory authority, and whose license is in good standing.

(6) “Commingle” means to mix, pool, or combine agricultural products of more than one agricultural producer prior to the sale of the products.

(7) “Consign” means to send a farm direct product to market to be sold by a farm direct marketer who did not produce the product. Ownership of consigned products remains with the agricultural producer who produced the product until the product is sold to an end user.

(a) Consignment agreements are limited to farm direct marketers who are from the same county or from adjoining counties.

(b) A farm direct marketer is prohibited from representing that products offered for sale on consignment are his/her own.

(c) Farm direct products that may be consigned to a farm direct marketer are limited to:

- (A) Fruits, vegetables, edible flowers and herbs that are fresh, or cured or dried as a part of routine post-harvest handling;
- (B) Unshelled nuts that are raw, cured or dried in the shell; and
- (C) Honey that has not been combined with any other ingredient.

(d) Shell eggs may be consigned only to a farm direct marketer who is a licensed egg handler.

(8) “Cure” means to ripen naturally or by controlled environmental storage whereby the taste, smell, texture, or appearance of the product is altered without causing the product to become adulterated or processed to an extent that the product changes significantly from its original form. Examples of agricultural products that may be cured include, but are not limited to: garlic, potatoes, and sweet potatoes.

(9) “Department” means the Oregon Department of Agriculture.

(10) “Farm direct marketer” means an agricultural producer that sells farm direct products or producer processed products directly to the retail consumer.

(11) “Farm direct product” means an agricultural product grown, raised and harvested by an agricultural producer to the point at which the product is ready for direct, retail sale.

(12) “Fresh” means not altered by processing. “Fresh” excludes potentially hazardous foods, including but not limited to, raw seed sprouts of all kinds, raw melons that have been cut in any way, and raw tomatoes that have been cut in any way.

(13) “Lacto-fermented” means food processed by lactobacilli whereby the lactic acid content of the food decreases the equilibri-

um pH to 4.6 or below. Examples of lacto-fermented products include sauerkraut and kimchi.

(14) “Major food allergens” means the eight most common food allergens defined in the Food Allergen Labeling Protection Act of 2004 (FALCPA). The major food allergens that may be used under the farm direct marketing rules are peanuts, treenuts, soy and wheat.

(15) “Principal ingredients” means the farm direct products that comprise a producer-processed product except for: herbs, spices, salt, vinegar, pectin, lemon or lime juice, honey, and sugar. For example, jalapeño peppers produced by a farm direct marketer would be a principal ingredient in pepper jelly, and tomatoes, onions, peppers, and garlic would be principal ingredients in salsa.

(16) “Producer-processed products” means farm direct products for which an agricultural producer has performed every step necessary to prepare the farm direct products for sale, including but not limited to: processing, bottling, canning and packaging. Every step necessary to prepare the farm direct products for sale will be conducted in a facility located where the farm direct products were grown.

(17) “Retail consumer” means the end user of a product. “Retail consumer” excludes: restaurants, grocery stores, schools, daycare centers, caterers, and other institutions, such as, prisons, hospitals, and nursing homes.

(18) “Water activity” means the measure of free moisture in a product and is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.

Stat. Auth.: ORS 561.190, 616 & (Enrolled HB 2336)
 Stats. Implemented: ORS 616.230 & (Enrolled HB 2336)
 Hist.: DOA 14-2012, f. & cert. ef. 6-1-12

603-025-0235

Farm Direct Marketer Exemption

(1) Agricultural products sold by farm direct marketers that are exempt from the licensing requirements in Section (3) are limited to:

(a) Fruits, vegetables, edible flowers and herbs that are:

- (A) Fresh; or
- (B) Cured or dried by the agricultural producer as part of routine post-harvest handling.

(b) Dried or cured fruits, vegetables, edible flowers and herbs for which drying or curing is not part of routine post-harvest handling, if:

- (A) All principal ingredients are grown by the agricultural producer; and
- (B) The product is labeled with a list of ingredients and the name and address of the agricultural producer that produced the ingredients.

(c) Shelled nuts and unshelled nuts cured or dried by an agricultural producer as part of routine post-harvest handling;

- (d) Shell eggs;
- (e) Honey, only when not combined with other ingredients;
- (f) Whole, hulled, crushed or ground grain, legumes and seeds, if of a type customarily cooked before eating;

(g) Parched or roasted grains, if of a type customarily cooked before eating;

(h) Popcorn, nuts, peppers and corn on the cob, if those items are:

- (A) Roasted at the place of purchase,
- (B) By a farm direct marketer,
- (C) After purchase, and
- (D) Not sold for immediate consumption.

(2) Producer-processed products sold by farm direct marketers that are exempt from the licensing requirements in Section (3) are limited to:

(a) Fruit-based syrups, fruit in syrup, preserves, jams, jellies, processed fruits and processed vegetables that meet all of the following conditions:

- (A) They are producer-processed products;
- (B) They are acidic foods;
- (i) Products having a naturally occurring equilibrium pH of 4.6 or below will be processed in a clean, healthful and sanitary manner;

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(ii) Products having been lacto-fermented to decrease the equilibrium pH of the food to 4.6 or below will be processed in a clean, healthful and sanitary manner;

(iii) Products having a water activity (aw) greater than 0.85 and having been acidified to decrease the equilibrium pH of the food to 4.6 or below will be processed in a clean, healthful and sanitary manner using:

(I) A published process and product formulation that has been approved by a recognized process authority. Examples of published processes and product formulations that have been approved by a recognized process authority can be found in:

(I-a) United States Department of Agriculture Complete Guide to Home Canning, 2009 Revision;

(I-b) Pacific Northwest Extension publications. The Pacific Northwest Extension publications are produced cooperatively by Oregon State University, Washington State University, and the University of Idaho; or

(I-c) So Easy to Preserve, 5th Edition, which is offered by the University of Georgia Cooperative Extension.

(II) Any process and product formulation that has been submitted to, and approved by a recognized process authority. A recognized process authority may be contacted through the Oregon State University, Department of Food Science and Technology Extension Service.

(C) They are labeled with:

(i) A product identity;

(ii) Net weight;

(iii) An ingredient statement that also includes properly declared major food allergens; and

(iv) The name and address of the agricultural producer that produced the principal ingredients and processed the product.

(D) During the preceding calendar year, had annual sales of producer-processed products that in total did not exceed \$20,000.

(i) Bottling, packaging and canning supplies will be made from food grade materials.

(ii) Ingredients other than the principal ingredients are limited to herbs, spices, salt, vinegar, pectin, lemon or lime juice, honey and sugar, and will be:

(I) From an approved source; or

(II) Farmed or produced by the agricultural producer.

(b) Producer-processed products that are exempt from licensure do not include any raw juices.

(3) The provisions of ORS 585.010 to 585.220 (Agricultural Marketing and Warehousing) and ORS 616.695 to 616.755 (Sanitary Regulations for Food and Food Establishments) do not apply to the following:

(a) A farm direct marketer;

(b) A consigning agricultural producer; and

(c) The location(s) used by a farm direct marketer or a consigning agricultural producer to prepare, store, sell, expose for sale, or offer for sale the farm direct marketer's own or consigned agricultural products identified in Sections (1) and (2).

(4) The farm direct marketer exemptions provided in Section (3) may be revoked by the Department when it determines that:

(a) The location used by a farm direct marketer is not maintained in a clean, healthful and sanitary condition, or

(b) A farm direct marketer failed to ensure the condition and safety of the food it processed for direct sale.

Stat. Auth.: ORS 561.190, 616 & (Enrolled HB 2336)

Stats. Implemented: ORS 616.230 & (Enrolled HB 2336)

Hist.: DOA 14-2012, f. & cert. ef. 6-1-12

603-025-0245

Consignment Sales

(1) Consigning agricultural producers exempt under OAR 603-025-0235(3)(b) are limited to sales of the following types of agricultural products:

(a) Fruits, vegetables, edible flowers and herbs that are:

(A) Fresh; or

(B) Cured or dried by an agricultural producer as part of routine post-harvest handling.

(b) Unshelled nuts cured or dried in the shell by an agricultural producer as part of routine post-harvest handling;

(c) Shell eggs, if the agricultural producer selling the consigned eggs is an egg handler licensed under ORS 632.715 (Egg Handler's License);

(d) Honey, only when not combined with other ingredients.

(2) A consigning agricultural producer will provide a farm direct marketer with documentation to be clearly and conspicuously posted during the sale of the products on consignment. The documentation will include:

(a) The name of the consigning agricultural producer;

(b) The product consigned by the consigning agricultural producer;

(c) The address of the consigning agricultural producer.

(3) A farm direct marketer will maintain separate sales logs for products sold on consignment.

(a) Sales logs will include, but are not limited to, the following information:

(A) The name of the consigning agricultural producer;

(B) The contact information of the consigning agricultural producer, including the address and phone number;

(C) Item(s) sold on consignment; and

(D) Quantity of item(s) sold on consignment.

Stat. Auth.: ORS 561.190 & (Enrolled HB 2336)

Stats. Implemented: ORS 616.700, 616.835 & (Enrolled HB 2336)

Hist.: DOA 14-2012, f. & cert. ef. 6-1-12

603-025-0255

Prohibitions; Department Enforcement

(1) A farm direct marketer will not:

(a) Sell, offer for sale, or expose for sale foods that are adulterated or misbranded under

ORS 616.205 to 616.385 (Sale of Adulterated, Misbranded or Imitation Foods);

(b) Receive, accept, possess, sell, offer for sale, or expose for sale food from a consigning agricultural producer that is adulterated or misbranded under ORS 616.205 to 616.385 (Sale of Adulterated, Misbranded or Imitation Foods);

(c) Commingle products;

(d) Knowingly sell or offer for sale foods covered by the farm direct sales exemption to a person that is not a retail consumer;

(A) An agricultural producer extracting only their own honey from 20 or fewer hives and licensed honey producers are exempt from this requirement.

(e) Sell foods other than those covered by the farm direct sales exemption found at OAR 603-025-0235 without an appropriate license.

(2) The Department may require a farm direct marketer or the entity in control of the location used by farm direct marketers to obtain and maintain a license under ORS 585.010 to 585.220 (Agricultural Marketing and Warehousing), 616.695 to 616.755 (Sanitary Regulations for Food and Food Establishments) for failure to maintain the location in a clean, healthful and sanitary condition in accordance with rules adopted under ORS 616.700 (Department to Enforce Sanitation Requirements for Food and Food Establishments).

Stat. Auth.: ORS 561.190, 616.700 (Enrolled HB 2336)

Stats. Implemented: ORS 616.835 & (Enrolled HB 2336)

Hist.: DOA 14-2012, f. & cert. ef. 6-1-12

603-025-0265

Labeling Requirements

(1) The principal display panel of a producer-processed product as defined by OAR 603-025-0225(15) will contain in a prominent location the following statements in legible, all capital, and bold-face type no less than one-eighth inch:

(a) "THIS PRODUCT IS HOMEMADE AND IS NOT PREPARED IN AN INSPECTED FOOD ESTABLISHMENT" and

(b) "NOT FOR RESALE."

(2) The principal display panel of shell eggs, grain, legumes, seeds and honey described under

OAR 603-025-0235(1)(d) to (g) and 603-025-0245(1)(c) and (d) will contain in a prominent location the following statements in legible, all capital, and bold-face type no less than one-eighth inch:

(a) "THIS PRODUCT IS NOT PREPARED IN AN INSPECTED FOOD ESTABLISHMENT" and
(b) "NOT FOR RESALE."

(c) An agricultural producer extracting only their own honey from 20 or fewer hives and licensed honey producers are exempt from the labeling requirements in (a) and (b).

(3) All bottled, packaged and canned food products described under OAR 603-025-0235 will be labeled with all of the following:

(a) A product identity, which is a truthful or common name of the product that is contained in the package;

(b) The net weight of the product. Net weight or volume must be in both the US lbs./oz. and metric scale. For example, "Net Wt. 12 oz. (340 g)" for a dry product and "Net Wt. 32 fl. Oz (1 QT) 946 ml" for a liquid product;

(c) An ingredient statement that properly declares all major food allergens. All ingredients will be listed in descending order of predominance by weight or volume; and

(A) Major food allergens allowed in producer-processed products under this rule are peanuts, tree nuts, soy and wheat;

(B) Major food allergens will be labeled:

(i) Using the appropriate major food allergen in parenthesis within the ingredient list after the common or usual name of the ingredient derived from that major food allergen, for example, if a product contained semolina, the ingredient list could read: semolina (wheat); or

(ii) Using a "Contains" statement to summarize the allergen information in a statement at the end of, or immediately adjacent to, the ingredient list.

(d) The address of the agricultural producer that produced the principal ingredients and bottled, packaged or canned the food products.

(4) When Oregon or the Federal Government has adopted a standard of identity for any labeled product covered by the farm direct marketer exemption, that product will specifically meet those standards of identity found in ORS Chapters 616 (Food and Other Commodities) and 632 (Agricultural and Horticultural Products) and in OAR 603-025-0190 (Standards of Identity).

Stat. Auth.: ORS 561, 616 & (Enrolled HB 2336)
Stats. Implemented: ORS 616.835 & (Enrolled HB 2336)
Hist.: DOA 14-2012, f. & cert. ef. 6-1-12

603-025-0275

Producer-Processed Foods Records

(1) Raw materials, packaging materials, and finished products that are not in compliance with United States Food and Drug Administration (FDA) regulations may be considered adulterated.

(2) Processing and production records for products having a water activity (aw) greater than 0.85 and having been acidified to decrease the equilibrium pH of the food to 4.6 or below will show that the process and product formulations comply with all critical factors mandated by a recognized process.

(a) To demonstrate compliance with acceptable equilibrium pH measurements, batch-by-batch records of pH meter calibration and batch-by-batch records of finished product testing will be maintained.

(A) Finished product testing will be performed following the requirements of the 2010 version of 21 CFR 114.90(a) and (b) (Methodology). A pH meter or potentiometer is the primary instrument used in determining product pH. Colorimetric methods including, but not limited to, indicator solutions and indicator paper may be used if the equilibrium pH of the product is 4.0 or lower.

(b) Processing and production records will be associated with production dates and batches.

(c) Any deviation from an approved process and the corrective action taken to remedy the deviation will be recorded and maintained.

(A) A product produced with a processing deviation will:

(i) Not be sold for human consumption; or,

(ii) Be permitted for sale for human consumption if the product is reprocessed to rectify the deviation in a manner approved by a recognized process authority.

(3) Farm direct marketers will maintain sales records of products subject to OAR 603-025-0235(2). Sales records will include, but need not be limited to, the following information:

- (a) Product(s) sold;
- (b) Price;
- (c) Quantity sold;
- (d) Current, rolling total of year-to-date sales.

(4) Copies of all records required by these administrative rules (OAR 603-025-0225 through 0275) will be retained at the processing facility or other reasonably accessible location for a period of three years from the date of manufacture.

(a) Records will be made available to the Department upon request.

(b) Failure to provide records to the Department upon request may result in the revocation of the farm direct marketer exemption.

Stat Auth.: ORS 616.700 & (Enrolled HB 2336)
Stats. Implemented: (Enrolled HB 2336)
Hist.: DOA 14-2012, f. & cert. ef. 6-1-12

Civil Penalties

603-025-0900

Purpose

The Oregon Department of Agriculture Food Safety Program licenses and inspects all facets of Oregon's food distribution system, except restaurants, to ensure food is safe for consumption. Education and technical assistance are vital to the prevention, correction, and abatement of food safety violations, and are preferred over regulatory action. However, regulatory action may be necessary to deter violations of food safety laws and rules, to educate persons about the consequences of such violations, and to compel compliance with food safety laws for the protection of consumers. The Department intends to initiate civil penalty actions when educational measures, technical assistance, warning letters, compliance agreements or other remedial measures fail to achieve compliance.

Stat. Auth.: ORS 561.190, 616.997 & 632.995
Stats. Implemented: ORS 616.997 & 632.995
Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

603-025-0910

Definitions

As used in OAR 603-025-0920 through 603-025-0930, unless otherwise required by the context, the following terms will be construed to mean:

- (1) "Department" means the Oregon Department of Agriculture.
- (2) "Interference" means hindering or impeding an activity or process, which includes, but is not limited to any harassment, unreasonable delay, threat, concealment, deceit, or obstruction.
- (3) "Major," with respect to violations, means an incident, or series of incidents that cause a reasonable probability that serious adverse health consequences or death will occur.
- (4) "Minor," with respect to violations, means an incident, or series of incidents that are not likely to cause adverse health consequences.
- (5) "Moderate," with respect to violations, means an incident, or series of incidents that may cause temporary or medically reversible adverse health consequences, or where the probability of serious adverse health consequences is remote.
- (6) "Repeat violation" means the recurrence of the same violation for each 24-hour period after a notice of noncompliance or assessment of civil penalty was issued within the preceding three years. It does not include a violation if the previous notice is the subject of a pending appeal or if the notice has been withdrawn or successfully appealed.
- (7) "Same," with respect to violations, means an identical recurrence, exact repetition, or a continuation of a previous violation.
- (8) "Violation" means the failure to comply with any requirement of ORS Chapter 616 or any rules adopted thereunder.

Stat. Auth.: ORS 561.190, 616.997 & 632.995
Stats. Implemented: ORS 616.997 & 632.995
Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

603-025-0920

Schedule of Civil Penalties

In addition to any penalty available under ORS 561.190, 616.992, 616.994, or 632.990 the Department may impose a civil penalty with respective amounts for:

(1) Violation of ORS 616.073(3), relating to sulfite use. Penalty — \$500 to \$5,000.

(2) The manufacture, sale or delivery, holding or offering for sale of any food that is adulterated or misbranded as explained in ORS 616.215(1). Penalties:

- (a) Minor — \$500 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(3) The adulteration or misbranding of any food as explained in ORS 616.215(2). Penalties:

- (a) Minor — \$500 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(4) The receipt in commerce of any food that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise as explained in ORS 616.215(3). Penalties:

- (a) Minor — \$500 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(5) Violation of the labeling requirements of ORS 616.215(4). Penalties:

- (a) Minor — \$500 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(6) The dissemination of any false advertisement as explained in ORS 616.215(5). Penalties:

- (a) Minor — \$500 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(7) Interference with any inspection or investigation performed pursuant to ORS 616.286. Penalty — \$5,000 to \$10,000.

(8) The giving of a guaranty or undertaking which is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person from whom the person received in good faith the food as explained in ORS 616.215(7). Penalties:

- (a) Minor — \$500 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(9) The removal or disposal of a detained or embargoed article in violation of ORS 616.225. Penalties:

- (a) Minor — \$500 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(10) The alteration, mutilation, destruction, obliteration or removal of the whole or any part of the label of a food, if done while such article is held for sale and results in such article being misbranded as explained in ORS 616.215(9). Penalties:

- (a) Minor — \$500 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(11) Forging, counterfeiting, simulating or falsely representing, or without proper authority using any mark, stamp, tag, label or other identification device authorized or required by rules promulgated under the provisions of ORS 616.205 to 616.295 and 616.305 to 616.315. Penalty — \$5,000 to \$10,000.

(12) The use by any person to the person's own advantage, or disclosure, other than to the Director or the authorized representative of the director or to the courts when relevant in any judicial proceeding under ORS 616.205 to 616.385, of any information acquired under the authority of ORS 616.205 to 616.385 concerning any method or process which is a trade secret entitled to protection. Penalties:

- (a) Minor — \$500 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(13) Labeling or offering for sale any food fish product designated as halibut, with or without additional descriptive words, unless such food fish product is *Hippoglossus hippoglossus* or *Hippoglossus stenolepis* as explained in ORS 616.217. Penalty — \$500 to \$5,000.

(14) Failure of a retail or wholesale food distributor to place a warning label on food containing diethylstilbestrol pursuant to ORS 616.333. Penalty — \$500 to \$5,000.

(15) Violation of rules promulgated under ORS 616.700, relating to sanitation requirements for food and food establishments. Penalties:

- (a) Minor — \$500 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(16) Operating a food establishment without obtaining or maintaining a license as required in ORS 616.706. Penalties:

- (a) Minor — \$500 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(17) Knowingly misrepresenting the annual gross dollar volume of sales of covered operations by that applicant within Oregon during the prior calendar year or, if the applicant maintains sales records on a fiscal basis, the prior fiscal year for the requirements of ORS 616.706. Penalty — \$1,000 to \$5,000.

(18) The unauthorized removal of a notice posted by the department under the authority of ORS 616.740. Penalties:

- (a) Minor — \$500 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(19) The manufacture, sale or delivery, holding or offering for sale of any food that does not conform to a standard of identity when the Department has adopted a standard of identity food as explained in ORS 616.761 to 616.775. Penalties:

- (a) Minor — \$500 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(20) Violation of ORS 616.785, relating to unenriched flours, macaroni, and noodle products. Penalty — \$500 to \$5,000.

(21) Interference with a lawful inspection under authority of ORS 616.790. Penalty — \$5,000 to \$10,000.

(22) Violation of the Open Date Labeling Laws of ORS 616.815, 616.820, 616.825 or 616.830 or the rules adopted under ORS 616.835, relating to open date labeling. Penalties:

- (a) Minor — \$500 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(23) Violation of ORS 616.860, relating to unit pricing. Penalty — \$500 to \$5,000.

(24) A retail seller of packaged consumer commodities failing to express unit retail price statements in terms of the price per single whole unit of weight, volume, measure or count as prescribed by administrative rules adopted by the Department under ORS 616.875 for particular consumer commodities or groups for consumer commodities. Penalty — \$500 to \$5,000.

Stat. Auth.: ORS 561.190, 616.997 & 632.995

Stats. Implemented: ORS 616.997 & 632.995

Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

603-025-0930

Penalty factors; procedure

(1) In imposing a penalty pursuant to the schedule adopted pursuant to ORS 628.995, the Department shall consider the following factors, which are listed in prioritized order:

(a) The immediacy and extent to which the violation threatens the public health or safety.

(b) Any prior violations of statutes, rules or orders pertaining to food and other commodities.

(c) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(d) The economic and financial conditions of the person incurring the penalty, including any financial gains resulting from the violation.

(2) Each 24-hour period a violation continues after the period of time established for compliance will be considered a separate violation unless the Department finds a different period of time is more appropriate to describe the specific violation event.

(3) Repeat violations of OAR 603-025-0910 will be assessed as three times the penalty amount in OAR 603-025-0910, not to exceed \$10,000.

(4) A civil penalty imposed under this rule will comply with ORS 183.745, except that the written application for a hearing must be received by the department no later than 10 days after the mailing or personal service of the notice of civil penalty.

Stat. Auth.: ORS 561.190, 616.997 & 632.995
 Stats. Implemented: ORS 616.997 & 632.995
 Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

DIVISION 27

SALE BY WEIGHT OR MEASURE

License Fees for Weighing and Measuring Devices

603-027-0030

License Fees and Categories

The annual license fees for weighing or measuring instruments or devices, as provided for in ORS 618.136 and 618.141 are as follows: License Period 2007-2009 — 2009-2011

- (1) Discrete Weighing Devices (mfr. rated capacity):
 - (a) 0-400 pounds — \$37.00; — \$39.00;
 - (b) 401-1,160 pounds — \$76.00; — \$80.00;
 - (c) 1,161-7,500 pounds — \$153.00; — \$161.00;
 - (d) 7,501-60,000 pounds — \$230.00; — \$242.00;
 - (e) Over 60,000 pounds — 230.00; — \$242.00;
 - (f) Static Railroad Track Scales — \$1000.00; — \$1051.00.
- (2) Continuous Weighing Systems (mfr. rated capacity):
 - (a) Under 10 tons/hour — \$290.00; — \$304.00;
 - (b) 10-150 tons/hour — \$450.00; — \$473.00;
 - (c) 151-1,000 tons/hour — \$900.00; — \$946.00;
 - (d) Over 1,000 tons/hour — \$2000.00; — \$2101.00;
 - (e) In motion railroad track scales — \$1000.00; — \$1051.00.
- (3) Liquid Fuel Metering Devices for Noncorrosive Fuels Contained at Atmospheric Pressure (max. device flowrate):
 - (a) Under 20 gal/min — \$30.00; — \$32.00;
 - (b) 20-150 gal/min — \$153.00; — \$161.00;
 - (c) Over 150 gal/min — \$230.00; — \$242.00.
- (4) Special Liquid Fuel Measuring Equipment:
 - (a) Liquefied Petroleum Gas meters:
 - (A) 1” pipe diameter or under — \$230.00; — \$242.00;
 - (B) Over 1” pipe diameter — \$230.00; — \$242.00.
 - (b) Liquefied Petroleum Gas Vapor-Measuring Devices:
 - (A) 1” pipe diameter or under — \$15.00;
 - (B) Over 1” pipe diameter — \$20.00.

(5) Effective July 1, 2011 through June 30, 2016, yearly increases to the weighing or measuring instrument or device license fees published in this administrative rule shall not exceed 2% annually and will be adopted through rule.

Stat. Auth.: ORS 561 & 618
 Stats. Implemented: ORS 618.136 & 618.141
 Hist.: AD 1025(15-74), f. 4-30-74, ef. 7-1-74; AD 1083(6-76), f. 3-5-76, ef. 7-1-76; AD 13-1977, f. & ef. 6-17-77; AD 18-1977, f. & ef. 8-19-77; AD 5-1983, f. & ef. 5-4-83; AD 7-1984, f. & ef. 4-18-84; AD 8-1990, f. 4-5-90, cert. ef. 7-1-90; AD 3-1992, f. & cert. ef. 4-9-92; AD 12-1996, f. & cert. ef. 12-10-96; DOA 10-2002, f. & cert. ef. 3-7-02; DOA 11-2007(Temp), f. 6-25-07, cert. ef. 7-1-07 thru 12-21-07; DOA 17-2007, f. & cert. ef. 11-8-07

Weights and Measures Packaging and Labeling Requirements

603-027-0105

Application

The Weights and Measures Packaging and Labeling requirements for all food and nonfood commodities in package form shall

be the Uniform Packaging and Labeling Regulation requirements adopted by the National Conference on Weights and Measures, as published by the U.S. Department of Commerce in its NIST (National Institute of Standards and Technology Handbook 130 2009 Edition, entitled “Uniform Laws And Regulations in the areas of legal metrology and motor fuel quality”.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 618
 Stats. Implemented: ORS 618.016, 618.031, 618.066, 618.201, 618.211, 618.216, 618.221, 618.226, 618.231 & 618.246
 Hist.: AD 1011(1-74), f. 1-7-74, ef. 1-25-74; AD 12-1984, f. & ef. 9-24-84; AD 15-1986, f. & ef. 12-19-86; AD 8-1990, f. & cert. ef. 4-5-90; AD 3-1992, f. & cert. ef. 4-9-92; AD 12-1996, f. & cert. ef. 12-10-96; DOA 17-2000, f. & cert. ef. 6-14-00; DOA 9-2002, f. & cert. ef. 2-15-02; DOA 20-2004, f. & cert. ef. 6-28-04; DOA 3-2007, f. & cert. ef. 2-2-07; DOA 19-2010, f. & cert. ef. 9-14-10

603-027-0170

Package Checking Procedures

The procedures for checking the accuracy of the net content statement on packaged goods shall be those adopted by the National Conference on Weights and Measures, and contained in the Fourth Edition of NIST Handbook 133, published by the United States Department of Commerce National Institute of Standards and Technology (NIST), January 2005 and entitled “NIST Handbook 133 Checking the Net Contents of Packaged Goods”.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561 & 618
 Stats. Implemented: ORS 618.016, 618.031, 618.066, 618.201, 618.211, 618.221 & 618.231
 Hist.: AD 15-1986, f. & ef. 12-19-86; AD 8-1990, f. & cert. ef. 4-5-90; AD 3-1992, f. & cert. ef. 4-9-92; AD 12-1996, f. & cert. ef. 12-10-96; DOA 9-2002, f. & cert. ef. 2-15-02; DOA 20-2004, f. & cert. ef. 6-28-04; DOA 3-2007, f. & cert. ef. 2-2-07

603-027-0180

Examination Procedures for Price Verification.

The procedures for price verification and accuracy in any store, including those that use Universal Product Code (U.P.C.) scanners and price-look-up codes at the checkout counter as a means for pricing, shall be those adopted by the National Conference on Weights and Measures, and contained in the National Institute of Standards and Technology (NIST) Handbook 130 2009 Edition, entitled “Uniform Laws And Regulations in the areas of legal metrology and engine fuel quality,” subsection “Examination Procedure for Price Verification.”

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561 & 618
 Stats. Implemented: ORS 618.016, 618.031, 618.051, 618.056, 618.066, 618.076, 618.081, 618.096, 618.201 & 618.236
 Hist.: DOA 17-2000, f. & cert. ef. 6-14-00; DOA 9-2002, f. & cert. ef. 2-15-02; DOA 20-2004, f. & cert. ef. 6-28-04; DOA 3-2007, f. & cert. ef. 2-2-07; DOA 19-2010, f. & cert. ef. 9-14-10

Weights and Measures Requirements as to Methods of Sale of Commodities

603-027-0206

Weights and Measures Requirements

The weights and measures requirements as to methods of sale of all food and nonfood commodities shall be the requirements adopted by the National Conference on Weights and Measures, as published by the United States Department of Commerce in its NIST (National Institute of Standards and Technology) Handbook 130 2009 Edition, entitled “Uniform Regulation for the Method of Sale of Commodities.”

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561, 618 & 621
 Stats. Implemented: ORS 618.016, 618.031, 618.066, 618.201, 618.206, 618.226, 618.236, 618.241 & 618.246
 Hist.: AD 12-1984, f. & ef. 9-24-84; AD 15-1986, f. & ef. 12-19-86; AD 8-1990, f. & cert. ef. 4-5-90; AD 3-1992, f. & cert. ef. 4-9-92; AD 12-1996, f. & cert. ef. 12-10-96; DOA 17-2000, f. & cert. ef. 6-14-00; DOA 9-2002, f. & cert. ef. 2-15-02; DOA 20-2004, f. & cert. ef. 6-28-04; DOA 3-2007, f. & cert. ef. 2-2-07; DOA 19-2010, f. & cert. ef. 9-14-10

603-027-0220**Exceptions to the National Institute of Standards and Technology Handbook 130 (2009 Edition)**

The following exceptions and amendments are made to said handbook identified in OAR 603-027-206 Method of Sale of Commodities:

(1) Ready-to-Eat Food Definition. Change Section 1.12.1. Definition to read as follows: “‘Ready-to-Eat Food’ is restaurant-style food offered or exposed for sale without additional cooking or preparation, whether in restaurants, supermarkets, or similar food service establishments, packaged on the premises for convenience and presentation, and that is ready for consumption, though not necessarily on the premises where sold. Ready-to-Eat Food does not include sliced luncheon products, such as meat, poultry, or cheese when sold separately.”

(2) Ready-to-Eat Food Methods of Sale. Change Section 1.12.2. Methods of Sale to read as follows: “Ready-to-Eat Food sold from bulk, or in servings packed on the premises, may be sold by weight, measure, or count (count includes servings) provided that:

(a) When Ready-to-Eat Foods are sold by count or measure, when such methods of sale are not customary, they shall be offered for sale by count or measure in areas of the establishment where customers would expect to find Ready-to-Eat Foods (e.g. Deli Section, Produce Section, etc.); and

(b) When Ready-to-Eat Foods are offered for sale near similar products packaged off of the premises, the Ready-to-Eat Foods shall be sold by the same method of sale as similar products.”

Stat. Auth.: ORS 561 & 618

Stats. Implemented: ORS 618.016, 618.031, 618.066, 618.201, 618.206, 618.211, 618.216, 618.221, 618.226, 618.231, 618.236 & 618.246

Hist.: DOA 17-2000, f. & cert. ef. 6-14-00; DOA 9-2002, f. & cert. ef. 2-15-02; DOA 20-2004, f. & cert. ef. 6-28-04; DOA 3-2007, f. & cert. ef. 2-2-07; DOA 19-2010, f. & cert. ef. 9-14-10

603-027-0370**Sawdust, Barkdust, Decorative Wood Particles, and Similar Products**

(1) As used in this rule, “Unit” means a standard volume equal to 200 cubic feet.

(2) Method of Sale. Quantity representations for sawdust, barkdust, decorative wood particles, and similar loose bulk materials when advertised, offered for sale, or sold within the state shall be in terms of cubic measure or units and fractions thereof.

Stat. Auth.: ORS 561.190 & 618.136 — 618.246

Stats. Implemented: ORS 561.190 & 618.136 — 618.246

Hist.: AD 1012(2-74), f. 1-10-74, ef. 2-11-74

603-027-0395**Liquefied Petroleum Gas (LPG)**

(1) As used in this rule, “Liquefied Petroleum Gas,” “LP Gas,” or “LPG” means a petroleum product composed predominantly of any of the hydrocarbons propane, propylene, butane (normal or iso), butylene, or mixtures thereof, maintained in the liquid state.

(2) Method of Sale. Liquefied petroleum gas shall be sold by weight or liquid measure determined from legal devices as provided in ORS 618.121 and 618.141. Customer charges for LP gas purchased at retail shall be computed only on the basis of the net weight or liquid measure received by the purchaser but may, for deliveries of two gallons or eight pounds or less, include an additional “bottle filling service charge” if the retailer so chooses and has clearly disclosed the use of the additional service charge. “Clearly disclosed” for bottle filling service charge means that both:

(a) The additional dollar amount for the filling charge; and

(b) The conditions under which the additional bottle filling service charge applies, are displayed by the retailer in a clear and conspicuous manner on both the dispensing device and on all signs advertising the price of LP-gas at that site. Minimum transaction charges based solely on the size of the customer’s LP-gas container or set at flat or fixed dollar amounts without regard to the actual quantity of LP-gas remaining in or delivered by the retailer into the customer’s container(s) are prohibited.

(3) Pressure Differential System. In the process of measuring liquefied petroleum gas for the purpose of sale whenever a meter is

used for the purpose of determining the quantity, a pressure differential between vessels shall not be obtained by use of a vapor pump or compressor, unless the vapor being transferred to the dispensing vessel is accurately measured by means of an accepted and approved vapor meter and the quantity of such vapor is deducted from the LPG delivered.

(4) Use of External Heat Source. The use of an external source of heat or energy which contributes to the thermal expansion of the liquefied petroleum gas immediately before or during the process of delivery, when the basis of settlement for such sale is liquid volume, is prohibited.

(5) Marking of Cylinders and Bottles. When liquefied petroleum gas is sold by weight and delivered in a cylinder or bottle, such cylinder or bottle must be legibly and conspicuously marked with, in addition to any other marking or labeling required by state or federal law, the following:

(a) The tare weight expressed in pounds or other identified unit of weight including all permanently attached fittings but not the cap;

(b) The water capacity expressed in pounds or other identified unit of weight if a refillable container;

(c) The name or identity symbol of the manufacturer or dealer.

(6) Vapor-Return Lines. Vapor return lines are only permitted for metered delivery of liquefied petroleum gas from a supplier’s tank to a receiving container under special circumstances, as provided for in section U.R.2.3. VAPOR-RETURN LINE (of NIST Handbook 44). When use is permitted, these vapor return lines must be of the portable type and must be physically disconnected from both the supplier’s tank and the receiving container after each delivery.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 618

Stats. Implemented: ORS 618.016, 618.031, 618.051, 618.056, 618.066, 618.096, 618.206, 618.236 & 618.241

Hist.: AD 1012(2-74), f. 1-10-74, ef. 2-11-74; AD 8-1990, f. & cert. ef. 4-5-90; AD 20-1990, f. & cert. ef. 10-25-90; AD 12-1996, f. & cert. ef. 12-10-96; DOA 8-2000, f. & cert. ef. 3-29-00; DOA 11-2004, f. & cert. ef. 3-26-04

603-027-0397**Hydrocarbon Gas Vapor-Measuring Devices.**

(1) As used in this rule, “Hydrocarbon Gas” means propane, propylene, butanes, butylenes and any other hydrocarbon gas/air mix maintained in a vapor state.

(2) Method of Sale. Hydrocarbon gas shall be offered, exposed for sale, and sold by metered cubic foot or cubic meter of vapor defined as 1 cubic foot at 60°F or 1 cubic meter at 15°C determined from legal-for-trade hydrocarbon gas vapor-measuring devices as provided in ORS 618.121 and 618.141. Any charges or custody transfer of hydrocarbon gas shall be determined by a legal-for-trade, licensed hydrocarbon gas vapor-measuring device.

(3) Retention of Customer Invoices. Any person engaging in the sale of hydrocarbon gas vapor shall retain a record of:

(a) Each individual hydrocarbon gas vapor-measuring device billing invoice; and

(b) The applicable rate schedule for a period of not less than 12 months and shall make them available at reasonable times for inspection and copying by the customer and the Measurement Standards Division.

(4) Adjustment of Overcharges. Where, initiated by a written customer complaint and through a Measurement Standards Division certification examination, a hydrocarbon gas vapor-measuring device is found to be over-registering beyond the applicable tolerance, the person using the device shall issue a refund or credit to the customer for the amount of any overcharge, without interest, computed back to the date that the person using the device determines the hydrocarbon gas vapor-measuring device error commenced, except that the period of adjustment shall not exceed six (6) months.

(5) Responsibility for Licensing. The person using hydrocarbon gas vapor-measuring devices is responsible to license these devices as required in ORS 618.121 prior to them being placed into commercial service.

(6) Responsibility for Testing and Certification Examinations. The person using hydrocarbon gas vapor-measuring devices is responsible for:

(a) Transporting and all associated transportation costs of hydrocarbon gas vapor-measuring devices to and from the Measurement Standards Division for testing and certification examinations;

(b) Assuring that a minimum of 10 percent per year of all hydrocarbon gas vapor-measuring devices in commercial service as of July 1, 2002 are delivered to the Measurement Standards Division for testing and certification examination until all such devices have been tested and certified; and

(c) Assuring that all hydrocarbon gas vapor-measuring devices are delivered to the Measurement Standards Division for testing and certification examination prior to them being placed into commercial service.

Stat. Auth.: ORS 618

Stats. Implemented: ORS 618.016, 618.031, 618.051, 618.056, 618.066, 618.096, 618.121, 618.141, 618.206, 618.236 & 618.241

Hist.: DOA 10-2002, f. & cert. ef. 3-7-02

603-027-0400

Liquid Fuels

(1) As used in this rule, "Liquid Fuel" means any predominately hydrocarbon compound or mixture for use as engine or heating fuel that exists as a noncorrosive liquid at atmospheric pressure, including, but not limited to, gasoline, tractor fuel, kerosene, jet fuel, diesel, and heating oil.

(2) Method of Sale.

(a) Liquid fuel shall be sold by weight or liquid measure determined from legal devices as provided in ORS 618.121 and 618.141. Use of tank gaging methods that include sticks, rods, markers, or other volume-measuring elements not permanently attached or sealed to such tanks is prohibited for purposes of product sale or transfer of ownership for tanks or tank compartments with capacities of 10,500 gallons (250 Bbl.) or less.

(b) The use of automatic temperature compensation with vehicle tank meter systems is prohibited.

(3) Declaration of Quantity: Liquid Measure. Quantity declarations or representations in terms of liquid measure shall for wholesale transactions or deliveries indicate the volume occupied by the products at 60°F consistent with Petroleum Measurement Tables (ASTM D-1250-80) (1990) (API MPMS Ch.11.1) published by the American Society for Testing Materials, unless the measuring device and any associated bill of lading, delivery ticket, or invoice are clearly marked to indicate that:

(a) The volume is based on a specified product temperature other than 60°F; or

(b) The quantity declaration or representation is "not corrected to 60°F," or is otherwise qualified by language of similar import.

(4) Advertising and Computing Unit Price. Whenever a liquid fuel is sold at retail by means of a computing-type device and a unit price for such fuel is advertised, posted, or displayed by the seller, the unit price at which the device is (or devices are, if more than one dispense such brand, blend, or mixture) set to compute at, shall coincide exactly with the advertised, posted, or displayed unit price for such fuel.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 618

Stats. Implemented: ORS 618.016, 618.031, 618.051, 618.066, 618.076, 618.096, 618.151, 618.206 & 618.241

Hist.: AD 1012(2-74), f. 1-10-74, ef. 2-11-74; AD 8-1990, f. & cert. ef. 4-5-90; DOA 19-2010, f. & cert. ef. 9-14-10

Biodiesel Blending Mandate and Premium Gasoline Ethanol Blending Exemption

603-027-0410

Definitions

(1) "Accredited Laboratory" means a laboratory that is currently accredited by an independent laboratory accrediting body for analyzing motor fuels using American Society for Testing and Materials (ASTM) International test procedures and specifications.

(2) "Alcohol" means a volatile flammable liquid having the general formula $C_nH_{(2n+1)}OH$ used or sold for the purpose of blending or mixing with gasoline for use in propelling motor vehicles,

and commonly or commercially known or sold as an alcohol, and includes ethanol or methanol.

(3) "ASTM" means ASTM International, the national voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems, and services; and the promotion of related knowledge. ASTM when used in these rules shall mean the 2011 Annual Book of ASTM Standards, Section 5, Volumes 05.01 through 05.05.

(4) "Antiknock Index (AKI)" means the arithmetic average of the Research Octane Number (RON) and Motor Octane Number (MON): $AKI=(RON+MON)/2$. This value is called by a variety of names, in addition to antiknock index, including: Octane Rating, Posted Octane, $(R+M)/2$ Octane.

(5) "Automotive Fuel Rating" means the automotive fuel rating determined under 16 CFR 306.5, required to be certified under 16 CFR 306.6 and 16 CFR 306.8, and required to be posted under 16 CFR 306.10. Under this Rule, sellers of liquid automotive fuels, including alternative fuels, must determine, certify, and post an appropriate automotive fuel rating. The automotive fuel rating for gasoline is the antiknock index (octane rating). The automotive fuel rating for alternative liquid fuels consists of the common name of the fuel along with a disclosure of the amount, expressed as a minimum percentage by volume, of the principal component of the fuel. For alternative liquid automotive fuels, a disclosure of other components, expressed as a minimum percentage by volume, may be included, if desired.

(6) "Automotive Gasoline, Automotive Gasoline-Oxygenate Blend" means a type of fuel suitable for use in spark-ignition automobile engines and also commonly used in marine and non-automotive applications.

(7) "Aviation Gasoline" means a type of gasoline suitable for use as a fuel in an aviation gas spark-ignition internal combustion engine.

(8) "Batch" and "Production Lot" means a homogenous production volume of finished biodiesel from one or more sources that is held in a single container where representative samples are taken and analyzed to provide an authentic certificate of analysis (COA) for the specific volume.

(9) "Bulk Facility" means a facility, including pipelines terminals, refinery terminals, rail and barge terminals and associated underground and above ground tanks connected or separate, from which motor vehicle fuels are withdrawn from bulk and delivered to retail, wholesale or nonretail facilities or into a cargo tank or barge used to transport those products.

(10) "Base Gasoline" means all components other than ethanol in a blend of gasoline and ethanol.

(11) "Biodiesel" means a motor vehicle fuel consisting of mono-alkyl esters of long chain fatty acids derived from vegetable oils, animal fats, or other nonpetroleum resources, not including palm oil, designated as B100 and complying with ASTM D6751. Biodiesel produced in or imported into Oregon for use as a blend stock shall comply with B100 biodiesel requirements including ASTM International D6751 and the Certificate of Analysis.

(12) "Biodiesel Blend" means a fuel comprised of a blend of biodiesel fuel with petroleum-based diesel fuel, designated BXX. In the abbreviation BXX, the XX represents the volume percentage of biodiesel fuel in the blend.

(13) "Biomass" means organic matter that is available on a renewable or recurring basis and that is derived from:

(a) Forest or rangeland woody debris from harvesting or thinning conducted to improve forest or rangeland ecological health and reduce uncharacteristic stand replacing wildfire risk;

(b) Wood material from hardwood timber described in ORS 321.267(3);

(c) Agricultural residues;

(d) Offal and tallow from animal rendering;

(e) Food wastes collected as provided under ORS Chapter 459 or 459A;

(f) Yard or wood debris collected as provided under ORS Chapter 459 or 459A;

(g) Wastewater solids; or

(h) Crops grown solely to be used for energy, and

(i) Biomass does not mean wood that has been treated with creosote, pentachlorophenol, inorganic arsenic, or other inorganic chemical compounds.

(14) "Biomass-Based Diesel", also referred to as Other Renewable Diesel and Renewable Diesel, means a conventional diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the U.S. Environmental Protection Agency under the 2007 42 U.S.C. 7545, and includes fuel derived from biomass (Reference OAR 603-027-0410) and animal wastes, including poultry fats and poultry wastes, and other waste materials, or from municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater, except that the term does not include biodiesel as defined in OAR 603-027-0410, complies with ASTM International D975 Standard Specification for Diesel Fuel Oils or other applicable ASTM product specifications, can be used as a finished fuel or fuel blending component, and designated "100% Biomass-Based Diesel".

(15) "Biomass-Based Diesel Blend", also referred to as Other Renewable Diesel Blend and Renewable Diesel Blend, means a fuel comprised of a blend of biomass-based diesel fuel with conventional petroleum-based diesel fuel, designated "XX% Biomass-Based Diesel Blend", and complies with ASTM International D975. In the abbreviation, "XX%", the XX represents the volume percentage of biomass-based diesel in the blend.

(16) "Certificate of analysis" means:

(a) A document verifying that B100 biodiesel has been analyzed and complies with, at a minimum, the following ASTM D 6751 biodiesel fuel test methods and specifications:

- (A) Flash point (ASTM D 93);
- (B) Acid number (ASTM D 664);
- (C) Cloud point (ASTM D 2500);
- (D) Water and sediment (ASTM D 2709);
- (E) Visual appearance (ASTM D 4176);
- (F) Free glycerin (ASTM D 6584);
- (G) Total glycerin (ASTM D 6584);
- (H) Oxidation stability (EN 14112 as per ASTM D 6751); and
- (I) Sulfur (ASTM D 5453 or ASTM D 7039).

(b) The ASTM International standards referenced in ORS 646.905(3) for free and total glycerin are incorrect. The correct ASTM International standards reference for free and total glycerin is ASTM D 6584.

(17) "Cetane Index" means an approximation of the cetane number of distillate fuel, which does not take into account the effect of a cetane improver additive, calculated from the density and distillation measurements. (Ref. ASTM D 976.)

(18) "Cetane Number" means a numerical measure of the ignition performance of a diesel fuel obtained by comparing it to reference fuels in a standardized engine test. (Ref. ASTM D 613.)

(19) "Coordinating Research Council (CRC) Rating" means a standardized format for rating injector and engine deposits as developed by the CRC.

(20) "Co-solvent" means an alcohol other than methanol which is blended with either methanol or ethanol or both to minimize phase separation in gasoline.

(21) "Dealer" means any motor vehicle fuel retailer dealer, non-retail dealer or wholesale dealer.

(22) "Director" means the Director of Agriculture.

(23) "Diesel Fuel" means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine.

(24) "Distillate." means any product obtained by condensing the vapors given off by boiling petroleum or its products.

(25) "EPA" means the United States Environmental Protection Agency.

(26) "E85 Fuel Ethanol" means a blend of ethanol and hydrocarbons of which the ethanol portion is nominally 75 to 85 volume percent denatured fuel ethanol (Ref. ASTM D 5798).

(27) "Ethanol" also known as "Denatured Fuel Ethanol", means nominally anhydrous ethyl alcohol meeting ASTM D 4806 stan-

dards. It is intended to be blended with gasoline for use as a fuel in a spark-ignition internal combustion engine. The denatured fuel ethanol is first made unfit for drinking by the addition of Alcohol and Tobacco Tax and Trade Bureau (TTB) approved substances before blending with gasoline.

(28) "Ethanol facilities production capacity" means the designed and "as-constructed" rated capacity as verified by the Oregon Department of Agriculture, or the ethanol facilities production capacity as determined by an independent Professional Engineer registered in the State of Oregon that is not the design consultant and as verified by the Oregon Department of Agriculture.

(29) "Feedstock" means the original biomass used in biofuel production.

(30) "Gasoline" means any fuel sold for use in spark ignition engines whether leaded or unleaded.

(31) "Gasoline-Oxygenate Blend" means a fuel consisting primarily of gasoline along with a substantial amount (more than 0.35 mass percent oxygen, or more than 0.15 mass oxygen if methanol is the only oxygenate) of one or more oxygenates.

(32) "Lead Substitute" means an EPA-registered gasoline additive suitable, when added in small amounts to fuel, to reduce or prevent exhaust valve recession (or seat wear) in automotive spark-ignition internal combustion engines designed to operate on leaded fuel.

(33) "Lead Substitute Engine Fuel" means a gasoline or gasoline-oxygenate blend that contains a "lead substitute."

(34) Low Temperature Operability" means a condition which allows the uninterrupted operation of a diesel engine through the continuous flow of fuel throughout its fuel delivery system at low temperatures.

(35) "Lubricity" means a qualitative term describing the ability of a fluid to affect friction between, and wear to, surfaces in relative motion under load.

(36) "Methanol" means methyl alcohol, a flammable liquid having the formula CH₃OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

(37) "M100 Fuel Methanol" means nominally anhydrous methyl alcohol, generally containing small amounts of additives, suitable for use as a fuel in a compression-ignition combustion engine.

(38) "M85 Fuel Methanol" means a blend of methanol and hydrocarbons of which the methanol portion is nominally 70 to 85 volume percent and which meets the requirements of ASTM D 5797.

(39) "Motor Octane Number" means a numerical indication of a spark-ignition engine fuel's resistance to knock obtained by comparison with reference fuels in a standardized ASTM D 2700 Motor Method engine test.

(40) "Motor Vehicles" means all vehicles, vessels, watercraft, engines, machines, or mechanical contrivances that are propelled by internal combustion engines or motors.

(41) "Motor Vehicle Fuel" means gasoline, gasoline-ethanol blends, diesel, biomass-based diesel, biomass-based diesel blends, B100 Biodiesel, Biodiesel Blends, E85 Fuel Ethanol, M85 Fuel Methanol, or any other liquid product used for the generation of power in an internal combustion engine, except aviation jet fuels, liquefied petroleum gases or natural gases.

(42) "Nonretail dealer" means any person who owns, operates, controls or supervises an establishment at which motor vehicle fuel is dispensed through a card or key-activated fuel dispensing device to nonretail customers.

(43) "Octane Rating" means the rating of the anti-knock characteristics of a grade or type of gasoline determined by dividing by two the sum of the research octane number and the motor octane number.

(44) "Octane Rating Certification Documentation" means an invoice, bill of lading, delivery ticket, letter or other documentation that specifies the actual octane rating or a rounded rating that is the largest whole number or half of a number that is less than or equal to the number determined by or certified to the person transferring the gasoline.

(45) "Official Sample" means a motor fuel sample delivered via nozzle directly through a fuel pump, dispenser, or metering device

from either a fuel delivery truck, tank wagon, above ground or below ground fuel storage tank into a suitable sealable, one litre or larger pressure-tight metal or glass container in the presence of, or drawn by, a department representative in the manner prescribed by department procedures. An official sample shall be appropriately sealed and labeled as to its identity, type, brand, grade, posted automotive fuel rating and the location, source, date, and name of official taking it at the time it is withdrawn from storage. A custody transfer receipt or record will be completed whenever an official sample changes hands enroute to a qualified motor fuel standards laboratory.

(46) "Oxygen Content of Gasoline" means the percentage of oxygen by mass contained in a gasoline.

(47) "Oxygenate" means an oxygen-containing, ashless, organic compound, such as an alcohol or ether, which can be used as a fuel or fuel supplement.

(48) "Premium Diesel" means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine and shall meet Standard Fuel Specifications OAR 603-027-0420.

(49) "Production" means the ability of a biofuel production facility to produce biofuel that is in compliance with applicable ASTM International specifications.

(50) "Production Lot" and "Batch" means a homogenous production volume of finished biodiesel from one or more sources that is held in a single container where representative samples are taken and analyzed to provide an authentic certificate of analysis (COA) for the specific volume.

(51) "Research Octane Number" means a numerical indication of a spark-ignition engine fuel's resistance to knock obtained by comparison with reference fuels in a standardized ASTM D 2699 Research Method engine test.

(52) "Retail Dealer" means any person who owns, operates, controls or supervises an establishment at which motor vehicle fuel is or offered for sale to the public.

(53) "SAE" means the SAE International, a technical organization for engineers, scientists, technicians, and others in positions that cooperate closely in the engineering, design, manufacture, use, and maintainability of self-propelled vehicles.

(54) "Sales" means volumes of biofuels measured in gallons per year, relevant consumer usage, demand, pricing, and other factors affecting sales.

(55) "Thermal Stability" means the ability of a fuel to resist the thermal stress which is experienced by the fuel when exposed to high temperatures in a fuel delivery system.

(56) "Unleaded" in conjunction with "engine fuel" or "gasoline" means any gasoline or gasoline-oxygenate blend to which no lead or phosphorus compounds have been intentionally added and which contains not more than 0.013 gram lead per liter (0.05 g lead per U.S. gal) and not more than 0.0013 gram phosphorus per liter (0.005 g phosphorus per U.S. gal).

(57) "Use" means the historic blending of biofuel in Oregon in areas using biofuel to meet Oregon's Renewable Fuel Standard (RFS) and other information relevant to industry blending of biofuel including the infrastructure capacity to blend and distribute biofuel.

(58) "Wholesale Dealer" means any person who sells motor vehicle fuel if the seller knows or has reasonable cause to believe that the buyer intends to resell the motor vehicle fuel in the same or an altered form to a retail dealer, a nonretail dealer, or another wholesale dealer.

(59) "Winter" or "Winterized" Diesel means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine which has been blended for low temperature operability and shall meet Standard Fuel Specifications OAR 603-027-0420.

(60) "Withdrawn From Bulk" means removed from a bulk facility for delivery directly into a cargo tank or a barge to be transported to a location other than another bulk facility for use or sale in this state.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & ORS 646.905 - 646.990
Stats. Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905 - 646.990 & 183

Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 20-2004, f. & cert. ef. 6-28-04; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-14-08, cert. ef. 3-17-08 thru 9-12-08; DOA 21-2008, f. & cert. ef. 9-11-08; DOA 11-2009(Temp), f. & cert. ef. 7-24-09 thru 1-17-10; DOA 16-2009, f. 12-23-09, cert. ef. 1-1-10; DOA 19-2010, f. & cert. ef. 9-14-10; DOA 24-2011, f. & cert. ef. 12-14-11

**603-027-0420
Standard Fuel Specifications**

(1) Gasoline and Gasoline-Oxygenate Blends, as defined in this regulation, shall meet the following requirements:

(a) The ASTM D 4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel," except that volatility standards for unleaded gasoline blended with ethanol shall not be more restrictive than those adopted under the rules, regulations, and Clean Air Act waivers of the U.S. Environmental Protection Agency (which includes those promulgated by Oregon and Federally approved State Implementation Plans (SIP's)). Gasoline blended with ethanol shall be blended under any of the following three options:

(A) The base gasoline used in such blends shall meet the requirements of ASTM D 4814; or

(B) The blend shall meet the requirements of ASTM D 4814; or

(C) The base gasoline used in such blends shall meet all the requirements of ASTM D 4814 except distillation, and the blend shall meet the distillation requirements of the ASTM D 4814 specification.

(b) Blends of gasoline and ethanol shall not exceed the ASTM D 4814 vapor pressure standard by more than 1.0 psi.

(c) Minimum Antiknock Index (AKI). The AKI shall not be less than the AKI posted on the product dispenser or as certified on the invoice, bill of lading, shipping paper, or other documentation.

(d) Minimum Motor Octane Number. The minimum motor octane number must not be less than 82 for gasoline with an AKI of 87 or greater.

(e) Lead Substitute Gasoline. Gasoline and gasoline-oxygenate blends sold as "lead substitute" gasoline shall contain a lead substitute additive which provides a level of protection against exhaust valve seat recession which is equivalent to the level of protection provided by a gasoline containing at least 0.026 gram of lead per liter (0.10 g per U.S. gal).

(2) Ethanol intended for blending with gasoline shall meet the requirements of ASTM D 4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel."

(3) Gasoline-Ethanol Blends Required

(a) Consistent with ORS 646.912, the Oregon Department of Agriculture shall study and monitor ethanol fuel production, use, and sales in Oregon.

(b) Except as provided in OAR 603-027-0420(3)(c), all retail dealers, nonretail dealers, or wholesale dealers may only sell or offer for sale gasoline that contains ten percent ethanol by volume.

(c) A retail dealer, nonretail dealer, or wholesale dealer may sell or offer for sale gasoline that is not blended with ethanol if the gasoline;

(A) Has an octane rating, as defined in ORS 646.945, of 91 or above, or if it is for use in;

(B) An aircraft;

(i) With a supplemental type certificate approved by the Federal Aviation Administration that allows the aircraft to use gasoline that is intended for use in motor vehicles, or

(ii) Issued a type certificate by an aircraft engine manufacturer that allows the aircraft to use gasoline that is intended for use in motor vehicles;

(C) An aircraft that has been issued an experimental certificate, described in 14 C.F.R. 21.191, by the Federal Aviation Administration and that is required by the manufacturer's specifications to use gasoline that is intended for use in motor vehicles;

(D) A light-sport aircraft, as defined in 14 C.F.R. 1.1, that is required by the manufacturer's specifications to use gasoline that is intended for use in motor vehicles;

(E) A vintage aircraft, as defined by the Oregon Department of Aviation by rule, that is required by the manufacturer's specifications to use gasoline that is intended for use in motor vehicles;

(F) An antique vehicle, as defined in ORS 801.125;

(G) A Class I all-terrain vehicle, as defined in ORS 801.190;

(H) A Class III all-terrain vehicle, as defined in ORS 801.194;

(I) A racing activity vehicle, as defined in ORS 801.404;

(J) A snowmobile, as defined in ORS 801.490;

(K) Tools, including but not limited to lawn mowers, leaf blowers, and chain saws; or

(L) A watercraft.

(d) Gasoline-ethanol blends shall contain not less than 9.2 percent by volume of agriculturally derived ethanol, exclusive of denaturants and permitted contaminants, that complies with

(A) OAR 603-027-0420(2) Ethanol ASTM D 4806 standards,

(B) Denatured as specified in 27 C.F.R. parts 20 and 21, and

(C) Complies with the volatility requirements specified in 40 C.F.R. part 80.

(e) The ethanol shall be derived from agricultural product, woody waste or residue.

(f) The gasoline and gasoline-ethanol blends shall comply with OAR 603-027-0420(1).

(g) It is prohibited to blend with casinghead gasoline, absorption gasoline, drip gasoline, or natural gasoline after the gasoline has been sold, transferred, or otherwise removed from a refinery or terminal.

(4) Gasoline Additive Restrictions.

(a) Effective November 1, 2009, a wholesale dealer, retail dealer, or nonretail dealer may not sell or offer to sell any gasoline blend or mixed with:

(A) Ethanol unless the blend or mixture meets the specifications or registration requirements established by the United States Environmental Protection Agency pursuant to section 211 of the Clean Air Act, 42 U.S.C. section 7545 and 40 C.F.R. Part 79, and the ethanol complies with ASTM International specification ASTM D 4806;

(B) Methyl tertiary butyl ether in concentrations that exceed 0.15 percent by volume; or

(C) A total of all of the following oxygenates that exceeds one-tenth of one percent, by weight, of:

(i) Diisopropyl ether,

(ii) Ethyl tert-butyl ether,

(iii) Iso-butanol,

(iv) Iso-propanol,

(v) N-butanol,

(vi) N-propanol,

(vii) Sec-butanol,

(viii) Tert-amyl methyl ether,

(ix) Tert-butanol,

(x) Tert-pentanol or tert-amyl alcohol, and

(xi) Any other additive that has not been approved by the California Air Resources Board or the United States Environmental Protection Agency.

(b) Nothing in this section shall prohibit transshipment through this state, or storage incident to the transshipment, of gasoline that contains methyl tertiary butyl ether in concentrations that exceed 0.15 percent by volume or any of the oxygenates listed in OAR 603-027-0420(4)(a)(C), provided,

(A) The gasoline is used or disposed of outside of this state; and

(B) The gasoline is segregated from gasoline intended for use within this state.

(c) Notwithstanding the additives in OAR 603-027-0420(4)(a), a person may sell, supply, or offer to sell or supply gasoline in this state that contains any oxygenate other than ethanol, if the California Air Resources Board (CARB), California Environmental Policy Council (CEPC), or the United States Protection Agency (U.S. EPA) allow use of the oxygenate.

(5) Diesel Fuel shall meet the requirements of ASTM D 975, "Standard Specification for Diesel Fuel Oils."

(6) Winter or Winterized Diesel Fuel shall meet the requirements of ASTM D 975, "Standard Specification for Diesel Fuel Oils"

and have a cold flow performance measurement which meets the ASTM D 975 tenth percentile minimum ambient air temperature charts and maps by either ASTM Standard Test Method D 2500 (Cloud Point) or ASTM Standard Test Method D 4539 (Low Temperature Flow Test, LTFT). Winter or winterized diesel (low temperature operability) is only applicable October 1–March 31 of each year.

(7) Premium Diesel Fuel — All diesel fuels identified on retail and nonretail dispensers, bills of lading, invoices, shipping papers, or other documentation with terms such as premium, super, supreme, plus, or premier shall meet the requirements of ASTM D 975, "Standard Specification for Diesel Fuel Oils" and must conform to the following requirements:

(a) Cetane Number — A minimum cetane number of 47.0 as determined by ASTM Standard Test Method D 613;

(b) Low Temperature Operability — A cold flow performance measurement which meets the ASTM D 975 tenth percentile minimum ambient air temperature charts and maps by either ASTM Standard Test Method D 2500 (Cloud Point) or ASTM Standard Test Method D 4539 (Low Temperature Flow Test, LTFT). Low temperature operability is only applicable October 1–March 31 of each year;

(c) Thermal Stability — A minimum reflectance measurement of 80 percent as determined by ASTM Standard Test Method D 6468 (180 minutes, 150 OC);

(d) Lubricity — A maximum wear scar diameter of 520 microns as determined by ASTM D 6079. If a single test of more than 560 microns is determined, a second test shall be conducted. If the average of the two tests is more

than 560 microns, the sample does not conform to the requirements of this part.

(8) Biodiesel; B100 Biodiesel and Biodiesel intended for blending with diesel fuel must,

(a) Meet the requirements of ASTM D 6751, "Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels";

(b) Be analyzed and issued a Certificate of Analysis for each batch or production lot produced in or imported into Oregon prior to blending, sale, or offer for sale in Oregon. The Certificates of Analysis expire 45 days following the date the biodiesel sample was obtained.

(c) Biodiesel must be analyzed for and comply with the visual appearance test (ASTM D 4176) upon its first receipt at a wholesale facility and prior to commingling with existing product.

(d) Prior to blending, sale, or offer for sale in Oregon, biodiesel must be analyzed and the Certificate of Analysis issued by:

(A) An accredited motor fuel laboratory, or

(B) A non-accredited motor fuel laboratory that meets all of the following requirements;

(i) The laboratory facilities must house and allow proper operation of all required equipment in accordance with the applicable test procedures,

(ii) The laboratory must use personnel trained to perform and analyze ASTM International D 6751 biodiesel fuel tests and other required tests,

(iii) The laboratory must use testing equipment that has been calibrated or verified to meet the requirements of each ASTM International test procedure used,

(iv) The laboratory must participate in an ASTM International proficiency program or similar national proficiency program for at least three times per year with appropriate results, and

(v) The laboratory must maintain current documentation of personnel qualifications, equipment verification, and proficiency results for at least one year. These records shall be available for inspection and reproduction upon request by the Director.

(9) Biodiesel Blends;

(a) Biodiesel blends through B5 must meet the requirements of ASTM D 975 Standard Specification for Diesel Fuel Oils.

(b) Biodiesel blends of B6 through B20 must meet the requirements of ASTM D 7467, Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6-B20).

(c) Blends of biodiesel and diesel fuels greater than B20 must meet the following requirements:

(A) The base diesel fuel must meet the requirements of ASTM D 975, Standard Specification for Diesel Fuel Oils; and

(B) The biodiesel blend stock must meet:

(i) The requirements of ASTM D 6751, Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, and

(ii) The requirements in OAR 603-027-0420(8).

(d) Exception; Biodiesel may be blended with diesel fuel whose sulfur, lubricity, or aromatic levels are outside specification ASTM D 975, Standard Specification for Diesel Fuel Oils, grades 1-D S15, 1-D S500, 2-D S15, or 2-D S500 provided the finished mixture meets pertinent national and local specifications and requirements for these properties.

(10) Biomass-Based Diesel, also referred to as Other Renewable Diesel and Renewable Diesel, must meet the registration requirements for fuels and fuel additives established by the U.S. Environmental Protection Agency under the 2007 42 U.S.C. 7545, comply with ASTM International D975 Standard Specification for Diesel Fuel Oils or other applicable ASTM product specifications, can be used as a finished fuel or fuel blending component, and designated "100% Biomass-Based Diesel".

(11) Biomass-Based Diesel Blends must comply with ASTM D975 Standard Specification for Diesel Fuel Oils.

(12) Biodiesel Blends, Biomass-Based Blends, or a Combination of Biodiesel and Biomass-Based Diesel Blends Required.

(a) Except as provided in subsection (d) of this section, a retail dealer, nonretail dealer, or wholesale dealer may only sell or offer for sale diesel fuel in Oregon containing;

(i) At least five percent biodiesel by volume, or

(ii) As of January 2, 2012, biomass-based diesel with at least five percent renewable component by volume, or

(iii) Five percent or less biodiesel by volume and five percent or less biomass-based diesel by volume provided the combined total of biodiesel and biomass-based diesel is at least five percent by volume.

(b) Biodiesel blends and biomass-based diesel blends shall contain the volume percent stated to the nearest;

(A) 1 volume percent for blends through 5 volume percent, and

(B) 2 volume percent for blends greater than 5 volume percent through 20 volume percent.

(c) Diesel fuel containing more than five percent biodiesel by volume or biomass-based diesel with more than five percent renewable component by volume must be labeled as required in OAR 603-027-0430.

(d) Exemption. The minimum biodiesel fuel content requirements in OAR 603-027-0420 do not apply to diesel fuel:

(A) Sold or offered for sale for use by railroad locomotives, marine engines, or home heating; or

(B) That otherwise meets the requirements in OAR 603-027-0420 but to which there have been added substances to prevent congealing or gelling of diesel fuel containing biodiesel or biomass-based diesel. This exception applies only to diesel fuel sold or offered for sale during the period from October 1 of any year to February 28 of the following year.

(13) Aviation Gasoline shall meet the requirements of ASTM D 910, "Standard Specification for Aviation Gasoline."

(14) E85 Fuel Ethanol shall meet the requirements of ASTM D 5798, "Standard Specification for Fuel Ethanol (Ed75-Ed85) for Automotive Spark-Ignition Engines."

(15) M85 Fuel Methanol shall meet the requirements of ASTM D 5797, "Standard Specification for Fuel Methanol (M70-M85) for Automotive Spark-Ignition Engines."

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561.190, 646.905 - 646.990 & 1997 OL Ch. 310 (SB 414)
 Stats. Implemented: ORS 646.905 - 646.990, 183 & 1997 OL Ch. 310 (SB 414)
 Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 15-2007(Temp), f. & cert. ef. 10-15-07 thru 4-11-08; DOA 20-2007(Temp) f. & cert. ef. 11-29-07 thru 4-11-08; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-14-08, cert. ef. 3-17-08 thru 9-12-08; DOA 21-2008, f. & cert. ef. 9-11-08; DOA 11-2009(Temp), f. & cert. ef. 7-24-09 thru 1-17-10; DOA 16-2009, f. 12-23-09, cert. ef. 1-1-10;

DOA 19-2010, f. & cert. ef. 9-14-10; DOA 7-2011, f. & cert. ef. 1-26-11; DOA 15-2011, f. & cert. ef. 9-9-11; DOA 24-2011, f. & cert. ef. 12-14-11

603-027-0430

Classification and Method of Sale of Petroleum Products

(1) General Considerations:

(a) Documentation.

(A) When gasoline; gasoline-oxygenate blends; reformulated gasoline; M85 and M100 fuel methanol; E85 and E100 fuel ethanol; B100 biodiesel and biodiesel blends; biomass-based diesel and biomass-based diesel blends; diesel fuel; winter or winterized diesel fuel; premium diesel fuel; or aviation gasoline are sold, an invoice, bill of lading, shipping paper or other documentation, must accompany each delivery other than a sale by a retail or nonretail dealer. This document must identify the:

(i) Quantity,

(ii) The name of the product,

(iii) The particular grade of the product,

(iv) The word "Winter" or "Winterized" diesel if applicable,

(v) The word "Premium" diesel if applicable,

(vi) The volume percent biodiesel and biomass-based diesel, if a biodiesel, biodiesel blend, biomass-based diesel, or biomass-based diesel blend through 5 volume percent to the nearest 1 volume percent and for greater than 5 volume percent through 20 volume percent blends to the nearest 2 volume percent,

(vii) The applicable automotive fuel rating,

(viii) The name and address of the seller and buyer,

(ix) The date and time of the sale,

(x) For gasoline-oxygenate and gasoline-alcohol blends which contain more than 1.5 mass percent oxygen, the documentation shall state the oxygenate type and oxygenate content, in volume percent, to the nearest 0.5 volume percent, and

(xi) For non-ethanol blended gasoline the documentation shall state that the gasoline is non-ethanol blended.

(B) Each operator of a bulk facility and each person who imports motor vehicle fuels into this state for sale in this state shall keep, for at least one year, at the person's registered place of business complete and accurate records of any motor vehicle fuels sold if sold or delivered in this state.

(C) Each biodiesel producer, each operator of a biodiesel bulk facility and each person who imports biodiesel into Oregon for sale in this state shall keep, on a monthly basis for at least one year, at the person's registered place of business the certificate of analysis and the analysis records for visual appearance tests that are performed upon first receipt at a wholesale facility prior to commingling with existing product for each batch or production lot of biodiesel sold or delivered in Oregon.

(D) Each biodiesel producer in Oregon shall keep, on a monthly basis for at least one year, at the person's registered place of business, documentation declaring the producer's name, location address, date, and quantity of biodiesel production and sales. This documentation shall be completed on a form provided by the Department of Agriculture and mailed on a quarterly basis to the Department in Salem, Oregon.

(E) All retail dealers, nonretail dealers, and wholesale dealers in Oregon are required to provide, upon request of the Department, evidence of a certificate of analysis for the biodiesel received.

(F) Each ethanol production facility in Oregon shall keep, on a monthly basis for at least one year, at the person's registered place of business, documentation declaring the production facility's name, location address, net ethanol production capacity, the date that the net ethanol capacity was attained, quantity of ethanol produced, and sales in Oregon. This documentation shall be completed on a form provided by the Department of Agriculture and mailed on a quarterly basis to the Department in Salem, Oregon.

(G) Retail dealers and nonretail dealers shall maintain at their facilities the octane rating certification or motor vehicle fuel delivery documentation for the three most recent deliveries to the facility for each grade of gasoline, fuel ethanol, fuel methanol, biodiesel, biodiesel blends, diesel fuel, biomass-based diesel fuel, and biomass-based diesel fuel blends sold or offered for sale.

(b) Retail and Nonretail Gasoline Dispenser Labeling. All retail and nonretail gasoline dispensing devices must identify conspicuously on each face of the dispenser(s),

- (A) The type of product,
- (B) The particular grade of the product,
- (C) Type of oxygenate contained if applicable,

(i) Including the specific volume percent of ethanol in gasoline-ethanol blends stating, for example, "THIS PRODUCT CONTAINS 10% ETHANOL" or other similar language in type at least 12.7 millimeters (1/2 inch) in height, 1.5 millimeter (1/16 inch) stroke (width of type) located on each face and on the upper 50 percent of the dispenser front panels in a position clear and conspicuous from the driver's position,

(ii) Prohibited terms and phrases include but are not limited to, "Contains Up To 10% Ethanol", "May Contain Ethanol", or any other similar language,

- (D) The applicable automotive fuel rating, and

(E) If non-ethanol blended gasoline, other than 91 octane or above, in compliance with OAR 603-027-0420, the dispensers shall be labeled, "NON-ETHANOL BLENDED GASOLINE FOR EXEMPTED USE ONLY (ORS 646.913)" in capital letters and type at least 12.7 millimeters (1/2 inch) in height, 1.5 millimeter (1/16 inch) stroke (width of type) located on each face and on the upper 50 percent of the dispenser front panels in a position clear and conspicuous to the consumer.

(c) Posting of Exceptions for Non-Ethanol Blended Gasoline. The exceptions for non-ethanol blended gasoline, other than 91 octane or above, shall be posted at a business that sells or offers for sale non-ethanol blended gasoline in a position that is clear and conspicuous to the consumer. The exceptions shall be posted:

"NON-ETHANOL BLENDED GASOLINE FOR USE IN THE FOLLOWING APPLICATIONS ONLY;" in capital letters and type at least 6.4 millimeters (1/4 inch) in height, 1 millimeter (1/32 inch) stroke (width of type), followed by,

"AIRCRAFT WITH A SUPPLEMENTAL TYPE CERTIFICATE APPROVED BY THE FEDERAL AVIATION ADMINISTRATION THAT ALLOWS THE AIRCRAFT TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES;

AIRCRAFT ISSUED A TYPE CERTIFICATE BY AN AIRCRAFT ENGINE MANUFACTURER THAT ALLOWS THE AIRCRAFT TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES;

AN AIRCRAFT THAT HAS BEEN ISSUED AN EXPERIMENTAL CERTIFICATE, DESCRIBED IN 14 C.F.R. 21.191, BY THE FEDERAL AVIATION ADMINISTRATION AND THAT IS REQUIRED BY THE MANUFACTURER'S SPECIFICATIONS TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES;

A LIGHT-SPORT AIRCRAFT, AS DEFINED IN 14 C.F.R. 1.1, THAT IS REQUIRED BY THE MANUFACTURER'S SPECIFICATIONS TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES;

A VINTAGE AIRCRAFT, AS DEFINED BY THE OREGON DEPARTMENT OF AVIATION BY RULE, THAT IS REQUIRED BY THE MANUFACTURER'S SPECIFICATIONS TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES;

AN ANTIQUE VEHICLE, AS DEFINED IN ORS 801.125;

A CLASS I ALL-TERRAIN VEHICLE, AS DEFINED IN ORS 801.190;

A CLASS III ALL-TERRAIN VEHICLE, AS DEFINED IN ORS 801.194;

A RACING ACTIVITY VEHICLE, AS DEFINED IN ORS 801.404;

A SNOWMOBILE, AS DEFINED IN ORS 801.490;

TOOLS, INCLUDING BUT NOT LIMITED TO LAWN MOWERS, LEAF BLOWERS, AND CHAIN SAWS; OR A WATERCRAFT (Reference ORS 646.913)" in capital letters and type at least 3 millimeters (1/8 inch) in height, 0.4 millimeter (1/64 inch) stroke (width of type).

(d) Grade Name. The sale of any product under any posted grade name that indicates to the purchaser that it is of a certain automotive fuel rating or ASTM grade indicated in the posted grade name must be consistent with the applicable standard specified in OAR 603-027-0420 "Standard Fuel Specifications".

(2) Automotive Gasoline and Automotive Gasoline-Oxygenate Blends:

(a) Posting of Antiknock Index Required. All automotive gasoline and automotive gasoline-oxygenate blends shall post the antiknock index in accordance with 16 CFR Part 306.

(b) Use of Lead Substitute Must Be Disclosed. Each dispensing device from which gasoline or gasoline oxygenate blend containing a lead substitute is dispensed shall display the grade name followed by "With a Lead Substitute" (e.g. "Unleaded With a Lead

Substitute"). The lettering of the lead substitute declaration shall not be less than 12.7 millimeters (1/2 in) in height and 1.5 centimeters (1/16 in) stroke (width of type). The color of the lettering shall be in definite contrast to the background color to which it is applied.

(c) Prohibition of Terms. It is prohibited to use specific terms to describe a grade of gasoline or gasoline-oxygenate blend unless it meets the minimum antiknock index requirement shown in Table 1.

TABLE 1. MINIMUM ANTIKNOCK INDEX REQUIREMENTS

The minimum antiknock index for Premium, Super, Supreme and High Test is 91

The minimum antiknock index for Mid Grade and Plus is 89

The minimum antiknock index for Unleaded with a Lead Substitute is 88

The minimum antiknock index for Regular and Unleaded (alone) is 87

(3) Diesel Fuel:

(a) Labeling of Product and Grade Required. Diesel fuel shall be identified by "Diesel" and grades "No. 1-D S15", "No. 1-D S500", "No. 1-D S5000", "No. 2-D S15", "No. 2-D S500", "No. 2-D S5000", or "No. 4-D". Each retail or nonretail dispenser of diesel fuel shall be labeled "Diesel" and the grade being dispensed.

(b) Location of Label. These labels shall be located on each face and on the upper 50 percent of the dispenser front panels in a position clear and conspicuous from the driver's position, in a type at least 12.7 millimeter (1/2 in) in height, 1.5 millimeter (1/16 in) stroke (width of type).

(4) Winter or Winterized Diesel Fuel:

(a) Labeling of Product and Grade Required. The dispensers of winterized diesel fuel must be labeled as required in OAR 603-027-0430(3)(a) and include the words "WINTERIZED DIESEL" or "WINTER DIESEL" (e.g. "WINTERIZED DIESEL No. 2-D S15").

(b) Location of Winterized Diesel Fuel Label. The location of the winterized diesel label shall be as required in OAR 603-027-0430(3)(b) or on a "pump topper" mounted on top of each winterized diesel dispenser with lettering as specified in 603-027-0430(3)(b) and must be in a position that is clear and conspicuous from the driver's position.

(5) Premium Diesel Fuel :

(a) Labeling of Premium Diesel Required. In addition to labeling requirements specified in OAR 603-027-0430(3), all retail and nonretail dispensers of premium diesel shall be labeled "Premium Diesel" (e.g. "Premium Diesel No. 2-D S15").

(b) Location of Premium Diesel Fuel Label. The location of the premium diesel fuel label shall be located on the upper 50 percent of the dispenser front panels in a position clear and conspicuous from the driver's position, in a type at least 12.7 millimeter (1/2 inch) in height, 1.5 millimeter (1/16 inch) stroke (width of type).

(6) Biodiesel and Biomass-Based Diesel:

(a) Identification of Product.

(A) Biodiesel and biodiesel blends must be identified by the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel. (Examples: B10; B20; B100)

(B) Biomass-based diesel and biomass-based diesel blends must be identified by the numerical value representing the volume percentage of biomass-based diesel immediately followed by the percentage symbol (%) and then the term "Biomass-Based Diesel" or "Biomass-Based Diesel Blend". (Examples: "10% Biomass-Based Diesel Blend"; "20% Biomass-Based Diesel Blend"; "70% Biomass-Based Diesel Blend"; "100% Biomass-Based Diesel".)

(b) Labeling of Retail and Non-Retail Dispensers Containing Between 5% and Up To and Including 20% Biodiesel or Biomass-Based Diesel.

(A) If containing biodiesel, the dispenser(s) must be labeled with either:

(i) The capital letter "B" followed by the numerical value representing the volume percentage of biodiesel fuel and ending with "Biodiesel Blend" (Examples: "B10 Biodiesel Blend"; "B20 Biodiesel Blend"); or

(ii) The phrase, "Biodiesel Blend Between 5% and 20%" or similar words; or

(iii) The Federal Trade Commission (FTC) 2011 16 CFR Part 306 approved label "Biodiesel Blend" that is appropriate for blends

from 5% to 20% biodiesel, or “B20 Biodiesel Blend” that is appropriate for 20% biodiesel blends only.

(B) If containing biomass-based diesel, the dispenser(s) must be labeled with either:

(i) “XX% Biomass-Based Diesel Blend” where the abbreviation “XX” represents the volume percentage of biomass-based diesel in the blend; or

(ii) The phrase, “Biomass-Based Diesel Blend Between 5% and 20%” or similar words; or

(iii) The Federal Trade Commission (FTC) 2011 16 CFR Part 306 approved label that is appropriate for biomass-based diesel blends from 5% to 20% biomass-based diesel.

(c) Labeling of Retail and Non-Retail Dispensers Containing More Than 20% Biodiesel or More Than 20% Biomass-Based Diesel.

(A) If containing more than 20% biodiesel, the dispenser(s) must be labeled;

(i) “Consult Vehicle Manufacturer Fuel Recommendations”, posted on the dispenser front panels in a position clear and conspicuous from the driver’s position in block letter type at least 6 mm (1/4 inch) in height by 0.8 mm (1/32) stroke (width of type) and the color must be in definite contrast to the background color to which it is applied; and in addition,

(ii) Separately labeled with the capital letter “B” followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either “Biodiesel” or “Biodiesel Blend” (Examples: “B100 Biodiesel”; “B60 Biodiesel Blend”); or

(iii) The Federal Trade Commission (FTC) 2011 16 CFR Part 306 approved label for biodiesel blends greater than 20% biodiesel.

(B) If containing more than 20% biomass-based diesel, the dispenser(s) must be labeled with:

(i) The numerical value representing the volume percentage of biomass-based diesel immediately followed by the percentage symbol (%) and then the term “Biomass-Based Diesel” or “Biomass-Based Diesel Blend” (Examples: “100% Biomass-Based Diesel”; “70% Biomass-Based Diesel Blend”); or

(ii) The Federal Trade Commission (FTC) 2011 16 CFR Part 306 approved label for biomass-based diesel blends greater than 20% biomass-based diesel.

(d) Documentation for Biodiesel, Biodiesel Blends, Biomass-Based Diesel, and Biomass-Based Diesel Blends. The operator of retail and non-retail dispensers must be provided, at the time of delivery of the fuel, with a declaration of the volume percent biodiesel, biomass-based diesel, or any combination thereof on an invoice, bill of lading, shipping paper, or other document in compliance with OAR 603-027-0430(1)(a).

(e) Exemption.

(A) Biodiesel blends containing 5% or less biodiesel by volume, 5% or less biomass-based diesel by volume, or a combination of 5% or less biodiesel by volume and 5% or less biomass-based diesel by volume, are exempted from the dispenser labeling requirements in OAR 603-027-0430(6) except,

(B) If a dispenser is labeled with any reference to biodiesel or biomass-based diesel and the fuel contains 5% or less biodiesel, 5% or less biomass-based diesel, or 5% or less biodiesel by volume and 5% or less biomass-based diesel by volume, then it must be labeled as appropriate either:

(i) With the capital letter “B” followed by the numerical value representing the volume percentage of biodiesel fuel and ending with “Biodiesel Blend” (Example: “B5 Biodiesel Blend”); or

(ii) With the numerical value representing the volume percentage of biomass-based diesel immediately followed by the percentage symbol (%) and then the term “Biomass-Based Diesel Blend” (Example: “5% Biomass-Based Diesel Blend”); or

(iii) If a combination of biodiesel and biomass-based diesel not exceeding five percent by volume of each product, “Contains Minimum 5% Renewable Fuel” or similar language.

(f) Size of Labeling Type. Except for the FTC 2011 16 CFR Part 306 approved labels and the “Consult Vehicle Manufacturer Fuel Recommendations” labels as specified, all labeling required in OAR

603-027-0430(6), must be in type at least 12 mm (1/2 inch) in height and 1.5 mm (1/16 inch) stroke (width of type).

(7) Aviation Gasoline: Labeling of Grade Required. Aviation gasoline and dispensers shall be identified by and labeled with Grade 80, Grade 100, or Grade 100LL.

(8) E85 Fuel Ethanol:

(a) How to Identify E85 Fuel Ethanol. Fuel ethanol shall be identified as E85. (Example: E85)

(b) Retail or Nonretail E85 Fuel Ethanol Dispenser Labeling.

(A) Fuel ethanol dispensers shall be labeled with its automotive fuel rating in accordance with 16 Code of Federal Regulations Part 306.

(B) A label shall be posted which states, “For Use in Flexible Fuel Vehicles (FFV) Only”. This information shall be posted on the upper 50% of the dispenser front panels in a position clear and conspicuous from the driver’s position, in a type at least 12.7 mm (1/2 inch) in height, 1.5 mm (1/16 inch) stroke (width of type).

(C) A label must be posted that states, “Consult Vehicle Manufacturer Fuel Recommendations”. This label must be posted on the dispenser front panels in a position clear and conspicuous from the driver’s position in block letter type at least 6 mm (1/4 inch) in height by 0.8 mm (1/32 inch) stroke (width of type) and the color must be in definite contrast to the background color to which it is applied.

(9) Fuel Methanol:

(a) Identification of Fuel Methanol. Fuel methanol shall be identified by the capital letter M followed by the numerical value volume percentage of methanol. (Example: M85)

(b) Retail or Nonretail Dispenser Labeling. Each retail or non-retail dispenser of fuel methanol shall be labeled in type at least 12 mm (1/2 inch) in height and 1.5 mm (1/16 inch) stroke (width of type) with the capital letter M followed by the numerical value volume percent methanol and ending with the word “methanol”. (Example: M85 Methanol).

(c) Additional Labeling Requirements. Fuel methanol shall be labeled with its automotive fuel rating in accordance with 16 CFR Part 306.

Stat. Auth.: ORS 561.190, 646.905 - 646.990 & 1997 OL Ch. 310 (SB 414)
 Stats. Implemented: ORS 183, 646.905 - 646.990 & 1997 OL Ch. 310 (SB 414)
 Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 15-2007(Temp), f. & cert. ef. 10-15-07 thru 4-11-08; DOA 20-2007(Temp) f. & cert. ef. 11-29-07 thru 4-11-08; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-14-08, cert. ef. 3-17-08 thru 9-12-08; DOA 21-2008, f. & cert. ef. 9-11-08; DOA 11-2009(Temp), f. & cert. ef. 7-24-09 thru 1-17-10; DOA 16-2009, f. 12-23-09, cert. ef. 1-1-10; DOA 19-2010, f. & cert. ef. 9-14-10; DOA 15-2011, f. & cert. ef. 9-9-11; DOA 24-2011, f. & cert. ef. 12-14-11

603-027-0440

Storage Tanks

(1) Water in Motor Vehicle Fuel Storage:

(a) Water in Gasoline-Alcohol Blends, Biodiesel, Biodiesel Blends, E85 Fuel Ethanol, M85 Fuel Methanol, and Aviation Gas. No water or water-alcohol phase greater than six millimeters (1/4 in) as determined by an appropriate detection paste is allowed to accumulate in any tank utilized in the storage of gasoline-alcohol blend, biodiesel, biodiesel blends, E85 fuel ethanol, M85 fuel methanol, and aviation fuel.

(b) Water in Gasoline, Diesel, Biomass-Based Diesel, Biomass-Based Diesel Blends, Gasoline-Ether, and Other Fuels. Water phase shall not exceed 25 mm (1 inch) in depth when measured with water indicating paste in any tank utilized in the storage of diesel, biomass-based diesel, biomass-based diesel blends, gasoline, gasoline-ether blends at retail or nonretail except as required in OAR 603-027-0440(1)(a).

(2) Product Storage Identification:

(a) Fill Connection Labeling.

(A) The fill connection for any motor vehicle fuel or aviation fuel storage tank from which the fuels are dispensed directly into motor vehicle or aircraft fuel tanks shall be permanently, plainly, and visibly marked as to the grade of product contained therein.

(B) In addition, storage tank fill connections of non-ethanol blended gasoline shall be permanently, plainly, and visibly marked that the product contained therein is non-ethanol blended gasoline.

(b) Declaration of Meaning of Color Code. When the fill connection device is marked by means of a color code, the color code key shall be conspicuously displayed at the place of business.

Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & 646.905 - 646.990
 Stats. Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905 - 646.990 & 183
 Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-14-08, cert. ef. 3-17-08 thru 9-12-08; DOA 21-2008, f. & cert. ef. 9-11-08; DOA 11-2009(Temp), f. & cert. ef. 7-24-09 thru 1-17-10; DOA 16-2009, f. 12-23-09, cert. ef. 1-1-10; DOA 24-2011, f. & cert. ef. 12-14-11

603-027-0450

Official Sampling Procedures; Inspections and Recordkeeping

(1) Official samples of motor vehicle fuel for testing shall be obtained by the Director or the Director's designate from:

- (a) The same dispensing device used for sales to customers;
- (b) Any bulk facility;
- (c) Any transporter of motor vehicle fuels.

(2) The official sample shall be obtained in the following manner:

(a) The official sample shall be collected into a clear or brown glass bottle or a metal container approved for such use;

(b) The container shall be sealed and identified immediately after the official sample has been obtained;

(c) At the motor vehicle fuel dispenser, the official sample shall be collected after at least 2 litres (one-half gallon) has been dispensed. This official sample shall be considered representative of the product dispensed.

(3) The Director of Agriculture, or the Director's authorized agent, upon reasonable oral or written notice, may make such examinations of books, papers, records, and equipment the Director requires to be kept by a biodiesel or other renewable diesel producer, facility operator or importer as may be necessary to carry out the duties of the Director under OAR 603-027-0420 and 603-027-0430.

(4) The Director or the Director's authorized agent, may obtain up to eight times per calendar year, at no cost to the Department, representative samples of biodiesel from any producer, bulk facility, business, or other establishment that sells, offers for sale, distributes, transports, hauls, delivers, or store biodiesel. The entire cost of transporting and testing of the samples shall be the responsibility of and invoiced directly to the business from which the sample was obtained. Any additional biodiesel testing beyond this specific requirement at the request of the Director shall be paid for by the Department of Agriculture.

(5) The Director of Agriculture, or the Director's authorized agent, upon reasonable oral or written notice, may make such examinations of books, papers, records, and equipment the Director requires to be kept by an ethanol production facility located in Oregon as may be necessary to carry out the duties of the Director under OAR 603-027-0420.

(6) At the time samples, or copies of books, papers or records of the owner or operator are obtained, the owner or operator shall specify what, if any, information the owner or operator considers to be confidential business information or a trade secret. The Department shall keep any information so specified (including the results of any test) in a separate file marked "confidential." The disclosure of such information shall be governed by the Oregon Public Records Law, ORS 192.410 et. seq. and section 8 of 1997 Oregon Laws Chapter 310. Nothing in this rule shall be construed to limit the use of such information in any enforcement proceeding by the Department. In the event such information is required in any enforcement proceeding by the Department, it may be used under a protective order.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561.190, 646.905, 646.915 & 646.920
 Stats. Implemented: ORS 646.905, 646.915 & 646.920
 Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 21-2008, f. & cert. ef. 9-11-08

603-027-0460

Test Methods and Reproducibility Limits

(1) Test Methods.

(a) The ASTM Standard Test Methods referenced for use within the applicable Standard Specification shall be used for enforcement purposes.

(b) Premium Diesel. The following test methods shall be used to determine compliance with the premium diesel parameters:

- (A) Cetane Number — ASTM D 613,
- (B) Low Temperature Operability — ASTM D 4539 or ASTM D 2500 (according to marketing claim),
- (C) Thermal Stability — ASTM D 6468 (180 minutes, 150 OC),

and

(D) Lubricity — ASTM D 6079.

(2) Reproducibility Limits:

(a) AKI Limits. When determining the antiknock index (AKI) acceptance or rejection of a gasoline sample, the AKI reproducibility limits as outlined in ASTM D 4814 Appendix X1 shall be acknowledged for enforcement purposes.

(b) The reproducibility limits of the ASTM standard test method used for each test performed shall be acknowledged for enforcement purposes, except as indicated in OAR 603-027-0460(2)(a).

(c) Dispute Resolution. In the event of a dispute over a reported test value, the guidelines presented in ASTM D 3244, "Standard Practice for Utilization of Test Data to Determine Conformance with Specifications", shall be used to determine the acceptance or rejection of the sample.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561.190, 646.905, 646.915 & 646.920
 Stats. Implemented: ORS 646.905, 646.915 & 646.920
 Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 21-2008, f. & cert. ef. 9-11-08

603-027-0470

Embargo of Product

(1) Stop Use Order, Hold Order or Removal Order:

(a) The Director may issue a Stop Use Order, Hold Order, or Removal Order for any motor vehicle fuel which fails to meet the requirements of OAR 603-027-0420 through 603-027-0460;

(b) A Stop Use Order, Hold Order or Removal Order may be affixed by the Director or the Director's designate to dispensing devices and storage devices containing the motor vehicle fuel ordered off sale:

(A) The Stop Use Order, Hold Order or Removal Order shall be attached to the storage tank fill cap and dispenser where the motor vehicle fuel is stored and dispensed;

(B) The Stop Use Order, Hold Order or Removal Order shall contain the following information:

- (i) A notice that the motor vehicle fuel has been prohibited from sale or use;
- (ii) A notice that the motor vehicle fuel is not to be disposed of without authorization from a Department official;
- (iii) Location of the motor vehicle fuel;
- (iv) Identification of the motor vehicle fuel;
- (v) Brand name;
- (vi) Number and type of containers;
- (vii) Marked contents;
- (viii) Other identification;
- (ix) Violation;
- (x) Name of official;
- (xi) Date.

(c) Any motor vehicle fuel which has been ordered off sale shall not be exposed for sale except under the following circumstances:

(A) The bulk facility, wholesale dealer, retail dealer, or nonretail dealer may be authorized to sell the motor vehicle fuel provided:

- (i) It can be brought up to represented quality;
- (ii) It can be brought up to ASTM specifications.

(B) The Director or the Director's designate may approve of any disposition of an off-sale commodity provided the disposition is not in conflict with Oregon Laws 1997, Chapter 310 Section 2, 3 and 5, and OAR 603-027-0420 through 603-027-0440;

(C) Any disposition authorized by the Director or the Director's designate shall be recorded on the Stop Use Order, Hold Order or Removal Order.

(D) If the Director or the Director's designate finds that the motor vehicle fuel cannot be brought up to represented quality or meet the specifications pursuant to Oregon Laws 1997, Chapter 310 Section 2, 3 and 5, and OAR 603-027-0420 through 603-027-0440, the Director or the Director's designate shall order the motor vehicle fuel removed by issuance of a Stop Use Order, Hold Order, or Removal Order to the bulk facility, wholesale dealer, retail dealer, or nonretail dealer. The Director or the Director's designate may authorize the motor vehicle fuel to be removed:

- (i) To a facility capable of reblending or refining;
- (ii) To another area within the state if specifications of that area can be met;
- (iii) Outside the state;
- (iv) Any disposition authorized by the Director or the Director's designate shall be recorded on the Stop Use Order, Hold Order or Removal Order.

(2) The owner or operator of a facility which is the subject of a Stop Use Order, Hold Order or Removal Order may appeal such an order in the manner provided in OAR 603-027-0490. A statement of appeal rights shall be included with any Stop Use, Hold or Removal Order posted as provided by section (1) of this rule. The Stop Use, Hold or Removal Order shall also be served on the owner or operator of the facility, as provided by OAR 603-207-0490. In the event the owner or operator requests a hearing to contest the Stop Use, Hold or Removal Order, such hearing shall be held as soon as is reasonably practicable. Where reasonably practicable, the Department shall give the owner or operator of the facility prior written notice of its intent to issue a Stop Use, Hold or Removal Order. In the event the owner or operator of the facility requests a hearing to contest a Stop Use, Hold or Removal Order, such person may request that the order be stayed pending completion of the contested case. The Director or the Director's designate shall stay the order if the party provides evidence and the Department determines that:

- (a) The party will suffer irreparable injury if the order is not stayed;
 - (b) There is a colorable claim of error in the proposed order; and
 - (c) Granting the stay will not result in substantial public harm.
- [Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561.190, 646.905 - 646.990, OL 1997, Ch. 310 (SB 414)
 Stats. Implemented: ORS 646.905-646.990, 183, OL 1997, Ch. 310 (SB 414)
 Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 8-2008, f. & cert. ef. 2-15-08

603-027-0480
Definitions

In addition to the definitions set forth in OAR 603-027-0410 Definitions, the following shall apply:

- (1) "Civil Penalty Assessment Notice" (CPAN) shall be an order in a contested case for the purpose of judicial review and means a document which informs a person of the existence of a violation and the assessment of a civil penalty amount as provided for in **Table 2** of OAR 603-027-0490(9). This document may be served by registered mail, certified mail, or in person.
- (2) "Enforcement" means any documented action taken to address a violation.
- (3) "Gravity" means grave consequences, seriousness or importance of a violation.
- (4) "Impact" means the financial impact on consumers and dealers.
- (5) "Intentional" means any violation where the department has documented evidence that the respondent acted with the conscious objective to cause the result or engaged in the conduct described in these regulations.
- (6) "Magnitude of Violation" means the seriousness of a violation with respect to how it is categorized by the department. The violations shall be categorized as either Gravity 1: Minor violations; Gravity 2: Moderate violations; Gravity 3: Major violations.
 - (a) Gravity 1 means the act was unintentional, not negligent and the impact was small or absent;
 - (b) Gravity 2 means the act was unintentional, not negligent and the impact was large;

(c) Gravity 3 means the act was intentional, negligent and the impact was large.

(7) "Negligent" means any violation where the respondent acted in a careless or inattentive manner, and therefore committed a violation as a result of neglect.

(8) "Notice of Noncompliance" (NNC) shall be an order in other than a contested case for purposes of judicial review and means a written warning, issued by the Department at the time a violation is discovered, which includes, but is not limited to:

- (a) A reference to the particular violation of the statute and/or administrative rule;
 - (b) A short and plain statement of the matters asserted;
 - (c) A statement of the possible ramifications of the violation.
- This document may be served by registered mail, certified mail, or in person.

(9) "Notice of Violation (NOV)" shall be an order in other than a contested case for purposes of judicial review and means a document which informs a person of the existence of a violation, the actions required to resolve the violation and the consequences of continued non-compliance. This document may be served by registered mail, certified mail, or in person.

(10) "Person" means an individual, partnership, association, or corporation.

[ED. NOTE: Tables referenced are available from the agency.]
 Stat. Auth.: ORS 561.190, 646.905, 646.915 & 646.920
 Stats. Implemented: ORS 646.905, 646.915 & 646.920
 Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98

603-027-0490
Enforcement Proceedings; Civil Penalties

(1) Consolidation of Proceedings: Notwithstanding that each and every violation of these rules and/or 1997 Oregon Laws Chapter 310 is a separate and distinct act and in cases of continuing violations, each day's continuance is a separate and distinct violation, proceedings for a Stop Use, Hold and/or Removal Order, or for the assessment of civil penalties arising from the same conduct or failure to act may be consolidated into a single proceeding.

(2) The Director or the Director's designate shall prescribe a reasonable time for the elimination of the violation prior to imposing a civil penalty, except that if a party fails to abide by the terms of any Stop Use, Hold and/or Removal Order, the Director or the Director's designate may immediately impose a civil penalty in addition to any other remedies provided by law.

(3) Violations occurring after the time prescribed for the elimination of the violation shall be considered repeat violations.

(4) Civil penalties shall be due and payable when the person incurring the penalty receives a Civil Penalty Assessment Notice in writing from the Director or the Director's designate.

(5) A Civil Penalty Assessment Notice, Stop Use Order, Hold Order and/or Removal Order shall be in writing. In addition to the posting providing for by OAR 603-207-0470 for Stop Use, Hold and Removal Orders, these documents shall be served on the owner or operator of the facility by registered mail, certified mail, or in person. The notice shall include, but not be limited to:

- (a) A reference to the particular section of the statute and/or administrative rule involved and;
- (b) A short and plain statement of the matters asserted or charged;
- (c) A statement of the amount of the penalty or penalties imposed, if any;
- (d) A statement of the person's right to request a hearing if such request is made within ten days of mailing of the notice and an explanation of how a hearing may be requested;
- (e) A statement that the notice becomes a final order unless the person upon whom the Stop Use, Hold and/or Removal Order, and /or civil penalty is assessed makes a written request for a hearing within ten days from the date of the mailing of the notice.

(6) A civil penalty imposed under the applicable statutes or these regulations may be remitted or reduced at the Director's discretion upon such terms and conditions that are proper and consistent with public safety and welfare.

Chapter 603 Department of Agriculture

(7) Hearing Procedures: All hearings shall be conducted pursuant to the applicable contested case procedures as outlined in ORS 183.310 to 183.550, and the Attorney General's Uniform and Model Rules of Procedure (OAR chapter 137).

(8) Entry of Order and Appeal Rights: If a person notified of the Stop Use, Hold, and/or Removal Order and/or civil penalty fails to request a hearing as specified in OAR 603-027-0490(5)(e), or if after the hearing the person is found to be in violation of the provisions of these rules, a final order may be entered by the Department as follows:

(a) The order shall be signed by the Director or the Director's designate;

(b) If the order is not appealed, or if it is appealed and the order is sustained on appeal, the order shall constitute a judgment and may be recorded with the county clerk in any county of this state. Any penalty provided in the order so recorded becomes a lien upon the title of any interest and real property in the county owned by the person against whom the order is entered.

(9) Penalty schedule: In addition to any other penalty provided by law, the Director may assess a civil penalty for violation of any provision of Oregon Laws 1997, chapter 310 section (7) relating to Motor Fuel Standards Regulation. The amount of any civil penalty shall be determined using the following table and shall not exceed \$10,000. In establishing penalty assessments within the table (Table 2), the department will consider factors such as the type of violation, the cause(s) of the violation, the economic impact on fuel purchasers, prior history of violations, repetition of violations, and the degree of demonstrated cooperativeness of the fuel seller. [Table not included. See ED. NOTE.]

(10) The commission of each violation has been categorized as to its magnitude of violation as follows:

(a) Gravity 1 (Minor):

(A) Labeling of Dispenser(s) (Ref. OAR 603-027-0430);

(i) Gasoline dispenser(s) not labeled with the identity of the product dispensed;

(ii) Gasoline dispenser(s) not labeled with the identity of the grade dispensed;

(iii) Gasoline dispenser(s) not labeled with the identity of oxygenates;

(iv) Gasoline-ethanol blend dispensers not labeled that the product contains 10% by volume ethanol in compliance with OAR 603-027-0430.

(v) Gasoline dispenser(s) of non-ethanol blended gasoline, other than 91 octane or above, not labeled for exempted use only in compliance with OAR 603-027-0430.

(vi) Exceptions for non-ethanol blended gasoline, other than 91 octane or above, not posted in compliance with OAR 603-027-0430.

(vii) Use of Prohibited Terms. Prohibited terms used to describe the grade of gasoline or gasoline-oxygenate blends. (Ref. OAR 603-027-0430);

(viii) Gasoline dispenser(s) not labeled with the Antiknock Index (AKI) number;

(ix) Gasoline dispenser(s) for lead substitute motor vehicle fuels not properly identified;

(x) Diesel dispenser not labeled with either the identity of the product and/or grade dispensed;

(xi) Location of either the diesel product and/or grade label not on each face and on the upper 50 percent of the dispenser front panels;

(xii) Winter or winterized diesel fuel dispenser(s) not labeled in compliance with OAR 603-027-0430;

(xiii) Premium diesel fuel dispenser(s) not labeled in compliance with OAR 603-027-0430;

(xiv) Aviation gasoline dispenser(s) not labeled with the identity of the grade dispensed;

(xv) Fuel ethanol dispenser(s) not labeled with the correct automotive fuel rating, "For Use In Flexible Fuel Vehicles (FFV) Only", or "Consult Vehicle Manufacturer Fuel Recommendations" in compliance with OAR 603-027-0430;

(xvi) Fuel methanol dispenser(s) not labeled with the correct automotive fuel rating and the identity of the product dispensed;

(xvii) Biodiesel, biodiesel blend, biomass-based diesel, or biomass-based diesel blend fuel dispenser(s) not labeled in compliance with OAR 603-027-0430.

(B) Storage Tank(s); Motor vehicle fuel storage tank(s);

(i) Not correctly identified as to the product contained;

(ii) Not correctly identified that the product contained therein is non-ethanol blended gasoline. (Ref. OAR 603-027-0440)

(C) Documentation; Wholesale Dealer and Bulk Facility (Ref. OAR 603-027-0430):

(i) Incorrect, incomplete, or no documentation of motor vehicle fuels provided to the retail dealer or nonretail dealer at the time of motor vehicle fuel delivery;

(ii) Motor vehicle fuel delivery documentation not maintained for at least one year at the person's registered place of business.

(D) Certificate of Analysis Documentation; Biodiesel Producer, Operator of a Biodiesel Bulk Facility, and each Person Who Imports Biodiesel not keeping on a monthly basis for at least one year, at the person's registered place of business the certificate of analysis for each batch or production lot of biodiesel sold or delivered in Oregon (Ref. OAR 603-027-0430);

(E) Visual Appearance Analysis Documentation; Biodiesel Producer, Operator of a Biodiesel Bulk Facility, and each Person Who Imports Biodiesel not keeping on a monthly basis for at least one year, at the person's registered place of business the analysis records for visual appearance tests that are performed upon first receipt at a wholesale facility prior to commingling with existing product for each batch or production lot of biodiesel sold or delivered in Oregon (Ref. OAR 603-027-0430);

(F) Documentation; Biodiesel Production Facility not keeping, on a monthly basis for at least one year, at the person's registered place of business, documentation declaring the producer's name, location address, date and quantity of biodiesel production and sales (Ref. OAR 603-027-0430);

(G) Documentation not delivered on a quarterly basis to the Oregon Department of Agriculture declaring the biodiesel producer's name, location address, date and quantity of biodiesel production and sales in compliance with OAR 603-027-0430;

(H) Documentation; Retail Dealer, Nonretail Dealer, and Wholesale Dealer not providing, upon request of the Department, evidence of a certificate of analysis for the biodiesel received (Ref. OAR 603-027-0430);

(I) Documentation; Ethanol Production Facility not keeping, on an annual basis by month, at the person's registered place of business, documentation declaring the production facility's name, location address, net ethanol production capacity, the date that the net ethanol capacity attained, quantity of ethanol produced, and sales in Oregon.

(J) Documentation declaring the ethanol facility's name, location address, net ethanol production, date, quantity of ethanol produced, and sales in Oregon not delivered to the Oregon Department of Agriculture on a quarterly basis in compliance with OAR 603-027-0430;

(K) Documentation; Retail Dealer and Nonretail Dealer (Ref. OAR 603-027-0430); Octane rating certification or motor vehicle fuel delivery documentation not maintained at their facilities for the three most recent deliveries to the facility for each grade of gasoline, fuel ethanol, fuel methanol, biodiesel, biodiesel blends, diesel fuel, biomass-based diesel fuel, and biomass-based diesel fuel blends sold or offered for sale.

(b) Gravity 2 (Moderate):

(A) Storage Tank(s);

(i) Water phase in motor vehicle fuel storage tank(s) for gasoline-alcohol blends, B100 Biodiesel, Biodiesel Blends, E85 fuel ethanol, M85 fuel methanol, and aviation fuel exceed allowable limits (Ref. OAR 603-027-0440);

(ii) Water phase in motor vehicle fuel storage tank(s) for gasoline, diesel, biomass-based diesel, biomass-based diesel blends, gasoline-ether, and other fuels exceed allowable limits (Ref. OAR 603-027-0440).

(c) GRAVITY 3 (Major):

(A) Automotive fuel rating of the gasoline does not meet the minimum antiknock index (AKI) posted on the dispenser or certified on the invoice, bill of lading, shipping paper, or other documentation. (Ref. OAR 603-027-0420 and 603-027-0430);

(B) Gasoline minimum motor octane number is less than 82 for gasoline with an AKI of 87 or greater;

(C) Gasoline does not meet ASTM standards (Ref. OAR 603-207-0420);

(D) Gasoline offered for sale with a lead substitute that does not meet requirements for a lead substitute gasoline. (Ref. OAR 603-207-0420);

(E) Ethanol intended for blending with gasoline does not meet the requirements of ASTM D 4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel". (Ref. OAR 603-027-0420);

(F) Gasoline sold or offered for sale does not meet gasoline-ethanol blend requirements (Ref. OAR 603-027-0420);

(G) Gasoline Additive Restrictions: A wholesale dealer, retail dealer, or nonretail dealer selling or offering for sale gasoline blended or mixed with prohibited additives. (Ref. OAR 603-027-0420);

(H) Diesel fuel offered for sale does not meet ASTM standards (Ref. OAR 603-027-0420);

(I) Winter or Winterized diesel fuel offered for sale does not meet Standard Fuel Specifications (Ref. OAR 603-027-0420);

(J) Premium diesel fuel offered for sale does not meet Standard Fuel Specifications (Ref. OAR 603-027-0420);

(K) Biodiesel intended for blending with diesel fuel does not meet ASTM Standard Fuel Specifications (Ref. OAR 603-027-0420);

(L) Biodiesel blend offered for sale does not meet fuel specifications (Ref. OAR 603-027-0420);

(M) Each batch or production lot of biodiesel produced in or imported into Oregon not analyzed and issued a Certificate of Analysis prior to blending, sale, or offered for sale in Oregon. (Ref. OAR 603-027-0420);

(N) Biodiesel Certificate of Analysis expired prior to blending, sale, or offer for sale in Oregon. (Ref. OAR 603-027-0420);

(O) Biodiesel not analyzed for and complying with the visual appearance test (ASTM D 4176) upon its first receipt at a wholesale facility and prior to commingling with existing product. (Ref. OAR 603-027-0420);

(P) Biodiesel not analyzed and the Certificate of Analysis issued by a motor fuel laboratory complying with OAR 603-027-0420 prior to blending, sale, or offer for sale in Oregon. (Ref. OAR 603-027-0420);

(Q) Biomass-based diesel sold or offered for sale does not meet fuel specifications (Ref. OAR 603-027-0420);

(R) Biomass-based diesel blends sold or offered for sale do not meet fuel specifications (Ref. OAR 603-027-0420);

(S) Diesel fuel sold or offered for sale does not meet diesel-biodiesel and biomass-based diesel blend requirements. (Ref. OAR 603-027-0420);

(T) Biodiesel, biodiesel blends, biomass-based diesel, biomass-based diesel blends, or any combination thereof content not to nearest 1 volume percent for blends through 5 percent by volume or not to nearest 2 volume percent for blends greater than 5 percent by volume through 20 percent by volume (Ref. OAR 603-027-0420);

(U) Aviation gasoline does not meet the requirements of ASTM D 910, "Standard Specification for Aviation Gasolines". (Ref. OAR 603-027-0420);

(V) E85 Fuel Ethanol offered for sale does not meet ASTM Standard Fuel Specifications (Ref. OAR 603-027-0420);

(W) M85 Fuel Methanol offered for sale does not meet ASTM Standard Fuel Specifications (Ref. OAR 603-027-0420).

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & 646.905 - 646.990
Stats. Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905 - 646.990 & 183
Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-14-08, cert. ef. 3-17-08 thru 9-12-08; DOA 21-2008, f. & cert. ef. 9-11-08; DOA 11-2009(Temp), f. & cert. ef. 7-24-09 thru 1-17-10; DOA 16-2009, f. 12-23-09, cert. ef. 1-1-10; DOA 19-2010, f. & cert. ef. 9-14-10; DOA 24-2011, f. & cert. ef. 12-14-11

Regulation for Equipment Specifications, Tolerances, and Other Technical Requirements

603-027-0630

Application

OAR 603-027-0635 and 603-027-0640 shall apply to weighing and measuring instruments and devices within Oregon as follows:

(1) To commercial weighing and measuring equipment; that is, to weights and measures and weighing and measuring devices commercially used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, vehicles, produce, or articles for distribution or consumption, purchases, offered or for sale, hire, or award, or in computing any basic charge or payment for services rendered on the basis of weight or measure, or in determining weight or measure when a charge is made for such determination.

(2) To any accessory attached to or used in connection with a commercial weighing or measuring device when such accessory is so designed that its operation affects the accuracy of the device.

(3) To weighing and measuring equipment in official use for the collection of statistical information by government agencies.

Stat. Auth.: ORS 561.190 & 618.136 - 618.246
Stats. Implemented: ORS 561.190 & 618.136 - 618.246
Hist.: AD 1010(23-74), f. 12-20-73, ef. 1-11-74

603-027-0635

Adoption of the National Institute of Standards and Technology Handbook 44

Except as provided in OAR 603-027-0640, the specifications, tolerances, and other technical requirements for the design, manufacture, installation, performance test, and use of weighing and measuring equipment within Oregon shall be those adopted by the National Conference on Weights and Measures, and contained in the 2010 Edition of Handbook 44, published by the U.S. Department of Commerce, entitled the "National Institute of Standards and Technology Handbook 44-Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices", which publication is by this reference hereby made a part of this rule.

[Publications referenced are available from the agency.]
Stat. Auth.: ORS 561 & 618
Stats. Implemented: ORS 618.016, 618.031, 618.051, 618.056, 618.066, 618.076, 618.081, 618.086, 618.096, 618.115, 618.151 & 618.275
Hist.: AD 1010(23-73), f. 12-20-73, ef. 1-11-74; AD 1056(2-75), f. 4-16-75, ef. 5-11-75; AD 6-1977, f. & ef. 3-21-77; AD 10-1979, f. & ef. 8-22-79; AD 19-1981, f. & ef. 8-21-81; AD 2-1986, f. & ef. 1-21-86; AD 9-1988, f. & cert. ef. 12-15-88; AD 8-1990, f. & cert. ef. 4-5-90; AD 3-1992, f. & cert. ef. 4-9-92; AD 12-1996, f. & cert. ef. 12-10-96; DOA 8-2000, f. & cert. ef. 3-29-00; DOA 9-2002, f. & cert. ef. 2-15-02; DOA 20-2004, f. & cert. ef. 6-28-04; DOA 3-2007, f. & cert. ef. 2-2-07; DOA 19-2010, f. & cert. ef. 9-14-10

603-027-0640

Exceptions to the National Institute of Standards and Technology Handbook 44

The following exceptions and amendments are made to said handbook identified in OAR 603-027-0635:

(1) General Code: Section G-UR. User Requirements. In the last sentence of subsection G-UR.4.1 "Maintenance of Equipment", change "device user" to "device owner or operator".

(2) Scale Code:

(a) Section UR.3. User Requirements. At the end of subsection UR.3.3 "Single-Draft Vehicle Weighing", of the Scale Code in said handbook, add a new paragraph (c): "(c) The requirements of this rule apply only to new or used vehicle scales installed after August 13, 1975."

(b) Section UR.3. User Requirements. At the end of subsection UR.3.7 (a) add "and domestic solid waste".

(c) (Add a new subsection UR.3.3.1. "Multiple-Draft Vehicle Weighing", to the Scale Code in said handbook: "UR.3.3.1. Multiple Draft Vehicle Weighing. A vehicle scale installed and in use for weighing highway vehicles prior to August 13, 1975, may, at its then existing location, continue to be used for commercially weighing a highway vehicle or a coupled highway vehicle in multiple-draft rather than a single draft if:

(A) The vendor and vendee to the weighing transaction or an agent of either with written authority to consent to the transaction,

agree in writing to a multiple-draft weight determination and provide written disclosure of the multiple-draft weight determination for the information of third parties to the weighing transaction, in a manner prescribed by the Department;

(B) At least one of the approaches to such a scale is straight, level and in the same plane as the scale platform and the weight determination is made using that approach; and

(C) The vehicle weight is limited or distributed on the scale platform so as not to exceed the manufacturer's rated sectional capacity for such a scale."

(d) Non-price-computing non-electronic mechanical scales of 50 kilograms (110 pounds) capacity or less that meet other Scale Code design, performance, marking and user requirements are exempt from ACCURACY CLASS MARKING under Section S.5. provided that devices intended for Class III applications excluding retail precious metals and semi-precious gem weighing under Table 7a. of Scale Code Section UR.1.1(a) shall have a minimum of 240 scale divisions.

(3) Appendix D Definitions.

(a) Direct Sale. Replace with the following: "A sale in which both parties in the transaction are present when the quantity is being determined."

(b) Remanufactured device. At the end of the Remanufactured device definition add "by a remanufacturer".

(c) Remanufacturer. Add the following definition: "Remanufacturer. A company or individual who produces remanufactured devices or remanufactured main elements for resale."

(4) Hydrocarbon Gas Vapor-Measuring Devices Code. Section 3.33. Add a new subsection "N.7. Leak Test" to the Hydrocarbon Gas Vapor-Measuring Devices Code in said handbook: "N.7. Leak Test. Each hydrocarbon gas vapor-measuring device shall be submitted to a pressure leak test not to exceed the manufacturer's maximum rated pressure."

[ED. NOTE: Tables referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561 & 618

Stats. Implemented: ORS 618.016, 618.031, 618.051, 618.056, 618.066, 618.076, 618.081, 618.086, 618.096, 618.115, 618.151 & 618.275

Hist.: AD 1010(23-73), f. 12-20-73, ef. 1-11-74; AD 1050(40-74), f. 11-20-74, ef. 12-11-74; AD 1056(2-75), f. 4-16-75, ef. 12-11-74; AD 6-1977, f. & ef. 3-21-77; AD 9-1979, f. & ef. 8-16-79; AD 12-1981, f. & ef. 7-6-81; AD 2-1986, f. & ef. 1-21-86; AD 9-1988, f. & cert. ef. 12-15-88; AD 8-1990, f. & cert. ef. 4-5-90; AD 3-1992, f. & cert. ef. 4-9-92; AD 12-1996, f. & cert. ef. 12-10-966; DOA 8-2000, f. & cert. ef. 3-29-00; DOA 9-2002, f. & cert. ef. 2-15-02; DOA 10-2002, f. & cert. ef. 3-7-02; DOA 11-2004, f. & cert. ef. 3-26-04; DOA 20-2004, f. & cert. ef. 6-28-04; DOA 3-2007, f. & cert. ef. 2-2-07

Weights and Measures

603-027-0650

Application

This regulation shall apply to all classes of devices and/or equipment as covered in **National Institute of Standards and Technology Handbooks 44, 105-1, 105-2, and 105-3.**

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561 & 618

Stats. Implemented: ORS 618.156

Hist.: AD 20-1990, f. & cert. ef. 10-25-90

603-027-0655

National Type Evaluation Program

(1) The term "National Type Evaluation Program" shall be construed to mean a program of cooperation between the National Institute of Standard and Technology, the National Conference on Weights and Measures, the State, and the private sector for determining, on a uniform basis, conformance of a type with the relevant provisions of National Institute of Standards and Technology Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," National Institute of Standards and Technology Handbook 105-1, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, specifications and Tolerances for Field Standard Weights (NIST Class F)," National Institute of Standards and Technology Handbook 105-2, "Specifications and Tolerances for Reference Stan-

dards and Field Standard Weights and Measures, Specifications and Tolerance for Field Standard Measuring Flask," or National Institute of Standards and Technology Handbook 105-3, "Specifications and Tolerances for Reference Standards and Field Standard Weights and measures, Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards."

(2) Type Evaluation: The term "type evaluation" shall be construed to mean the testing, examination, and/or evaluation of a type by a Participating Laboratory under the National Type Evaluation Programs.

(3) Type: The term "type" shall be construed to mean a model or models of a particular measurement system, instrument, element, or a field standard that positively identified the design. A specific type may carry in its measurement ranges, size, performance, an operating characteristics as specified in the Certificate of Conformance.

(4) Participating Laboratory: The term "participating laboratory" shall be construed to mean any State Measurement Laboratory that has been certified by the National Institute of Standards and Technology, in accordance with its program for the Certification of Capability of state Measurement Laboratories, to conduct a type evaluation under the National Type Evaluation Program.

(5) Certificate of Conformance: The term "certificate of conformance" shall be construed to mean a document issued by the National Institute of Standards and Technology or the National Conference on Weights and Measures based on testing in participating laboratories, said document constituting evidence of conformance of a type with the requirements of National Institute of Standards and Technology Handbooks 44, 105-1, 105-2, 105-3.

(6) Director: The term "director" means the Director of the Department of Agriculture.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561 & 618

Stats. Implemented: ORS 618.156

Hist.: AD 20-1990, f. & cert. ef. 10-25-90; DOA 19-2010, f. & cert. ef. 9-14-10

603-027-0660

Certificate of Conformance

The Director may require any weight or measure, or any weighing or measuring instrument or device to be issued a Certificate of Conformance prior to use for commercial or law enforcement purposes.

Stat. Auth.: ORS 561 & 618

Stats. Implemented: ORS 618.156

Hist.: AD 20-1990, f. & cert. ef. 10-25-90

603-027-0665

Participating Laboratory

The Director is authorize to operate a Participating Laboratory as part of the National Type Evaluation Program. In this regard, the Director is authorized to charge and collect fees for type evaluation services.

Stat. Auth.: ORS 561 & 618

Stats. Implemented: ORS 618.156

Hist.: AD 20-1990, f. & cert. ef. 10-25-90

Weighing and Measuring Device Placed in Service Requirements

603-027-0670

Definitions

As used in this Chapter, unless the context requires otherwise:

(1) "Placed in Service" means to install or repair following official rejection of any weighing or measuring device used commercially or intended to be used commercially.

(2) "Predominantly in Favor" means any and all weighing or measuring equipment, by group or entirety, in service at a single place of business found to be in error predominantly in a direction favorable to the device owner or operator:

(a) More than 50 percent of the total devices with errors in favor of the device owner or operator; and

(b) In the case of measuring devices, more than 50 percent of the devices dispensing any single product, grade, service level, or payment method, with errors in favor of the device owner or oper-

ator. Devices that are not consistently minus (i.e. have either one “zero” or one “plus” error in addition to one minus error) on either the normal or special test will not be included in the calculations to determine if the entire site or a specific product, grade, service level, or payment method, is predominantly minus.

(3) “Repair,” in any of its variant forms, means to adjust or recondition any weighing or measuring device following official rejection.

(4) “Service Agency” means any agency, firm, company or corporation which for hire, award, commission, or any other payment of any kind, installs, services, repairs or reconditions a commercial weighing or measuring device.

(5) “Serviceperson” means any individual who for hire, award, commission, or any other payment of any kind, installs, services, repairs, or reconditions a commercial weighing or measuring device.

Stat. Auth.: ORS 561.190 & 618

Stats. Implemented: ORS 618.031 & 618.156

Hist.: DOA 26-1999, f. & cert. ef. 12-6-99; DOA 3-2007, f. & cert. ef. 2-2-07

603-027-0680

Placed in Service

A weighing or measuring device shall not be used commercially in the State of Oregon until:

(1) It is licensed as required in ORS 618.121;

(2) Either:

(a) A Placed in Service Report is completed and distributed as required in OAR 603-027-0690; or

(b) Express permission is given to the device owner or operator by a representative of the Measurement Standards Division,

(3) The devices are in compliance with all applicable requirements of the 2010 Edition of the National Institute of Standards and Technology (N.I.S.T.) Handbook 44;

(4) The devices are issued an active National Type Evaluation Program (N.T.E.P.) Certificate of Conformance (CC) on the entire weighing or measuring system unless otherwise exempted;

(5) The devices are installed in accordance with the manufacturer’s instructions;

(6) The devices are adjusted within applicable tolerances and not Predominantly in Favor of the device owner or operator;

(7) The devices are adjusted as closely as practicable to zero error; and

(8) Security seals are appropriately affixed to any mechanism designed to be sealed.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561.190 & 618

Stats. Implemented: ORS 618.031 & 618.156

Hist.: DOA 26-1999, f. & cert. ef. 12-6-99; DOA 9-2002, f. & cert. ef. 2-15-02; DOA 20-2004, f. & cert. ef. 6-28-04; DOA 3-2007, f. & cert. ef. 2-2-07; DOA 19-2010, f. & cert. ef. 9-14-10

603-027-0690

Placed in Service Report

The Measurement Standards Division shall make available to each Service Agency report forms to be known as “Placed in Service Reports.” A Serviceperson or a serviceperson representing a Service Agency shall sign such a form and execute it in triplicate for each rejected device restored to service and for each newly installed device placed in service. Properly completed rejection tag(s) shall suffice in lieu of a Placed in Service Report for device(s) restored to service following official rejection. Within 24 hours after a device is restored to service, or placed in service, the original of the properly executed Placed in Service Report or any completed official rejection tag removed from the device, shall be mailed to the Measurement Standards Division, 635 Capitol Street NE, Salem, Oregon, 97301-2532. The duplicate copy of the report shall be handed to or mailed to the owner or operator of the device, and the triplicate copy of the report shall be retained by the Serviceperson or Agency.

Stat. Auth.: ORS 561.190 & 618

Stats. Implemented: ORS 618.031 & 618.156

Hist.: DOA 26-1999, f. & cert. ef. 12-6-99

603-027-0700

Responsibilities of Service Person or Service Agency

The Service person or Service Agency is responsible for placing in service, installing, repairing, and adjusting devices such that:

(1) The devices are in compliance with all applicable requirements of the 2010 Edition of the National Institute of Standards and Technology (N.I.S.T.) Handbook 44;

(2) The devices are issued an active National Type Evaluation Program (N.T.E.P.) Certificate of Conformance (CC) on the entire weighing or measuring system unless otherwise exempted;

(3) The devices are installed in accordance with the manufacturer’s instructions;

(4) The devices are adjusted within applicable tolerances and not Predominantly in Favor of the device user;

(5) The devices are adjusted as closely as practicable to zero error;

(6) Security seals are appropriately affixed to any mechanism designed to be sealed; and

(7) A Placed in Service Report is completed and distributed as required in 603-027-0690.

[Publications: Publications referenced are available from the agency.]

Stat. Auth. ORS 618.031 & 618.156

Stats. Implemented: ORS 618.031 & 618.156

Hist.: DOA 26-1999, f. & cert. ef. 12-6-99; DOA 9-2002, f. & cert. ef. 2-15-02; DOA 20-2004, f. & cert. ef. 6-28-04; DOA 3-2007, f. & cert. ef. 2-2-07; DOA 19-2010, f. & cert. ef. 9-14-10

DIVISION 28

MEAT PRODUCTS AND ESTABLISHMENTS

General

603-028-0005

Definitions

In addition to the provisions and definitions set forth in ORS Chapters 616 and 619, a meat and meat products establishment is subject to the definitions set forth in OAR 603-025-0010.

(1) “Fat Content” means the amount of fat contained in a meat or meat product as determined by laboratory procedures and methods recommended and accepted by the Association of Official Analytical Chemists (AOAC).

(2) “Ground Beef” or “Chopped Beef” means chopped, fresh or frozen beef with a maximum fat content of 30 percent of the finished product weight.

(3) “Lean Ground Beef” means chopped, fresh or frozen beef with a maximum fat content of 22 percent of the finished product weight.

(4) “Extra Lean Ground Beef” means chopped, fresh or frozen beef with a maximum fat content of 16 percent of the finished product weight.

(5) “Hamburger” means chopped fresh or frozen beef with a maximum fat content of 30 percent of the finished product weight not containing corn syrup solids, corn syrup, or glucose syrup as seasoning, in excess of two percent of the finished product weight and with or without other beef fat.

(6) “Meat (species) Patty” or “Meat (species) Patty Mix” means a ground or chopped meat product, from one or more fresh or frozen meats, with a maximum fat content of 30 percent of the finished product weight, and a maximum added extender content of ten percent (on a dry weight basis) of the finished product weight. It may contain the following as additional optional ingredients:

(a) Water;

(b) Corn syrup solids, corn syrup, or glucose syrup as seasoning, not in excess of two percent of the finished product weight;

(c) Binders;

(d) Extenders (cereals, whey protein, soy protein, textured vegetable protein etc.), but if such is textured vegetable protein, it shall be fortified. Rehydrated extenders shall contain 70 percent or less water.

(7) “Fabricated (species) Steak”, or Formed (species) Steak”, “Shaped (species) Steak”, or “Molded (species) Steak” means a fab-

ricated, formed, comminuted meat product from fresh or frozen meat of the species identified, with a maximum fat content of 30 percent of the finished product weight, and without the addition of water, extenders or binders. It may contain the following as additional optional ingredients:

- (a) Other fat of the same species;
- (b) Hydrolyzed plant protein or other flavorings.

(8) "Fresh Pork Sausage" means a coarse or finely comminuted meat product, from fresh or frozen pork meat, with a maximum fat content of 50 percent of the finished product weight, and may contain added seasonings (condimental substances), and added water or ice (to facilitate chopping or mixing) not to exceed three percent of the total ingredients used.

(9) "Fresh Beef Sausage" means a coarse or finely comminuted meat product, from fresh or frozen beef meat, with a maximum fat content of 30 percent of the finished product weight, and may contain added seasonings (condimental substances), and added water or ice (to facilitate chopping or mixing) not to exceed three percent of the total ingredients used.

(10) "Breakfast Sausage" means a coarse or finely comminuted meat product from fresh or frozen meat or meat-by-products, with a maximum fat content of 50 percent of the finished product weight, and may contain added seasonings (condimental substances), added water or ice (to facilitate chopping or mixing) not to exceed three percent of the total ingredients used, and extenders (cereals, whey protein, soy protein, textured vegetable protein or plant protein, etc.) not to exceed 3.5 percent of the finished product weight. If textured vegetable protein is used, it shall be fortified.

(11) "Beef Barbecue", "Barbecued Pork", or a similar barbecued product means a meat product cooked by the direct action of dry heat for a sufficient period of time to assume the usual characteristics of a barbecued article, including the formation of a brown crust on the surface and the rendering of surface fat. Such product may be basted or injected with a sauce during the cooking process.

(12) Only the terms "Lean" or "Extra Lean" may be used to describe the products identified in sections (4) and (5) of this rule.

(13) If beef cheek meat (trimmed beef cheeks) is used in the products identified in sections (3), (4), (5) and (6) of this rule, the amount of such shall not exceed 25 percent of the finished product weight, and if in excess of natural proportions, shall be declared on the package label or bulk display placard.

(14) Domesticated elk means North American wapiti (*Cervus canadensis*), Manitoban elk (*Cervus elaphus manitobensis*), Rocky Mountain elk (*Cervus elaphus nelsoni*), Roosevelt elk (*Cervus elaphus roosevelti*) and Tule elk (*Cervus elaphus nannodes*) that are born and raised in captivity.

Stat. Auth.: ORS 561, 616 & 619
 Stats. Implemented: ORS 603.085, 619.031 & 619.046
 Hist.: AD 1005(19-73), f. 12-5-73, ef. 12-25-73; AD 21-1990, f. & cert. ef. 11-27-90; DOA 13-2002, f. & cert. ef. 4-11-02; DOA 12-2007, f. & cert. ef. 7-2-07

Sanitation, Maintenance, and Construction

603-028-0100

Buildings

(1) Meat and Meat Product Establishments are subject to the provisions specified in OAR 603-025-0020, 603-025-0030 and 603-025-0150.

(2) In addition, Poultry and Rabbit Slaughterer/Processors are subject to the provisions of OAR 603-028-0605 and 603-028-0825.

(3) Lighting — No illumination or display shall be of a type, color, or density that alters or distorts the appearance of a meat product to make it appear of better quality than the product actually is.

(4) Waste — Unwholesome and inedible meat products shall be denatured prior to removal.

(5) Ready-to-eat smoked pork or meat products shall be processed at not less than 140 degrees F. for a sufficient length of time to destroy trichina and other toxigenic organisms. The smoking compartment shall be equipped with accurate (plus or minus 2 degrees F.), visible recording chart thermometers for recording internal product temperatures. An indicating thermometer shall be provided showing the ambient temperature of the smoking compartment. Each

recording chart shall be maintained for at least one year from the date of recording, shall show the type and lot number of the meat product being smoked, the date thereof, and bear the signature of the person in charge.

(6) The carcasses or products of game animals, game birds or other non-meat animals shall not be:

(a) Stored in an establishment, unless apart from meat or meat products and securely enclosed in a clean wrapper or game bag;

(b) Prepared in any manner, except after completion of the daily preparation of meat or meat products, in which case the equipment and utensils utilized shall thereafter be cleaned and sanitized.

(7) Elk held for slaughter shall be kept in the most secure interior pens at the slaughter plant. These holding and transfer facilities shall be adequate to prevent escape of the animals.

Stat. Auth.: ORS 561, 616 & 619
 Stats. Implemented: ORS 603.085, 619.031 & 619.046
 Hist.: AD 1005(19-73), f. 12-5-73, ef. 12-25-73; AD 21-1990, f. & cert. ef. 11-27-90; DOA 13-2002, f. & cert. ef. 4-11-02

603-028-0212

General Controls

The operator of a slaughtering facility shall ensure that required blood and tissue samples, and any means of identification of domesticated elk slaughtered at that facility be collected and submitted to the Oregon Department of Agriculture.

Stat. Auth.: ORS 561 & 603.085
 Stats. Implemented:
 Hist.: DOA 13-2002, f. & cert. ef. 4-11-02

Packaging, Labeling, Advertising, and Display

603-028-0300

Packaging

(1) Package coverings or wrapping of meat or meat products shall not be of a color, design, fabrication, or kind as to be misleading or deceptive with respect to the color, quality, nature, or kind of meat or meat product.

(2) Transparent or semi-transparent package wrappers, casings, or coverings of cured, cured and smoked, or cured and cooked sausage products, and sliced ready-to-eat meat products may be color-tinted or bear red designs, not to exceed 50 percent of such package wrapper, casing, or covering. However, the transparent or semi-transparent portion of the principal display panel shall be free of any color-tinting or red designs, and such principal display panel shall provide at least 20 percent unobstructed, clear space, consolidated in one area, so that the true color, quality, nature, or kind of meat product is visible.

(3) Meat or meat products shall not be packaged in such a manner as to hide from view undesirable or less costly portions, cuts or portions, cuts or portions of cuts of the meat, or meat products contained therein.

(4) Sliced bacon, other than that which is canned or packaged at the time of offering for retail sale, shall only be packaged in containers which provide the retail customer with a clear, unobstructed view of a substantial portion of a slice of bacon similar to that packaged therein, and such bacon shall not be packaged in such a manner as to make the whole package appear to be of better quality than it actually is.

(5) Except as otherwise provided in this rule, Meat and Meat Products shall be labeled in accordance with OAR 603-025-0020(17), 603-025-0080 and 603-025-0190, the Federal Wholesome Meat Act and the provisions contained in the Code of Federal Regulations specified in Title 9, Part 319, and at retail shall be labeled as recommended in the **1973 Uniform Retail Meat Identity Standards** published by the National Livestock and Meat Board.

(6) A meat or meat product labeled with descriptive, comparative or superlative terms as to fat content, shall also be labeled with a qualifying statement indicating the percentage of fat content thereof. A reasonable variation between fat content in descending order shall be maintained if more than one such descriptive, comparative or superlative term is used. A bulk display placard may be used in lieu of labeling in this respect.

(7) The term “fresh” shall not be used on labels of a meat or meat product which:

- (a) Contains any added nitrites, nitrates, or other preservatives;
- (b) Has been salted for preservation, pickled, irradiated, heat-ed or smoked;
- (c) Has been frozen and thawed prior to retail sale.

(8) Pet animal food meat products shall be additionally labeled “**Not For Human Consumption**”.

(9) Packaged fryers, whole or cut-up, not including giblets, shall be labeled “**whole fryer without giblets**”. Packaged fryer parts labeled as specific parts shall not contain other parts of lesser value unless labeled to that effect (“**breast with portion of ribs**”; “**thighs with portion of backs**”; etc.).

(10) A meat and meat product advertisement shall conform with the requirements of sections (5), (6), and (7) of this rule, except for the ingredient declaration.

(11) A bulk display of meat or meat products shall include a clearly visible and legible placard prominently displayed immediately adjacent to such display, and such placard shall be of such a color contrast that it may be easily read. Such placard shall contain:

- (a) The product name;
- (b) A declaration of price per unit of weight;
- (c) A percentage of fat if meeting the requirements of section (6) of this rule;
- (d) Other statement as may be required by these regulations.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561, 616 & 619

Stats. Implemented: ORS 603.085, 619.031 & 619.046

Hist.: AD 1005(19-73), f. 12-5-73, ef. 12-25-73; AD 21-1990, f. & cert. ef. 11-27-90; DOA 12-2007, f. & cert. ef. 7-2-07

Standards of Quality, Identity, and Composition

603-028-0405

Additives

(1) Proteolytic enzyme (tenderizers) substances may be used in raw meat or raw meat products, and if so used a declaration of this fact shall be included on the package label or bulk display placard.

(2) No non-meat substance, including, but not limited to, sulfite compounds, salts, or esters of sulfurous acids, benzoate compounds niacin compounds, ascorbates, nitrates, nitrites, artificial colorings, or flavorings, shall be used in raw meat or raw meat products unless specifically provided in these regulations.

Stat. Auth.: ORS 561.190, 603.085, 619.031 & 619.046

Stats. Implemented: ORS 603.085, 619.031 & 619.046

Hist.: AD 1005(19-73), f. 12-5-73, ef. 12-25-73

Prohibitions

603-028-0500

Prohibited Acts

No operator or employee of an establishment shall:

(1) Fail to keep and maintain an establishment and equipment therein or thereon in a clean, healthful, and sanitary condition as required by subsection (1) of ORS Chapter 619 (Section 5, Chapter 174, Oregon Laws 1973) and OAR 603-028-0100.

(2) Prepare, sell, offer, or hold for sale any meat or meat product that is:

(a) Misbranded as defined in subsection (1) of ORS 619.010 and subsections (1), (7), (8), and (10) of ORS 616.250, and as prescribed in OAR 603-028-0300;

(b) Adulterated as defined in subsections (1) and (2) of ORS 616.235, and as prescribed in OAR 603-028-0300 and 603-028-0405.

(3) Prepare, sell, offer, or hold for sale domesticated elk meat or meat by-products where the slaughtering and processing has not been conducted in establishment inspected and certified for wholesomeness by the U.S. Department of Agriculture or a successor agency.

Stat. Auth.: ORS 561, 603 & 619

Stats. Implemented: ORS 603.085, 619.031 & 619.046

Hist.: AD 1005(19-73), f. 12-5-73, ef. 12-25-73; AD 13-1978, f. & ef. 9-5-78; AD 21-1990, f. & cert. ef. 11-27-90; DOA 13-2002, f. & cert. ef. 4-11-02; DOA 7-2006, f. & cert. ef. 3-10-06

Requirements for Meat Establishment Licensees, Including Custom Slaughtering and Processing Establishments

General

603-028-0600

Definitions

(1) In addition to the definitions set forth in ORS Chapter 603, a custom meat establishment is subject to the definitions set forth in OAR 603-025-0010.

(2) “Mobile custom slaughtering establishment” means a custom slaughtering establishment consisting of a truck, trailer, or other vehicle, and the equipment and utensils situated therein or thereon.

Stat. Auth.: ORS 561, 616 & 619

Stats. Implemented: ORS 603.085, 619.031 & 619.046

Hist.: AD 1004(18-73), f. 12-5-73, ef. 12-25-73; AD 21-1990, f. & cert. ef. 11-27-90

603-028-0605

Sanitation, Maintenance, and Construction by Licensees

(1) Stationary Custom Establishments are subject to the General Requirements outlined in OAR 603-025-0020 and 603-025-0150. In addition a stationary custom slaughtering establishment shall comply with the following:

(a) Provide a holding pen of sufficient size to hold the number of meat animals comprising an average day’s slaughter. It shall have a concrete floor sloped to a drain meeting the **Oregon State Plumbing Code**. The pen interior shall be free of projecting nails or other hazards to the penned animals. The chute from the holding pen to the knocking box shall also have a concrete floor;

(b) Provide a knocking box having a concrete floor curbed at its outside and forward edges, and sloped so as to drain to the kill floor (unless sloped to a dry landing area thereof). Doors or gates to the knocking box shall be hinged or pivoted and of metal or metal-covered material. Walls shall be of masonry or metal material;

(c) Provide a kill room having a concrete floor sloped to a drain meeting the Oregon State Plumbing Code. Walls and ceilings shall be of smooth, impervious material, with the junctions of floors and walls to be covered and tight. It shall have hot and cold water supplies with overhead and wall outlets;

(d) Provide an inedible offal room of sufficient size to hold the offal from the largest day’s slaughter. It shall have an exterior, screened and ventilated, and hot and cold water supplies. Doors from the kill room and through which the offal is removed shall be of metal or metal-covered material, and the latter door shall be self-closing. It shall not contain any wooden structure or equipment except in the ceiling area;

(e) Special purpose rooms (for offal separating, hide storage, freezer, etc.) may also be a part of the establishment if designed and constructed in accordance with the requirements of the Department relating to its intended use. If inedible offal is to stored for longer than 18 hours, refrigeration shall be provided in the storage area.

(2) Mobile Custom Slaughtering Establishments are subject to the applicable provisions of OAR 603-025-0020. In addition it shall be constructed and equipped in accordance with the following:

(a) It shall have a van-type body enclosing and covering the unit, excluding the driver’s cab and hoist, and surfaces constructed from non-rusting metal or sheet metal painted with smooth enamel or lacquer. Wood may only be used as internal framing or spacing materials between double non-wooden walls. It shall be designed and constructed so as to prevent the entry of contaminants (dirt, dust, insects, etc.) and to allow the exterior and interior to be easily cleanable and sanitized;

(b) It shall have a metal interior lining, or other material approved by the department, with the junctions of facing surfaces to be smoothly welded or soldered (or rolled and soldered) and spatter removed. All interior corners shall be rounded. Caulking compounds shall not be substituted for welding or soldering. The interior facing surfaces shall not be required to be painted if they are made of stainless or galvanized steel in good condition. The minimum metal gauges for interior facing surfaces are 14 for aluminum, 16 for sheet metal, and 17 for stainless steel. Fiberglass reinforced resin or alu-

minum alloys are permitted upon approval by the Department. Insulation shall be non-absorbent;

(c) It shall have the following minimum interior dimensions (excluding space for tanks and other affixed or mounted equipment):

(A) Height of six feet;

(B) Length of six feet;

(C) Width of four feet for single center hanging rail, or six feet for double hanging rails.

(d) It shall have affixed a metal hoist of not less than 1-1/2 tons capacity, capable of lifting carcasses to above 12 inches from the ground (for purposes of bleeding and evisceration). Such hoist shall be situated so that carcasses suspended therefrom do not contact the truck or trailer body, and shall be equipped with a metal beef spreader;

(e) It shall contain a sanitizing tank of rust resistant metal and of sufficient size to immerse all tools (knives, cleavers, saws, hooks, etc.) and pans used in slaughter operations. It shall be filled with potable water of at least 180°F during all of the slaughter operations. This requirement does not preclude any other sanitization process approved by the Department;

(f) It shall contain a water tank of rust resistant metal, with at least a 100 gallon capacity, and with at least one spigot (for hand-washing and general water supply), and at least one hose with nozzle (for washing of carcasses). It shall contain at least 50 gallons of potable water, under at least 60 pounds per square inch pressure, prior to commencing the slaughter operations. Such pressure shall be maintained during all of the slaughter operations;

(g) A smaller mobile custom slaughtering establishment may be used solely for the slaughter of animals of 400 lbs. or less live weight with the following exceptions from the above requirements:

(A) The interior dimensions of the vehicle may be five feet in height and four feet in width with a single center hanging rail;

(B) It may have affixed a metal hoist of not less than 3/4 ton capacity;

(C) It shall have a water tank of rust resistant metal with at least a 60 gallon capacity which shall contain at least 30 gallons of potable water.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561, 616 & 619

Stats. Implemented: ORS 603.085, 619.031 & 619.046

Hist.: AD 1004(18-73), f. 12-5-73, ef. 12-25-73; AD 21-1990, f. & cert. ef. 11-27-90

603-028-0615

Federal Inspection

Custom slaughtering or custom processing establishments subject to the inspection and authority of the U.S. Department of Agriculture pursuant to the Federal Meat Inspection Act, as defined in ORS Chapter 619, or the Federal Poultry Inspection Act, and if directed by federal authorities to do so, shall comply with the requirements of said Act and regulations thereunder applicable to such establishments.

Stat. Auth.: ORS 561, 616 & 619

Stats. Implemented: ORS 603.085, 619.031 & 619.046

Hist.: AD 1004(18-74), f. 12-5-73, ef. 12-25-73; AD 21-1990, f. & cert. ef. 11-27-90

Labeling, Reports and Records

603-028-0700

Labeling by Custom Slaughtering Establishments

(1) A custom slaughtering establishment shall label or firmly affix a tag to the carcass and each part therefrom, before removal from the vehicle in the case of a mobile establishment or before removal from the kill floor in the case of a stationary establishment, with the following:

(a) The name and address of the custom slaughtering establishment;

(b) The name of the owner of the article;

(c) The terms **“Not for Sale”** in letters at least 3/8 inch in height; and

(d) The date of slaughter.

(2) The certificate required by ORS 603.045 shall be prepared in duplicate by the custom slaughtering establishment, with one copy of each certificate retained by the establishment and the other copy of each certificate submitted to the Department at the time of hide inspection.

(3) The records required to be kept by ORS 603.045(7) shall be retained by the custom establishment for a period of six months from the date of slaughter.

(4) A custom processing establishment, whether operated in conjunction with a retail meat seller establishment, a custom slaughtering establishment, or otherwise, shall label each individual package or each outside container, or parts of meat and meat products, immediately after preparation with the following:

(a) Symbols, numbers, names, or other marks so as to insure the identity of the owner and that such meat products are those of said owner;

(b) Only at the request of the owner, the name of the owner of the meat products;

(c) The name of the package contents (grounds beef, ribs, roasts, etc.);

(d) Label all packages in accordance with ORS 603.045.

Stat. Auth.: ORS 561, 616 & 619

Stats. Implemented: ORS 603.085, 619.031 & 619.046

Hist.: AD 1004(18-73), f. 12-5-73, ef. 12-25-73; AD 21-1990, f. & cert. ef. 11-27-90

1,000 Poultry Slaughter Exemptions

603-028-0710

Definitions

In addition to the definitions in ORS Chapter 616 and OAR 603-025-0010, unless otherwise required by the context, the following terms will be construed, respectively, to mean:

(1) “Approved” means acceptable to the Department based on the determination of conformity with principles, practices, and generally recognized standards that protect public health.

(2) “Department” means the Oregon Department of Agriculture.

(3) “Domesticated” means born and raised in captivity so as to live and breed in a tame condition.

(4) “Off-Farm Direct Sale” means sold and delivered to the end-user of the poultry product by the poultry producer.

(5) “On-Farm Direct Sale” means sold and delivered to the end-user of the poultry product at the poultry business.

(6) “Open date” means a date clearly visible to retail consumers showing the pull date or packing date.

(7) “Poultry,” for the purposes of this section, means:

(a) Domesticated species of birds subject to mandatory or voluntary inspection by the Department or the United States Department of Agriculture that are commonly used as a food source; including: chickens, turkeys, ducks, geese, or guinea fowl, whether live or dead.

(b) Poultry does not include ratites, endangered or protected species, wild game birds, non-game wild birds, or pet birds, whether live or dead.

(8) “Poultry business” means the land and improvements within the contiguous property boundary where the slaughter of the poultry being sold has occurred.

(9) “Poultry product” means a whole poultry carcass or part thereof, which is processed for use as human food to the extent that feathers and offal are removed and may include the re-addition of the poultry’s gizzards or giblets.

(10) “Slaughtering Facility” means an area where the poultry slaughter, processing or packaging takes place.

Stat. Auth.: ORS 561.020, 619.046 & (HB 2872 enrolled)

Stats. Implemented: ORS 603.085 & 619.046

Hist.: DOA 10-2012, f. & cert. ef. 5-15-12

603-028-0715

Intent

(1) It is the intent of the Department’s Food Safety Division to promote and enable the Oregon State Legislature’s directive to encourage Oregon-grown poultry production for consumption in the state of Oregon by Oregonians.

(2) Therefore, the Department promulgates two poultry slaughter exemptions. Poultry businesses may qualify for either the Off-Farm Direct Sale Exemption or the On-Farm Direct Sale Exemption. A person claiming both exemptions within a calendar year shall not slaughter more than 1,000 poultry in that calendar year. A poultry business that qualifies for either exemption shall comply with OAR 603-028-0740.

(3) A poultry business that sells poultry from the poultry business, at farmers' markets, or through other direct sales involving off-farm delivery to customers should refer to the Off-Farm Direct Sale and sanitation requirements found in OAR 603-028-0720 and 603-028-0725.

(4) A poultry business that sells poultry only from the poultry business should refer to the On-Farm Direct Sale Exemption and sanitation requirements found in OAR 603-028-0730 and 603-028-0735.

Stat. Auth.: ORS 561.020, 561.190, 619.046 & (HB 2872 enrolled)
Stats. Implemented: ORS 561.020, 603.085, 619.046
Hist.: DOA 10-2012, f. & cert. ef. 5-15-12

603-028-0720

Off-Farm Direct Sale Exemption

(1) A person is not required to obtain a license under ORS 603.025 or 616.706 if:

- (a) During a calendar year, the person slaughters a total of 1,000 or fewer poultry of all species combined; and
- (b) The person performing the slaughter raised the poultry since the poultry was two weeks of age or younger; and
- (c) The poultry are free from disease; and
- (d) The poultry are for use as human food; and
- (e) The person maintains sanitary records under OAR 603-028-0740; and

(f) The person slaughters the poultry at the person's slaughter facility meeting the sanitary requirements of OAR 603-028-0725 and does not allow other persons to use the slaughter facility.

(2) Poultry may not be adulterated or misbranded in accordance with ORS 616.205 to 616.385.

(3) Persons claiming the exemption under this section may slaughter and process only their own poultry and sell the shell eggs of such poultry.

- (a) Poultry must be sold as a whole carcass; and
- (b) Shell eggs will be labeled with the open date in accordance with ORS 616.800 to 616.835 (Open Date Labeling).

(4) Poultry and poultry products may not enter into interstate commerce and will be labeled with legible typed lettering a minimum of 0.25 inches in height "THIS PRODUCT MAY NOT LEAVE THE STATE OF OREGON".

(5) The licensing exemptions contained in this section apply only to activities directly related to poultry and poultry products. Activities relating to food other than poultry or poultry products remain subject to licensing by the Department.

Stat. Auth.: ORS 561.190 & 616
Stats. Implemented: ORS 616.835 & (HB 2872 enrolled)
Hist.: DOA 10-2012, f. & cert. ef. 5-15-12

603-028-0725

Sanitation Standards

A person claiming the exemption of OAR 603-028-0720 must slaughter the poultry in slaughtering facilities and conduct activities in accordance with ORS 619.026 and OAR 603-028-0100 on the premises of the person's poultry business.

Stat. Auth.: ORS 561.190 & 616
Stats. Implemented: ORS 603.085, 619.046 & (HB 2872 enrolled)
Hist.: DOA 10-2012, f. & cert. ef. 5-15-12

603-028-0730

On-Farm Direct Sale Exemption

(1) A person is not required to obtain a license under ORS 603.025 or 616.706 if:

- (a) During a calendar year, the person slaughters a total of 1,000 or fewer poultry of all species combined; and
- (b) The person performing the slaughter raised the poultry since the poultry was two weeks of age or younger; and
- (c) The poultry are free from disease; and

(d) The poultry are for use as human food; and

(e) The person maintains sanitary records in accordance with OAR 603-028-0740; and

(f) The person slaughters the poultry at the person's slaughter facility meeting the sanitary requirements of OAR 603-028-0735 and does not allow other persons to use the slaughter facility for any other purpose; and

(g) The poultry products are sold exclusively via on-farm sale.

(2) Poultry may not be adulterated or misbranded in accordance with ORS 616.205 to 616.385.

(3) A person claiming this exemption may not engage in buying or selling poultry products other than those produced from poultry raised on his or her own farm.

(a) Poultry must be sold as a whole carcass; and

(b) Shell eggs will be labeled with the open date in accordance with ORS 616.800 to 616.835 (Open Date Labeling).

(4) Poultry and poultry products may not enter into interstate commerce and will be labeled with legible typed lettering a minimum of 0.25 inches in height "THIS PRODUCT MAY NOT LEAVE THE STATE OF OREGON".

(5) The licensing exemptions contained in this section apply only to activities directly related to poultry and poultry products. Activities relating to other than poultry or poultry products remain subject to licensing by the Department.

Stat. Auth.: ORS 561.020, 561.190, 616.835 & 619.046
Stats. Implemented: ORS 561.020, 603.085, 616.835 & 619.046
Hist.: DOA 10-2012, f. & cert. ef. 5-15-12

603-028-0735

Sanitation Standards

(1) A person claiming the exemption of OAR 603-028-0730 will be exempt from the requirements of ORS 619.026 and OAR 603-028-0100 if the poultry slaughter and processing are conducted on the person's poultry business premises, under sanitary standards, practices, and procedures that produce poultry products that are sound, clean, and fit for human food (not adulterated).

(2) The slaughter facility must be reasonably protected from potential contaminants such as dust, mud, pests and all other adulterants. The protection can be as minimal as a combination of tarps, canopies and floor mats.

Stat. Auth.: ORS 561.020, 561.190 & 619.046
Stats. Implemented: ORS 561.020, 603.085 & 619.046
Hist.: DOA 10-2012, f. & cert. ef. 5-15-12

603-028-0740

Records and Enforcement

(1) The person claiming license exemption under OAR 603-028-0720 or 603-028-0730 will maintain clear and understandable records at the poultry business that:

- (a) Demonstrate the person raised the poultry since the poultry was two weeks of age or younger;
- (b) Calculate the year-to-date cumulative total of each species and total quantity of poultry slaughtered;
- (c) Contain the date of slaughter;
- (d) Contain sales information including the:
 - (A) Purchaser's name and address;
 - (B) Species and quantity of poultry sold;
 - (C) Date of the poultry's slaughter and the date of sale; and
 - (D) Address of the poultry business.
- (e) Demonstrate adequate sanitation measures as required to include:

- (A) Daily cleaning logs regarding any and all slaughter dates;
- (B) Ware washing cleaning logs;
- (C) Lists of chemicals used in the sanitation of the facility;
- (D) Other records as required by the Department.

(2) Records shall be maintained for two calendar years following the last dated activity recorded and shall be made available to the Department upon request.

(3) At the Department's discretion, the Department may conduct an unscheduled inspection of an exempt poultry slaughtering facility and its records. If deemed necessary for food safety, the Department may take regulatory action, which may include mandatory licensing.

(4) A person claiming exemption from ORS 603.025 or 616.706 will not be an approved food source.

Stat. Auth.: ORS 561.190, 616.835 & (HB 2872 Enrolled)
Stats. Implemented: ORS 603.085 & (HB 2872 Enrolled)
Hist.: DOA 10-2012, f. & cert. ef. 5-15-12

Mobile Custom Slaughtering Establishments

603-028-0810

Conditions of Transportation and Slaughter

(1) No carcass shall be transported in a mobile custom slaughter unit unless it is hung free from contact with the unit floor, and tagged as prescribed in OAR 603-028-0700.

(2) No carcass, other than a scalded and dehaired hog carcass, shall be dressed or transported in a mobile custom slaughter unit with the hide on.

(3) Meat by-products shall be transported in a mobile custom slaughter unit in clean and sanitary containers, of material approved by the Department, with secure coverings or lids.

(4) Inedible offal shall be transported in a mobile custom slaughter unit in clean and sanitary containers (barrels, tubs, etc.), of easily cleaned and durable rubber, plastic, or rust resistant metal materials, which shall be situated in a metal lined compartment separated from the area of the unit used for the slaughter operations. In lieu of the preceding, such offal may be transported in a clean, sanitary, covered watertight trailer of a design approved by the Department.

(5) No horse carcass, or parts thereof, shall be transported in a mobile custom slaughter unit.

(6) No slaughter of a meat animal in a mobile custom slaughter unit while other carcasses are hanging therein shall be performed unless the unit doors are closed or the area in which such carcasses are situated is separated from the area used for the slaughter operation.

Stat. Auth.: ORS 561.190, 603.085, 619.031 & 619.046
Stats. Implemented: ORS 603.085, 619.031 & 619.046
Hist.: AD 1004(18-73), f. 12-5-73, ef. 12-25-73

Stationary Custom Slaughtering Establishments
Custom Processing Establishments

603-028-0825

Construction and Equipment

(1) A custom processing establishment is subject to the requirements specified in OAR 603-025-0020, 603-025-0030 and 603-025-0150.

(2) These requirements are not in lieu or any requirements specified in the Federal Wholesome Meat Act and those contained in the CFR Title 9, Chapter 3, Part 308.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 561, 616 & 619
Stats. Implemented: ORS 603.085, 619.031 & 619.046
Hist.: AD 1004, f. 12-5-73, ef. 12-25-73; AD 21-1990, f. & cert. ef. 11-27-90

Game Meat Processing

603-028-0845

Definitions

The following definitions shall apply to OAR 603-028-0845 to 603-028-0865:

(1) "Fit for human consumption" means game meat:

(a) That is from an animal killed by a weapon, the carcass of which is free of visible disease or parasite lesions; or

(b) That is from an animal killed by a collision with a motor vehicle, the carcass of which is free of excessive parasite lesions, visible disease and rigor mortis, and which has been bled and eviscerated immediately after being killed or has an internal temperature of 101 degrees F. or greater at the time of its inspection.

(2) "Game meat" means meat, as defined in ORS 619.010(14), of antelope, Bighorn sheep, deer, elk, moose or Mountain goat, but does not include domesticated elk as defined in OAR 603-28-0005(14).

(3) "Inspector" means an employee of the State Department of Fish and Wildlife, of the State Police, or of the State Department of

Agriculture, who has been certified to examine game meat under OAR 603-028-0860(1), or a licensed veterinarian.

Stat. Auth.: ORS 561, 616 & 619
Stats. Implemented: ORS 603.085, 619.031 & 619.046
Hist.: AD 5-1984, f. & ef. 4-17-84; AD 21-1990, f. & cert. ef. 11-27-90; DOA 13-2002, f. & cert. ef. 4-11-02

603-028-0850

Licensing Requirements for Game Meat Processing

(1) An establishment, not otherwise licensed under ORS 603.025(4)(b) or (d), that desires to process game meat to be used by the establishment or other charitable organization for human consumption under the provisions of 619.095(1), shall obtain and maintain a license to operate a custom processing establishment under 603.025(4)(d). In order to obtain and maintain such a license, the establishment shall be constructed, operated, maintained and equipped in accordance with OAR 603-028-0825.

(2) In order to assist the State Department of Fish and Wildlife and the State Police in carrying out their inspections as to the fitness of game meat for human consumption under ORS 619.095(1), and the designation of approved charitable organizations or public institutions by the State Department of Fish and Wildlife under ORS 619.095(2)(a), the Department shall furnish such state agencies with the names of the establishments licensed to process game meat, on a semi-annual basis.

Stat. Auth.: ORS 561, 616 & 619
Stats. Implemented: ORS 603.085, 619.031 & 619.046
Hist.: AD 5-1984, f. & ef. 4-17-84; AD 21-1990, f. & cert. ef. 11-27-90; DOA 12-2007, f. & cert. ef. 7-2-07

603-028-0855

Labeling Requirements for Game Meat

(1) Upon inspection of game meat and a determination that it is fit for human consumption, the inspector shall firmly affix a copy of the official inspection tag prescribed by the Department (see Exhibit 1) to the animal carcass and each part therefrom.

(2) In lieu of the provisions of OAR 603-028-0700, a custom processing establishment that processes game meat, whether operated in conjunction with charitable organization or otherwise, shall label each individual package or each outside wrapper or container of game meat with the following:

(a) The terms "Game Meat" and "Not For Sale" in letters at least 3/8" in height;

(b) The name and address of the custom processing establishment;

(c) The identity of the species of the game meat animal; and

(d) The identity of the package contents (e.g., ribs, roasts, etc.). [ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 561, 616 & 619
Stats. Implemented: ORS 603.085, 619.031 & 619.046
Hist.: AD 5-1984, f. & ef. 4-17-84; AD 21-1990, f. & cert. ef. 11-27-90

603-028-0860

Game Meat Inspection Procedures

(1) In order to qualify to inspect game meat for the purpose of determining its fitness for human consumption, under the provisions of ORS 619.095, employees of the State Department of Fish and Wildlife and of the State Police shall be certified to have successfully completed one of the inspectional training courses conducted by the Department. The certification shall be valid for three years from issuance. The certification may be renewed by submitting an application therefore and attending an inspectional refresher course conducted by the Department.

(2) The inspection of game meat and the determination of its fitness for human consumption shall be carried out in accordance with the training provided by the Department, as applicable to the inspection of game meat, (in consideration of the differences between game meat animals and domestic meat animals), and may include but not be limited to a visual examination of the animal carcass and, if examined after processing of the carcass, of the muscle tissue, heart, lungs, liver, spleen, mesentery and lymph nodes for discoloration, bruises, abscesses or other evidence of disease, and for excessive parasite lesions.

Stat. Auth.: ORS 561 & 619

Stats. Implemented: ORS 603.085, 619.031 & 619.046
 Hist.: AD 5-1984, f. & ef. 4-17-84; DOA 12-2007, f. & cert. ef. 7-2-07

603-028-0865

Game Meat Inspection Reports

On or before the 10th day of each month, a copy of each completed official inspection tag for the prior month shall be submitted to the Department by the agencies employing inspectors.

Stat. Auth.: ORS 561 & 619
 Stats. Implemented: ORS 603.085, 619.031 & 619.046
 Hist.: AD 5-1984, f. & ef. 4-17-84

Civil Penalties

603-028-0900

Purpose

The Oregon Department of Agriculture Food Safety Program licenses and inspects all facets of Oregon’s food distribution system, except restaurants, to ensure food is safe for consumption. Education and technical assistance are vital to the prevention, correction, and abatement of food safety violations, and are preferred over regulatory action. However, regulatory action may be necessary to deter violations of food safety laws and rules, to educate persons about the consequences of such violations, and to compel compliance with food safety laws for the protection of consumers. The Department intends to initiate civil penalty actions when educational measures, technical assistance, warning letters, compliance agreements or other remedial measures fail to achieve compliance.

Stat. Auth.: ORS 561.190, 603.995 & 619.996
 Stats. Implemented: ORS 603.995 & 619.996
 Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

603-028-0910

Definitions

As used in OAR 603-028-0920 through 603-028-0930, in addition to the definitions set forth in OAR 603-028-0005 and 603-028-0600, the following shall apply:

(1) “Interference” means hindering or impeding an activity or process, which includes, but is not limited to any harassment, unreasonable delay, threat, concealment, deceit, or obstruction.

(2) “Major,” with respect to violations, means an incident, or series of incidents that cause a reasonable probability that serious adverse health consequences or death will occur.

(3) “Minor,” with respect to violations, means an incident, or series of incidents that are not likely to cause adverse health consequences.

(4) “Moderate,” with respect to violations, means an incident, or series of incidents that may cause temporary or medically reversible adverse health consequences, or where the probability of serious adverse health consequences is remote.

(5) “Repeat violation” means the recurrence of the same violation for each 24-hour period after a notice of noncompliance or assessment of civil penalty was issued within the preceding three years. It does not include a violation if the previous notice is the subject of a pending appeal or if the notice has been withdrawn or successfully appealed.

(6) “Same,” with respect to violations, means an identical recurrence, exact repetition, or a continuation of a previous violation.

(7) “Violation” means the failure to comply with any requirement of ORS Chapter 603 or 619 or any rules adopted thereunder.

Stat. Auth.: ORS 561.190, 603.995 & 619.996
 Stats. Implemented: ORS 603.995 & 619.996
 Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

603-028-0920

Schedule of Civil Penalties

In addition to any penalty available under ORS 561.190, 603.992, or 619.993 the Department may impose a civil penalty with respective amounts for:

(1) Selling, offering to sell, or exposing for sale meat products, or engaging in any activity described or identified in ORS 603.025(4) without first obtaining and maintaining a license from the Department. Penalty — \$5,000 to \$10,000.

(2) Failure to carry a surety bond meeting the requirements of ORS 603.025(3) with one or more corporate sureties authorized to do business in this state, or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008. Penalties:

- (a) Minor — \$2,500 to \$5,000;
- (b) Moderate — \$5,001 to \$7,500; or
- (c) Major — \$7,501 to \$10,000.

(3) Failure to display the license required in ORS 603.025 in a conspicuous manner at the address shown on the license. Penalty — \$100.

(4) Buying or selling carcasses of meat animals, meat or meat products capable of use as human food that are not marked, tagged or otherwise identified as inspected meat or meat products as required by ORS Chapter 619. Penalties:

- (a) Minor — \$1,000 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(5) Failure to comply with the custom slaughtering establishment requirements as required in ORS 603.045(2) – (7) or the provisions of OAR 603-028-0700, 603-028-0810, or 603-028-0825. Penalties:

- (a) Minor — \$500 to \$3,500;
- (b) Moderate — \$3,501 to \$6,500; or
- (c) Major — \$6,501 to \$10,000.

(6) The owner or occupier of premises where animals are slaughtered permitting the same to remain unclean, to the extent that it constitutes a health hazard as explained in ORS 603.059. Penalties:

- (a) Minor — \$1,000 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(7) Violation of the slaughter methods prescribed in ORS 603.065(1)-(2). Penalty — \$5,000 to \$10,000.

(8) Violation of the sanitation requirements of ORS 619.026. Penalties:

- (a) Minor — \$1,000 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(9) Interference with lawful inspections by the Department as authorized by ORS 619.036(1) and (3). Penalty — \$5,000 to \$10,000.

(10) Interference with the lawful seizure, embargo, or detention of any food commodity, or lawful quarantine any building, equipment, vehicle or facility found upon inspection or test to be in violation of ORS 619.026 to 619.066 or of any rule adopted under ORS 619.026 to 619.066. Penalty — \$5,000 to \$10,000.

(11) Unapproved removal of a Department posted notice, or continued use of an establishment or vehicle when condemned by the Department as authorized in ORS 619.041. Penalty — \$5,000 to \$10,000.

(12) Having in the person’s possession for any reason or purpose unwholesome meat or meat products that are not denatured and properly identified as explained in ORS 619.051(1). Penalty — \$1,000 to \$5,000.

(13) Carrying or transporting, by vehicle or otherwise, the carcass or meat of any meat animal destined for sale or distribution as food, that is not thoroughly protected from dust, dirt, flies or other contaminants as explained in ORS 619.051(2). Penalty — \$1,000 to \$5,000.

(14) Selling, holding or offering for sale any meat product if such meat product is from a meat animal not slaughtered under the auspices of the meat and poultry inspection program of the United States Department of Agriculture if federal regulations have been established for the inspection of the meat animal as explained in ORS 619.051(3). Penalty — \$5,000 to \$10,000.

(15) Failure to perform trichinae treatments as required in ORS 619.056. Penalties:

- (a) \$1,000 to \$4,000;
- (b) \$4,001 to \$7,000; or
- (c) \$7,001 to \$10,000.

(16) Any person operating a retail meat seller establishment, as defined in ORS Chapter 603, in conjunction with a custom slaughtering establishment or custom processing establishment failing to mark, tag or identify all individually wrapped packages or containers of meat or meat products slaughtered, wrapped, prepared or handled for the owner of a meat animal, at the time and in the manner deemed necessary by the Department as explained in ORS 619.061. Penalty — \$500 to \$5,000.

(17) Violation of the provisions of ORS 619.355, 619.360, 619.365, or 619.370, relating to fryers. Penalty — \$500 to \$5,000.

(18) Willful violation of ORS 619.421, relating to lamb. Penalty — \$500 to \$5,000.

(19) Violation of OAR 603-028-0300, relating to packaging, labeling, advertising, and display. Penalties:

- (a) Minor — \$500 to \$4,000;
(b) Moderate — \$4,001 to \$7,000; or
(c) Major — \$7,001 to \$10,000.

(20) Violation of OAR 603-028-0405, relating to additives in raw meat and raw meat products. Penalty — \$500 to \$5,000.

(21) Violation of OAR 603-028-0500, relating to prohibited acts. Penalty — \$5,000 to \$10,000.

Stat. Auth.: ORS 561.190, 603.995 & 619.996
Stats. Implemented: ORS 603.995 & 619.996
Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

603-028-0930

Penalty factors; procedure

(1) In imposing a penalty pursuant to the schedule adopted pursuant to ORS 603.995 or 619.996, the Department shall consider the following factors, which are listed in prioritized order:

- (a) The immediacy and extent to which the violation threatens the public health or safety;
(b) Any prior violations of statutes, rules or orders pertaining to meat or meat related activities.
(c) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.
(d) The economic and financial conditions of the person incurring the penalty, including any financial gains resulting from the violation.

(2) Each 24-hour period a violation continues after the period of time established for compliance will be considered a separate violation unless the Department finds a different period of time is more appropriate to describe the specific violation event.

(3) Repeat violations of OAR 603-028-0910 will be assessed as three times the penalty amount in OAR 603-028-0910, not to exceed \$10,000.

(4) A civil penalty imposed under this rule will comply with ORS 183.745, except that the written application for a hearing must be received by the department no later than 10 days after the mailing or personal service of the notice of civil penalty.

Stat. Auth.: ORS 561.190, 603.995 & 619.996
Stats. Implemented: ORS 603.995 & 619.996
Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

GRAIN INSPECTION

DIVISION 32

WAREHOUSES AND GRAIN

603-032-0090

Intent

Persons who operate grain warehouses in Oregon should obtain copies from the State Department of Agriculture, Commodity Inspection Division, 635 Capitol Street N.E., Salem, Oregon 97310, and become familiar with the provisions of the Oregon Grain Warehouse and Inspection Law, ORS Chapter 586. The regulations hereafter promulgated by the Department, in most instances merely clarify and carry out the intent of the legislature and such law. Particular reference for example, should be made in the law to the definition of "Grain" and the fact should be noted (ORS 586.382) in the law it

states in part "A warehouseman operating another business in conjunction with, or in proximity to, his licensed public warehouse shall keep a complete set of records for the warehouse business, entirely separate and distinct from the accounts and records of any other business." Regulations have the effect of law in Oregon.

Stat. Auth.: ORS 561.190 & 586.225 — 586.561
Stats. Implemented: ORS 586.225 — 586.561
Hist.: AD 712, f. 10-3-62, ef. 10-11-62; DOA 9-1998, f. & cert. ef. 9-21-98

603-032-0100

Definitions

As used in OAR 603-032-0100 to 603-032-0150, unless the context otherwise requires, and in addition to the definitions set forth in ORS 586.210:

- (1) "Act" means ORS Chapter 586.
(2) "Depositor" means any person who deposits an agricultural commodity in an Oregon state licensed warehouse for storage, handling, processing, reconditioning or shipment, and who is the owner or holder of a negotiable warehouse receipt or other evidence of such deposit, whether or not such agricultural commodity is within the warehouse.

(3) "Persons" includes individuals, partnerships, corporations, and associations.

(4) "Station" (see ORS 586.270) means the public warehouses of an applicant for a license, in a particular locality.

Stat. Auth.: ORS 561.190 & 586.225 - 586.561
Stats. Implemented: ORS 586.225 - 586.561
Hist.: AD 586, f. 7-28-58, ef. 7-25-58; AD 670, f. 6-16-61, ef. 7-1-61; AD 712, f. 10-3-62, ef. 10-11-62; AD 901(7-69), f. 5-28-69, ef. 7-1-69; DOA 9-1998, f. & cert. ef. 9-21-98

603-032-0105

Definitions — Public Warehouses

As used in these rules, unless the context requires otherwise, "public warehouses" shall include elevators, mills, warehouses, temporary structures, containers, or facilities used for the storage and handling of grain which shall be subject to the provisions of ORS Chapter 586 and the administrative rules thereunder, including all requirements for licensing, bonding, and maintenance of the facilities.

Stat. Auth.: ORS 561 & 586
Stats. Implemented: ORS 586.225 - 586.561
Hist.: AD 11-1986, f. & ef. 6-27-86; DOA 9-1998, f. & cert. ef. 9-21-98

603-032-0110

Licenses

(1) Every person who has not complied with the requirements of subsection (4) of Section 586.300 of the Act and who desires to engage in business as a public warehouseman under the provisions of the Act, shall, prior to the commencement of such business, file with the Department a surety bond or letter of credit executed in favor of the State of Oregon. Such bond shall be executed by a corporate surety qualified to do business in the State of Oregon. No warehouseman's license shall be issued prior to the Department's approval of such bond or letter of credit.

(2) Warehouse licenses shall be issued yearly and shall expire on June 30 of each year. Licenses issued for a fractional part of the fiscal year shall be paid for at the rate of the full annual warehouse fee.

(3) Warehouse licenses issued under the Act shall be non-transferable. Such licenses shall automatically terminate upon the transfer or cessation of business by the license holder.

(4) Upon termination of a warehouseman's license by suspension of business, transfer of ownership, revocation of license, or for any other cause, such license shall be immediately surrendered to the Department for cancellation. No refund of license fees shall be made by the Department in the event of such cancellation.

(5) Every warehouseman who discontinues the operation of a public warehouse shall surrender all blank and unused warehouse receipts to the Department for cancellation. No refund of pro rata costs of such receipts shall be made upon such surrender.

(6) All grain warehouses or elevators at one station will be licensed by the Department under one permanent license number. Individual warehouses (including adjoining warehouse buildings or

facilities or those structurally connected, or connected by power conveyor, gravity, spout, or other mechanical devices capable of conveying grain from one such building or facility to the other) will be designated by the Department by a suffix letter "A," "B," "C," etc. The applicable assigned suffix number is to be painted on each warehouse when two or more houses or elevators are at one station.

(7)(a) The Department in determining whether certain grain warehouses or elevators should be one station shall take into consideration:

(A) Whether the proposed grain storage facilities are in the same trading area; and

(B) Whether the proposed grain storage facilities can be reasonably audited by the Department.

(b) In determining whether grain storage facilities which it is proposed to consolidate can be reasonably audited by the Department, the following matters will be considered:

(A) Whether all grain storage facilities have the same cutoff for examination of records and physical measure-up;

(B) Accessibility and adequacy of records;

(C) Whether all of the grain storage facilities of a warehouseman in a particular locality are listed in the application.

Stat. Auth.: ORS 586

Stats. Implemented: ORS 586.225 - 586.561

Hist.: AD 586, f. 7-28-58, ef. 7-25-58; AD 670, f. 6-16-61, ef. 7-1-61; AD 703, f. 5-21-62; AD 877(7-68), f. 4-30-68, ef. 7-1-6; DOA 9-1998, f. & cert. ef. 9-21-98

603-032-0120

Marking and Identification of Grain and Storage Facilities

(1) All permanent bins licensed for storage of bulk grain shall be plainly and permanently numbered or lettered; a bin chart diagram showing the locations of the various bins in the storage facility shall be conspicuously posted.

(2) Public warehouses in which identity preserved lots of edible dry beans and dry peas are stored, shall be divided into sections, and each section shall be numbered or lettered in a legible manner.

(3) Field run, identity preserved "edible" dry beans or dry peas received in a public warehouse shall be given a lot number for each and every lot received. Identification tags or cards shall be attached to a sufficient number of bags, boxes, or containers of each lot so as to maintain unquestionable identity of each lot. Such identification tags shall show:

(a) Lot number;

(b) Number of bags or other containers;

(c) Warehouse receipt number, if any.

(4) If a public warehouse is not kept open each weekday, the warehouseman shall keep a written notice conspicuously posted on the door of the public entrance to such warehouse. Such notice shall state the name, address, and telephone number of an accessible person authorized to transact business in the name of the warehouseman.

Stat. Auth.: ORS 561.190 & 586.225 - 586.561

Stats. Implemented: ORS 586.225 - 586.561

Hist.: AD 586, f. 7-28-58, ef. 7-25-58; AD 712, f. 10-3-62, ef. 10-11-62; DOA 9-1998, f. & cert. ef. 9-21-98

603-032-0131

Maintenance of Quality and Quantity of Grain and Transfer Authority

(1) Unless written approval to transfer or forward grain is first obtained pursuant to ORS 586.415, a warehouseman shall maintain at all times in a public warehouse at the station in which the grain was originally deposited for storage, inventories which are of at least the quantity, class, and quality of that which the warehouseman is obligated to deliver under the outstanding warehouse receipts, scale tickets, load slips, or other documentary evidence of deposit.

(2) The written approval and authority required by ORS 586.415 shall contain thereon at least the following:

(a) The name of warehouseman and location of grain warehouse facility;

(b) The amount and kind of grain deposited;

(c) The time period of grain deliveries to be subject to such written document, including the initiation date;

(d) The purpose of the approval or authority (sale, transfer, shipment, etc.);

(e) The signature and address of the depositor of grain.

Stat. Auth.: ORS 561.190 & 586.225 - 586.561

Stats. Implemented: ORS 586.225 - 586.561

Hist.: AD 712, f. 10-3-62, ef. 10-11-62; AD 901(7-69), f. 5-28-69, ef. 7-1-69; DOA 9-1998, f. & cert. ef. 9-21-98

603-032-0136

Load Slips

(1) Each load slip and copy thereof shall contain thereon:

(a) The actual weight of each draft of the grain;

(b) The tare, if any;

(c) The kind of grain deposited;

(d) The name and location of the warehouse;

(e) The name of the depositor;

(f) The date of the deposit of the grain; and

(g) A predesignated printed number for each load or parcel of grain, different from any other number on any load slip given for any other load or parcel of grain. A pre-numbered series of load slips, which conform to good accounting practices, shall be used for warehouse transactions. Also, books of load slips within the series used for this purpose will be made available to state inspectors.

(2) Copies of all load slips shall be retained by the warehouseman for at least three years and shall be filed consecutively together in one place by number.

(3) All persons delivering or withdrawing grain shall be issued pre-numbered load slips by the warehouseman.

Stat. Auth.: ORS 561.190 & 586.225 - 586.561

Stats. Implemented: ORS 586.225 - 586.561

Hist.: AD 712, f. 10-3-62, ef. 10-11-62; DOA 9-1998, f. & cert. ef. 9-21-98

603-032-0140

Maintenance of Grounds and Physical Plant

(1) Storage facilities shall be of sound construction and shall be maintained in such condition as shall adequately protect at all times stored commodities from the elements, rodents, birds, and injurious vermin.

(2) Windows and other openings used for ventilation, except doors, shall be permanently screened as a protection against rodents and birds.

(3) Doors in exterior walls shall be tight fitting.

(4) Warehouse interiors shall be kept reasonably free of gathered dirt and dust.

(5) Warehouse interiors shall be kept free of all rodents and birds, whether alive or dead, together with all excrement, urine, hair, nesting, feathers, or other evidence of rodent or bird infestation.

(6) Warehouse interiors shall be kept reasonably free of live insect infestations.

(7) Grounds surrounding grain elevators and/or warehouses shall be maintained free from weeds and tall grass, accumulated scrap piles of discarded machinery, paper, rubbish, garbage, and other material which is capable of being used as a place of refuge and breeding ground for rodents.

Stat. Auth.: ORS 561.190 & 586.225 - 586.561

Stats. Implemented: ORS 586.225 - 586.561

Hist.: AD 586, f. 7-28-58, ef. 7-25-58; AD 712, f. 10-3-62, ef. 10-11-62; DOA 9-1998, f. & cert. ef. 9-21-98

603-032-0145

Grain Deposit Ledger

(1) Each warehouseman must maintain a current grain deposit ledger account for each depositor of grain, including therein, grain owned by the warehouseman. Such account shall show at least the following:

(a) The name of the depositor;

(b) Applicable dates of all transactions or postings affecting the account, including load slips, withdrawal, purchase order and/or check number;

(c) The kind and weight of grain and all other information or transactions affecting each account.

(2) Each warehouseman shall currently post all applicable information and data from the load slips and other books of original record

to each grain deposit ledger account. The grain deposit ledger accounts must be balanced at least once each month.

(3) Each warehouseman must maintain a Daily Position Record (DPR) which conforms to good accounting practices for grain that is on hand for cleaning or processing, for treating, for shipping by the warehouseman, for the account of the depositor, and for all grains purchased by, or left for, the purpose of sale to the warehouseman. Memorandum agreements or written documents covering such transactions must be attached to, or filed with, the ledger records.

Stat. Auth.: ORS 561.190 & 586.225 - 586.561
Stats. Implemented: ORS 586.225 - 586.561
Hist.: AD 712, f. 10-3-62, ef. 10-11-62; AD 877(7-68), f. 4-30-68; AD 901(7-69), f. 5-28-69, ef. 7-1-69; DOA 9-1998, f. & cert. ef. 9-21-98

**603-032-0150
Insurance**

(1) The warehouseman shall maintain a printed record of the insurance coverage applicable to grain in storage held as required by ORS 586.315, including copies of current insurance policies, "loss payable" certificates, or other written evidence of insurance encumbrances. Such records, policies, certificates, or other written evidence shall be made available to the Department upon demand, and shall be maintained at the principal place of business of the warehouseman within the state unless otherwise authorized by the Department.

(2) The Department, in auditing grain warehouses as required by the Act, will verify for accuracy, to the nearest report, providing the warehouseman is using the insurance reporting system. Warehousemen not using such system, must insure the entire licensed warehouse capacity.

(3) The warehouseman who cancels any insurance required under ORS 586.315 must give the Department at least 10 days' notice prior to such cancellation date. If the warehouseman receives a notice from his insurance company that such company is canceling insurance, the warehouseman within 24 hours (of the next business day) of receipt of such notice shall notify the Department of such action.

(4) In case of fire, flood, explosion or any other event that could cause significant structural damage or inventory losses in a licensed warehouse, the warehouseman shall give immediate notice thereof to the Department. The warehouseman must also give prior notice if there is to be a change of any kind in the ownership of the warehouse, or any change which will affect the storage capacity.

Stat. Auth.: ORS 561.190 & 586.225 - 586.561
Stats. Implemented: ORS 586.225 - 586.561
Hist.: AD 712, f. 10-3-62, ef. 10-11-62; AD 901(7-69), f. 5-28-69, ef. 7-1-69; DOA 9-1998, f. & cert. ef. 9-21-98

**603-032-0155
Warehouse Receipts**

(1) All warehouse receipts must be pre-numbered within the warehouse station license number assigned by the Department (see OAR 603-032-0100). Such warehouse receipts, both used and unused, must be maintained at the same location where all other grain storage records are maintained. Used warehouse receipts which have been returned to or picked up by the warehouseman must be filed together consecutively and marked "Cancelled." They may be attached to the file copy maintained by the warehouseman if all are handled in the same manner.

(2) A negotiable warehouse receipt and its copy must always accurately reflect and represent the amount of grain in storage. Before any release of grain or any use of grain is permitted, represented by such negotiable warehouse receipt, the warehouseman must obtain and keep such receipt, marking it "Cancelled." A new negotiable or non-negotiable warehouse receipt can then be issued covering the remainder of the grain that will be in storage (see ORS 586.385). (A warehouseman may make an appropriate notation of withdrawal of grain on the depositor's non-negotiable warehouse receipt and on other books of original entry, if desired).

(3) In the event a warehouse receipt is subject to cancellation in accordance with section (1) or (2) of this rule, and is lost, mutilated, or destroyed, then the warehouseman shall obtain an affidavit containing the facts surrounding such loss, mutilation, or destruction, executed by the person responsible for the custody of such warehouse receipt. The affidavit shall be subject to review and approval

of the Department and a duplicate original of such affidavit shall be retained in lieu of the warehouse receipt.

(4) In the event a warehouse receipt is outstanding and is lost, mutilated, or destroyed, then the warehouseman shall comply with the provision of ORS 77.6010 (Uniform Commercial Code).

Stat. Auth.: ORS 561.190 & 586.225 - 586.561
Stats. Implemented: ORS 586.225 - 586.561
Hist.: AD 712, f. 10-3-62, ef. 10-11-62; AD 901(7-69), f. 5-28-69, ef. 7-1-69; DOA 9-1998, f. & cert. ef. 9-21-98

**603-032-0160
Trading, Check Payments, and Use of Scales**

(1) Trading of depositor's grain is prohibited unless it is carried out by written agreement or written authorization of the depositor.

(2) Cancelled checks which relate to payments made for grain by the warehouseman, shall be available to the Department for auditing purposes.

(3) A warehouseman shall use a licensed functional scale for the weighing of all grains delivered to the warehouse and for the weighing of grains moved or used in feed mills, or for any other movement in or out of grain storage bins or the warehouse.

Stat. Auth.: ORS 561.190 & 586.225 - 586.561
Stats. Implemented: ORS 586.225 - 586.561
Hist.: AD 712, f. 10-3-62, ef. 10-11-62; DOA 9-1998, f. & cert. ef. 9-21-98

**603-032-0165
Written Evidence of Exemption**

(1) The written evidence required to be a part of the records of the owner or operator of a grain warehouse facility pursuant to ORS 586.225, shall include at least the following:

- (a) The amount and kind of grain subject to such written document;
- (b) The time period of grain deliveries to be subject to such written document, including the initiation date;
- (c) The purpose of the grain deliveries (Sale to warehouseman, processing, cleaning, etc.);
- (d) The terms and basis of payment for said sale, processing, or cleaning.

(2) The written evidence required shall be executed by the owner, or authorized agent, of the grain, and the owner or operator of the grain warehouse facility shall acknowledge acceptance thereon.

Stat. Auth.: ORS 561.190 & 586.225 - 586.561
Stats. Implemented: ORS 586.225 - 586.561
Hist.: AD 901(7-69), f. 5-28-69, ef. 7-1-69; DOA 9-1998, f. & cert. ef. 9-21-98

Warehouses and Bonds

**603-032-0505
Bond Requirements: Storage Capacity Rating**

(1) The amount of the bond required under subsection (1), Section 586.300, Oregon Revised Statutes, and OAR 603-032-0110, shall be a sum equal to the total number of bushels of rated grain storage capacity of the warehouse covered, multiplied by the number of cents herein assigned rounded up to the nearest \$1,000:

- (a) \$.15 per bushel of capacity if provided to the Department an annual financial statement which shall have been audited or reviewed by a certified or licensed public accountant;
- (b) \$.20 per bushel of capacity if no annual financial statement or audit is submitted and approved.

(2) If at any time it appears, in accordance with the provisions of subsection (5), Section 586.300, Oregon Revised Statutes, that the bond referred to in section (1) of this rule is not sufficient to provide adequate protection to holders of the receipts or load slips of the warehouse or warehouses covered by the bond, the Department may require the filing of an additional bond or bonds.

(3) Other provisions of this section notwithstanding, no bond shall be less than \$20,000 and no bond or bonds of any one warehouseman shall total more than \$500,000. In lieu of a surety bond, the warehouseman may submit a letter of credit satisfactory to the state Department of Agriculture.

(4) The total storage capacity of any warehouse or warehouses subject to bond shall be determined by the Department.

Stat. Auth.: ORS 561.190 & 586.225 - 586.561

Stats. Implemented: ORS 586.225 - 586.561
 Hist.: AD 440, f. 6-23-52, ef. 7-1-52; AD 669, f. 6-16-61, ef. 7-1-61; AD 847(19-67), f. 8-24-67, ef. 9-13-67; AD 980(13-72)(Temp), f. & ef. 10-1-72; AD 984(16-72), f. 12-21-72, ef. 1-1-73; AD 994(8-73)(Temp), f. & ef. 8-1-73; AD 1002(16-73), f. 12-5-73, ef. 12-25-73; DOA 9-1998, f. & cert. ef. 9-21-98

Posting of Number

603-032-0510

Posting of License Number

Each warehouseman shall post the warehouse license number assigned to the facility by the Department, on all grain warehouses and elevators, just below the "Oregon Bonded Grain Warehouse" sign, in letters and numerals not less than eight (8) inches high and as follows: "LICENSE NO. _____" (Also see OAR 603-032-0110(6)).

Stat. Auth.: ORS 561.190 & 586.225 - 586.561
 Stats. Implemented: ORS 586.225 - 586.561
 Hist.: AD 487, f. 6-8-55, ef. 7-1-55; AD 703, f. 5-21-62; DOA 9-1998, f. & cert. ef. 9-21-98

DIVISION 42

PRACTICES AND PROCEDURES FOR COMMODITY COMMISSIONS

603-042-0010

Monitoring of Fiscal Practices and Procedures

(1) To facilitate the monitoring of the fiscal practices and procedures of all commodity commissions by the Department under ORS 576.066, in order to assure that commodity commissions are complying with applicable laws and administrative rules and are maintaining good business management practices, and pursuant to ORS 576.395, all commodity commissions shall comply with the requirements of this section.

(2) As soon as practicable after preparation, copies of the following documents shall be submitted to the Commodity Commission Oversight Program Office of the Department:

- (a) Minutes of regular or special meetings;
- (b) Administrative rules, including all related statements of the rules;
- (c) Executed contracts, agreements, memoranda of understanding or similar documents, and addenda thereto;
- (d) Statements of internal operational policies;
- (e) Periodic reports or summaries of the fiscal status of the commissions; and

(f) Fidelity bonds covering authorized agent who receives or disburses funds, filed with the commissions under either ORS 576.385, 577.550, or 578.110.

(3) Not later than 60 days after the end of each fiscal year, commission must prepare an annual financial statement of commission revenues and expenses, which shall be made available to the public, submitted to the Commodity Commission Oversight Program Office of the Department, and provided to the Secretary of State. An annual financial statement must include the following:

- (a) A balance sheet combining all funds;
- (b) A statement of budgeted and actual revenues and expenditures, indicating thereon any changes in fund balances; and
- (c) Any appropriate notes of explanation or disclosure.

(4) Every five years, or with greater frequency as determined by each Commission, each Commission will acquire either an independent fiscal evaluation or a financial statement audit of the Commission's accounting records, books and fiscal procedures. The constitutional and statutory audit authority of the Secretary of State is recognized as applicable to commodity commissions, and upon either a request of the Secretary of State or a request of a commodity commission, the Secretary of State may audit a commission either in lieu of or in addition to an Independent Fiscal Evaluation or audit:

(a) Each Commission shall determine the number of years that will be evaluated or audited;

(b) Each Commission will write a letter to the Secretary of State Audits Division seeking permission to obtain a financial statement

audit, and obtain permission from the Audits Division before conducting an audit;

(c) Commissions shall follow competitive bidding procedures to obtain financial evaluation or audit services when the value of service is in excess of \$10,000, pursuant to OAR 122-050;

(d) Financial statement evaluations and audits shall follow generally accepted accounting principles.

(5) Independent Fiscal Evaluations shall be an option only for those Commissions with annual assessment income of \$50,000 or less and shall follow the Fiscal Evaluation Tool adopted by the Commodity Commission Oversight Program Advisory Committee. Each commission that selects the Independent Fiscal Evaluation method shall take official action to name a committee to conduct the evaluation. The committee shall not contain any member who was authorized to sign commission checks during the period that will be evaluated.

(6) One copy of the draft Independent Fiscal Evaluation report or the audit report, whichever the case, shall be mailed via certified mail to the home address of the Commission chairman or chairwoman for review, and one copy shall be mailed via first class mail to the Department's office of the Commodity Commission Oversight Program.

(7) One copy of the final report shall be mailed to the home address of the Commission chairman or chairwoman; a second copy of the final report shall be provided to the Commission's administrator. In addition, one copy of the final report shall be mailed to the Department's office of the Commodity Commission Oversight Program and one copy shall be mailed to the Secretary of State Audits Division.

(8) Whenever a Commission administrator changes, the Commission shall cause an audit to be conducted pursuant to ORS 297.210(2).

(9) The accounting records, books and procedures of all commodity commissions shall be established and maintained in accordance with generally accepted accounting principles.

(10) All new contracts, memoranda of understanding or similar documents committing commissions' funds or actions, and all addenda thereto, shall be submitted to and reviewed by the Department of Agriculture's office of the Commodity Commission Oversight Program prior to execution.

(11) The Attorney General's Model and Uniform Rules of Procedure under the Administrative Procedure Act shall be followed in all matters except where a different procedure is prescribed by a commodity commission's statute or rule.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561, 576, 577 & 578
 Stats. Implemented: ORS 561, 576, 577 & 578
 Hist.: AD 7-1983, f. & ef. 7-8-83; DOA 14-2007, f. & cert. ef. 8-23-07; DOA 14-2007, f. & cert. ef. 8-23-07

603-042-0015

Department Oversight over Promotion and Research

(1) The Department has the duty to review, and either approve or disapprove plans and projects recommended by a commodity commission for commodity promotion and research under ORS 576.066, 577.125 and 578.025. The Department's review will ensure that the plans or projects are:

- (a) Factual;
- (b) Not disparaging to other commodities; and
- (c) Consistent with the purposes of ORS 576.051 to 576.584, 577, and 578.

(2) In order to assist with the Department's review under section (1) of this rule commodity commissions must:

(a) Submit to the Department two copies of a detailed operational plan describing plans and projects for commodity promotion and research to be undertaken, contracted for, or otherwise funded (in whole or in part) over the next fiscal year. An operational plan submitted under this section shall include, if known and as applicable:

- (A) An outline of the message to be communicated through commodity promotion or research, including the target audience;
- (B) The objective of the commodity promotion or research;

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(C) The manner in which the commodity promotion or research is to be communicated, for example print ads, radio, mailings, e-mail, websites;

(D) The entity that will undertake the commodity promotion or research; and

(E) A description of how the Commission will evaluate the effectiveness of the promotion and how the objectives of the research will be met.

(b) Scientific research plans or projects that will be the subject of grant agreements do not have to be included in the operational plan described in (a) of this section as long as the grant agreements include the information required by (2)(a)(B), (D), and (E) of this rule.

(3) Each Commission shall submit an operational plan under section (2)(a) of this rule within 60 calendar days after its budget hearing. A Commission may request an extension of time from the Department for good cause shown.

(4) If a significant new plan or project for commodity promotion or research was not included in the operational plan described in subsection (2)(a) of this rule the Commission must submit an amendment to the operational plan to the Department for review under subsection (1) of this rule.

(5) The Department will review an operational plan submitted under (2)(a) of this rule in accordance with the criteria in section (1) of this rule, and approve, approve with modifications, or disapprove the operational plan, in writing, within 21 business days of receipt of the plan.

(6) A Commission shall include a clause in all contracts, grants and any other arrangement for payment for promotion or research that reserves to the Commission the right to approve a final communication prior to its dissemination. A Commission shall also reserve the right to refuse payment for work performed, unless a final communication has been approved. A Commission may consult with the Department prior to approval of a final communication in order to ensure that the communication is consistent with Section (1) of this rule.

(7) To the extent feasible, any commodity promotion paid for with commission funds, including promotion carried out by a contractor or grantee, shall include an identification statement such as: "paid for/paid in part by the Oregon _____ (insert name of commission), an agency of the State of Oregon."

(8) If the Department approves with modifications, or disapproves an operational plan or a communication submitted for review under subsection (2) of this rule, the Department shall explain the basis for its modifications or disapproval and shall give the Commission an opportunity to request that the Department reconsider its decision. A request for reconsideration must be in writing, must be received by the Department within 14 business days of the day the plan or communication was modified or disapproved, and must include the basis upon which the Commission believes the Department's modification or disapproval was in error. The Department will act on the request for reconsideration within 14 business days of its receipt.

(9) If a Commission enters into a contract, grant or otherwise contributes funds to an entity to do commodity promotion or research, the Commission may submit evidence to the Department that the United States Department of Agriculture (USDA) engages in oversight and control substantially equivalent to that the Department undertakes under subsection (1) of this rule. After an examination of this evidence, the Department may waive its review under subsection (1) of this rule if it concurs that a substantially equivalent degree of governmental oversight and control will occur.

(10) This rule does not apply to a Commission that has adopted a rule under ORS 576.372 or 578.216 providing for a refund.

(11) For purpose of this rule:

(a) "Commodity commission or commission(s)" means a commodity commission listed in ORS 576.062, the Oregon Beef Council established in ORS 577 and the Oregon Wheat Commission established in ORS 578.

(b) "Commodity promotion" means any action taken to present a favorable image of the commodity to the general public or to the

food and agriculture industry for the purpose of improving the competitive position of the commodity and stimulating the sale of the commodity.

(A) Without limiting the generality of the foregoing, "commodity promotion includes

(i) Providing information to consumers that is designed to enhance the image or sale of the commodity;

(ii) Consumer Education;

(iii) Nutrition Education;

(iv) Providing funding to another person or entity to carry out any of the above.

(c) "Consumer education" means any program or action utilizing or funding public relations, advertising or other means devoted to educating the general public or the food and agriculture industry about the desirable characteristics of the commodity and directed toward increasing the demand for the commodity.

(d) "Research" means any type of test, study, or analysis. Research may include research concerning how to enhance the image or sale of the commodity, as well as research concerning use, production, product development, quality, nutrition, or other characteristics of the commodity.

(12) For the 2004-05 fiscal year, a Commission shall submit an operational plan under section (2)(a) within 60 calendar days of the rule becoming effective. A Commission may request an extension of time from the Department for good cause shown.

Stat. Auth.: ORS 576.066, 577.125 & 578.025

Stats. Implemented: ORS 576.066, 577.125 & 578.025

Hist.: DOA 26-2004, f. & cert. ef. 11-30-04

603-042-0020

Commodity Commission Fees for Commodity Commission Program

(1) Pursuant to ORS 576.320, ORS 577.345, and ORS 578.135, the Department of Agriculture may collect annual fees from the commodity commissions to reimburse the Department for the supervisory and administrative functions that the Department performs according to ORS Chapters 576, 577, and 578.

(a) The Department shall consult with the Commodity Commission Oversight Program Advisory Committee related to the annual fees.

(2) The total fee assessed to the commissions shall not exceed \$300,000 per fiscal year, beginning with the fee invoiced in fiscal year 2011-2012. The fee shall be used to reimburse the Department for expenses incurred in the previous fiscal year.

(3) The fees for each commission shall be determined using the assessment income as shown on the annual financial reports submitted to the Department.

(4) The total fee for each commodity commission shall be calculated as follows:

(a) First, calculate the base fee for each commission. The base fee for each commission equals 2.3% of the actual assessment income that the commission received in the fiscal year two years prior to the calculation, except that for those commissions with assessment income of \$30,000 or less the base fee shall be a flat fee of \$750, and except that for those commissions with assessment income exceeding \$1,521,738 the base fee shall be a flat fee not to exceed \$40,000.

(b) Second, calculate the first shortfall by totaling all the base fees and subtracting the result from the program's annual operating costs, which are not to exceed \$300,000.

(c) Third, calculate the assessment factor for each commission. The assessment factor shall be determined by dividing each commission's fiscal year assessment collection by the total assessment income collected from all commodity commissions. The Department shall use the assessment collection shown on each commission's year-end financial statements from the fiscal year two years before the calculation. (For example, when calculating the fee invoiced in fiscal year 2011-12, the Department shall use the assessment shown on the 2009-10 year-end financial statement.)

(d) Fourth, calculate the shortfall portion for each commission. For commissions paying a base fee based on a percentage of its actual assessment income, the shortfall portion equals the first shortfall

multiplied by the assessment factor for that commission. For commissions paying a base fee based on a flat fee, the shortfall portion is not calculated.

(e) Fifth, calculate the combined fee for each commission. The combined fee for each commission equals the base fee for that commission plus the shortfall portion for that commission.

(f) Sixth, add all the combined fees for all commissions. If the total does not equal the actual cost of the program, which is not to exceed \$300,000, a second shortfall exists.

(g) Seventh, if subsequent shortfalls exist, the Department shall assess those shortfalls to each commission that is paying a base fee based on a percentage of its actual assessment income.

(5) The Department shall invoice each commission no later than November 15 each year; and the total fees shall be paid to the Department no later than December 31 of each year.

Stat. Auth.: ORS 561.190
 Stats. Implemented: ORS 561, 576, 577 & 578
 Hist.: DOA 11-2000, f. & cert. ef. 4-18-00; DOA 14-2007, f. & cert. ef. 8-23-07;
 DOA 9-2011, f. & cert. ef. 5-10-11; DOA 23-2012, f. & cert. ef. 8-6-12

603-042-0030

Public Information Purpose and Application

(1) Commission as used herein includes all commodity commissions organized under ORS Chapters 576, 577, 578, and 579.

(2) In order to implement the provisions of ORS 183.330(1) requiring each agency to publish its methods for the public to obtain information, and in order to implement the provisions of ORS 192.430 so as to provide reasonable rules necessary for the protection of commodity commission records and to prevent interference with the regular discharge of the commodity commission duties, the Oregon Department of Agriculture adopts the procedures set forth in OAR 603-042-0030 to 603-042-0050. Unless rules for a specific commission provide otherwise, the procedures set forth in OAR 603-042-0030 to 603-042-0050, shall apply to requests for inspection or copying of public records of a commission, and requests for a commission to prepare and supply certified or other types of public records. Procedures for review of any denial of public records inspections or public record copies shall be in accordance with the provisions of ORS 192.450 to 192.490.

Stat. Auth.: ORS 183, 192 & 576
 Stats. Implemented: ORS 183, 192 & 576
 Hist.: DOA 11-2000, f. & cert. ef. 4-18-00

603-042-0035

Procedures for Inspection or Copying of Public Records

(1) Requests for inspection or copying of public records must be made either in person or in writing and directed to the Administrator of the commission to which the request is directed. E-mails are not an acceptable form of writing. All requests shall be made at or delivered to the offices of the commission to which the request is directed. Commission addresses are available from the Department of Agriculture, Agricultural Development and Marketing Division located at 1207 NW Naito Parkway, Suite 104, Portland, OR 97209-2832. Requests made in person shall be made between the hours of 8:30 a.m. to 11:30 a.m. and 1:30 p.m. to 4:30 p.m. Monday through Friday of each week except holidays and depending upon staff availability. Requests made in writing shall be acknowledged by the commission to which they are directed and the commission will specify the time and place the requested records will be available for inspection or copying.

(2) Requests for inspection or copying of public records that would result in any of the following shall only be accepted if made in writing:

(a) If the Commission is required to search for, collect, examine, or sort voluminous and separate records or documents in order to comply with such request; or

(b) If the Commission is required to consult with another public body or agency having any interest in the propriety of such request.

Stat. Auth.: ORS 183 & 576
 Stats. Implemented: ORS 192 & 576
 Hist.: DOA 11-2000, f. & cert. ef. 4-18-00

603-042-0040

Procedures for Obtaining Copies of Public Records

(1) Requests for certified or other types of copies of public records shall only be made in writing and shall include a reasonably specific description of the particular record copy requested, i.e., the type of document, the subject matter, the approximate document date, and the name of the firm or person identified in the document (if pertinent).

(2) Subject to the provisions of OAR 603-042-0050, requestor copies of public records shall be submitted to the requestor within a reasonable time following receipt of the request. If the request will require more than 30 days to respond to, the commission will notify the requester of such fact within 31 days of receipt of the request.

Stat. Auth.: ORS 183 & 576
 Stats. Implemented: ORS 192 & 576
 Hist.: DOA 11-2000, f. & cert. ef. 4-18-00

603-042-0045

Fees for Public Record Request

(1) As provided by ORS 192.440(3), the following fees are established for all public record requests:

(a) Record search: Per hour — \$20 with a minimum charge of \$5.00;

(b) Copies: Per page (all duplication processes) — \$.25;

(c) Certification: Per certificate — \$2.50.

(2) If the request appears to require services for which no fee has been established (computer time, travel, shipping cost, communication costs, etc.) the actual cost shall be determined or estimated by the commission. Should such be \$25 or more, the requestor shall be notified of such prior to the commission complying with such request.

(3) A requestor shall pay the applicable fees to the commission prior to or at the time the commission complies with a request. No refund of fees shall be made. If the commission notifies a requestor of estimated or determined fees in excess of \$25, as provided in section (2) of this rule, the requestor shall upon commission's request, pay a deposit of such estimated or determined fee prior to the commission complying with such request.

(4) No fees shall be assessed to other governmental agencies or offices.

Stat. Auth.: ORS 183, 192 & 576
 Stats. Implemented: ORS 192 & 576
 Hist.: DOA 11-2000, f. & cert. ef. 4-18-00

603-042-0050

Noncompliance with Requests

(1) If a request received by the commission has been submitted erroneously, in that the commission has no public records relating to the request, the request shall be returned to the requestor with any information concerning the appropriate agency to be contacted.

(2) If a commission determines that all or any part of a public record is exempt from disclosure and will not be disclosed, the commission shall notify the requester of such fact, the public record(s) or part(s) thereof that will not be disclosed, the reasons therefor and the right of the requester to petition the Attorney General for review.

(3) In determining whether all or any part of a public record is exempt from disclosure, a commission shall consider:

(a) Public record exemptions specified in ORS 192.501 and 192.502;

(b) Public record exemptions specified in applicable federal laws or regulations;

(c) Public record exemptions specified in other applicable Oregon law;

(d) Whether a partially exempt public record can be reasonably segregated so as to allow disclosure of an intelligible and undistorted portion of such record while preserving the confidentiality of the exempt portion of such record.

Stat. Auth.: ORS 183 & 576
 Stats. Implemented: ORS 192 & 576
 Hist.: DOA 11-2000, f. & cert. ef. 4-18-00

603-042-0060

Assessment Collection Procedures

(1) In the event of delinquent assessments or imposition of penalties, when the assessment amount is known, a commodity commission:

(a) Shall send a demand letter immediately following the assessment due date. The demand letter shall include:

(A) A statement that the assessment payment is due and delinquent and that the debtor is subject to a penalty for late payment, pursuant to ORS 576.355, 577.785, 579.250;

(B) The amount of assessments and penalties owed; and

(C) A procedure for requesting reconsideration. A commission may offer a payment plan and include a payment plan request form with a demand letter. If offered, a payment plan must be based on a documented need resulting in an inability to make full payment, be interest bearing, and not exceed one year.

(b) May refer the matter, if unresolved, to the Oregon Department of Revenue sixty days after the date of a demand letter.

(2) In the event of delinquent assessments or imposition of penalties, when the amount is unknown, the process shall be as follows:

(a) A commodity commission shall, immediately following the assessment due date, send a notice of non-payment letter to persons from which assessment payments may be expected. The non-payment letter shall include:

(A) A statement that the recipient may be subject to penalties for late payment, if assessments are owed; and

(B) A statement that the commission may inspect and audit records to determine the amount of assessments due to the commission. An audit will be conducted at the handler or producer's place of business. No person may refuse to permit an inspection and audit.

(b) If the amount owed is determined but the assessment or any accrued penalties remain unpaid, a commodity commission shall send a demand letter requesting payment. As applicable, the demand letter shall include:

(A) A statement that the assessment payment is due and delinquent and that the debtor is subject to a penalty for late payment, pursuant to ORS 576.355, 577.785, 579.250;

(B) The amount of assessments and penalties owed; and

(C) A procedure for requesting reconsideration. A commission may offer a payment plan and include a payment plan request form with a demand letter. If offered, a payment plan must be based on a documented need resulting in an inability to make full payment, be interest bearing, and not exceed one year.

(c) May refer the matter, if unresolved, to the Oregon Department of Revenue sixty days after the date of a demand letter.

Stat. Auth.: ORS 576

Stats. Implemented: ORS 576

Hist.: DOA 11-2000, f. & cert. ef. 4-18-00; DOA 32-2000, f. & cert. ef. 12-6-00

DIVISION 43

ASSESSMENT CHALLENGE PROCEDURES

603-043-0010

Scope and Purpose

These rules establish a challenge process for those producers who dispute the amount of a commodity assessment levied against the producer pursuant to ORS 576.325(3)(a) and procedures for the affected commission to process the challenge. These rules also establish guidelines for the commission in setting their industry average unit price.

Stat. Auth.: ORS 576.044 & 576.370

Stats. Implemented: ORS 576.320

Hist.: DOA 20-2002, f. & cert. ef. 7-26-02

603-043-0020

Definitions

(1) "Reporting Period" is set by each commission by administrative rule and means the period of time no longer than one year for which a first purchaser files the assessment report and remits the

assessment to the commission. Example: monthly, quarterly, annually, etc.

(2) "Reporting Year" is set by each commission by administrative rule and means 12 consecutive months. Example: August 1 through July 31.

(3) "Assessment Period" is set by each commission by administrative rule and means the current reporting year, or the current reporting year plus the previous one or two reporting years. It is the period producers use to challenge an assessment levied under ORS 576.325(3)(a).

(4) "Limit Period" is set by each commission by administrative rule and means the most recent complete one, two, or three reporting years used by the commission in determining the industry average unit price.

(5) "Arm's-length transaction" is one in which each party is acting independently in such party's own economic self-interest. The purest example of an arm's length transaction is a purchase and sale between strangers in an open market or at public auction. Transactions between a cooperative and its member and transactions among affiliates would not be considered at arm's length.

Stat. Auth.: ORS 576.044 & 576.370

Stats. Implemented: ORS 576.320

Hist.: DOA 20-2002, f. & cert. ef. 7-26-02

603-043-0030

Industry Average Unit Price

(1) Within the first 14 days of each reporting year, those commissions assessing pursuant to ORS 576.325(3)(a) must determine by commission vote an industry average unit price for the limit period. The commission must provide notice of the meeting in the same manner as for a proposed budget under ORS 576.425(3). The notice must include the proposed industry average unit price.

(2) Each commission must specifically define the terms to calculate the industry average unit price for the commodity. These terms will be consistent for establishing the assessment rate. Terms to be considered are:

(a) Payment Terms. Standard payment terms for cash or cash equivalents, and whether deductions for the cost of money are to be considered for extended terms.

(b) Delivery Terms. Standard form of delivery, whether FOB producer's property, receiving station, grain elevator, buyer's plant, or other.

(c) Commodity Unit. Standard for determining the common unit of measure for the commodity whether by volume, weight, units, dozens, gross, or other.

(d) Commodity Characteristics. Standards for determining the classification or number of classifications of commodity units, whether by grade, variety, size, maturity or other, for which standard purchase and sale transactions will be recognized.

(e) Standard Deductions. Define the standard deductions, if any, from amounts paid to producers that will apply to all commodity transactions.

Stat. Auth.: ORS 576.044 & 576.370

Stats. Implemented: ORS 576.320

Hist.: DOA 20-2002, f. & cert. ef. 7-26-02

603-043-0040

Challenge Process

(1) Any commodity producer who has paid an assessment under ORS 576.325(3)(a) may file a challenge with the commission if the total assessment levied against the producer during the assessment period established by the commission exceeds one and one-half percent of the total dollar value received by the producer for the raw commodity during that assessment period.

(2) A producer may file a challenge by obtaining a Commission Assessment Challenge Form from the relevant commodity commission. The producer must file the completed Challenge Form with a US Postmark dated no later than on the 60th day following the close of the assessment period. Failure to comply with this requirement must result in an automatic denial of the challenge.

(3) The commission must approve or disapprove the challenge in writing within 90 days following the deadline for the challenge. At any time before the commission issues its decision, either the

commission or the challenger may request informal methods of resolution. If involved in an informal method of resolution, the 90 day period may be extended by consent of both parties.

(4) If a commission approves the challenge, the commission will refund the challenger within 30 days of the date of the approval for the amount of the assessment that the challenger proves is in excess.

(5) If a commission disapproves the challenge, the producer may file an action in the appropriate court.

Stat. Auth.: ORS 576.044 & 576.370
Stats. Implemented: ORS 576.320
Hist.: DOA 20-2002, f. & cert. ef. 7-26-02

**603-043-0050
Determining Commodity Prices in a Challenge**

(1) All prices for any method of selling the commodity reported on the Commission Assessment Challenge Form must be the same term(s) that the respective commission uses to calculate the industry average unit price and in establishing the assessment rate.

(2) In addition to the Commission Assessment Challenge Form, the challenger must submit the appropriate documentation to demonstrate the price(s) received.

(3) If the challenger is involved in arm’s length transactions for all or part of the challenger’s commodity production, the challenger must prove the total dollar value received by the challenger during the assessment period.

(4) If the challenger is a member of a cooperative for all or part of the challenger’s commodity production, the challenger must use the economic value of the commodity as set by the cooperative’s Board of Directors.

(5) If the challenger acts as a first handler or processor for all or part of the challenger’s commodity production, the challenger must prove that prices received for the production is equivalent to the prices paid in arm’s length transactions. If the challenger is unable to prove the price equivalence, the challenger must use the commission’s average price for this production in the respective reporting year.

(6) If the challenger is not involved in an arm’s length transaction for all or part of the challenger’s production, the challenger must prove that prices received for the production are equivalent to the prices paid in arm’s length transactions. If the challenger is unable to prove the price equivalence, the challenger must use the commission’s average price for this production in the respective reporting year.

(7) The total dollar value as determined pursuant to these rules is deemed to be “received by the producer” as that term is used in ORS 576.370 in the reporting year during which the commodity was delivered to the first purchaser or handler.

Stat. Auth.: ORS 576.044 & 576.370
Stats. Implemented: ORS 576.320
Hist.: DOA 20-2002, f. & cert. ef. 7-26-02

DIVISION 45

THIRD PARTY GRADING ELECTION PROCEDURES

603-045-0010

Definitions

(1) “Department” means the State Department of Agriculture.

(2) “Grower” means any person engaged in the business of growing or producing any produce in this state and includes any cooperative organization composed exclusively of growers and handling exclusively the produce of its own members and operating under and by virtue of the laws of this state or any other state of the United States.

(3) “Elector” is synonymous with “Grower.”

(4) “Handler” means a person or the agent of the person who processes produce the person has purchased or otherwise acquired in this state from a grower.

(5) “Produce” means any fruit or vegetable grown or produced by a grower and of which total sales by growers to handlers for the previous growing season totaled more than \$1 million. The Depart-

ment shall determine and verify the application of this defined term, and the total sales value herein specified, and for this purpose shall be authorized to inspect books and records and require reports.

(6) “Election” means the procedure for terminating the Department’s inspection and classification as provided by ORS 632.950.

(7) “Supervisor of Elections” means the Administrator of the Agricultural Development and Marketing Division or some other person appointed by the Director.

Stat. Auth.: ORS 632
Stats. Implemented: ORS 632
Hist.: DOA 1-2002, f. & cert. ef. 1-15-02

**603-045-0020
Petition Filing Requirements**

(1) Any grower or handler who wants the Department to terminate its inspection of a processing plant in Oregon must contact the Administrator of the Agricultural Development and Marketing Division of the Oregon Department of Agriculture and request a petition. The Department will send the requestor an information packet and petition.

(2) The petition must specify the commodity, processing firm and location, and a petition representative. A separate petition and election will be held for each commodity and each processing plant by location.

(3) The processing plant must provide the Department a notarized statement certifying a list of all growers who deliver the commodity to that plant. The list must include each grower’s name, address, and relevant production for the period designated by the Department. The list will become the list of electors.

(4) The petitioners must meet the signature requirements of ORS 632.950.

(5) The petition representative must submit with the petition a deposit of \$250 for the cost of the election. If the cost of the election exceeds the deposited amount, the petitioners must pay the difference. If the actual cost is less than the deposit, the Department will issue a refund to the petitioner(s) for the difference between the deposit and the actual cost.

(6) The Supervisor of Elections will review the petition to verify it meets the requirements of ORS 632.950. If it does, the Supervisor of Elections will notify the petition representative. If it does not, the Supervisor of Elections will notify the petition representative of the petition’s deficiencies.

Stat. Auth.: ORS 632
Stats. Implemented: ORS 632
Hist.: DOA 1-2002, f. & cert. ef. 1-15-02

603-045-0030

Election

(1) If the petition meets the statutory requirements, the Department will provide notice of the date of the election in a newspaper circulated in the production area. The notice will appear at least 14 days before the first day of the election. The notice will include the following:

- (a) The beginning date and the end date of the election period;
- (b) A statement explaining how the grower list was established; and

(c) Information on how a grower may obtain a ballot.

(2)(a) During the period established for the election, all affected growers are entitled to vote. Any grower may present evidence in support of a claim to be an eligible elector, however their vote will not count unless the Supervisor of Elections determines that they qualify to be an eligible elector;

(b) A partnership has only one vote, which may be cast either by one of the partners or by the partners jointly;

(c) The vote of a corporation, association, joint stock company, or other firm or business entity, may be cast by any properly authorized officer.

(3) The Supervisor of Elections shall:

- (a) Conduct the election by giving an opportunity to affected electors to cast their ballots;

(b) Determine the beginning and end of the election period and the deadline for casting ballots. Electors must be allowed at least ten days to vote in the election;

(c) Determine whether ballots may be cast by mail or at polling places. If the Supervisor of Elections determines that ballots may be cast by mail, it will cause all material specified in subsection (3)(d) of this rule to be mailed to each elector at the last known address on file with the Department. If the Supervisor of Elections determines that ballots may be cast at polling places, it may determine, subject to provisions of ORS Chapter 576, the necessary polling places and the hours during which each polling place will be open; provided that all polling places remain open at least four consecutive hours during each day announced. The Supervisor of Elections will also allow electors to vote by absentee ballot;

(d) Make available to affected electors the following:

(A) A statement of the proposal on the ballot form;

(B) A form certifying the following information:

(i) That the elector has the authority to vote for business entity;

(ii) The elector’s production in the last preceding crop season or year of the affected commodity; and

(iii) That the elector is a current grower of the affected commodity.

(4)(a) The Supervisor of Elections and its appointees during an election will check that each postmark is within the election period, maintain a daily record of each elector’s name and business entity located on the outside of the return envelope, and place return envelopes in a locked ballot box. The daily record is available to the public for inspection. Any registered grower may challenge the qualifications and eligibility of an elector to vote. The person challenging the ballot must submit, under oath or affirmation before a public notary, a written statement of challenge. The statement must contain the challenger’s name and residential address and mailing address, if different; the name of the person challenged; and a statement of the facts upon which the challenge is based. All challenges must be received by the Supervisor of Elections by 5:00 p.m. on the second business day following the close of the election.

(b) The Supervisor of Elections will examine any challenge to determine if the challenger is registered to vote. If the challenge meets the requirements contained in this rule, the Supervisor of Elections will examine the challenge and determine if the person is qualified and if the vote was properly cast. If the challenge does not comply with the requirements of this rule, it will be dismissed.

(5) After all challenges have been decided, the Supervisor of Elections will appoint two persons to open the locked ballot box and remain present while the ballot box is open. They must immediately reconcile the number of ballots against the daily record of electors.

(a) One person must open the return envelope and determine if the certification complies with the requirements of this rule. If so, the ballot envelope must be handed to the second person for tally. The first person shall read the certified production total to the second person to be recorded on the ballot. If the certification does not comply with the requirements of this rule, it must be submitted to the Supervisor of Election with the sealed ballot for review. The Department may obtain missing information from all electors whose certifications are incomplete. One the certification is complete the ballots may be tallied.

(b) The certification and ballots will remain in separate files to protect the elector’s confidentiality.

(6) Within ten days of the conclusion of the election, the Supervisor of Elections will prepare the Certification and Declaration and submit it to the Director for filing with the Secretary of State. The Certification and Declaration must include the following:

(a) A statement to the effect that the ballots submitted are all of the ballots cast and received by such persons during the election period;

(b) A list of all challenged ballots;

(c) A detailed statement explaining the method used in publicizing the election and how the election was conducted; and

(d) The total numbers of affirmative and negative votes cast;

(e) The percentage of total electors that those voting represent; and

(f) The percentage of total production that the affirmative and negative votes represent.

(7) After filing the Certification and Declaration with the Secretary of the State, the Department will announce the results of the election.

(8) The Supervisor of Elections may prescribe additional instructions consistent with the provisions of this rule.

Stat. Auth.: ORS 632

Stats. Implemented: ORS 632

Hist.: DOA 1-2002, f. & cert. ef. 1-15-02

DIVISION 47

PAYMENT FOR AGRICULTURE COMMODITIES

603-047-0010

Definitions

Unless the context or a specifically applicable definition requires otherwise, the following definitions shall apply to OAR 603-047-0100 to 603-047-0500: Rules promulgated under the authority of ORS Chapter 576, Payment for Agriculture Commodities (Seeds).

(1) “Agricultural seed” means grass seed of a type commonly sold for use in turf lawns or as forage seed.

(2) “Authenticate” has the meaning given that term in ORS 79.0102.

(3) “Complaint” as used in this rule means a written complaint submitted to the department by a producer or grower pursuant to ORS 576.738 alleging a failure by a seed dealer to make any payment or timely payment under a seed bailment contract, seed production contract or seed purchase contract.

(4) “Department” means the State Department of Agriculture.

(5) “Reasonable Price” means the value of a grass seed kind, variety (or similar variety) and quality (or similar quality) during a time frame corresponding with the date in which payment was due.

(6) “Financial Assurance” as used in ORS 576.741 means any written assurance attesting to the applicant’s financial abilities as obligated under seed production or seed purchase contracts and may include a surety bond.

(7) “Notice of failure to make payment,” as used in ORS 576.738 and this OAR means a notice made by the department to a seed dealer of failure to make payment under a seed production contract or a seed purchase contract as described in 576.738 for which a final order affirming the notice has been issued. It does not include a notice that has been withdrawn or successfully appealed.

(8) “Producer” means a person that grows agricultural seed in this state on a commercial basis for a seed dealer.

(9) “Seed Bailment Contract” means a seed production contract under which the seed dealer retains title to all seed, seed stock and plant life grown or used by the producer under the terms of the contract.

(10) “Seed Dealer” means a person that in the ordinary course of business contracts to buy agricultural seed grown in this state by a producer or contracts with a producer for the growing of agricultural seed in this state.

(11) “Seed Deliver” means the date on which the seed grower delivers grass seed to the seed dealer pursuant to a notice from the dealer.

(12) “Seed Grower” means a person that grows grass seed in this state on a commercial basis without entering into a contract with a seed dealer prior to harvesting of the seed.

(13) “Seed Production Contract” means a written agreement between a producer and a seed dealer for the growing of agricultural seed in this state.

(14) “Seed Purchase Contract” means a written agreement for a seed dealer to purchase grass seed that has been grown by a seed grower. “Seed purchase contract” does not include a seed production contract.

(15) “Variety Not Stated Seed” means agricultural seed that is sold in unmarked plastic bags or other unmarked containers without any reference to a variety name for the seed.

Stat. Auth.: ORS 561.190, 576.738, 576.741, 576.744, 633.660, 633.670 & 633.680
 Stats. Implemented: ORS 576.738, 576.741 & 574.744
 Hist.: DOA 31-2012, f. & cert. ef. 12-21-12

603-047-0100

Seed Production Contract Terms

As provided for in ORS 576.718, 576.721, 576.726, 576.729 and 72.3050 (1) to (3):

(1) If the seed production or purchase contract does not settle the price of the grass seed, a reasonable price may be established according to a department survey of a representation of seed dealers and growers/producers for the purpose of determining a reasonable price at the time of delivery.

(2) When the price of a grass seed kind is the “established price” pursuant to supervised price discussions as described in ORS 646.738, the established price shall apply.

(3) When a disagreement over payment or timely payment stems from a disagreement between the seed dealer and the seed producer or grower over the quality of the seed of a contracted or purchased lot, the parties to the contract may engage in collaborative dispute resolution processes including the process specified in OAR 603-047-0500.

Stat. Auth.: ORS 561.190, 576.738, 576.741, 576.744, 633.660, 633.670 & 633.680
 Stats. Implemented: ORS 576.738, 576.741 & 574.744
 Hist.: DOA 31-2012, f. & cert. ef. 12-21-12

603-047-0200

Seed dealer Failures to Timely Make Payment; Fee

Pursuant to ORS 576.738, all producers or growers making a complaint of no payment or untimely payment must submit the complaint in writing to the department.

(1) Prior to filing a complaint of untimely or nonpayment with the department, a seed grower or producer must send a notice to the dealer of the amount owed.

(2) Unless expressly provided otherwise in a seed production contract that is authenticated by the producer and seed dealer prior to the producer planting the agricultural seed, a producer shall upon notification to the dealer of seed quality test results, indicating that the seed is eligible for sale, shall also notify a seed dealer, in writing, no later than 30 days prior to commencement of storage fees, a rate for storage fees and the date in which storage fees will commence.

(3) A written complaint must include all documents and information as required by the department and must include a fee of \$50.

(a) Upon receipt of the fee and written complaint the department shall verify that the complainant has provided all information required to make a determination and request additional information from the complainant if necessary.

(b) Consistent with law, the agency may initiate an investigation to determine the validity of the complaint.

(4) Upon the department’s determination that a complaint of untimely or nonpayment is valid and correct the department shall notify the seed dealer in writing that the dealer has 30 days to pay the producer or seed grower all delinquent monies plus interest on each delinquent amount at the rate of one percent per month simple interest from the final payment date for that delinquent amount and that failure to make payment as described in the notice may result in the suspension of the seed dealer’s license.

(a) The department must notify the seed dealer of its determination consistent with ORS Chapter 183 and as described in OAR 603-047-0400, and shall serve its notice on the seed dealer and on any and all persons to whom payment is due under the contract.

(b) The complainant or respondent may challenge and offer evidence to prove or disprove the department’s notice in a contested case hearing.

(5) The Department may post a notice issued pursuant to subsection (2) above on its web page and in a newspaper of general circulation. This notice shall include the following information:

(a) The name of the seed dealer to whom the Department has issued a notice;

(b) A statement that the Department has determined as a preliminary matter that the named seed dealer owes payment to a grower/producer and the name of the grower/producer;

(c) A statement allowing any person to file a complaint as described in subsection (1) of this section with the Department within 30 days of publication of the notice.

(6) If it appears that no determination may be made that payment has not been made in accordance with the terms of a seed production contract or seed purchase contract, or that the department does not have jurisdiction over the complaint, the department shall apprise the complainant in writing of its final decision not to pursue the complaint.

(7) The complainant producer or grower shall submit to the department a payment of \$150 for each notice of payment demand made to a seed dealer prior to the department’s issuance of the notice.

Stat. Auth.: ORS 561.190, 576.738, 576.741, 576.744, 633.660, 633.670 & 633.680
 Stats. Implemented: ORS 576.738, 576.741 & 574.744
 Hist.: DOA 31-2012, f. & cert. ef. 12-21-12

603-047-0300

Seed Dealer Financial Assurance; Rules; License Refusal; Agents

As used in ORS 576.741 and this rule, unless the context or a specifically applicable definition requires otherwise.

(1) “Officer” means any of the following individuals:

(a) A president, vice president, secretary, treasurer or director of a corporation;

(b) A general partner in a limited partnership;

(c) A manager in a manager-managed limited liability company;

(d) A member of a member-managed limited liability company;

(e) A trustee;

(f) A person or group of persons who direct or cause the direction of the management and policies of a licensed seed dealer person, whether through ownership of voting securities, by contract or otherwise.

(g) “Owner” means the sole proprietor of, partner in or holder of a controlling interest in the named entity on an application for a seed dealer’s license.

(2)(a) As a condition of issuing a seed dealer license under ORS 633.70, the department shall require the following financial assurance when:

(b) If during the preceding year a seed dealer, owner or officer of a seed dealer’s license has received a final order suspending the dealer’s license and the final order is not withdrawn or successfully appealed, but the seed dealer has demonstrated to the satisfaction of the department that the dealer is current on all payments described in a final order, the department may issue a seed dealer license but shall require a surety bond or irrevocable letter of credit for not less than \$100,000 prior to issuing or renewing a license. This bond must be maintained for a period of time not less than 5 years from the date of issuance of the new or renewed license.

(3)(a) The department may refuse to issue or renew a seed dealer license to a seed dealer, owner or officer of a seed dealer, for which the license has been suspended under ORS 576.738, or may refuse to issue or renew a seed dealer license to an officer of a seed dealer at the time of an event that resulted in the license of the seed dealer being suspended, or of a person who exercised substantial control over the seed industry activities of a seed dealer at the time of an event that resulted in the license of the seed dealer being suspended under 576.738.

(b) The department must notify applicant of its decision to refuse to issue or renew a seed dealer license in writing consistent with ORS Chapter 183 and as described in OAR 603-047-0400, and shall serve its notice on the applicant and on any party to the previous action resulting in suspension of the seed dealer’s license.

(4) Any seed dealer or person who was an officer or agent for a seed dealer at the time of an event that resulted in the license of the seed dealer being suspended may provide evidence to the department

as to why a seed dealer license should not be suspended and may include evidence;

(a) That the seed dealer named in the order on suspension is current on all payments due as described in a final order issued by the Department;

(b) That the person or entity making the application is not or did not exercise substantial control over the business or activities causing the suspension of the seed dealer license; or

(c) That the person or entity making the application did not have actual authority to establish the performance obligations of the seed dealer under the contract at issue in any seed dealer license suspension.

(5) The department may corroborate the evidence submitted by a seed dealer with any seed growers or producers who were a party to the suspension proceeding in which the seed dealer’s license was suspended. If significant disputes remain regarding the evidence submitted by applicant, the department shall refer the issue of whether the seed dealer has made satisfactory payment to an evidentiary hearing.

Stat. Auth.: ORS 561.190, 576.738, 576.741, 576.744, 633.660, 633.670 & 633.680
Stats. Implemented: ORS 576.738, 576.741 & 574.744
Hist.: DOA 31-2012, f. & cert. ef. 12-21-12

603-047-0400

Department’s Notice; Right to Contested Case Hearing

(1) A notice issued by the department pursuant to OAR 603-047-0200 and 603-047-0300 must be in writing, is subject to any applicable provisions of ORS Chapter 183, and shall include:

(a) A reference to the particular statute and administrative rule involved in the department’s determination;

(b) A statement explaining how the amount of nonpayment was calculated, or how the payment is untimely or both;

(c) A statement explaining that the seed dealer’s license is suspended and the dealer has not demonstrated to the satisfaction of the Department that the dealer is current on all payments due as described in a final order issued by the Department and that the Department may refuse to issue or renew the seed dealer license;

(d) A statement explaining that a license applicant is an officer, owner or agent of the entity holding a seed dealer’s license that was suspended;

(e) A statement of the person’s right to request a hearing within 60 days of receipt of the notice and an explanation of how a hearing may be requested;

(f) A statement that a collaborative dispute resolution process is available as an alternative to a contested case hearing, and that choosing such process will not affect the right to a contested case hearing if a hearing request is received by the agency within the time period stated in the notice and the matter is not resolved through the collaborative process;

(g) A statement indicating whether and under what circumstances ODA may issue a final order by default.

Stat. Auth.: ORS 561.190, 576.738, 576.741, 576.744, 633.660, 633.670 & 633.680
Stats. Implemented: ORS 576.738, 576.741 & 574.744
Hist.: DOA 31-2012, f. & cert. ef. 12-21-12

603-047-0500

Collaborative Dispute Resolution; Mediation

(1) Resolution of contested cases. The department may enter into an informal disposition of a contested case with the parties to a contested case to resolve any matter identified in the department’s notice.

(a) Any informal disposition must be in writing and signed by the party or parties to the contested case;

(b) The department shall incorporate an informal disposition into a final order resolving all issues described in the notice.

(2) Dispute over price stemming from seed quality disputes. When a disagreement over payment or untimely payment stems from a disagreement between the seed dealer and the seed producer or grower regarding the quality of the seed of a contracted or purchased lot, then upon mutual agreement and request of both dealer and producer or grower, the Department may take an official sample of the

disputed lot and submit the sample to the Oregon State University, agricultural research station, or other laboratory agreed upon by the parties for testing.

(a) The parties may agree that the results of this test shall be binding upon the dealer and producer or grower.

(b) The parties may agree that the cost of sampling and testing shall be shared equally between the dealer and producer or grower and dealer, but in no case shall the cost of sampling be ascribed to the department unless by consent of the department.

(3) Mediation of disputes. At any time after the department receives a complaint or issues a notice pursuant to OAR 603-047-0200, the parties to the disputed contract may enter into mediation to resolve the matters disputed.

(a) The department may keep a roster of qualified mediators to assist parties wishing to mediate the matters disputed and a mediator may be selected by agreement of the parties.

(b) Any mediation agreement between the parties must contain a provision for reporting to the department as to whether the mediation successfully resolves the matters asserted in the department’s notice. If there is no agreement, the Department may refer the matter to the Office of Administrative Hearings for a contested case hearing.

(c) A request for mediation does not toll the time period for requesting a contested case hearing if a notice has been issued.

Stat. Auth.: ORS 561.190, 576.738, 576.741, 576.744, 633.660, 633.670 & 633.680
Stats. Implemented: ORS 576.738, 576.741 & 574.744
Hist.: DOA 31-2012, f. & cert. ef. 12-21-12

DIVISION 48

INDUSTRIAL HEMP

603-048-0010

Definitions

The following definitions apply to OAR 603-048-0050 through 603-048-1000 unless the context requires otherwise.

(1) “Agricultural hemp seed” means Cannabis sativa seed that meets any labeling, quality and other standards set by the Oregon Department of Agriculture (department) and that is intended for sale or is sold to, or purchased by, licensed growers for planting.

(2) “Crop” means any contiguous field of industrial hemp grown under a single license.

(3) “Composite Sample” means the combined total number of hemp samples of the same variety, taken from the plants of one field of industrial hemp.

(3) “Field” means any contiguous property not separated by fence, road, ditch, or crop.

(4) “Flagrant” means the respondent had actual knowledge that the conduct was unlawful and consciously set out to commit the violation.

(5) “Grower” means a person, joint venture or cooperative that produces unprocessed industrial hemp, including agricultural hemp seed.

(6) “Handler” means a person, joint venture or cooperative that receives industrial hemp for processing into commodities, products or agricultural hemp seed.

(7) “Hemp Commodities or Products” means mature stalks of the industrial hemp plant, fiber produced from such stalks and any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom).

(8) “Industrial hemp”:

(a) Means all non-seed parts and varieties of the Cannabis sativa plant, whether growing or not, that contain a crop-wide average tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry weight basis.

(b) Means any Cannabis sativa seed that:

(A) Is part of a growing crop;

(B) Is retained by a grower for future planting; or

(C) Is for processing into, or use as, agricultural hemp seed.

(c) Does not mean industrial hemp commodities or products.

(9) "Lot" means a definite quantity of industrial hemp of a single variety, grown in one field.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996
Stats. Implemented: ORS 571.300 - 571.315
Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0050

Production and Handling of Industrial Hemp

(1) No person, joint venture or cooperative may grow, handle, possess or process industrial hemp without first obtaining an industrial hemp license from the Department. Growers and handlers of industrial hemp must comply with all terms and conditions of a license issued by the Department.

(2) No person, joint venture or cooperative may grow, handle, or possess agricultural hemp seed without first obtaining an agricultural hemp seed production permit from the Department except that a licensed grower may retain seed from each industrial hemp crop to ensure a sufficient supply of seed for that grower for the following year provided the seed retained is not sold or transferred.

(3) Agricultural hemp seed that is sold, offered or exposed for sale within this state must comply with all requirements established in ORS 633.511 to 633.750 or any rule of the Department implementing those statutes.

(4) Every licensed grower or handler of industrial hemp, or holder of an agricultural hemp seed production permit must keep records as specified in OAR 603-048-0400.

(5) A grower of industrial hemp or agricultural hemp seed may not change the location of fields or the number of acres produced, unless the Department is first notified in writing, on forms provided by the Department, including a map indicating the changes.

(6) Growers of industrial hemp or agricultural hemp seed must notify the Department a minimum of 14 days prior to the intended harvest date to allow the Department to take and test samples.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996
Stats. Implemented: ORS 571.300 - 571.315
Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0100

Licensing and Permits

(1) All persons, joint venture or cooperative engaged in growing, handling, possession and commerce in industrial hemp must obtain an industrial hemp license.

(2) In addition to an industrial hemp license, all persons, joint venture or cooperative engaged in growing, handling, possession and commerce in agricultural hemp seed, must obtain an agricultural hemp seed production permit.

(3) The application for a license to grow and handle industrial hemp, or a permit to grow and handle agricultural hemp seed, must be submitted in writing to the Department on forms provided by the Department. Applications must include the following information:

- (a) The name, and address of the applicant;
- (b) The global positioning system (GPS) coordinates taken at the approximate center of the growing area(s) and legal description for all properties proposed to be used to handle industrial hemp;
- (c) When the application is for growing industrial hemp or permit for agricultural hemp seed, a license or permit application must include:

- (A) The number of acres to be cultivated and showing that at least 2.5 acres will be cultivated;
- (B) A map of the land area showing the boundaries and dimensions of the growing area(s) in acres or square feet, the number of acres in each field, and the location of different varieties within the growing area(s) if applicable;
- (C) Estimated harvest date for each year's crop.

(d) The applicant's acknowledgment and agreement to the following terms and conditions:

(A) Any information provided to the Department may be publicly disclosed and be provided to law enforcement agencies without notice to the applicant;

(B) The applicant agrees to allow for inspection, sampling and testing that the Department deems necessary to administer the laws governing industrial hemp growing and handling;

(C) The applicant agrees to submit all required reports, by applicable due dates specified by the Department;

(D) The applicant agrees to pay all fees and charges for licenses, and or permits, and other fees associated with sampling, inspection and testing.

(E) The applicant's signature and attestation that the information in the application is true and correct.

(e) License and permit fees as specified in OAR 603-048-0600.

(4) In addition to information as required by OAR 603-048-0100 (3), all applicants for industrial hemp license, or agricultural hemp seed production permit, and upon request of the department, must make available for review a valid U.S., state, or federal-issued photographic identification that includes last name, first name, and date of birth from the applicant. Acceptable forms of current U.S., state or federal issued photographic identification include but are not limited to:

- (a) Drivers license;
- (b) State identification card;
- (c) Passport; or
- (d) Military identification card.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996
Stats. Implemented: ORS 571.300 - 571.315
Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0110

Renewal of Licenses and Permits

(1) An industrial hemp license or agricultural hemp seed production permit is valid for a three-year term unless revoked and may be renewed as provided in OAR 603-048-0110. An industrial hemp license and an agricultural hemp seed production permit is a personal privilege that is nontransferable.

(2) Licenses and permits may be renewed for additional (3) year terms in a manner consistent with these rules.

(3) An application to renew a license to grow and handle industrial hemp, or to renew a permit to grow and handle agricultural hemp seed, must be submitted in writing to the Department on forms provided by the Department and must contain the information as in OAR 603-048-0100. Required fees must accompany all applications for renewal of a license.

(4) The Department may refuse to renew a license for industrial hemp, or an agricultural hemp seed production permit, if the applicant has a record of noncompliance with ORS 571.300 to 571.315, a license or permit requirement term or condition, a Department rule relating to industrial hemp or agricultural hemp seed, or noncompliance with a final order of the Department that is specifically directed to the licensee or permittee's operations or activities.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996
Stats. Implemented: ORS 571.300 - 571.315
Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0200

Review and Approval of License and Permit Applications, License and Permit Conditions

(1) Within 60 days of receiving an application, the Department shall determine whether an application or an application to renew contains the information required and is complete and not defective, including the payment of all required fees. If the Department determines that the application is incomplete or defective or that all fees have not been paid, the Department shall return any or all fees and the application, and may not issue the license or permit.

(2) Within 30 days of determining that an application contains all the required information and is complete and not defective, the Department may issue a license or permit.

(3) An industrial hemp license authorizes a person, joint venture or cooperative to grow and handle industrial hemp and is valid for a three-year term effective January 1, through December 31 of the third year after issuance, unless revoked. A license may be renewed as provided in OAR 603-048-0110. Licenses shall contain the following conditions:

(a) A condition requiring that the following be immediately reported to the Department:

(A) Any changes in the name or location of the individual or business entity holding the license.

(B) Any changes in the ownership of the land used to cultivate industrial hemp;

(C) Any changes in the ownership or structure of the entity holding an industrial hemp license;

(D) Any loss or theft of an industrial hemp crop.

(b) A condition requiring the licensee to keep the records as specified in OAR 603-048-0400.

(c) A condition requiring an Annual Report as provided in OAR 603-048-0300.

(d) A condition requiring the licensee to notify the Department a minimum of 14 days prior to the intended harvest date to allow the Department to take and test samples prior to harvest.

(e) General conditions specifying that the Department may inspect and sample industrial hemp as authorized in ORS 561.275 and ORS 571.305, to administer the laws governing industrial hemp production or to assure compliance with applicable statutes, rules, permit and license requirements or any Department order.

(f) A condition specifying the license is nontransferable.

(4) An agricultural hemp seed production permit authorizes a person, joint venture or cooperative with a valid, unsuspended industrial hemp license, to grow and handle agricultural hemp seed that is intended for sale or is sold to, or purchased by industrial hemp licensee's for planting, growing or handling and is valid for a three-year term effective January 1, through December 31 of the third year after issuance, unless revoked. A permit may be renewed as provided in OAR 603-048-0110. Permits must contain the following conditions:

(a) A condition that a license for industrial hemp is required to obtain a permit authorizing growing or handling of agricultural hemp seed.

(b) A condition requiring that the following be immediately reported to the Department:

(A) Any changes in the name or location of the individual or business entity holding the license or permit or the facility used for handling agricultural hemp seed;

(B) Any changes in the location of the industrial hemp fields used to produce agricultural hemp seed or change in the number of acres of industrial hemp seed produced may not occur unless the licensee first notifies the Department of any changes and provides a map indicating the changes.

(C) Any changes in the ownership of the land used to cultivate industrial hemp or agricultural hemp seed;

(D) Any changes in the ownership or structure of the entity holding an industrial hemp license or agricultural hemp seed production permit;

(E) Any loss or theft of an industrial hemp crop or agricultural hemp seed.

(c) A condition requiring the grower or handler to keep the records as specified in OAR 603-048-0400.

(d) A condition requiring an annual report as provided in OAR 603-048-0300.

(e) A condition requiring the licensee to notify the Department a minimum of 14 days prior to the intended harvest date to allow the Department to take and test samples prior to harvest.

(f) A condition specifying that the permit is nontransferable.

(g) General conditions specifying that the Department may inspect and sample agricultural hemp seed as authorized in ORS 561.275 and 571.305 to administer the laws governing agricultural hemp seed or to assure compliance with applicable statutes, rules, permit and license requirements or any Department order.

(h) General conditions that, in addition to meeting all laws and regulations pertaining to industrial hemp growers and handlers, ORS 571.300 to 571.315 and OAR 603-048-0010 to 603-048-1000, all production, storing, processing, handling, packaging, labeling, marketing and selling of agricultural hemp seed must meet all applicable State seed laws and regulations as specified in ORS 633.511 through 633.996 and seed regulations, OAR 603-056-0030 to 603-056-0490

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996

Stats. Implemented: ORS 571.300 - 571.315

Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0250

Retaining Agricultural Hemp Seed

As provided for in ORS 571.305(6), a grower of industrial hemp or agriculture hemp seed may retain seed from each industrial hemp crop to ensure a sufficient supply of seed for that grower for the following year.

(1) A grower does not need an agricultural hemp seed production permit in order to retain seed for future planting.

(2) Agricultural hemp seed may not be retained for future planting when official test results indicate the Tetrahydrocannabinol concentration exceeds 0.3 percent on a dry weight basis, in the crop from which it was harvested.

(3) Seed retained by a grower may not be sold or transferred and does not need to meet other seed standards set by the Department.

(4) Seed retained by a grower may not be more than needed for the following year.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996

Stats. Implemented: ORS 571.300 - 571.315

Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0300

Annual Reporting Requirements

(1) Annually, and within 21 days of planting industrial hemp, growers must supply the following information to the Department on forms provided by the Department:

(a) The licensee shall certify to the Department the planted acreages of industrial hemp;

(b) Variety and documentation of seed;

(c) The total number of lots, as defined in OAR 603-048-0010(9), of industrial hemp;

(d) The name and address of the intended Oregon licensed industrial hemp handler/s, receiving each lot of hemp crop. If within 21 days of planting a handler has not been selected, the grower must notify the department that a handler has not been selected, and upon determining the handler, must immediately report to the Department the name and address of the Oregon licensed handler.

(e) The Grower must notify the Department a minimum of 14 days prior to the intended harvest date to allow the Department to take and test samples.

(2) Annually, and within 21 days after the completion of harvesting of industrial hemp, growers must supply the following information to the Department on forms provided by the Department:

(a) The total amount in pounds, produced from each lot of industrial hemp;

(b) The name and address of the licensed handler/s, or licensed and permitted handler/s receiving each lot of industrial hemp. If within 21 days of harvesting a handler has not been selected, the grower must notify the department that a handler has not been selected, and upon determining the handler, must immediately report to the Department the name and address of the Oregon licensed handler.

(3) Annually, and within 21 days of receiving industrial hemp, licensed handlers must supply the following information to the Department on forms provided by the Department:

(a) Intended type of handling and disposition of all products received;

(b) Name and address of the Oregon licensed industrial hemp grower/s, supplying industrial hemp.

(4) Annually and within 21 days of planting agricultural hemp seed, permitted growers must supply the following information to the Department on forms provided by the Department:

(a) The permittee shall certify to the Department the annual planted acreages of agricultural hemp seed on forms provided by the Department;

(b) Variety and documentation of seed;

(c) The total number of lots, as defined in OAR 603-048-0010(9), of agricultural hemp seed;

(d) Name and address of the Oregon permitted agricultural hemp seed handler/s, receiving growers agricultural hemp seed. If within 21 days of planting a handler has not been selected, the grower must notify the department that a handler has not been selected, and upon determining the handler, must immediately report to the Department the name and address of the Oregon licensed handler.

(e) The Grower must notify the Department a minimum of 14 days prior to the intended harvest date to allow the Department to take and test samples.

(5) Annually, and within 21 days after the completion of harvesting of agricultural hemp seed, permitted growers must supply the following information to the Department on forms provided by the Department:

(a) The total amount in pounds, produced from each lot of agricultural hemp seed;

(b) The name and address of the licensed and permitted handler/s receiving each lot of agricultural hemp seed. If within 21 days of harvesting a handler has not been selected, the grower must notify the department that a handler has not been selected, and upon determining the handler, must immediately report to the Department the name and address of the Oregon licensed and permitted handler.

(6) Annually, and within 21 days of receiving agricultural hemp seed, licensed and permitted handlers must supply the following information to the Department on forms provided by the Department:

(a) Intended type of handling and disposition of all products received;

(b) Name and address of the Oregon licensed and permitted grower/s, supplying the agricultural hemp seed.

(7) Immediate Reports

(a) The holder of any industrial hemp license or agricultural hemp seed production permit shall immediately notify the Department of the following:

(A) Changes to the name, address, or telephone number of the license or permit holder;

(B) Changes in the ownership of the land used to cultivate industrial hemp or agricultural hemp seed;

(C) Changes in the ownership or structure of the entity holding an industrial hemp license or agricultural hemp seed production permit;

(D) Loss or theft of an industrial hemp or agricultural seed crop.
Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996
Stats. Implemented: ORS 571.300 - 571.315
Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0400

Records Required for Industrial Hemp Growers, Handlers and Agricultural Hemp Seed Producers and Handlers

(1) All holders of an industrial hemp license or an agricultural hemp seed production permit shall keep the following records:

(a) When receiving agricultural hemp seed for planting, growers must keep the following records:

- (A) Name and address of the supplier;
- (B) Amount specified in weight received;
- (C) Seed stock lot number;
- (D) Varietal records;

(b) Upon harvesting, growers must keep the following records:

- (A) Name and address of the buyer;
- (B) Description of product delivered;
- (i) Industrial hemp;
- (ii) Agricultural hemp seed.
- (C) Amount of each product, specified in weight, delivered;
- (D) Official test report records for tetrahydrocannabinol.

(c) When receiving industrial hemp, handlers must keep the following records:

- (A) Name and address of the supplier(s);
- (B) Amount of industrial hemp, specified in weight, received;
- (C) Official test report records for tetrahydrocannabinol.

(d) In the case of agricultural hemp seed, and in addition to those records required by ORS 633.511 to 633.996, handlers must keep the following records:

- (A) Name and address of the supplier(s);
- (B) Amount of agricultural hemp seed, specified in weight, received;
- (C) Official test report records for tetrahydrocannabinol;
- (D) Name and address of each licensed purchaser.

(2) A complete record of each seed lot must be maintained for 3 years after disposition of the entire lot; the file sample, as described

in OAR 603-048-0700, may be discarded one (1) year after disposition of the entire lot.

(3) In addition to these records, all permitted growers, handlers and dealers of agricultural hemp seed must keep records as required in ORS 633.511 through 633.996 and seed regulations, OAR 603-056-0030 through 603-056-0490.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996
Stats. Implemented: ORS 571.300 - 571.315
Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0500

Probation, Suspension, Revocation and Re-issuance of License and Permits

In addition to any other liability or penalty provided by law, the Department may, consistent with ORS Chapter 183, refuse to issue, refuse to renew, revoke or suspend any license or permit whenever it finds the licensee or permittee has violated the statutes or rules governing industrial hemp, or a license or permit requirement, or for violation of any rule of the department that pertains to agricultural operations or activities other than industrial hemp growing or handling; or a final order of the Department that is specifically directed to the grower's or handler's industrial hemp operations or activities.

(1) Upon issuance of a civil penalty the Department shall also place the license or permit holder on probation. The conditions of probation shall be related to violations of the Oregon industrial hemp Law or regulations.

(a) Probation shall be established for the purpose of monitoring and documentation of corrective actions of the licensee, which relate to previous violations.

(b) The duration of a probationary period shall be at least one year for civil penalties totaling \$10,000 or more.

(c) If, in the opinion of the Department, persons on probationary status have complied with regulatory requirements and have corrected conditions related to issuance of a violation, the Department may terminate probation before the probationary period has expired.

(2) Consistent with the provisions of ORS Chapter 183, the Department may suspend an industrial hemp license or agricultural hemp seed production permit for:

- (a) Failure to pay appropriate fees as described in these rules;
- (b) Any violation of, or repeated violations of the laws governing industrial hemp or violation of any license or permit condition;
- (c) Failure to adhere to a final order containing probationary conditions;
- (d) Any violation of or multiple or flagrant violations of the laws or rules governing industrial hemp;
- (e) Any violation of any rule of the Department that pertains to agricultural operation or activities other than industrial hemp or agricultural hemp seed;
- (f) Failure to cooperate in matters under investigation conducted pursuant to ORS 571.305 to 315 or these rules.

(3) Consistent with the provisions of ORS Chapter 183, the Department may revoke an industrial hemp license or agricultural hemp seed production permit on the following grounds:

- (a) Continuing failure to pay appropriate fees as described in these rules;
- (b) One or more final orders requiring suspension of an industrial hemp license or agricultural hemp seed production permit;
- (c) One or multiple flagrant violations of the laws governing industrial hemp or violation of any license or permit condition;
- (d) One or multiple flagrant violations of any rules of the department pertaining to agricultural operations or activities other than industrial hemp growing or handling;
- (e) Continuing failure to cooperate in matters under investigation.

(4) Re-issuance of license: A suspended license may be reinstated following correction of items listed in section (2) of this rule or upon the completion of a suspension period. A revoked license may be re-issued following correction of items listed in 603-048-0500 section (3) above, as determined by the Department.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996

Stats. Implemented: ORS 571.300 - 571.315
 Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0600

Industrial hemp Fees, License, Permits and Inspection Fees

(1) The following designated triennial license fees shall be applicable to each described activity under authority of ORS 571.305:

- (a) Industrial Hemp License \$1,500.00; and
- (b) Agricultural Hemp Seed Production Permit \$1,500.00.

(2) Sampling and Inspection: All sampling and inspection as described in OAR 603-048-0700 will be provided on a first come, first served basis, as qualified staff is available. The cost of services shall include:

(a) A charge for a minimum of four hours of service at a rate of \$92 per hour;

(b) Travel time at the rate of \$92 per hour;

(c) Mileage, lodging and per diem reimbursed at rates established by the Department of Administrative Services;

(3) Mileage Charges: Mileage may be charged in addition to all inspection fees or time charges, at the rate per mile established by the Department of Administrative Services, when travel is required.

(4) Overtime Charges: For all inspection services performed during the following times (which will be considered overtime), the regular inspection fees or hourly charges shall be charged plus \$ 30 per hour for all time involved. Overtime charges shall be figured to the nearest one-half hour:

(a) After eight hours (per scheduled shift) or 6:00 p.m., whichever comes first, on Monday through Friday of each week;

(b) At any time on Saturdays or Sundays; and

(c) At any time on any day which is declared by law to be a holiday for state employees.

(5) Overtime Service Charge: The minimum overtime service charge for Saturdays, Sundays and other legal holidays shall be four hours.

(6) No Service Days: No service will be given on Thanksgiving, Christmas, or New Years days.

(7) Laboratory Charges shall be \$350 per test.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996

Stats. Implemented: ORS 571.300 - 571.315

Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0700

Sampling and Inspection

Industrial hemp fields, industrial hemp handling facilities, and facilities handling, processing, cleaning, storing and selling agricultural hemp seed must be readily accessible for monitoring, sampling, testing and inspection purposes. As authorized in ORS 561.279 and 571.305, the licensees or permit holders shall allow Department officials to enter industrial hemp fields or handling facilities for inspection. The following sampling and testing protocols apply:

(1) Growers of industrial hemp and agricultural hemp seed must notify the Department a minimum of 14 days prior to the intended harvest date to allow the Department to take and test samples.

(2) The Department shall conduct inspection, sampling and testing for tetrahydrocannabinol content of all fields annually when at least 50% of plants' seeds are resistant to compression. Inspection and sampling shall include:

(a) A composite sample weighing no less than 2 pounds, that is representative of a single variety in a field, shall be taken by the Department for official testing.

(b) When more than one variety is present in a field, a separate composite sample weighing no less than 2 pounds shall be taken, which is representative of each single variety of industrial hemp present in the field, and shall be tested as a separate lot of industrial hemp.

(c) Each two (2) pound composite sample shall be divided equally into 2 one (1) pound sample. One sample shall be tested for tetrahydrocannabinol, the other shall be held by the department as a file sample.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996

Stats. Implemented: ORS 571.300 - 571.315

Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0800

Equipment and Machinery Cleaning

Any person operating or having control over equipment or machinery that is used to sow or harvest the hemp shall ensure that the equipment or machinery is thoroughly cleaned before the equipment or machinery is moved over any public road or from one farm to another.

Stat. Auth.: ORS 569.445

Stats. Implemented: ORS 571.300 - 571.315

Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0900

Enforcement and Civil Penalty for Industrial Hemp Law Violation

(1) In addition to any other liability or penalty provided by law, any person who violates any provision of ORS 571.300 to 571.315, a rule adopted pursuant thereto or the terms or conditions of any license, permit or order issued by the State Department of Agriculture under 571.300 to 571.315, shall be subject to a civil penalty not to exceed \$2,500 per violation and/or a suspension or revocation of their industrial hemp license or agricultural hemp seed production permit as provided in 571.305 and 571.315.

(2) If a civil penalty is imposed, the Department shall issue a written notice to the person being assessed the penalty consistent with ORS Chapter 183. Contested cases will be conducted pursuant to ORS Chapter 183. Each violation may be considered a separate and distinct offense.

Stat. Auth.: ORS 561 & 571

Stats. Implemented: ORS 571.300 - 571.315

Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-1000

Violations and Penalties

Classification of Violations

(1) Violations are flagrant violations classified as follows:

(a) Class 1 violations:

(A) ORS 571.305(1) or OAR 603-048-0050

(B) Providing false information on an application for a license or permit, or application to renew a license or permit;

(C) Falsifying, or failure to keep or provide, information and records as required by the Department;

(D) Possession of hemp with Tetrahydrocannabinol concentration that exceeds 0.3 percent on a dry weight basis;

(E) Harvesting without notifying the Department;

(F) Repeat violations of Class 2 or Class 3 violations.

(b) Class 2 violations are any violations in which the person acted in a negligent manner:

(A) Failure to pay fees for inspection and testing;

(B) Violation of any other rule, regulation or requirement as required by OAR 603-048.

(c) Class 3 violations are negligent violations of:

(A) OAR 603-048-0050

(B) Providing false information on an application for a license or permit, or application to renew a license or permit;

(C) Falsifying or failure to keep or provide, information and records as required by the Department;

(D) Possession of hemp with Tetrahydrocannabinol concentration that exceeds 0.3 percent on a dry weight basis

(2) Civil Penalty amounts for each classification:

(a) Class 1 violation, \$2,500;

(b) Class 2 violation, \$1000;

(c) Class 3 violation, \$ 500.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996

Stats. Implemented: ORS 571.300 - 571.315

Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

PLANT INDUSTRY

DIVISION 50

GENERAL

Controlled Atmosphere Storage of Apples and Pears

603-050-0200

Declaration of Policy

Providing and maintaining a voluntary program for the identification and standards relating to controlled atmosphere storage of produce are functions of state government, the responsibilities of which are vested in the Department in keeping with ORS 632.460 and 632.905.

Stat. Auth.: ORS 561 & 632
 Stats. Implemented: ORS 632.460 & 632.905
 Hist: AD 19-1977, f. & ef. 10-5-77

603-050-0205

Definitions

As used in OAR 603-050-0200 to 603-050-0230, unless the context requires otherwise:

(1) "Certification" means the issuance of a certificate by the Department bearing official identification and verifying that the provisions of OAR 603-050-0210 to 603-050-0225 have been met as to any particular quantity or lot of apples or pears.

(2) "Controlled Atmosphere Storage" means any produce storage establishment, or one or more rooms therein, in which the atmospheric gases are controlled in their amount or in degrees of temperature for the purpose of controlling the condition and maturity of fresh apples or pears.

(3) "Official Identification" means the tag or label prescribed by the Department for an operator of a controlled atmosphere storage, which contains the number assigned to such operator preceded by the letters "CA," and which may be affixed to a particular quantity or lot of apples or pears. Such tag or label shall conform to the size requirements set forth in subsection (3) of ORS 632.450.

Stat. Auth.: ORS 561 & 632
 Stats. Implemented: ORS 632.460 & 632.905
 Hist: AD 19-1977, f. & ef. 10-5-77

603-050-0210

General Requirements and Standards for Controlled Atmosphere Storage

(1) Any person desiring to operate a controlled atmosphere storage shall submit an application therefore to the Department on forms provided by the Department, and containing such information as the Department may prescribe, on or before August 31. The Department shall cause an inspection to be made of the facilities proposed to be utilized for controlled atmosphere storage of apples or pears and, if the application and facilities are approved, shall register and assign to the operator an official identification number which may be validly used for one year thereafter. An operator of an approved controlled atmosphere storage facility may thereafter apply on or before August 31 of subsequent years for annual renewals of the use of such official identification number.

(2) Immediately after sealing a controlled atmosphere storage, the operator thereof shall submit a report on forms prescribed by the Department setting forth:

- (a) The date of sealing the storage;
- (b) The quantity of loose fruit by variety; and
- (c) The quantity of packed fruit by variety.

(3) The operator of a controlled atmosphere storage shall keep daily records of temperature, and of air components as to percentages of carbon dioxide and oxygen, determined from readings taken at least once each day. Such records shall be subject to examination and audit by the Department.

(4) Prior to opening a controlled atmosphere storage, the operator thereof shall notify the Department of his intention to do so, and if so directed by the Department, shall await opening until the Department's representative is present.

(5) In keeping with ORS 632.475 and 632.970, the official identification shall only be affixed on containers of any quantity or lot of apples or pears after departmental inspection and certification.

Stat. Auth.: ORS 561 & 632
 Stats. Implemented: ORS 632.460 & 632.905
 Hist: AD 19-1977, f. & ef. 10-5-77

603-050-0215

Special Requirements and Standards for Apples

(1) In order to obtain certification and allow for the use of official identification, all apple varieties shall:

(a) Be placed in controlled atmosphere storage, wherein the oxygen content has been reduced to not more than five percent within 20 days after sealing;

(b) Be retained in such controlled atmosphere storage for a period of not less than 60 days; except Gala and Jonagold varieties which shall be retained in such controlled atmosphere storage for a period of not less than 45 days; and

(c) Meet the Condition Standards for Export established by the U.S. Department of Agriculture as set forth in 7 CFR Section 51.323.

(2) In addition to the conditions set forth in section (1) of this rule, standard and Delicious apple varieties shall be placed in the controlled atmosphere storage on or before December 15 of the registration year.

(3) Prior to certification, the Department may make such investigations and examinations as necessary in order to assure compliance with the conditions described in sections (1) and (2) of this rule.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561 & 632
 Stats. Implemented: ORS 632.460 & 632.905
 Hist: AD 19-1977, f. & ef. 10-5-77; AD 10-1995, f. & cert. ef. 6-14-95; DOA 19-1999, f. & cert. ef. 8-27-99

603-050-0220

Special Requirements and Standards for Bartlett, Bosc and Comice Pears

(1) In order to obtain certification and allow for the use of official identification, Bartlett, Bosc and Comice pears shall:

(a) Be placed in controlled atmosphere storage, wherein the oxygen content has been reduced to five percent or less within 20 days after sealing;

(b) Be retained in such controlled atmosphere storage for a period of 45 days or more; and

(c) Meet the maturity standard of generally firm and meet the condition standard that there is not more than 2% decay or breakdown.

(2) Prior to certification, the Department may make such investigations and examinations as necessary in order to assure compliance with the conditions described in subsection (1) of this rule.

Stat. Auth.: ORS 561 & 632
 Stats. Implemented: ORS 632.460 & 632.905
 Hist.: AD 19-1977, f. & ef. 10-5-77; AD 10-1995, f. & cert. ef. 6-14-95; DOA 24-1999, f. & cert. ef. 11-29-99

603-050-0225

Special Requirements and Standards for Other Varieties of Pears

(1) In order to obtain certification and allow for the use of official identification, other varieties of pears shall:

(a) Be placed in controlled atmosphere storage, wherein the oxygen content has been reduced to five percent or less within 20 days after sealing;

(b) Be retained in such controlled atmosphere storage for a period of 60 days or more; and

(c) Meet the maturity standard that not more than five percent are further advanced in maturity than firm and meet the condition standards that there are not more than two percent decay, not more than 2% scald, and not more than an average total of 5% for all condition factors including corkspot; and

(d) If preconditioned, be subjected to the storage conditions referred to in subsection (a) and (b) of this section prior to such preconditioning.

(2) Prior to certification, the Department may make such investigations and examinations as necessary in order to assure compliance with the conditions described in subsection (1) of this rule.

Stat. Auth.: ORS 561 & 632
 Stats. Implemented: ORS 632.460 & 632.905
 Hist.: AD 19-1977, f. & ef. 10-5-77 ; DOA 25-1999, f. & cert. ef. 11-29-99

603-050-0230

Penalties

Upon a determination that a person has willfully violated any of the provisions of OAR 603-050-0210 to 603-050-0225, the Department may suspend, revoke, or refuse to renew the registration of the official identification number assigned under OAR 603-050-0210(1).

Stat. Auth.: ORS 561 & 632
 Stats. Implemented: ORS 632.460 & 632.905
 Hist: AD 19-1977, f. & ef. 10-5-77

Labeling

603-050-0300

Labeling of Onions and Potatoes, “Brand Name” of Grower or Packer

(1) Any person, grower, or packer as required by ORS 632.226(1) or 632.321(2), in labeling container of onions or potatoes, may use his brand name in lieu of or in place of his name and address only after:

(a) He has registered his brand with the Department and the Secretary of State and has included in such registration his name and address, a complete description or exact facsimile of the brand, and information as to whether the brand will be used on onion containers, potato containers, or both; and

(b) The brand as used on containers is of sufficient size and type to be conspicuous and easily readable.

(2) If the brand is registered in the prescribed manner, until it has been canceled by the first grower or first packer, it shall be used only by him and shall be his exclusive property.

(3) Only the commodity or commodities identified in the registration shall be placed in the containers which are labeled with the brand approved and authorized by the Department.

Stat. Auth.: ORS 632
 Stats. Implemented: ORS 632.226 & 632.321
 Hist: AD 521, f. 3-14-56, ef. 3-13-56

DIVISION 51

PRODUCE STANDARDS

Apples

603-051-0005

Oregon Grades

(1) Oregon Extra Fancy. “Oregon Extra Fancy” consists of apples of one variety which are mature but not overripe, carefully hand-picked, clean, fairly well formed; free from scab, decay, internal browning, internal breakdown, scald, bitterpit, Jonathan spot, freezing injury, visible water core, and broken skins and bruises except those which are slight and incident to proper handling and packing. The apples are also free from injury caused by smooth net-like russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, disease, insects, or other means; and free from damage by stem or calyx cracks; or by smooth, solid, slightly rough, or rough russeting; provided, that in the case of the Newtown variety, characteristic russet commencing at the stem end shall be permitted as long as it is continuous from the stem bowl and not extending beyond the center of the apple. Each apple of this grade has the amount of color specified in OAR 603-051-0015 for the variety.

(2) Oregon Fancy. “Oregon Fancy” consists of apples of one variety which are mature but not overripe, carefully hand-picked, clean, fairly well formed; free from decay, internal browning, internal breakdown, bitter pit, Jonathan spot, scald, freezing injury, visible water core, and broken skins and bruises except those which are incident to proper handling and packing. The apples are also free from damage caused by russeting; provided, that in the case of the Newtown variety, characteristic russet commencing at the stem end shall be permitted as long as it is continuous from the stem bowl and

not extending beyond the center of the apple; sunburn or sprayburn, limb rubs, hail drought spots, scars, stem or calyx cracks, disease, insects; or damage by other means. Each apple of this grade has the amount of color specified in OAR 603-051-0015 for the variety.

(3) Oregon Hail. “Oregon Hail” consists of apples which meet the requirements of Oregon Fancy grade except that hail marks where the skin has not been broken, and well healed hail marks where the skin has been broken, are permitted, provided the apples are fairly well formed (see OAR 603-051-0010 and 603-051-0015).

(4) Oregon C. “Oregon C” consists of apples of one variety which are mature but not overripe, carefully hand-picked, clean, not seriously deformed; free from decay, internal browning, internal breakdown, scald, and freezing injury. The apples are also free from serious damage caused by broken skins, bruises, russeting, sunburn or sprayburn, limb rubs, hail, drought spots, scars, stem or calyx cracks, visible water core, disease, insects; or other means. Each apple of this grade has the amount of color specified in OAR 603-051-0015 for the variety.

(5) Combination Grades:

(a) Combinations of the grades designated in sections (1) to (4) of this rule may be used as follows:

(A) Combination Oregon Extra Fancy and Oregon Fancy;

(B) Combination Oregon Fancy and Oregon C;

(C) Combination Oregon Extra Fancy, Oregon Fancy, and Oregon C.

(b) Combinations other than these are not permitted in connection with the Oregon apple grades. When combination grades are packed, at least 25 percent of the apples in any lot shall meet the requirements of the higher grade in the combination.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 787(11-64), f. 8-12-64, ef. 9-1-64; AD 926(12-70), f. 9-2-70, ef. 10-1-70; AD 1054(43-74), f. 1-6-75, ef. 1-25-74

603-051-0007

Open Container Pack

As applied to Oregon grades (OAR 603-051-0005) open container pack may consist of apples meeting the requirements of any of the foregoing grades of combinations thereof or may be packed orchard run, except such fruit shall be fit for human consumption and free from decay, worms, scale, and dangerous insect pests and diseases and shall not be packed with noticeable superior specimens on top. The fruits in this pack shall not be wrapped nor the container lidded or covered, except a cleat may be nailed on each end of said container.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 787(11-64), f. 8-12-64, ef. 9-1-64; AD 926(12-70), f. 9-2-70, ef. 10-1-70

603-051-0009

Other Brands and Grades

As applied to Oregon grades (OAR 603-051-0005), any person, firm, or organization wishing to pack apples under any other grade or brand than according to the foregoing rules shall file a certified copy of the description of such grade or brand with the Director of Agriculture before the first day of September of the year in which the apples so to be packed are grown. If such grade or brand is approved by the Director of Agriculture, apples may be packed under such grade or brand instead of the official state grading rules and all boxes of apples so packed shall be marked with that grade or brand. When grades or brands are authorized by the Director of Agriculture, apples packed under such grades shall be inspected and certified by the Department of Agriculture.

Stat. Auth.: ORS 632 & 561
 Stats. Implemented: ORS 632.450 - 632.490, 632.900 - 632.980 & 561.190
 Hist.: AD 787(11-64), f. 8-12-64, ef. 9-1-64; AD 926(12-70), f. 9-2-70, ef. 10-1-70; DOA 18-1999, f. & cert. ef. 8-27-99

603-051-0010

Tolerances

(1) In order to allow for variations incident to proper grading and handling in each of the Oregon grades (OAR 603-051-0005), the following tolerances are provided as specified:

(a) Defects:

(A) Oregon Extra Fancy, Oregon Fancy, and Oregon Hail grades: Ten percent of the apples in any lot may fail to meet the requirement of the grade, but not more than 1/2 of this amount, or five percent, shall be allowed for apples which are seriously damaged, including therein not more than one percent for apples affected by decay or internal breakdown.

(B) Oregon C grade: Ten percent of the apples in any lot may fail to meet the requirements of the grade, but not more than 1/2 of this amount, or five percent, shall be allowed for apples which are seriously damaged by insects and including in the total tolerance not more than one percent for apples affected by decay or internal breakdown.

(b) When applying the foregoing tolerances to Combination grades, no part of any tolerance shall be allowed to reduce, for the lot as a whole, the 25 percent of apples of the higher grade required in the combination, but individual containers shall have not less than 15 percent of the higher grade;

(c) Size: When size is designated by the numerical count for a container, not more than five percent of the apples in the lot may vary more than 1/4 inch in diameter. When size is designated by minimum or maximum diameter, not more than five percent of the apples in any lot may be smaller than the designated minimum and not more than 10 percent may be larger than the designated maximum.

(2) Application of Tolerances. The contents of individual packages in the lot are subject to the following limitations; provided, that the averages for the entire lot are within the tolerances specified for the grade:

(a) Packages which contain more than 10 pounds shall have not more than 1-1/2 times a specified tolerance of 10 percent or more and not more than double a tolerance of less than 10 percent, except that at least one apple which is seriously damaged by insects or affected by decay or internal breakdown may be permitted in any package;

(b) Packages which contain 10 pounds or less. Not over 10 percent of the packages may have more than three times the tolerance specified, except that at least one defective apple may be permitted in any package; provided, that no more than one apple or more than six percent (whichever is the larger amount) may be seriously damaged by insects or affected by decay or internal breakdown.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 787, f. 8-12-64, ef. 9-1-64; AD 926(12-70), f. 9-2-70, ef. 10-1-70

**603-051-0011
 Calculation of Percentages**

As applied to Oregon grades (OAR 603-051-0005) calculation of percentages shall be on the basis of count.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 787(11-64), f. 8-12-64, ef. 9-1-64; AD 926(12-70), f. 9-2-70, ef. 10-1-70

**603-051-0013
 Condition After Storage or Transit**

As applied to Oregon grades (OAR 603-051-0005), decay, scald, or any other deterioration which may have developed on apples after they have been in storage or transit shall be considered as affecting condition and not the grade.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 787(11-64), f. 8-12-64, ef. 9-1-64; AD 926(12-70), f. 9-2-70, ef. 10-1-70

**603-051-0014
 Marking Requirements**

As applied to Oregon grades (OAR 603-051-0005):

(1) The numerical count or the minimum diameter of the apples packed in a closed container shall be indicated on the container.

(2) When the numerical count is not shown, the minimum diameter shall be plainly stamped, stenciled, or otherwise marked on the container in terms of whole inches, or whole inches and not less than eighth inch fractions thereof, in accordance with the facts. Net weight

shall be similarly marked in terms of whole pounds, avoirdupois, in accordance with the facts.

(3) Only the following abbreviations are approved and permitted for marking grade on containers:

- (a) Ore. Ex. Fcy. — Oregon Extra Fancy;
- (b) Ore. Fcy. — Oregon Fancy;
- (c) Ore. C — Oregon C;
- (d) Ore. Hail — Oregon Hail;
- (e) Comb. — Combination (used in conjunction with combination grades).

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 787(11-64), f. 8-12-64, ef. 9-1-64; AD 926(12-70), f. 9-2-70, ef. 10-1-70

**603-051-0015
 Color Requirements**

(1) In addition to the requirements specified for grades set forth in OAR 603-051-0005 apples of these grades shall have the percentage of color specified for the variety in **Table 1**. For the solid red varieties, the percentage stated refers to the area of the surface which must be covered with a good shade of solid red characteristic of the variety; provided, that an apple having color of a lighter shade of solid red or striped red than that considered as a good shade of red characteristic of the variety may be admitted to a grade, provided it has sufficient additional area covered so that the apple has as good an appearance as one with the minimum percentage of good red characteristic of the variety required for the grade. For the striped red varieties, the percentage stated refers to the area of the surface in which the stripes of a good shade of red characteristic of the variety shall predominate over stripes of lighter red, green, or yellow. However, an apple having color of a lighter shade than that considered as a good shade of red characteristic of the variety may be admitted to a grade, provided it has sufficient additional area covered so that the apple has as good an appearance as one with the minimum percentage of stripes of a good red characteristic of the variety required for the grade. Faded brown stripes shall not be considered as color.

(2) In the following, no color is required in any Oregon grade: Natural blush is not objectionable: Golden Delicious, Gravenstein, Ortley, Newtown, Yellow Transparent, or other similar varieties.

[ED. NOTE: Tables referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 787(11-64), f. 8-12-64, ef. 9-1-64; AD 926(12-70), f. 9-2-70, ef. 10-1-70

**603-051-0020
 Definitions**

As used in OAR 603-051-0005 to 603-051-0020:

(1) "Mature" means that the apples have reached the state of development which will insure the proper completion of the ripening process. Before a mature apple becomes overripe, it will show varying degrees of firmness, depending upon the stage of the ripening process. The following terms are used for describing different stages of firmness of apples:

(a) "Hard" means apples with a tenacious flesh and starchy flavor;

(b) "Firm" means apples with a tenacious flesh but which are becoming crisp with a slightly starchy flavor, except the Delicious variety;

(c) "Firm ripe" means apples with crisp flesh except that the flesh of the Gano, Ben Davis, and Rome Beauty varieties may be slightly mealy;

(d) "Ripe" means apples with mealy flesh and soon to become soft for the variety.

(2) "Overripe" means apples which are dead ripe, with flesh very mealy or soft, and past commercial utility.

(3) "Carefully Hand-Picked" means that the apples do not show evidence of rough handling or of having been on the ground.

(4) "Clean" means that the apples are free from excessive dirt, dust, spray residue, and other foreign material.

(5) "Fairly Well Formed" means that the apple may be slightly abnormal in shape but not to an extent which detracts materially from its appearance.

(6) "Injury" means any specific defect defined in this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which more than slightly detracts from the appearance, or the edible or shipping quality of the apple. The following specific defects shall be considered as injury:

(a) Russeting in the stem cavity or calyx basin which cannot be seen when the apple is placed stem end or calyx end down on a flat surface shall not be considered in determining whether or not an apple is injured by russeting. Smooth, net-like russeting outside of the stem cavity or calyx basin shall be considered as injury when an aggregate area of more than 10 percent of the surface is covered, and the color of the russeting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous net-like russeting when the appearance is affected to a greater extent than the above amount permitted;

(b) Sunburn or sprayburn, when the discolored area does not blend into the normal color of the fruit;

(c) Dark brown or black limb rubs which affect a total area of more than 3/8 inch in diameter, except that light brown limb rubs of a russet character shall be considered under the definition of injury by russeting (see section (11) of this rule);

(d) Hail marks, drought spots, other similar depressions or scars:

(A) When the skin is broken, whether healed or unhealed;

(B) When there is appreciable discoloration of the surface;

(C) When any surface indentation exceeds 1/16 inch in depth;

(D) When any surface indentation exceeds 1/4 inch in diameter;

or

(E) When the aggregate affected area of such spots exceeds 3/8 inch in diameter (see section (11) of this rule).

(e) Disease, red skin spots which are thinly scattered over more than 1/10 of the surface, or dark, heavily concentrated spots which affect an area of more than 1/4 inch in diameter (see section (11) of this rule);

(f) Insects:

(A) Aphis or thrip marks that are rough or pebbly, or which are not rough or pebbly affecting more than 10 percent of the surface;

(B) Worm holes.

(7) "Damage" means any specific defect defined in this section, or an equally objectionable variation of any one of these defects, or any other defect, or any combination of defects, which materially detracts from the appearance or the edible or shipping quality of the apple. The following specific defects shall be considered as damage:

(a) Russeting in the stem cavity or calyx basin which cannot be seen when the apple is placed stem end or calyx end down on a flat surface shall not be considered in determining whether or not an apple is damaged by russeting, except that excessively rough or bark-like russeting in the stem cavity or calyx basin shall be considered as damage when the appearance of the apple is materially affected. The following types and amounts of russeting outside of the stem cavity or calyx basin shall be considered as damage:

(A) Russeting which is excessively rough on Roxbury Russet and other similar varieties;

(B) Smooth, net-like russeting, when an aggregate area of more than 15 percent of the surface is covered, and the color of the russeting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous net-like russeting when the appearance is affected to a greater extent than the above amount permitted;

(C) Smooth, solid russeting, when an aggregate area of more than five percent of the surface is covered, and the pattern and color of the russeting shows no very pronounced contrast with the background color of the apple, or lesser amounts of more conspicuous solid russeting when the appearance is affected to a greater extent than the above amount permitted;

(D) Slightly rough russeting which covers an aggregate area of more than 1/2 inch in diameter (see section (11) of this rule);

(E) Rough russeting which covers an aggregate area of more than 1/4 inch in diameter (see section (11) of this rule).

(b) Sunburn or sprayburn which has caused blistering or cracking of the skin, or when the discolored area does not blend into the normal color of the fruit unless the injury can be classed as russeting;

(c) Limb rubs which affect a total area of more than 1/2 inch in diameter, except that light brown limb rubs of a russet character shall be considered under the definition of damage by russeting (see section (11) of this rule);

(d) Hail marks, drought spots, other similar depressions or scars:

(A) When any unhealed mark is present;

(B) When any surface indentation exceeds 1/8 inch in depth;

(C) When the skin has not been broken and the aggregate affected area exceeds 1/2 inch in diameter (see section (11) of this rule); or

(D) When the skin has been broken and well healed and the aggregate affected area exceeds 1/4 inch in diameter (see section (11) of this rule).

(e) Stem or calyx cracks which are not well healed, or well healed stem or calyx cracks which exceed an aggregate length of 1/2 inch;

(f) Disease:

(A) Scab spots which affect a total area of more than 1/4 inch in diameter (see section (11) of this rule);

(B) Red skin spots which are thinly scattered over more than 1/10 of the surface, or dark, heavily concentrated spots which affect an area of more than 1/2 inch in diameter (see section (11) of this rule).

(g) Insects:

(A) Aphis or thrip marks that are rough or pebbly or which are not rough or pebbly affecting more than 20 percent of the surface;

(B) Worm holes.

(8) "Serious Damage" means any specific defect defined in this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects which seriously detracts from the appearance, or the edible or shipping quality of the apple. The following specific defects shall be considered as serious damage:

(a) The following types and amounts of russeting shall be considered as serious damage: Smooth, solid russeting, when more than 1/2 of the surface in the aggregate is covered, including any russeting in the stem cavity or calyx basin, or slightly rough, or excessively rough or bark-like russeting, which detracts from the appearance of the fruit to a greater extent than the amount of smooth, solid russeting permitted; provided, that any amount of characteristic russeting shall be permitted on Newtown variety;

(b) Sunburn or sprayburn which seriously detracts from the appearance of the fruit;

(c) Limb rubs which affect more than 1/10 of the surface in the aggregate;

(d) Hail marks, drought spots, or scars, if they materially deform or disfigure the fruit, or if such defects affect more than 1/10 of the surface in the aggregate; provided, that no hail marks which are unhealed shall be permitted and not more than an aggregated area of 1/2 inch shall be allowed for well healed hail marks where the skin has been broken (see section (11) of this rule);

(e) Stem or calyx cracks which are not well healed, or well healed stem or calyx cracks which exceed an aggregate length of 1/2 inch;

(f) Visible water core which affects an area of more than 1/2 inch in diameter (see section (11) of this rule);

(g) Disease:

(A) Scab spots which affect total area of more than 3/4 inch in diameter (see section (11) of this rule);

(B) Red skin spots which affect more than 1/3 of the surface;

(C) Bitter pit or Jonathan spot which is thinly scattered over more than 1/10 of the surface and does not materially deform or disfigure the fruit.

(h) Insects:

(A) Aphid pebbling or thrip marks which seriously distract from the appearance;

(B) Worm holes.

(9) "Seriously Deformed" means that the apple is so badly misshapen that its appearance is seriously affected.

(10) "Diameter." When measuring for minimum size, "diameter" means the greatest dimension of the apple measured at right angles to a line from stem to blossom end. When measuring for maximum size, "diameter" means the smallest dimension of the apple determined by passing the apple through a round opening in any position.

(11) "Area." Where in the regulations relating to standards for apples there is a reference "see section (11) of this rule," the word "area" as used therein refers to a circle of the specified diameter.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980

Stats. Implemented: ORS 632.900 - 632.980

Hist.: AD 787(11-64), f. 8-12-64, ef. 9-1-64; AD 926(12-70), f. 9-2-70, ef. 10-1-70

603-051-0026

U.S. Standards Adopted as State Standards

(1) In addition to standards prescribed in OAR 603-051-0005 to 603-051-0020, there hereby are adopted as the **Standards of the State of Oregon For Apples** adopted by the United States Department of Agriculture effective September 1, 1964, as amended and in effect October 1, 1966. Such federal standards are contained in Title 7, Chapter 1, Part 51 of the Code of Federal Regulations in Sections 51.300 to 51.323, a copy of which is filed herewith and by this reference made a part hereof.

(2) The use of United States standards for grades pursuant to this section or of Oregon standards for grades pursuant to OAR 603-051-0005 is optional: However, the federal standards included in CFR Section 51.305 to 51.323 are applicable only to United States grades.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561.190 & 632.900 - 632.980

Stats. Implemented: ORS 632.900 - 632.980

Hist.: AD 787(11-64), f. 8-12-64, ef. 9-1-64; AD 926(12-70), f. 9-2-70, ef. 10-1-70; AD 880(11-68), f. 6-11-68

603-051-0045

Apricots Official Standards

The United States **Standards For Apricots** adopted by the United States Department of Agriculture effective May 25, 1928, and in effect on January 1, 1963, hereby are adopted as the standards of the State of Oregon for apricots. Such federal standards are contained in Title 7, Chapter 1, Part 51 of the Code of Federal Regulations in Sections 51.2925 to 51.2932, a copy of which is filed herewith and by this reference made a part hereof.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561.190 & 632.900 - 632.980

Stats. Implemented: ORS 632.900 - 632.980

Hist.: AD 728, f. 7-2-63

Oregon Standards for Grades of Fresh Asparagus

603-051-0061

Oregon No. 1 Grade

"Oregon No. 1" consists of stalks of asparagus which are fresh and fairly straight; which are free from decay and free from damage caused by spreading or broken tips, dirt, disease, insects, or other means:

(1) Size. Unless otherwise specified, the diameter of each stalk is not less than 3/8 inch.

(2) Color. Unless otherwise specified, not less than two-thirds of the stalk length is of a green color.

(3) Tolerances. In order to allow for variations incident to proper grading and handling, the following tolerances, by count, are provided as specified:

(a) For defects. Ten percent for stalks in any lot which fail to meet the requirements of this grade, including therein not more than five percent for defects causing serious damage; provided, that not more than 1/5 of this latter amount, or one percent, shall be allowed for stalks affected by decay;

(b) For off-size. Ten percent for stalks in any lot which fail to meet the specified diameter or length requirements.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980

Stats. Implemented: ORS 632.900 - 632.980

Hist.: AD 1023(13-74), f. 4-19-74, ef. 5-11-74

603-051-0062

Oregon No. 2 Grade

"Oregon No. 2" consists of stalks of asparagus which are fresh and not badly misshapen; which are free from decay and free from serious damage caused by spreading or broken tips, dirt, disease, insects or other means:

(1) Size. Unless otherwise specified, the diameter of each stalk is not less than 5/16 inch.

(2) Color. Unless otherwise specified, not less than 1/2 of the stalk length is of a green color.

(3) Tolerances. In order to allow for variations incident to proper grading and handling, the following tolerances, by count, are provided as specified:

(a) For defects. Ten percent for stalks in any lot which fail to meet the requirements of this grade, including therein not more than 1/10 of this tolerance, or one percent, shall be allowed for stalks affected by decay;

(b) For off-size. Ten percent for stalks in any lot which fail to meet the specified diameter or length requirements.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980

Stats. Implemented: ORS 632.900 - 632.980

Hist.: AD 1023(13-74), f. 4-19-74, ef. 5-11-74

603-051-0063

Unclassified

"Unclassified" consists of stalks of asparagus which have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards but is provided as a designation to show that no grade has been applied to the lot.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980

Stats. Implemented: ORS 632.900 - 632.980

Hist.: AD 1023(13-74), f. 4-19-74, ef. 5-11-74

603-051-0064

Application of Tolerances

The contents of individual packages in the lot are subject to the following limitations:

(1) Packages which contain more than 50 stalks shall have not more than 1-1/2 times a specified tolerance of 10 percent or more, or not more than double a specified tolerance of less than 10 percent; provided, that the averages for the entire lot are within the tolerances specified for the grade.

(2) Packages which contain 50 stalks or less shall have not more than four times the tolerances specified, except that at least two defective and two off-size stalks may be permitted in any package; provided, that not more than one stalk which is affected by decay may be permitted in any package; and provided further, that the averages for the entire lot are within the tolerances specified for the grade.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980

Stats. Implemented: ORS 632.900 - 632.980

Hist.: AD 1023(13-74), f. 4-19-74, ef. 5-11-74

603-051-0065

Diameter Classification

Any lot of asparagus may be classified as Small, Medium, or Large, if eighty percent, by count, of the stalks in any lot conform to the following requirements for such sizes:

(1) Small — 3/8 to 9/16 inch;

(2) Medium — 9/16 to 3/4 inch;

(3) Large — over 3/4 inch.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980

Stats. Implemented: ORS 632.900 - 632.980

Hist.: AD 1023(13-74), f. 4-19-74, ef. 5-11-74

603-051-0066

Amount of Green Color

When the asparagus in a lot has less or more green color than is specified in the grade, it may be described as 1/4 stalk length green, 3/4 stalk length green, etc., in accordance with the facts.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 1023(13-74), f. 4-19-74, ef. 5-11-74

603-051-0067

Stalk Length

There is no minimum stalk length specified in the grades, but the minimum stalk length may be stated in terms of whole inches or whole and half inches in connection with the grade designation as “Oregon No. 1, 8-1/2 inch minimum,” “Oregon No. 1 Large, 7-inch minimum,” “Oregon No. 1 Large, 10-1/2 inch minimum,” etc., in accordance with the facts.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 1023(13-74), f. 4-19-74, ef. 5-11-74

603-051-0068

Definitions

- (1) “Fresh” means that the stalk is not limp or flabby.
- (2) “Damage” means any defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality of the stalk.
- (3) “Diameter” means the greatest thickness of the stalk measured at a point approximately one inch from the butt.
- (4) “Badly Misshapen” means that the stalk is so badly flattened, crooked, or otherwise so badly deformed that its appearance is seriously affected.
- (5) “Serious Damage” means any defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality of the stalk.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 1023(13-74), f. 4-19-74, ef. 5-11-74

Snap Beans

603-051-0075

Official Standards

The United States **Standards for Snap Beans** adopted by the United States Department of Agriculture effective August 1, 1936, and in effect on January 1, 1963, hereby are adopted as the standards of the State of Oregon for snap beans. A copy of such federal standards is filed herewith and by this reference made a part hereof.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 730, f. 7-2-63

Beets

603-051-0090

Official Standards

The United States **Standards for Beets** adopted by the United States Department of Agriculture effective August 1, 1955, and in effect January 1, 1963, hereby are adopted as the standards of the State of Oregon for beets. Such federal standards are contained in Title 7, Chapter 1, Part 51 of the Code of Federal Regulations in Sections 51.375 to 51.394, a copy of which is filed herewith and by this reference made a part hereof.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 731, f. 7-2-63

Brussels Sprouts

603-051-0105

Official Standards

The United States **Standards for Brussels Sprouts** adopted by the United States Department of Agriculture effective January 18,

1954, and in effect on January 1, 1963, hereby are adopted as the standards of the State of Oregon for Brussels sprouts. Such federal standards are contained in Title 7, Chapter 1, Part 51 of the Code of Federal Regulations in Sections 51.2250 to 51.2262, a copy of which is filed herewith and by this reference made a part hereof.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 732, f. 7-2-63

Cabbage

603-051-0120

Official Standards

The United States **Standards for Cabbage** adopted by the United States Department of Agriculture effective September 1, 1945, and in effect January 1, 1963, hereby are adopted as the standards of the State of Oregon for cabbage. A copy of such federal standards is filed herewith and by this reference made a part hereof.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 733, f. 7-2-63

Cantaloupes

603-051-0135

Official Standards

The United States **Standards for Cantaloupes** adopted by the United States Department of Agriculture in effect on July 1, 1969, hereby are adopted as the standards of the State of Oregon for cantaloupes. Such federal standards are contained in Title 7, Chapter 1, Part 51 of the Code of Federal Regulations in Sections 51.475 to 51.497, a copy of which is filed herewith and by this reference made a part hereof.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 734, f. 7-2-63; AD 903(9-69), f. 8-11-69, ef. 8-15-69

Bunched Carrots

603-051-0150

Official Standards

The United States **Standards for Bunched Carrots** adopted by the United States Department of Agriculture effective September 18, 1954, and in effect on January 1, 1963, hereby are adopted as the standards of the State of Oregon for bunched carrots. Such federal standards are contained in Title 7, Chapter 1, Part 51 of the Code of Federal Regulations in Sections 51.2455 to 51.2471, a copy of which is filed herewith and by this reference made a part hereof.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 735, f. 7-2-63

Cauliflower

603-051-0165

Official Standards

The United States **Standards for Cauliflower** adopted by the United States Department of Agriculture in effect on July 1, 1969, hereby are adopted as the standards of the State of Oregon for cauliflower. A copy of such federal standards is filed herewith and by this reference made a part hereof.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 736, f. 7-2-63; AD 903(9-69), f. 8-11-69, ef. 8-15-69

Celery

603-051-0180

Official Standards

The United States **Standards for Celery** adopted by the United States Department of Agriculture effective April 7, 1959, and in

effect on January 1, 1963, hereby are adopted as the standards of the State of Oregon for celery. Such federal standards are contained in Title 7, Chapter 1, Part 51 of the Code of Federal Regulations in Sections 51.560 to 51.588, a copy of which is filed herewith and by this reference made a part hereof.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 737, f. 7-2-63

Sulphured Cherries

603-051-0195

Definition

(1) "Sulphured Cherries" means properly matured whole cherries of similar varietal characteristics packed in a solution of sulphur dioxide of sufficient strength to preserve the cherries with or without the addition of hardening agents.

(2) "Unpitted Sulphured Cherries" means whole cherries stemmed or unstemmed from which the pits have not been removed. If unstemmed, not more than 20 percent, by weight, of all the cherries may have the stems removed. If stemmed, not more than 1/2 of one percent, by weight, of all the cherries may have the stems attached.

(3) "Pitted Sulphured Cherries" means whole cherries with or without stems from which the pits have been removed. If unstemmed (cocktail), not more than seven percent, by weight, of all the cherries may have the stems removed. If stemmed, not more than 1/2 of one percent, by weight, of all the cherries, may have the stems attached.

(4) "Pit" means an entire pit or portion thereof attached to a sulphured cherry or within the pit cavity.

(5) "Unclassified Cherries" means sulphured cherries which do not conform to any of the styles set forth in sections (2), (3), or (4) of this rule.

(6) "Properly Matured" means that stage of ripeness in which the fruit is fully developed for brining purposes.

(7) "Clean" means that the product is practically free from leaves, fruit spurs, bark, twigs, dirt, or foreign material.

(8) "Well Bleached" means that the cherries possess a practically uniform color typical of well bleached sulphured cherries for the variety.

(9) "Firm" means that the cherries possess a firm, fleshy texture, retain their approximate original shape, are not shriveled, and do not show more than slight collapsed areas of flesh.

(10) "Damage" means any injury or defect which materially affects the appearance or market quality of the product. The following shall be considered "damage":

(a) "Mechanical injury." Any open pitter hole, or open pitter holes measuring more than 1/8 inch across in the aggregate; any pitter hole where there is a material loss of flesh; any pitter tear or pitter tears, or any other mechanical injury which materially affects the appearance of the cherry;

(b) "Surface discoloration":

(A) (In case of Oregon No. 1 whole cherry) — Any light surface discoloration exceeding in the aggregate 1/8 of the surface of the cherry; any dark surface discoloration exceeding in the aggregate the area of a circle 3/16 inch in diameter, but not exceeding in the aggregate 1/8 of the surface of the cherry;

(B) (In case of Oregon No. 1 halved cherries) — Any light surface discoloration exceeding in the aggregate 1/8 of the surface of the cherry; any dark surface discoloration exceeding in the aggregate the area of a circle 1/16 inch in diameter.

(c) "Rain cracks":

(A) (In case of Oregon No 1. whole cherries) — In the stem basin more than 1/4 inch in length; outside the stem basin more than 3/16 inch in length measured on the circumference;

(B) (In the case of Oregon No. 1 halved cherries) — In the stem basin more than 1/8 inch in length; outside the stem basin no rain cracks shall be allowed.

(d) "Blemished." Any insect injury, bird pecks, limb rub, hail marks, sunburn, solution cracks, or any other blemish or combina-

tion of blemishes which materially affects the appearance of the cherry; also any cherry, the flesh of which is materially discolored.

(11) "Fairly Well Bleached" means that the cherries possess a reasonably uniform color typical of reasonably well bleached sulphured cherries for the variety.

(12) "Fairly Firm" means that the cherries possess a reasonably firm texture, may have slightly lost their original shape, may be slightly shriveled, or may show moderately collapsed areas of the flesh.

(13) "Serious Damage" means any injury which seriously affects the appearance or market quality of the product. The following shall be considered "serious damage":

(a) Any deformed or double cherry;

(b) "Mechanical injury":

(A) (In case of Oregon No. 2 whole cherries) — Any open pitter hole, or open pitter holes measuring more than 3/16 inch across in the aggregate; any pitter hole where there is a serious loss of flesh; any pitter tear or pitter tears, or any other mechanical injury which seriously affects the appearance of the cherry;

(B) (In the case of Oregon No. 2 halved cherries) — Any open pitter hole, or open pitter holes measuring more than 1/8 inch across in the aggregate; any pitter hole where there is a serious loss of flesh; any pitter tear or pitter tears, or any other mechanical injury which seriously affects the appearance of the cherry.

(c) "Surface discoloration." Any light surface discoloration exceeding in the aggregate 1/2 of the surface of the cherry; any dark surface discoloration exceeding in the aggregate 1/8 of the surface of the cherry;

(d) "Rain cracks":

(A) (In the case of Oregon No. 2 whole cherries) — In the stem basin more than 1/2 inch in length; outside the stem basin more than 3/8 inch in length measured on the circumference;

(B) (In the case of Oregon No. 2 halved cherries) — In the stem basin more than 1/4 inch in length; outside the stem basin more than 3/16 inch in length measured on the circumference.

(e) Any blemish or combination of any blemishes which seriously affects the appearance of the cherry; also any cherry, the flesh of which is seriously discolored.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980

Stats. Implemented: ORS 632.900 - 632.980

Hist.: AD 469, ef. 5-20-54

603-051-0200

Grades

(1) Oregon No. 1 grade sulphured whole cherries shall consist of properly matured cherries of similar varietal characteristics that are clean, firm, well formed, and well bleached. The cherries shall be free from damage caused by mechanical injury, surface discoloration, rain cracks, blemishes, or other means. In order to allow for variations incident to proper preparation, grading, and handling, at least 95 percent of the cherries of any lot must meet the requirements of "firm." In addition, not more than 10 percent of the cherries of any lot may be below the remaining requirements of this grade, of which not more than 1/2 or five percent shall be allowed for defects classified as serious damage.

(2) Oregon No. 1 grade sulphured halved cherries shall consist of portions of sliced cherries, no particle of which shall be smaller than an estimated 1/3 or more than an estimated 2/3 of a whole cherry. The cherries shall be properly matured, of similar varietal characteristics that are clean, firm, well formed, and well bleached. The cherries shall be free from damage caused by mechanical injury, surface discoloration, rain cracks, blemishes, or other means. In order to allow for variations incident to proper preparation, grading, and handling, at least 95 percent of the cherries of any lot must meet the requirements of "firm." In addition, not more than 10 percent of the cherries of any lot may be below the remaining requirements of this grade, of which not more than 1/2 or five percent shall be allowed for defects classified as serious damage.

(3) Oregon No. 2 grade sulphured whole cherries shall consist of properly matured cherries of similar varietal characteristics that are clean, fairly firm, well formed, and fairly well bleached. The cherries shall be free from serious damage caused by mechanical

injury, surface discoloration, rain cracks, blemishes or other means. In order to allow for variations incident to proper preparation, grading, and handling, at least 90 percent of the cherries of any lot must meet the requirements of "fairly firm." In addition, not more than 10 percent of the cherries of any lot may be below the remaining requirements of this grade.

(4) Oregon No. 2 grade sulphured halved cherries shall consist of properly matured cherries of similar varietal characteristics that are clean, fairly firm, well formed, and fairly well bleached. The cherries shall be free from serious damage caused by mechanical injury, surface discoloration, rain cracks, blemishes, or other means. In order to allow for variations incident to proper preparation, grading, and handling, at least 90 percent of the cherries of any lot must meet the requirements of "fairly firm." In addition, not more than 10 percent of the cherries of any lot may be below the remaining requirements of this grade.

(5)(a) Oregon Combination Grade sulphured cherries shall be a combination of Oregon No. 1 and Oregon No. 2 cherries of any style. When such a combination grade is packed, unless otherwise specified, the lot shall average not less than 50 percent Oregon No. 1 quality cherries;

(b) A tolerance of not more than 10 percent shall be allowed for cherries which fall below the requirements of Oregon No. 2 grade;

(c) The tolerances for the standards are on a container basis. However, individual containers in any lot may vary from the specified tolerances, providing the averages for the entire lot, based on sample inspection, are within the tolerances specified. No part of any tolerance shall be allowed to reduce, for the lot as a whole, the 50 percent of cherries of the higher grade requirement in the combination; but individual containers may not have less than 35 percent of the higher grade or more than 20 percent below the requirements of Oregon No. 2 grade;

(d) When other combinations are specified, individual containers may not have more than 15 percent less than the percentage specified of the higher grade or more than 20 percent below the requirements of Oregon No. 2 grade.

(6) Oregon No. 3 grade sulphured cherries shall consist of cherries which fail to meet the requirements of the above grades, and shall be practically free of stems, leaves, fruit spurs, bark, dirt, or foreign material.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 469, ef. 5-20-54

**603-051-0205
 Tolerances for Certification of Lots of Oregon No. 1 or 2 Grade Sulphured Cherries**

(1) The tolerances for certification of lots of Oregon No. 1 or 2 grades of sulphured cherries shall be on a container basis. However, not to exceed 1/6 of the individual containers in any lot may vary from the specified tolerances provided the averages for the entire lot, based on sample inspection, are within the tolerances specified. For a tolerance of 10 percent or more, individual containers in any lot may contain not more than 1-1/2 times the tolerance specified. For a tolerance of less than 10 percent, individual containers in any lot may contain not more than double the tolerance specified.

(2) In pitted cherries:

(a) Of extra small and small sizes, there shall not be found in excess of two pits per each 40 ounces of cherries;

(b) Of medium, large, or mixed sizes, there shall not be found in excess of one pit per each 40 ounces of cherries;

(c) Of extra large size, there shall not be found in excess of one pit per each 60 ounces of cherries.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 469, ef. 5-20-54

**603-051-0210
 Sizes**

The following approximate sizes shall be considered as standards for all grades of sulphured cherries except for halved cherries:

- (1) Extra Small: 14 mm. to and including 16 mm.
- (2) Small: 16 mm. to and including 18 mm.

- (3) Medium: 18 mm. to and including 20 mm.
 - (4) Large: 20 mm. to and including 22 mm.
 - (5) Extra Large: 22 mm. and over.
- Stat. Auth.: ORS 616
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 469, ef. 5-20-54

Sweet Cherries

**603-051-0225
 Official Standards**

The United States Standards For Grades of Sweet Cherries adopted by the United States Department of Agriculture (36 F. R. 8502) effective May 7, 1971, are hereby adopted as the official standards for sweet cherries within the State of Oregon, save and except that specifically set forth hereafter. A copy of such federal standards is filed herewith and by this reference made a part hereof. The exception to such federal standards is in reference to Section 51.2648(b)(1) of such federal standards, so that the Oregon standard for the grade "Oregon No. 1" would provide for 24 percent for cherries in any lot rather than the 12 percent provided in said federal standard.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561 & 632
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 738, f. 7-2-63; AD 937(6-71), f. 7-19-71, ef. 7-19-71; AD 7-1978(Temp), f. & ef. 6-5-78; AD 12-1978, f. & ef. 7-17-78

Green Corn

**603-051-0240
 Official Standards**

The United States Standards For Green Corn adopted by the United States Department of Agriculture effective May 18, 1954, and in effect on January 1, 1963, hereby are adopted as the standards for the State of Oregon for green corn. Such federal standards are contained in Title 7, Chapter 1, Part 51 of the Code of Federal Regulations in Sections 51.835 to 51.857, a copy of which is filed herewith and by this reference made a part hereof.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 739, f. 7-2-63

**603-051-0255
 Dewberries and Blackberries Official Standards**

The United States Standards For Dewberries and Blackberries adopted by the United States Department of Agriculture effective February 13, 1928, and in effect on January 1, 1963, hereby are adopted as the standards of the State of Oregon for dewberries and blackberries. A copy of such federal standards is filed herewith and by this reference made a part hereof.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 740, f. 7-2-63

Filberts in Shells

**603-051-0268
 Official Standards**

The United States Standards For Grades of Filberts in Shell adopted by the United States Department of Agriculture on July 14, 1970. Effective September 1, 1970, are hereby adopted as a standard of the State of Oregon for filberts in shell. Such federal standards are as contained in Sections 51.1995 to 51.2009 of 35 Federal Register 11453. A copy of such regulations is filed herewith and by this reference made a part hereof. In addition thereto, OAR 603-51-273, 603-51-278, 603-51-283, and 603-51-288 of this Order are also hereby adopted as standards of the State of Oregon for filberts in shell.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 939(14-70), f. 10-20-70, ef. 11-1-70

603-051-0273

Oregon No. 1 Grade

“Oregon No. 1” consists of filberts in the shell which meet the following requirements:

- (1) Similar type; and
- (2) Dry;
- (3) Shells:
 - (a) Well formed; and
 - (b) Clean and bright;
 - (c) Free from:
 - (A) Blanks; and
 - (B) Broken or split shells.
 - (d) Free from damage caused by:
 - (A) Stains; and
 - (B) Adhering husk; or
 - (C) Other means.
- (4) Kernels:
 - (a) Reasonable well developed; and
 - (b) Not badly misshapen;
 - (c) Free from:
 - (A) Rancidity;
 - (B) Decay;
 - (C) Mold; and
 - (D) Insect injury.
 - (d) Free from damage caused by:
 - (A) Shriveling; and
 - (B) Discoloration; or
 - (C) Other means.
- (5) Size: The size shall be specified in connection with the grade in accordance with one of the size classifications in **Table 2**.

(6) Tolerances: In order to allow for variations incident to proper grading and handling, the following tolerance, by count, are permitted as specified:

- (a) For mixed types. Twenty percent filberts which are of a different type;
- (b) For defects. Ten percent for filberts which are below the requirements of this grade; provided, that not more than 1/2 of this amount or five percent shall consist of blanks, and not more than five percent shall consist of filberts with rancid, decayed, moldy, or insect injured kernels, including not more than two percent for insect injury;
- (c) For off-size. Fifteen percent for filberts which fail to meet the requirements for the size specified, but not more than 2/3 of this amount, or 10 percent shall consist of undersize filberts.

[ED. NOTE: Tables referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 929(14-70), f. 10-20-70, ef. 11-1-70; AD 982(15-72), f. 10-25-72, ef. 11-15-72; AD 1065(11-75), f. 8-5-75, ef. 8-25-75

603-051-0278

Application of Standards

(1) The grade of a lot of filberts shall be determined on the basis of a composite sample drawn from containers in various locations in the lot. However, any container or group of containers in which the filberts are obviously of a quality, type, or size materially different from that in the majority of containers shall be considered a separate lot, and shall be sampled separately.

(2) In grading the sample, each filbert shall be examined for defects of the shell before being cracked for kernel examination. A filbert shall be classed as only one defective nut even though it may be defective externally and internally.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 929(14-70), f. 10-20-70, ef. 11-1-70

603-051-0283

Definitions

(1) “Similar Type” means that the filberts in each container are of the same general type and appearance. For example, nuts of the round type shall not be mixed with those of the long type in the same container.

(2) “Dry” means that the shell is free from surface moisture, and that the shells and kernels combined do not contain more than 10 percent moisture.

(3) “Well Formed” means that the filbert shell is not materially misshapen.

(4) “Clean and Bright” means that the individual filbert and the lot as a whole are practically free from adhering dirt and other foreign material, and that the shells have characteristic color.

(5) “Blank” means a filbert containing no kernel or a kernel filling less than 1/4 the capacity of the shell.

(6) “Split Shell” means a shell having any crack which is open and conspicuous for a distance of more than 1/4 the circumference of the shell, measured in the direction of the crack.

(7) “Damage” means any specific defect described in this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects which materially detracts from the appearance, or the edible or marketing quality of the filberts. The following specific defects shall be considered as damage:

(a) Stains which are dark and materially affect the appearance of the individual shell;

(b) Adhering husk when covering more than five percent of the surface of the shell in the aggregate;

(c) Shriveling when the kernel is materially shrunken, wrinkled, leathery, or tough;

(d) Discoloration when the appearance of the kernel is materially affected by black color.

(8) “Reasonably Well Developed” means that the kernel fills 1/2 or more of the capacity of the shell.

(9) “Badly Misshapen” means that the kernel is so malformed that the appearance is materially affected.

(10) “Rancidity” means that the kernel is noticeably rancid to the taste. An oily appearance of the flesh does not necessarily indicate a rancid condition.

(11) “Moldy” means that there is a visible growth of mold either on the outside or the inside of the kernel.

(12) “Insect Injury” means that the insect, frass, or web is present inside the nut, or the kernel shows definite evidence of insect feeding.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 929(14-70), f. 10-20-70, ef. 11-1-70

603-051-0288

Metric Conversion Table

Millimeters (mm) — Inches:

- (1) 24.6 — 62/64.
- (2) 23.4 — 59/64.
- (3) 23.0 — 58/64.
- (4) 22.2 — 56/64.
- (5) 19.4 — 49/64.
- (6) 19.0 — 48/64.
- (7) 18.6 — 47/64.
- (8) 17.9 — 45/64.
- (9) 17.5 — 44/64.
- (10) 16.7 — 42/64.
- (11) 13.9 — 35/64.
- (12) 13.5 — 34/64.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 929(14-70), f. 10-20-70, ef. 11-1-70; AD 1065(11-75), f. 8-5-75, ef. 8-25-75

Oregon Grade Standards for Filbert (Hazelnut) Kernels

603-051-0305

Application of Standards

The grade of a lot of filbert kernels shall be determined on the basis of a composite sample drawn from containers in various locations in the lot. However, any container or group of containers in which the filberts are obviously of a quality, type, or size materially different from that in the majority of containers shall be considered a separate lot, and shall be sampled separately.

Stat. Auth.: ORS 561 & 632
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 682, f. 9-8-61; Renumbered from 603-051-0386; AD 741, f. 7-2-63; AD 1101(22-76), f. & ef. 7-20-76

603-051-0310

Official Grades

The following grades are established for filberts (hazelnuts) in Oregon:

- (1) Oregon Fancy, which consists of whole filbert kernels meeting the following requirements:
 - (a) Similar type, well dried and clean;
 - (b) Free from foreign material, mold, rancidity, decay and insect injury;
 - (c) Free from damage caused by chafing or scraping, shriveling, deformity, internal flesh discoloration, or other means;
 - (d) Free from serious damage caused by serious shriveling, broken kernels or other means; and
 - (e) The size meets, and is declared as, those specified in connection with the grade, in accordance with one of the size classifications in **Tables 3** or **4**.
- (2) Oregon No. 1, which consists of whole filbert kernels meeting the following requirements:
 - (a) Well dried and clean;
 - (b) Free from foreign material, mold, rancidity, decay and insect injury;
 - (c) Free from damage caused by chafing or scraping, shriveling, deformity, internal flesh discoloration or other means;
 - (d) Free from serious damage caused by serious shriveling, broken kernels or other means; and
 - (e) The size meets, and is declared as, those specified in connection with the grade, in accordance with one of the size classifications in **Tables 3** or **4**, or is declared in terms of minimum diameter or minimum and maximum diameters.
- (3) Oregon No. 1 Whole and Broken, which consists of whole filbert kernels or portions of filbert kernels meeting the following requirements:
 - (a) Well dried and clean;
 - (b) Free from foreign material, mold, rancidity, decay and insect injury;
 - (c) Free from serious damage caused by serious shriveling, or other means; and
 - (d) Does not have to meet any size requirement.

[ED. NOTE: Tables referenced are available from the agency.]
 Stat. Auth.: ORS 561 & 632
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 682, f. 9-8-61; Renumbered from 603-051-0388; AD 1038(28-74), f. 8-20-74, ef. 9-11-74; AD 1101(22-76), f. & ef. 7-20-76; AD 16-1979, f. & ef. 1-2-80; AD 5-1981, f. & ef. 5-13-81

603-051-0311

Size Classifications

The following size classifications are established for filberts (hazelnuts) in Oregon. (See **Tables 3** and **4**.)

[ED. NOTE: Tables referenced are available from the agency.]
 Stat. Auth.: ORS 561 & 632
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 993(7-73), f. 6-15-73, ef. 7-1-73; AD 1038(28-74), f. 8-20-74, ef. 9-11-74; AD 1065(11-75), f. 8-5-75, ef. 8-25-75; AD 1101(22-76), f. & ef. 7-20-76

603-051-0315

Tolerances

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances, by weight, are permitted as specified:

- (1) For Foreign Material: 0.02 of one percent, for foregoing material.
- (2) For Mixed Types: In the Oregon Fancy grade, 10 percent for kernels which are of a different type.
- (3) For Defects: In the Oregon Fancy and Oregon No. 1 grades, 10 percent for kernels which are below the requirements of these grades, provided that not more than 1/2 of this amount or five percent shall be allowed for serious damage caused by serious shrivel-

ing and broken kernels, including not more than one percent for moldy, rancidity, decay or insect injury.

(4) For Defects: In the Oregon No. 1 Whole and Broken grade, five percent for kernels or portions of kernels which are below the requirements of this grade, including not more than one percent for moldy, rancidity, decay or insect injury.

(5) For Offsize: 15 percent for kernels which fail to meet the requirements for the size classifications specified, but not more than 2/3 of this amount or 10 percent shall consist of undersize kernels.

Stat. Auth.: ORS 561 & 632
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 682, f. 9-3-61; Renumbered from 603-051-0390; AD 993(7-73), f. 6-15-73, ef. 7-1-73; AD 1038(28-74), f. 8-20-74, ef. 9-11-74; AD 1065(11-75), f. 8-5-75, ef. 8-25-75; AD 1101(22-76), f. & ef. 7-20-76; AD 16-1979, f. & ef. 1-2-80

603-051-0320

Definitions

As used in OAR 603-051-0305 to 603-051-0325:

- (1) "Similar Type" means that the kernels are of the same general type and appearance (i.e., kernels of the round type shall not be mixed with those of the long type). Color of the kernels shall not be considered since there is often a marked difference in skin color of kernels of similar type.
- (2) "Well Dried" means that the kernels are firm and crisp, not containing more than six percent moisture.
- (3) "Clean" means practically free from plainly visible adhering dirt or other foreign material.
- (4) "Foreign Material" means any substance other than the filbert kernel, or portions of kernels. Loose skins, pellicles, or corky tissue which have become separated from the kernel shall not be considered as foreign material, provided that this material does not exceed .02 of one percent by weight.
- (5) "Damage" means any specific defect described in this section, or an equally objectionable variation of any one of these defects, or any other defect or any combination of defects, which materially detracts from the appearance of the edible or marketing quality of the individual portion of the kernel or of the lot as a whole. The following defects shall be considered as damage:
 - (a) "Chafing or scraping" means that more than 1/8 of the surface is affected;
 - (b) "Shriveling" means the kernel is materially shrunken, wrinkled, and tough;
 - (c) "Deformity" means that the kernel is deformed to the extent that the appearance is materially affected;
 - (d) "Internal flesh discoloration" means any black discoloration within the kernel. The natural brown stain which occurs within the internal cavity of some types of kernels shall not be considered damage.

(6) "Serious Damage" means any specific defects described in this section or an equally objectionable variation of any of these defects, or any other defect, or any combination of defects, which seriously detracts from the appearance or the edible marketing quality of the individual portion of kernel or of the lot as a whole. The following defects shall be considered as serious damage:

- (a) "Serious shriveling" means that the kernel is seriously shrunken, wrinkled, and tough;
- (b) "Broken kernels" means portions of kernels of which an estimated 1/4 or more of the original entire kernel has been broken off;
- (c) "Moldy" means that there is a visible growth of mold either on the outside or inside of the kernel;
- (d) "Rancidity" means that the kernel is noticeably rancid to the taste. An oily appearance of the flesh does not necessarily indicate a rancid condition;
- (e) "Decay" means that any portion of the kernel is decomposed;
- (f) "Insect injury" means that the insect, frass, or web is present, or the kernel or portion of kernel shows definite evidence of insect feeding.

Stat. Auth.: ORS 561 & 632
 Stats. Implemented: ORS 632.900 - 632.980

Hist.: AD 682, f. 9-8-61; Renumbered from 603-051-0392; AD 1038(28-74), f. 8-20-74, ef. 9-11-74; AD 1065(11-75), f. 8-5-75, ef. 8-25-75; AD 1101(22-76), f. & ef. 7-20-76; AD 16-1979, f. & ef. 1-2-80

603-051-0325

Labeling Requirements

The principal display panel of each filbert (hazelnut) container shall state:

- (1) The name of the commodity, unless it can be easily identified through the wrapper or package;
- (2) The name and business address of the grower, packer, shipper, distributor, or dealer, including the zip code;
- (3) The grade and size of nuts in accordance with the standards set forth in OAR 603-051-0305 to 603-051-0320;
- (4) The net weight; and
- (5) The country of origin.

Stat. Auth.: ORS 561.190 & 632.460
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 1101(22-76), f. & ef. 7-20-76; AD 16-1994, f. & cert. ef. 10-10-94

American (Eastern Type) Bunch Grapes

603-051-0335

Official Standards

The United States **Standards For American (Eastern Type) Bunch Grapes** adopted by the United States Department of Agriculture effective July 19, 1943, and in effect on January 1, 1963, hereby are adopted as the standards of the State of Oregon for American (Eastern type) bunch grapes. A copy of such federal standards is filed herewith and by this reference made a part hereof.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 742, f. 7-2-63

Table Grapes (European or Vinifera Type)

603-051-0350

Official Standards

The United States **Standards For Grades of Table Grapes (European or Vinifera Type)** adopted by the United States Department of Agriculture effective May 20, 1971, are hereby adopted as the standards for table grapes in the State of Oregon.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561 & 632
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 743, f. 7-2-63; AD 1103(24-76), f. & ef. 8-25-76

Honey

603-051-0365

Definitions

As used in OAR 603-051-0366 through 603-051-0395, unless otherwise required by the context, the following terms will be construed, respectively, to mean:

- (1) "Air bubble" means the small visible pockets of air in suspension that may be numerous in the honey and contribute to the lack of clarity in filtered style.
- (2) "Bees" means honey-producing insects of the genus *Apis* and includes the adults, eggs, larvae, pupae or other immature stages thereof.
- (3) "Comb" means the wax like cellular structure that bees use for retaining their brood or as storage for pollen and honey.
- (4) "Crystallize" means the spontaneous solidification of the natural glucose content from solution as the monohydrate.
- (5) "Floral source" means the flower from which the bees gather nectar to make honey.
- (6) "Food" has the definition provided in ORS 616.205(8).
- (7) "Food additive" has the definition provided in ORS 616.205(9).
- (8) "Granulate" means the initial formation of crystals in honey.
- (9) "Honey" means the natural sweet substance produced by bees resulting from the harvest of plant nectar or plant secretions that has been collected and transformed by the deposition, dehydration, and storage in comb to ripen and mature.

(10) "Pollen grain" means the granular, dust-like microspores that bees gather from flowers. Pollen grains in suspension contribute to the lack of clarity in filtered style.

Stat. Auth.: ORS 561.190, 632.900 – 632.980 & HB 2947 enrolled
 Stats. Implemented: ORS 632.900 – 632.980 & HB 2947 enrolled
 Hist.: AD 152, f. 11-12-43, ef. 1-29-44; DOA 4-2012, f. & cert. ef. 2-9-12

603-051-0366

Standard of Identity for Honey

Honey will meet the following standards:

- (1) Honey may not be heated or processed to such an extent that its essential composition is changed or its quality is impaired.
- (2) Chemical or biochemical treatments may not be used to influence honey crystallizations.
- (3) Honey may not contain more than 21 percent moisture content.
 - (a) Water may not be added to honey in the course of extraction or packing for sale or resale as honey.
 - (b) Heather honey may contain up to 23 percent moisture content.
- (4) Honey may not be less than 60g/100g fructose and glucose, combined; the ratio of fructose to glucose will be greater than 0.9.
- (5) Honey will not exceed five (5) percent sucrose except for honey from the nectar of the plants:
 - (a) alfalfa (*Medicago sativa*); citrus spp; false acacia (*Robinia pseudoacacia*); french honeysuckle (*Hedysarum*); menzies banksias (*Banksia menziesii*); red gum (*Eucalyptus camaldulensis*); leatherwood (*Eucalyptus lucida*); and eucryphia milligani which may contain up to 10 percent sucrose; or
 - (b) lavender (*Lavandula* spp) and borage (*Borago officinalis*) which may contain up to 15 percent sucrose.
- (6) Honey may not contain food additives.
- (7) Extracted honey may not contain more than .05g/1000g water insoluble solids.

Stat. Auth.: ORS 561.190, 632.900 – 632.980 & HB 2947 enrolled
 Stats. Implemented: ORS 632.900 – 632.980 & HB 2947 enrolled
 Hist.: DOA 4-2012, f. & cert. ef. 2-9-12

603-051-0370

Types and Styles of Honey

- (1) "Extracted honey" is honey that has been separated from the comb by centrifugal force, gravity, straining, or other means, and is identified in the following types:
 - (a) "Liquid honey" is honey free from visible crystals;
 - (b) "Crystallized honey" is honey that is solidly granulated or crystallized, irrespective of whether candied, fondant, creamed or spread types of crystallized honey;
 - (c) "Partially crystallized honey" is honey that is a mixture of liquid honey and crystallized honey.
- (2) Extracted honey styles are:
 - (a) "Filtered" honey is honey of any type defined in these standards having been filtered to the extent that most of the fine particles, pollen grains, air bubbles, or other materials normally found in suspension, have been removed;
 - (A) Honey will not be filtered to the extent that the filtration removes unnatural chemicals or elemental contaminants.
 - (b) "Strained" honey is honey of any type defined in these standards having been strained to the extent that most of the particles, including comb, propolis, or other defects normally found in honey, have been removed. Pollen grains, small air bubbles, and very fine particles would not normally be removed.
 - (3) "Comb honey" is the type of honey stored by bees in the cells of freshly built broodless combs and is sold in sealed whole combs or sections of such combs.
 - (4) "Chunk honey" is the type of honey whereby comb honey is surrounded by extracted honey.

Stat. Auth.: ORS 561.190, 632.900 – 632.980 & HB 2947 enrolled
 Stats. Implemented: ORS 632.900 – 632.980 & HB 2947 enrolled
 Hist.: AD 152, f. 11-12-43, ef. 1-29-44; DOA 4-2012, f. & cert. ef. 2-9-12

603-051-0375

Grades

The United States Standards for Grades of Extracted Honey adopted by the Agriculture Marketing Service, United States Department of Agriculture effective May 23, 1985 are hereby adopted as the standards for the State of Oregon for extracted honey grades. A copy of such federal standards is filed herewith and by this reference made a part hereof.

Stat. Auth.: ORS 561.190, 632.900 – 632.980 & HB 2947 enrolled
 Stats. Implemented: ORS 632.900 – 632.980 & HB 2947 enrolled
 Hist.: AD 152, f. 11-12-43, ef. 1-29-44; DOA 4-2012, f. & cert. ef. 2-9-12

603-051-0390

Color

The United States Standards for Grades of Extracted Honey adopted by the United States Department of Agriculture effective May 23, 1985 are hereby adopted as the standards for the State of Oregon for extracted honey color. A copy of such federal standards is filed herewith and by this reference made a part hereof.

Stat. Auth.: ORS 561.190, 632.900 – 632.980 & HB 2947 enrolled
 Stats. Implemented: ORS 632.900 – 632.980 & HB 2947 enrolled
 Hist.: AD 152, f. 11-12-43, ef. 1-29-44; DOA 4-2012, f. & cert. ef. 2-9-12

603-051-0395

Labeling Requirements

(1) The name of the food meeting the standard of identity in OAR 603-051-0366 is “honey”.

(2) Honey in a liquid or crystalline state or a mixture of the two will be labeled as “honey”.

(3) Comb honey will be labeled as “comb honey” or “cut comb honey”.

(4) Chunk honey may be labeled as “cut comb in honey”, “honey with comb” or “chunk honey”.

(5) Food containing honey and any flavoring, spice or other ingredient or if honey is processed in such a way that a modification to honey occurs that materially changes the flavor, color, viscosity or other material characteristic of honey, then such foods will be distinguished in the food name from honey by declaration of the food additive modification.

(6) Honey may be designated according to floral source if the honey comes predominantly from that particular source and has the organoleptic, physiochemical and microscopic properties corresponding with that origin. Honey designated according to the honey’s floral source in section (6) will have the common name or the botanical name of the floral source in close proximity or conjoined to the word “honey”.

(7) All labels, containers and food associated with the containers will meet the requirements of ORS 616.205 to 616.385.

Stat. Auth.: ORS 616 & HB 2947 enrolled
 Stats. Implemented: ORS 632.900 – 632.980 & HB 2947 enrolled
 Hist.: AD 152, f. 11-12-43, ef. 1-29-44; DOA 4-2012, f. & cert. ef. 2-9-12

Lettuce

603-051-0410

Official Standards; Lettuce

The United States Standards For Grades of Lettuce adopted by the United States Department of Agriculture effective December 1, 1975, are hereby adopted as the standards for lettuce in the State of Oregon.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561 & 632
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 744, f. 7-2-63; AD 1103(24-76), f. & ef. 8-25-76

Lilium Longiflorum Bulbs

603-051-0425

Definitions of Terms

As used in OAR 603-051-0430 through 603-051-0445:

(1) “Single Crown” means a bulb that shows evidence of producing only one bloom stalk.

(2) “One Variety” means bulbs such as the Croft, Ace, Estate, etc. (the Kenyon-Davidson lily may be packed, and labeled Kenyon-Davidson though it may be more than one strain).

(3) “Mature” means that the bulb shall have reached a stage of maturity in months or years, according to variety, that will tend to produce under good greenhouse practices three or more blooms.

(4) “Fairly Firm” means that the bulbs shall be sufficiently cured at the time of shipment so that there shall be no appreciable loss in weight or shrinking in size during a reasonable length of time after grading, but shall not be so shrunken as to be flabby.

(5) “Damage” means any defect or condition that will affect the forcing qualities of the bulb or detract materially from the appearance of the pack.

(6) “Basal Plate” means the fleshy, circular plate at the base of the bulb from which roots develop.

(7) “Free from Sprouting” means that the bulbs shall not show appreciable evidence of top growth or new root development.

(8) “Damage by Disease” means that the bulbs shall not show evidence of injurious fungus or other plant diseases.

(9) “Slight Blemishes” means slight bruises and/or a very few broken scales. (Corky Tip shall not be considered as blemishes except where it materially affects the appearance of the pack.)

(10) “Circumference” means the measurement around the bulb in inches at the greatest diameter taken at right angles to the straight line from the top to the base of the bulb.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 216, f. 8-30-45, ef. 8-28-45

603-051-0430

Grades

(1) Oregon No. 1 shall consist of single crown bulbs of one variety which are mature, well shaped, fairly firm, with sound basal plates with well developed root systems and free from damage caused by sprouting, sun scald, freezing, heating, dirt, foreign material, diseases, insects, rodents, mechanical, or other means, except that slight blemishes shall be permitted in this grade.

(2) Oregon No. 1 Double Crown shall consist of bulbs that show evidence of producing two or more bloom stocks. Such bulbs shall meet all other requirements of Oregon Grade No. 1.

(3) Unclassified shall consist of bulbs of one variety that do not meet the requirements of the number one grade except they shall be free from injurious insect pests and plant diseases.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 216, f. 8-30-45, ef. 8-28-45

603-051-0435

Tolerance: Sizes

(1) In order to allow for variations incident to proper grading and handling, not more than 10 percent of the bulbs, by count, of any lot may be below the requirements of the grade. Slight imperfections which are not discernible in good commercial sorting practice shall not be considered defects of grade.

(2)(a) Unless otherwise specified, the size stated by inches in circumference shall be as follows:

- (A) 6–7, 8–9, 9–10, etc.; or
- (B) 6–8, 7–9, 8–10, etc.

(b) The above sizes shall be determined as follows: A bulb that will caliper between six and seven inches in circumference is a 6–7, a bulb that will caliper between seven and eight inches is a 7–8, etc. A bulb that will caliper between 6–8 inches in circumference is a 6–8, a bulb that will caliper between 7–9 is a 7–9, etc. Bulbs that are not of a circular shape shall be so measured that the size in circumference will be comparable to that if the bulb was round.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 216, f. 8-30-45, ef. 8-28-45

603-051-0440

Oregon Box Packs

(1) All bulbs packed under these regulations shall be packed in clean, fairly bright boxes, in accordance to approved methods. The

boxes shall be well nailed with cleats at ends. There shall be a layer of granulated peat or other suitable packing material on the top and bottom of the pack and also between each layer. All boxes shall be tightly packed at the time of packing, but contents shall not show unnecessary bruising because of over-filled package.

(2) Packed bulbs in any one box shall not have more than 10 percent below the minimum size marked on the box. The number of bulbs in any individual box shall not vary more than two percent below the number marked on the box and not more than one percent in lots of 10 boxes or more.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 216, f. 8-30-45, ef. 8-28-45

603-051-0445

Marking

All packages of bulbs shall be marked on one end in a legible manner with letters and figures not less than 3/8 inch in height and not less than 3/16 inch in width with the following information: Number of bulbs in the box, variety, size, and name and address of the grower, shipper, or dealer as the case may be. If the required markings do not appear on the label they shall appear on the label end of the box, or if no label is used, on the end of the box as illustrated below:

**Oregon No. 1 — 100 Croft 7-8
 LABEL Grower or Shipper**

Stat. Auth.: ORS 616
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 216, f. 8-30-45, ef. 8-28-45

Loganberries

603-051-0460

Grades

(1)(a) Oregon No. 1 shall consist of loganberries which are clean, fresh, firm, well colored, well developed, and not overripe, which are free from hulls, mold, and decay, and from damage caused by dirt or other foreign matter, shriveling, sunscald, moisture, disease, insects, mechanical, or other means;

(b) In order to allow for variations incident to proper grading and handling, not more than 10 percent, by count, of the berries in any lot may be below the requirements of this grade, but not to exceed 1/2 of this tolerance or five percent, shall be allowed for defects causing serious damage. No appreciable tolerance shall be allowed for mold or decay.

(2) Oregon No. 2 shall consist of loganberries which are not graded in conformity with the foregoing grade and which do not contain more than 10 percent, by count, of berries that have been seriously damaged from any cause.

(3) Unclassified shall consist of loganberries which fail to meet the requirements of any of the foregoing grades.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 108, f. 4-7-42, ef. 5-4-42

603-051-0465

Size

Unless otherwise specified, No. 1 berries shall be not less than 3/4 inch in length.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 108, f. 4-7-42, ef. 5-4-42

603-051-0470

Definitions of Terms

As used in OAR 603-051-0460 through 603-051-0470:

(1) “Clean” means reasonably free from leaves, stems, dirt, and other foreign matter.

(2) “Well Colored” means that the whole surface of the berry shall be a good red color.

(3) “Well Developed” means that the berries shall not be misshapen owing to anthracnose injury, frost injury, lack of pollination, insect injury, or other causes.

(4) “Overripe” means dead ripe or soft, becoming very dark in color necessitating immediate consumption.

(5) “Underripe” means partly colored or of a very light red color.

(6) “Damage” means any injury from the causes mentioned which materially affects the appearance, edible, or shipping quality.

(7) “Seriously Damaged” means berries which are badly deformed, crushed, leaky, or otherwise seriously injured. Berries which have less than 1/2 of the surface covered with a good red color shall be considered as seriously damaged.

(8) “Appreciable Tolerance” means less than one percent.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 108, f. 4-7-42, ef. 5-4-42

Onions

603-051-0483

Definitions

For the purposes specified in ORS 632.206–632.260, “lot” means a continuous identifiable amount of fresh packed onions that does not exceed one day’s run.

Stat. Auth.: ORS 632.905 & 632.211
 Stats. Implemented: ORS 632.900 - 632.980 & 632.206 - 632.260
 Hist.: DOA 8-2001, f. & cert. ef. 5-4-01

603-051-0485

Official Standards

The following standards hereby are adopted as the Standards of the State of Oregon for Onions: United States **Standards For Grades of Onions Other Than Bermuda, Granex, Grano, and Creole Types** adopted by the United States Department of Agriculture on October 18, 1966, which went into effect on December 15, 1966. Such federal standards are contained in Sections 51.2830 to 51.2854 of 31 Federal Register 13637 et seq. A copy of such regulations is filed herewith and by this reference made a part hereof.

NOTE: Refer to ORS 632.206 - 632.260 and 632.990 for requirements as to inspection and labeling.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 746, f. 7-2-63; AD 832(4-67), f. 3-3-67, ef. 4-1-67; AD 833A(4-67), f. & ef. 4-4-67

603-051-0487

Oregon Percentage Grade

In order to allow shippers to pack a percentage of US NO. 1 Grade product for market, the “Oregon Percentage Grade” is adopted. The “Oregon Percentage Grade” shall include a percentage of US No. 1 Grade product. (7 CFR Section 51.2830).

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 632.905 & 632.211
 Stats. Implemented: ORS 632.900 - 632.980 & 632.206 - 632.260
 Hist.: DOA 8-2001, f. & cert. ef. 5-4-01

603-051-0490

Oregon Extra Fancy Export Grade

In order to allow shippers to pack a higher quality for export, the “Oregon Extra Fancy Export” grade is adopted. This grade consists of onions which meet all of the requirements of the U.S. No. 1 Grade (7 CFR Section 51.2830) except that the onions shall meet the following additional requirements:

- (1) Color: fairly bright;
- (2) Size:
 - (a) Boiler: 1 inch to 2 inches;
 - (b) Prepack: 2 inch minimum;
 - (c) Medium: 2-1/2 inch minimum;
 - (d) Jumbo: 3 inch minimum.
- (3) Tolerance for size. 2 percent undersize, 10 percent oversize;
- (4) Tolerances for grade. Lot limit 3 percent total defects including 1 percent decay; no averaging above 5 percent total, including 2 percent decay on any one sample;
- (5) Special lot tolerances:

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(a) Sunburn or greening. Lot tolerance 10 percent; score when more than 10 percent of onions in a lot have a medium green color on one-quarter of the surface;

(b) Peeling. Lot tolerance 10 percent; score when more than one-quarter of thin papery skin is missing, leaving the underlying fleshy scale unprotected.

NOTE: Refer to ORS 632.206 - 632.260 and 632.990 for requirements as to inspection and labeling.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 632.905

Stats. Implemented: ORS 632.900 - 632.980

Hist.: AD 16-1997, f. & cert. ef. 10-8-97

Onion Sets

603-051-0500

Official Standards

The United States **Standards for Onion Sets** adopted by the United States Department of Agriculture effective February 1, 1940, and in effect on January 1, 1963, hereby are adopted as standards for the State of Oregon for onion sets. A copy of such federal standards is filed herewith and by this reference made a part hereof.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561.190 & 632.900 - 632.980

Stats. Implemented: ORS 632.900 - 632.980

Hist.: AD 747, f. 7-2-63

Parsnips

603-051-0515

Official Standards; Parsnips

The United States **Standards for Grades of Fresh Parsnips** adopted by the United States Department of Agriculture effective March 23, 1954, are hereby adopted as the standards for fresh parsnips in the State of Oregon.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561 & 632

Stats. Implemented: ORS 632.900 - 632.980

Hist.: AD 748, f. 7-2-63; AD 1103(24-76), f. & ef. 8-25-76

Peaches

603-051-0530

Official Standards

The United States **Standards for Peaches** adopted by the United States Department of Agriculture effective June 15, 1952, and in effect January 1, 1963, hereby are adopted as the standards of the State of Oregon for peaches. A copy of such federal standards is filed herewith and by this reference made a part hereof.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561.190 & 632.900 - 632.980

Stats. Implemented: ORS 632.900 - 632.980

Hist.: AD 749, f. 7-2-63

Summer and Fall Pears

603-051-0545

Official Standards

The following standards hereby are adopted as the standards of the State of Oregon for summer and fall pears:

(1) The United States **Standards for Summer and Fall Pears**, adopted by the United States Department of Agriculture effective August 20, 1955, and in effect on January 1, 1963. Such federal standards are contained in Title 7, Chapter 1, Part 51 of Code of Federal Regulations in Sections 51.1260 to 51.1280, a copy of which is filed herewith and by this reference made a part hereof.

(2) Oregon Extra Fancy. This grade consists of summer and fall pears which meet all the requirements of U.S. No. 1 grade (7 CFR Sec. 51.1261).

(3) Oregon Fancy. This grade consists of summer and fall pears which meet all the requirements of U.S. No. 2 grade (7 CFR Sec. 51.1263).

(4) Oregon Combination. This grade consists of a combination of Oregon Extra Fancy and Oregon Fancy grades for summer and fall

pears which meet all the requirements of U.S. Combination grade (7 CFR Sec. 51.1262).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561.190 & 632.900 - 632.980

Stats. Implemented: ORS 632.900 - 632.980

Hist.: AD 750, f. 7-2-63

Winter Pears

603-051-0560

Official Standards

The following standards hereby are adopted as the standards of the State of Oregon for winter pears:

(1) The United States **Standards for Winter Pears**, adopted by the United States Department of Agriculture effective September 10, 1955, and in effect on January 1, 1963. Such federal standards are contained in Title 7, Chapter 1, Part 51 of the Code of Federal Regulations in Sections 51.1300 to 51.1323, a copy of which is filed herewith and by this reference made a part hereof.

(2) Oregon Extra Fancy. This grade consists of winter pears which meet all the requirements of U.S. Extra No. 1 grade (7 CFR Sec. 51.1301).

(3) Oregon Fancy. This grade consists of winter pears which meet all requirements of U.S. No. 2 grade (7 CFR Sec. 51.1304).

(4) Oregon Commercial. This grade consists of winter pears which meet all the requirements of U.S. Combination grade (7 CFR Sec. 1303), except that broken skins and skin punctures not to exceed three-sixteenths of an inch in diameter shall not be considered a defect for this grade.

(5) Oregon Unclassified. This grade consists of winter pears of one variety which are hand picked, mature, clean, sound, free from codling moth injury, and scale; hard end, if the pear shows a distinctly constricted protrusion at the blossom end; except that scab spots affecting an aggregate area of not more than one inch width no one spot of more than 3/4 of an inch in diameter shall be permitted. The pear shall peel one good half, shall be free from punctures and broken skin, except those meeting the requirements of Oregon Extra Fancy and Oregon Fancy grades may have punctures or cuds not to exceed 1/4 of an inch in diameter. U.S. Standards Sections 51.1306 to 51.1323, (7 CFR) are applicable to this grade.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561.190 & 632.900 - 632.980

Stats. Implemented: ORS 632.900 - 632.980

Hist.: AD 751, f. 7-2-63

Fresh Peas

603-051-0575

Official Standards

The United States **Standards for Fresh Peas** adopted by the United States Department of Agriculture effective June 1, 1942, and in effect on January 1, 1963, hereby are adopted as the standards of the State of Oregon for fresh peas. A copy of such federal regulations is filed herewith and by this reference made a part hereof.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561.190 & 632.900 - 632.980

Stats. Implemented: ORS 632.900 - 632.980

Hist.: AD 752, f. 7-2-63

Fresh Plums and Prunes

603-051-0590

Official Standards

The United States **Standards for Fresh Plums and Prunes** adopted by the United State Department of Agriculture as of the date of this regulation and including last amendment effective July 1, 1969, hereby are adopted as the standards of the State of Oregon for fresh plums and prunes. Such federal standards are contained in Title 7, Chapter 1, Part 51 of the Code of Federal Regulations in Sections 51.1520 to 51.1537, a copy of which is filed herewith and by this reference made a part hereof.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561.190 & 632.900 - 632.980

Stats. Implemented: ORS 632.900 - 632.980

Fresh Plums and Prunes for Processing

603-051-0605

Grades

(1) Oregon No. 1 shall consist of plums or prunes of one variety which are well formed, mature, but not soft or shriveled, and which are free from decay and sunscald, and from damage caused by cracks, heat injury or internal browning, growth cracks, sunburn, split pits, russeting, scars, drouth spots, or gum pockets, dirt or other foreign materials, disease, insects, mechanical, or other factors which affect the quality of the processed fruit. Plums or prunes unless otherwise specified shall be not less than 1-3/16 inches in diameter.

(2) Oregon No. 2 shall consist of plums or prunes of one variety which meet the requirements of Oregon No. 1 grade, except for size. The minimum diameter shall be not less than 1-1/8 inches.

Stat. Auth.: ORS 616
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 348, f. 6-4-48, ef. 6-18-48

603-051-0610

Definitions

As used in OAR 603-051-0605:

(1) "Well-Formed" means that the fruit has the shape characteristics of the variety; doubles shall not be considered well-formed.

(2) "Mature" means that the fruit has reached the stage of maturity at which the flesh has a distinct amber color. Light green color of the flesh at the stem end shall not be scored when extending not in excess of 1/4 inch from the stem basin towards the pit of the fruit.

(3) "Soft" means overripe, or the flesh has reached the stage where it has become mushy, or the skin badly wrinkled. Slight shriveling at stem end shall not be considered as damage.

(4) "Sunscald" means injury by the sun in which softening or collapse of the flesh of the fruit is apparent.

(5) "Damage" means any injury or defect which materially affects the appearance or edible quality of the fruit. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage:

(a) Broken skins which are unhealed and more than 1/8 inch in diameter or depth; except those caused by pulled stems where the skin is not torn beyond the stem basin. (Healed skin breaks shall be handled as scars.);

(b) Heat injury or internal browning, which is extensive and shows dark discoloration of the flesh;

(c) Healed growth cracks shall be considered on the same basis as heavy russet;

(d) Sunburn which has materially changed the normal color of the fruit, or has caused the skin to blister or crack;

(e) Split pit which affects the fruit to an extent that the shape is not well formed;

(f) Russeting which is not rough, when aggregating more than 10 percent of the fruit surface; or excessively rough russeting or scars when aggregating more than 3/16 inch in diameter;

(g) Fresh plums or prunes should be considered defective when the presence of gum formations is identified with surface scars, drought spots, or gum pockets;

(h) Dirt or other foreign materials which cannot be readily removed by normal washing in preparation for processing.

(6) "Diameter of the Fruit" means the shortest distance measured through the center of the fruit at right angles to a line running from the stem to the blossom end.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 348, f. 6-4-48, ef. 6-18-48

Oregon Grade Standards — Fresh Italian Prunes

603-051-0615

Oregon Grade

Oregon No. 1 grade shall consist of prunes of one variety which are well formed, mature, but not overripe, soft, or shriveled, and which are free from decay and sunscald, and from damage caused by broken skins, heat injury, growth cracks, sunburn, split pits, hail marks, drought spots, russeting, scars, dirt or other foreign material, disease, insects, or mechanical or other means. Italian type prunes shall have 2/3 of the surface with purplish color, and unless otherwise specified, the minimum size of such prunes shall be not less than 1-1/4 inches in diameter.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 797(4-65), f. 6-7-65, ef. 7-1-65; AD 880(11-68), f. 6-11-68, ef. 6-11-68; AD 976(9-72), f. 8-24-72, ef. 9-15-72

603-051-0616

Tolerances

In order to allow for variations incident to proper grading and handling, the following tolerances are specified:

(1) At Shipping Point: Not more than a total of 10 percent, by count, of the prunes in any container may not meet the requirements of this grade for defects other than color and size, but not more than five percent by count, may be allowed for defects causing serious damage and not more than one percent may be allowed for decay. In addition, not more than 10 percent, by count, in any container may not meet the color requirements and not more than 10 percent, by count, may not meet the size specifications, but the combined tolerance for all defects shall not exceed 15 percent.

(2) At Destination or Enroute: Not more than a total of 18 percent of the prunes in any container may not meet the requirements of this grade and not more than the following percentages shall be allowed for the defects listed:

(a) Twelve percent for permanent defects including therein not more than 10 percent which fail to meet the color requirement, 10 percent which fail to meet the minimum diameter requirement, and 10 percent which fail to meet the requirements of the grade because of other permanent defects;

(b) Six percent for defects causing serious damage, including therein not more than four percent for serious damage by permanent defects and not more than two percent for decay.

Stat. Auth.: ORS 561 & 632
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 797(4-65), f. 6-7-65, ef. 7-1-65; AD 976(9-72), f. 8-24-72, ef. 9-15-72; AD 20-1977, ef. 10-5-77

603-051-0617

Application of Tolerances

The contents of individual containers in the lot, based on sample inspection, are subject to the following limitations, provided the averages for the entire lot are within the tolerances specified:

(1) When a tolerance is 10 percent or more, individual containers in any lot shall have not more than 1-1/2 times the tolerance specified, except that at least one defective and one undersized fruit may be permitted in a container.

(2) When a tolerance is less than 10 percent, individual containers in any lot shall have not more than double the tolerance specified, except that at least one defective and one undersized fruit may be permitted in a container.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 797(4-65), f. 6-7-65, ef. 7-1-65; AD 976(9-72), f. 8-24-72, ef. 9-15-72

603-051-0618

Standard Pack

(1) The prunes shall be of fairly uniform size and tightly packed according to the approved and recognized methods. The fruits in the top layer shall not be noticeably superior in quality or size to those in the remainder of the package.

(2) The size of prunes packed in 4-basket crates shall be indicated as follows: 4 x 4, 4 x 5, 5 x 5, etc., in accordance with the arrangement in the top layer of the basket. These packs shall not be

more than three layers deep. Arrangements such as 4-3 x 5 and 5-4 x 5 shall not be considered standard packs.

(3) The arrangement of the bottom layer shall be one row less one way, and may be one row less each way than the arrangement of the top layer. The arrangement of the middle layer may be the same as the top layer, or may be one row less one way than the arrangement of the top layer. Straight, offset, and diagonal packs in the layers are permitted. For example: A pack with 5 x 5 in the top layer may have 5 x 5 in the middle layer, and shall have 4 x 5 or 4-3 x 5 in the bottom layer; or it may have 4 x 5 or 4-3 x 5 in the middle layer, and shall have 4 x 5, 4-3 x 5, or 4 x 4 in the bottom layer.

(4) In layer-packed California peach or lug boxes, the count in the entire container shall be marked on the package.

(5) In double-faced and filled special lugs the number of rows, lengthwise of the lugs, shall be marked on the package to indicate size, as "nine row."

(6) In order to allow for variations incident to proper packing, not more than 10 percent, by count, of the containers in any lot may fail to meet the requirements of the standard pack.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980

Stats. Implemented: ORS 632.900 - 632.980

Hist.: AD 797(4-65), f. 6-7-65, ef. 7-1-65; AD 976(9-72), f. 8-24-72, ef. 9-15-72

603-051-0619

Definitions of Terms

As used in these standards:

(1) "Well-Formed" means that the fruit has the shape characteristic of the variety. Doubles shall not be considered well-formed.

(2) "Mature" means that the fruit has reached the stage of maturity which will insure a proper completion of the ripening process.

(3) "Sunscald" means injury caused by the sun in which softening or collapse of the flesh is apparent.

(4) "Damage" means any injury or defect which materially affects the appearance, or edible or shipping quality of the fruit. Internal growth cracks, cavities, or gum spots are not considered damage. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage:

(a) Broken skins which are unhealed; except those caused by pull stems where the skin is not torn beyond the stem basin. (Healed skin breaks shall be handled as scars.);

(b) Heat injury which is extensive or not light in color;

(c) External growth cracks, when there are more than one on a fruit, or when any growth crack is deep, not well healed, or more than 1/4 inch in length;

(d) Sunburn which has materially changed the normal color of the fruit, or has caused the skin to blister or crack;

(e) Split pit which causes a readily apparent crack at the stem end, or which affects the shape to the extent that the fruit is not well-formed;

(f) Hail marks, or other similar depressions or scars, which are not shallow or superficial, or which aggregate more than 3/8 inch in diameter, or when the skin has been broken;

(g) Drought spots or external gum spots which are more than 1/4 of an inch in diameter;

(h) Russetting which is not excessively rough, when aggregating more than 10 percent of the fruit surface; or excessively rough russetting when aggregating more than 1/4 inch in diameter;

(i) Scars. Dark, rough depressed scars which aggregate more than 1/4 inch in diameter:

(A) Fairly smooth, superficial scars, including fairly light discoloration such as is caused by handling or packing or by prunes rubbing against each other while on the tree, which aggregate more than 1/2 inch in diameter;

(B) Thorn and limb scratches which are not well healed, or which aggregate more than 1/2 inch in length.

(5) "Well Colored" as applied to Italian type prunes, means that 95 percent of the surface of the prune is purple color, excepting that portion which is permitted to be affected by russetting.

(6) "Fairly Well Colored" as applied to Italian type prunes, means that at least 3/4 of the surface of the prune is purple color.

(7) "Diameter" means the greatest distance measured through the center of the fruit, at right angles to a line running from the stem to the blossom end.

(8) "Badly Misshapen" means that the fruit is so malformed or rough that its appearance is seriously damaged. Doubles shall be considered badly misshapen, except that doubles of Italian type prunes which have approximately equal sized halves shall not be considered badly misshapen.

(9) "Serious Damage" means any injury or defect which seriously affects the appearance, edible, or shipping quality of the fruit. Any one of the following defects, or any combination of defects, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as serious damage:

(a) Broken skins which are unhealed and more than 1/8 inch in diameter or depth, except those caused by pulled stems where the skin is not torn beyond the stem basin. (Healed skin breaks shall be handled as scars.);

(b) Heat injury which causes any softening or dark discoloration of the flesh. Heat injury may cause internal or external discoloration, and may or may not be serious. It should not be confused with sunscald which causes softening or collapse of the tissue, and which is always classed as serious damage;

(c) External growth cracks which are not well healed, or which are more than 3/16 inch in depth, or more than 1/2 inch in length;

(d) Sunburn which causes decided flattening of the fruit, or causes blistering, cracking, or noticeable brownish discoloration of the skin;

(e) Split pit which causes a crack at the stem end more than 3/16 inch in length, including any part which may be covered by the stem; or which affects the shape to the extent that the fruit is badly misshapen;

(f) Hail marks which are more than 3/16 inch in depth, or which aggregate more than 1/2 inch in diameter;

(g) Drought spots or external gum spots which aggregate more than 1/2 inch in diameter;

(h) Russetting which is not excessively rough, when aggregating more than 1/3 of the fruit surface; or excessively rough russetting when aggregating more than 1/2 inch in diameter.

(i) Scars which are very dark or excessively rough and aggregate more than 1/2 inch in diameter; or which are more than 3/16 inch in depth.

(10) "Fairly Uniform Size" means that the fruits in each packed container shall not show a variation of more than 1/4 of an inch in diameter.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980

Stats. Implemented: ORS 632.900 - 632.980

Hist.: AD 797(4-65), f. 6-7-65, ef. 7-1-65; AD 976(9-72), f. 8-24-72, ef. 9-15-72

Potatoes

603-051-0626

Official Standards

The United States Standards for Grades of Potatoes adopted by the United States Department of Agriculture effective September 1, 1971, are hereby adopted as the official standards for the State of Oregon. A copy of the standards is filed herewith and by this reference made a part hereof.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561.190 & 632.900 - 632.980

Stats. Implemented: ORS 632.900 - 632.980

Hist.: AD 941(9-71), f. 8-19-71, ef. 9-1-71

Raspberries

603-051-0665

Official Standards

The United States Standards for Raspberries adopted by the United States Department of Agriculture effective May 29, 1931, and in effect on January 1, 1963, hereby are adopted as the standards of the State of Oregon for raspberries. A copy of the federal standards is filed herewith and by this reference made a part hereof.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980

Stats. Implemented: ORS 632.900 - 632.980

Hist.: AD 754, f. 7-2-63

Spinach Plants

603-051-0680

Official Standards

The United States **Standards for Spinach Plants** adopted by the United States Department of Agriculture effective November 19, 1956, and in effect on January 1, 1963, are hereby adopted as the standards for the State of Oregon for spinach plants. Such federal standards are contained in Title 7, Chapter 1, Part 51 of the Code of Federal Regulations in Sections 51.2880 to 51.2890, a copy of which is filed herewith and by this reference made a part hereof.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 755, f. 7-2-63

Squash (Fall and Winter Type)

603-051-0695

Official Standards

The United States **Standards for Fall and Winter Type Squash** adopted by the United States Department of Agriculture effective November 15, 1944, and in effect on January 1, 1963, hereby are adopted as the standards of the State of Oregon for fall and winter type squash. A copy of such federal standards is filed herewith and by this reference made a part hereof.

Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 756, f. 7-2-63

Strawberries

603-051-0710

Official Standards

The United States **Standards For Strawberries** adopted by the United States Department of Agriculture effective as of the date of this regulation and including U.S.D.A. amendment effective July 1, 1965, hereby are adopted as the standards of the State of Oregon for strawberries. A copy of such federal standards is attached herewith, identified as **Exhibit "C,"** and by this reference made a part hereof.

[ED. NOTE: Exhibits referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 757, f. 7-2-63; AD 880(11-68), f. & ef. 6-11-68

Fresh Tomatoes

603-051-0725

Official Standards; Fresh Tomatoes

The United States **Standards for Grades of Fresh Tomatoes** adopted by the United States Department of Agriculture effective December 1, 1973, as amended February 1, 1975, and April 15, 1976, are hereby adopted as the standards for fresh tomatoes in the State of Oregon.

Stat. Auth.: ORS 561 & 632
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 758, f. 7-2-63; AD 1103(24-76), f. & ef. 8-25-76

Walnuts (In Shell)

603-051-0740

Official Standards

The following standards hereby are adopted as the standards of the State of Oregon for walnuts in shell:

(1) The United States **Standards for Grades of Walnuts (juglans regia) in the Shell**, adopted by the United States Department of Agriculture in effect on July 1, 1969. Such federal standards are contained in Title 7, Chapter 1, Part 51 of the Code of Federal Regulations in Sections 51.2945 to 51.2966, a copy of which is filed herewith and by this reference made a part hereof.

(2) Oregon No. 1. This grade consists of walnuts in shell which meet all the requirements of U.S. No. 1 grade (7 CFR 51.2945).

(3) Oregon No. 2. This grade consists of walnuts in shell which meet all the requirements of U.S. No. 2 grade (7 CFR 51.2949).

(4) Oregon No. 3. This grade consists of walnuts in shell which meet all the requirements of U.S. No. 3 grade (7 CFR 51.2950).

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 759, f. 7-2-63; AD 903(9-69), f. 8-11-69, ef. 8-15-69

Walnuts (Shelled)

603-051-0755

Official Standards

The United States **Standards for Shelled Walnuts** (*juglans regia*) adopted by the United States Department of Agriculture in effect on July 1, 1969, hereby are adopted as the standards of the State of Oregon for shelled walnuts. Such federal standards are contained in Title 7, Chapter 1, Part 51 of the Code of Federal Regulations in Sections 51.2275 to 51.2296, a copy of which is filed herewith and by this reference made a part hereof.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 760, f. 7-2-63; AD 903(9-69), f. 8-11-69, ef. 8-15-69

Watermelons

603-051-0770

Official Standards

The United States **Standards for Watermelons** adopted by the United States Department of Agriculture effective March 22, 1954, and in effect on January 1, 1963, hereby are adopted as the standards of the State of Oregon for watermelons. Such federal standards are contained in Title 7, Chapter 1, Part 51 of the Code of Federal Regulations in Sections 51.1970 to 51.1981, a copy of which is filed herewith and by this reference made a part hereof.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 & 632.900 - 632.980
 Stats. Implemented: ORS 632.900 - 632.980
 Hist.: AD 761, f. 7-2-63

Olive Oil

603-051-0775

Definitions

(1) "Federal Act" means the United States Standards for Grades of Olive Oil and Olive Pomace-Oil adopted by the Agricultural Marketing Service, United States Department of Agriculture effective October 25, 2010.

(2) "Imitation olive oil" means the mixture of any edible oil artificially colored or flavored that resembles olive oil.

(3) "Olive oil" used in this section includes the description of the food item and a type of the food item. When referring to the type of olive oil, a capital letter "T" in parentheses will follow the term "olive oil"; eg: olive oil (T).

(4) "Olive pomace" means the product remaining after the initial mechanical extraction of olive oil from olive tree fruits.

Stat. Auth.: ORS 561.190, 616.230 & 616.761
 Stats. Implemented: ORS 616.761
 Hist.: DOA 3-2012, f. & cert. ef. 2-1-12

603-051-0777

Standards of Identity

(1) The standard of identity for olive oil products are:

(a) "Olive oil" is the oil obtained solely from the fruit of the olive tree (*Olea europaea* L.), to the exclusion of oils obtained using solvents or re-esterification processes and of any mixture with oils of other kinds and will meet the minimum requirements of Table I in the federal Act.

(A) Types of olive oil are:

(i) Olive oil (T);

(ii) Refined Olive Oil.

(b) "Virgin olive oils" are the oils obtained from the fruit of the olive tree solely by mechanical or other physical means under conditions, including thermal conditions, that do not lead to alterations in the oil, and which have not undergone any treatment other than washing, decantation, centrifugation, and filtration and will meet the

minimum requirements of Table I in the federal Act. No additives of any kind are permitted.

(A) Types of virgin olive oil are:

(i) Extra virgin olive oil;

(ii) Virgin olive oil;

(iii) Lampante virgin olive oil. Lampante virgin olive oil may also be called "Virgin olive oil not fit for human consumption without further processing".

(c) "Olive-pomace oil" is the oil obtained by treating olive pomace with solvents or other physical treatments, to the exclusion of oils obtained by synthetic processes and mixture with oils of other kinds and will meet the minimum requirements of Table I in the federal Act. Alpha-tocopherol is permitted to restore natural tocopherol lost in the refining process for refined olive pomace and olive-pomace oil. Maximum level: 200 mg/kg of total alpha-tocopherol is permitted in the final product.

(A) Types of olive-pomace oil are:

(i) Olive-pomace oil;

(ii) Refined olive-pomace oil;

(iii) Crude olive-pomace oil.

(2) For purposes of this section, "ordinary virgin oil" in ORS 616.761 has the same meaning as "lampante virgin olive oil" as defined in the federal Act.

(3) A person may not prepare, mix, blend, or express olive pomace or meats with any bland fixed oil other than olive oil.

(4) A person may not use artificial coloring or flavoring in the manufacture or blending of olive oil or olive-pomace oil.

(5) "Flavored olive oil" is olive oil meeting the standard of identity in section (1) and grade defined in the federal Act that has been mixed with a flavoring or olives that are processed into oil with any fruit, vegetable, nut, seed, or spice and the product resulting from either process contains not less than 90 percent olive oil meeting the standard of identity in section (1) and grade defined the federal Act.

Stat Auth.: ORS 561.190, 616.230 & 616.761

Stats. Implemented: ORS 616.761

Hist.: DOA 3-2012, f. & cert. ef. 2-1-12

603-051-0779

Grades of Olive Oil; Adoption of Federal Regulations

The United States Standards for Grades of Olive Oil and Olive Pomace-Oil adopted by the Agricultural Marketing Service, United States Department of Agriculture effective October 25, 2010 are hereby adopted as the standards for the State of Oregon for olive oil and olive pomace-oil grades. A copy of such federal standards is filed herewith and by this reference made a part hereof.

Stat Auth.: ORS 561.190, 616.230 & 616.761

Stats. Implemented: ORS 616.761

Hist.: DOA 3-2012, f. & cert. ef. 2-1-12

603-051-0780

Labeling Requirements

(1) Only olive oil meeting the standards of identity in OAR 603-051-0777(1)(a)-(b) and grade in the federal Act will be labeled as "olive oil".

(2) Olive oil meeting the standard of identity in OAR 603-051-0777(1) and grade in the federal Act will be labeled with the corresponding U.S. grade and the label will comply with the requirements of ORS 616.205 to 616.385.

(3) The following types of olive oil and olive pomace-oil will be labeled "not for human consumption":

(a) Lampante virgin olive oil;

(b) Crude olive-pomace oil

(4) Mixtures or blends of olive oil and other oils may not be labeled as "olive oil".

(5) Olive-pomace oils may not be labeled as "olive oil".

(6) Flavored olive oil will not be labeled as "extra virgin olive oil", will be distinguished from "olive oil" on the principal display panel, and will be labeled for sale as an olive oil that has been flavored in accordance with the provisions of the 2010 version of Title 21, Chapter 1, Part 101 of the Code of Federal Regulations.

Stat Auth.: ORS 561.190, 616.230 & 616.761

Stats. Implemented: ORS 616.761

Hist.: DOA 3-2012, f. & cert. ef. 2-1-12

603-051-0785

Prohibition of Imitation Olive Oil

A person may not manufacture, produce, process, pack, expose, sell, offer for sale, possess, dispense, supply, or give away imitation olive oil.

Stat Auth.: ORS 561.190, 616.230 & 616.761

Stats. Implemented: ORS 616.761

Hist.: DOA 3-2012, f. & cert. ef. 2-1-12

Oregon Standards for Rose Stock

603-051-0803

Reference

The book, *Modern Roses*, most recent edition, and the *American Rose Annual*, published by the American Rose Society, may be used as references to determine the classification of a variety.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561.190 & 633.620 - 633.660

Stats. Implemented: ORS 633.620 - 633.660

Hist.: AD 707, f. & ef. 9-5-62

Registration and Certification of Grape Nursery Stock

603-051-0830

Definitions

As used in these sections, unless the context requires otherwise:

(1) "Virus-Infected" means infected by a serious virus or manifesting symptoms or behavior characteristic of a serious virus disease. "Serious virus disease" includes corky bark, fan leaf and roll virus diseases, and any other diseases so designated by the Department.

(2) "Index" means to test for virus infection by making a graft with tissue from the plant to be tested to an indicator plant or by other means of inoculation or other generally accepted laboratory methods approved by the Department.

(3) "Off-Type" means different from the variety as stated on the application for registration or certification. A vine or a cane shall be considered off-type when affected by a disorder of genetic origin or it is found to be atypical of the variety.

(4) "Progeny Vine" means a vine propagated from a parent root-stock and/or a parent top-stock source which has been indexed and is intended for planting in a foundation block.

(5) "Registered" means that a registration number has been assigned by the Department to a grapevine in a foundation block or to an entire increase block following the inspection and testing required in these regulations.

(6) "Foundation Block" means a planting of grapevines in which each vine has been registered to serve as a source of foundation stock.

(7) "Foundation Stock" means plants which have been produced in a foundation block.

(8) "Increase Block" means a planting of grapevines made with registered or foundation stock which has been registered as a block to serve as a source for the production of Oregon Certified Grape Nursery Stock.

(9) "Elite stock" means plants which have been produced in a Level One increase block in accordance with 603-051-0835(4)(d).

(10) "Registered Stock" means plants which have been produced in an increase block in accordance with 603-051-0835(4)(e).

(11) "Oregon Certified Grape Nursery Stock" means vines, rootings, cuttings, grafts, or buds taken or propagated from foundation or registered stock and certified in accordance with these regulations.

Stat. Auth.: ORS 561.190 & 633.620 - 633.660

Stats. Implemented: ORS 633.620 - 633.660

Hist.: AD 917(3-70), f. 4-20-70, ef. 5-15-70; DOA 17-1999, f. & cert. ef. 8-16-99

603-051-0835

Requirements and Conditions for Registration or Certification

Registration or certification by the Department shall not imply or be construed as any warranty of the Department or its employees. In addition to other requirements which may be specified by the Department, the following requirements and conditions shall be met

in order to qualify for consideration of registration or certification of grape nursery stock:

(1) The applicant for such registration or certification shall be responsible for the selection of the location and the proper maintenance of a planting being grown under the provisions of these sections. Said applicant shall be responsible for maintaining the identity of all such nursery stock in a manner approved by the Department. The Department shall be notified by the applicant in advance of the planting, replanting, grafting, budding, rebudding, pruning, or removal of grape nursery stock, or the removal of vines in any planting to be submitted for registration or certification, in order that necessary inspections may be made or approval granted prior to the performance thereof.

(2) Each planting shall be located in an area where contamination by soil-borne virus diseases of grapes from drainage, flooding, irrigation, or other means has not occurred, or is not likely to occur. Each of said planting areas shall be inspected and approved by the Department prior to planting:

(a) No uncertified grape vines may be located within thirty feet of the increase block location;

(b) No uncertified grapes may be growing upslope from the increase block location;

(c) Only grape nursery stock originating from Foundation Blocks approved by the Department may be planted in a certified grape increase block. A grower may produce cuttings from foundation stock grape plants for the purpose of completing the increase block planting, for example: a grower who receives five certified Pinot Noir vines from an approved foundation block may make forty five cuttings to complete a fifty vine planting of that Pinot Noir clone in the increase block;

(d) Only cuttings from grapevines planted in the increase block are eligible for certification tags provided by the Department;

(e) The grower must provide the Department with photocopies of the tags or other documents that accompany grape stock received from foundation sources, such copies shall be kept indefinitely in the Department certification file for the grower;

(f) The grower must prepare, and provide to the Department a map which locates each certified grapevine in the increase block. The map shall be kept in the Department certification file for the grower. Each grape vine in the increase block shall be marked to show variety, clone number and foundation source;

(g) When new certified grapevines are planted in the increase block, copies of certification tags must be sent to the Department along with a revised planting map that indicates the locations of the new vines;

(h) The grower of the increase block shall be licensed with the Department as a nursery stock grower;

(i) No increase block that loses its certification status may be reinstated into the certification program, notwithstanding any change in ownership.

(3) Each planting shall be kept in a thrifty growing condition, and pests shall be kept under intensive control. Suitable precautions shall be taken in cultivation, irrigation, movement, use of equipment, and in other farming practices so as to safeguard against the spread of soil-borne pests to plantings. Any plant found to be off-type shall be removed from any planting. Off-type canes may be permitted to be removed in a manner approved by the Department. Grape nursery stock, including cuttings, shall be produced, stored, heeled-in, or calloused in media, beds, or storage areas approved by the Department. The Department may require such treatments, including fumigation, as shall protect against infection of or infestation with pests.

(4) For purposes of determining eligibility of said grape nursery stock for registration or certification, the following shall apply:

(a) To be acceptable in a planting in a foundation block, a plant shall be foundation stock, or its rootstock and topstock sources and the plant itself shall have been inspected and tested and not found to be virus-infected or off-type, and the index readings shall have been completed within the previous eight months, or the plant shall have an equivalent known history approved by the Department. Such plant shall have been protected from possible virus infection in a manner

approved by the Department from the time it was originally propagated until it is planted in a foundation block;

(b) To be acceptable for planting in an increase block, the plant shall be foundation stock or propagated from foundation stock. Propagating wood from an increase block may be planted in the same increase block to increase its size or to replace plants subject to the approval of the Department;

(c) To be acceptable for planting or propagation in a nursery planting, a plant shall be foundation stock or an increase block for the purpose of certification;

(d) An increase block that is inspected as required by the Department and has no detectable virus infections of any kind shall be designated as "Level One" and stock from such increase blocks shall be called "Elite" stock;

(e) An increase block that is free of serious virus diseases shall be designated as "Level Two" and stock from such increase blocks shall be called "Registered" stock. No increase block may be newly established as a Level Two increase block and no material may initially enter the certification program except as Elite stock, defined in 603-051-0835(4)(d).

Stat. Auth.: ORS 561.190 & 633.620 - 633.660

Stats. Implemented: ORS 633.620 - 633.660

Hist.: AD 917(3-70), f. 4-20-70, ef. 5-15-70; DOA 17-1999, f. & cert. ef. 8-16-99

603-051-0840

Authority and Procedures for Registration or Certification

Registration, certification, approvals, and the supervision of activities specified herein shall reside in the Department. Inspection and testing procedures prescribed in these regulations may be made by Oregon State University, the United States Department of Agriculture, or the Department, and shall be conducted in a manner and at times determined to be suitable by the Department. In the indexing procedures required in these regulations, the substitution of other indicator plants may be approved by the Department if found equally suitable. Indexing on a fewer number of indicator plants may also be approved by the Department if the plant being tested is, itself, a good indicator for a particular disease. The following inspection and testing procedures shall control as applicable:

(1) Progeny Vines:

(a) The parent rootstock and topstock sources of a progeny vine for which registration or certification shall be requested, shall be index-tested on St. George, LN-33, Baca 22 A, and Carignane varieties of grapevines. *Chenopodium* spp. may be used in lieu of Carignane grapevine;

(b) Propagating wood to produce the progeny vines for a foundation block shall be taken from the parent rootstock and topstock sources in the same growing season that tissue is taken from the parent sources for indexing. The progeny vines shall be visually inspected at least twice each growing season prior to planting in a foundation block.

(2) In a Foundation Block: Plantings in a foundation block, or the vines thereof, shall be visually inspected at least twice each growing season.

(3) In an Increase Block: Plantings in an increase block, or the vines thereof, shall be visually inspected at least twice each year prior to the removal of fruit, if any, from the vines.

(4) In a Nursery Planting: Plantings in a nursery, or the vines thereof, shall be visually inspected at least twice each growing season and, in addition thereto, shall be inspected at the time of digging. In order to be eligible for certification or approval as registered stock, said nursery stock shall not remain in the nursery row for more than two growing seasons.

(5) In addition to the requirements of sections (1) to (5) of this rule additional inspections or tests may be required in the event seasonal conditions or other factors tend to obscure virus symptoms or make adequate information impossible, or when virus infection is suspected or virus symptoms may be masked in a particular variety.

Stat. Auth.: ORS 561.190 & 633.620 - 633.660

Stats. Implemented: ORS 633.620 - 633.660

Hist.: AD 917(3-70), f. 4-20-70, ef. 5-15-70; DOA 17-1999, f. & cert. ef. 8-16-99

Registration or Certification Fees and Special Services Fees

603-051-0845

Application and Fees for Registration or Certification

(1) An application for registration or certification of grape nursery stock shall be made on a form prescribed by the Department and shall be accompanied by a fee of \$50, which shall be valid for one year from acceptance by the Department. The application shall include the consent of the applicant for the removal of plants from any planting for inspection or testing purposes. Applications for annual reregistration shall be in accordance with this section and accompanied by the fee stated herein. Applications shall be made sufficiently in advance of the time of planting so as to permit the Department to establish the origin of the stock, to determine the suitability of the location, to inspect for virus infection, including Fan Leaf and Leaf Roll virus, and to supervise any treatment that may be required.

(2) Request for special or additional inspection or testing services of grape nursery stock and the charges therefore shall be in accordance with the provisions of OAR 603-054-0025.

(3) Fees and charges provided in this section are separate from and in addition to any such fees or charges required by ORS 571.057 or 571.145 and are intended to be used solely to defray the costs of inspections, testing, and certifications incurred by the Department.

Stat. Auth.: ORS 561.190 & 633.620 - 633.660
 Stats. Implemented: ORS 633.620 - 633.660
 Hist.: AD 917(3-70), f. 4-20-70, ef. 5-15-70; AD 1029(19-74), f. 6-19-74, ef. 7-11-74; DOA 17-1999, f. & cert. ef. 8-16-99

603-051-0850

Refusal or Cancellation of Registration or Certification

Registration or certification may be refused or cancelled by the Department if:

(1) The requirements of these regulations have not been met.

(2) Any vine in the planting is found virus-infected with a soil-borne virus, unless in the opinion of the Department the remainder of the planting can be adequately protected by treatment or by removal and destruction of all vines in the infected area, or by other means.

(3) The plant is off-type.

(4) Any vine in the planting is found infected with a serious virus that is not known to be soil-borne unless such vine is removed under supervision of the Department.

(5) It is determined by the Department that a registered vine or registered increase block is virus-infected and the plants propagated from such source are also liable to be infected.

(6) The pest cleanliness requirements of the Oregon Nursery Laws have not been met.

Stat. Auth.: ORS 561.190 & 633.620 - 633.660
 Stats. Implemented: ORS 633.620 - 633.660
 Hist.: AD 917(3-70), f. 4-20-70, ef. 5-15-70; DOA 17-1999, f. & cert. ef. 8-16-99

Rules for Virus Certification of Oregon Nursery Stock

603-051-0855

Declaration of Policy

Certification of nursery stock is a function of state government, the responsibilities of which shall be conducted by the Department in keeping with the provisions of ORS 633.620 to 633.660 and statutes related thereto. Participation by nurseries in the certification program shall be voluntary in nature. These regulations may be reviewed biennially by the Department and nurseries participating in the program.

Stat. Auth.: ORS 561, 571 & 632
 Stats. Implemented: ORS 561, 571 & 632
 Hist.: AD 17-1977, f. & ef. 7-15-77; DOA 14-2004, f. & cert. ef. 6-1-04; DOA 5-2013, f. & cert. ef. 3-1-13

603-051-0856

Definitions

As used in OAR 603-051-0855 to 603-051-0859, unless the context requires otherwise:

(1) "Block" means a contiguous grouping of plants separated by at least 10-feet from other contiguous groupings of plants.

(2) "Clean cultivation" means the site is bare earth or is planted with a grass (Gramineae) or another crop approved in writing by the Department in which broad-leaved weeds are actively controlled.

(3) "Department" means the Oregon Department of Agriculture.

(4) "G1" means the original plants (nuclear materials) that have tested negative in the most extensive battery of virus tests available, and subsequently maintained in isolation to prevent (re)infection. Production and maintenance of G1 material must be in within a system approved by USDA-APHIS or its official designee.

(5) "G2" means plant material that is propagated from G1 stock and maintained under the specific conditions outlined in OAR 603-051-0857 to prevent (re)infection.

(6) "G3" means plant material that is propagated from G1 or G2 stock to increase the amount of source material available for producing virus-tested certified nursery stock. G3 plants must be maintained under the specific conditions outlined in OAR 603-051-0857 to prevent (re)infection.

(7) "G4" means plant material that is propagated from G1, G2, or G3 stock that will be distributed for sale. When using seed for G4 rootstock production, the source of seed must be approved by the Department.

(8) "Index" means to determine virus infection by means of inoculation from the plant to be tested to an indicator plant or by other scientifically acceptable means of detection.

(9) "Indicator Plant" means any herbaceous or woody plant used to index or determine virus infection.

(10) "Off-Type" means different from the cultivar as stated on the application for certification.

(11) "Oregon Certified Nursery Stock" means G4 plant materials including nursery-grown seedlings, clonal root-stocks originating from registered G2 or G3 trees, nursery-grown trees propagated by using top-stock from registered G2 or G3 trees, and rootstock originating from registered G2 or G3 trees, but is limited to the genera Chaenomeles, Cydonia, Malus, Prunus, and Pyrus.

(12) "Oregon Certified Seed" means seed produced on registered G1, G2, or G3 seed trees.

(13) "Registered Tree" means a tree or clonal planting that has a registration number assigned to it by the Department, and that has been inspected and tested in accordance with the provisions of OAR 603-051-0855 to 603-051-0859.

(14) "Scion-Block" means a planting of registered G2 or G3 trees, which serves as a source of scionwood for the propagation of Oregon Certified Nursery Stock.

(15) "Seed-Block" means a planting of registered G2 or G3 seed trees, which serves as a source of seed for producing rootstock used in the propagation of Oregon Certified Nursery Stock.

(16) "Stool Bed" means a clonal planting of self-rooted registered G2 or G3 trees for the specific purpose of producing vegetatively propagated rootstock used in the propagation of Oregon Certified Nursery Stock.

(17) "Virus" means virus and virus-like pathogens including phytoplasmas, viroids, and graft transmissible agents.

(18) "Virus Infected" means the presence of a harmful virus in a plant or plant part.

(19) "Virus-Like" means either a genetic disorder or nontransmissible entity.

(20) "Tissue culture" means a general term for the cultivation of plants (cells, tissues, or organs) under aseptic conditions in a synthetic medium in vitro. It also refers to the cultures themselves.

(21) "Tested" means having been subjected to an official examination, other than visual, to determine if pests are present or to identify pests.

Stat. Auth.: ORS 561, 571 & 632
 Stats. Implemented: ORS 561, 571 & 632
 Hist.: AD 17-1977, f. & ef. 7-15-77; DOA 14-2004, f. & cert. ef. 6-1-04; DOA 6-2007, f. & cert. ef. 3-16-07; DOA 5-2013, f. & cert. ef. 3-1-13

603-051-0857

Requirements and Conditions for Certification

Certification by the Department shall not imply or be construed as any warranty of the Department or their employees as to the condition of nursery stock. The following requirements and conditions shall be met in order to qualify for consideration of certification of nursery stock:

(1) The applicant for certification shall be responsible for the selection of the location and the proper maintenance of all plantings being grown. The applicant shall also be responsible for maintaining the identity of all nursery stock. Any planting entered in this certification program shall be kept in a thrifty growing condition and free of plant pests.

(2) Trees may be registered for certification as rootstock, inter-stock, and top-stock sources for the propagation of Oregon Certified Nursery Stock when inspected, tested and found to be discernably free from harmful virus and virus-like diseases of regulatory concern and having varietal purity, in accordance with the procedures prescribed in OAR 603-051-0855 to 603-051-0859.

(3) No budding, grafting, or top-working of registered G2 and G3 trees in a scion-block, seed-block, or stool bed shall be permitted. Use of a certified G2 and G3 nursery stock for scionwood shall only be allowed upon receiving permission from the Department and shall be subject to departmental supervision.

(4) Any plant found to be infected by a virus or virus-like disease and officially confirmed by the Department, or found to be off-type, or in root or foliar contact with a confirmed infected plant shall be removed immediately from any planting and destroyed after notification is rendered by the Department. For scion blocks, if a positive plant is present the following growing season, all plants growing within 30-feet of the infected plant within the same block will not be certified. For stool beds, if a positive plant is present the following growing season, all plants growing within 10-feet of the infected plant within the same block will not be certified. The certification of these plants may be regained if Departmentally-approved corrective action is taken.

(5) Prior to planting, all registered plant growing areas and their contiguous border areas of not less than ten feet shall be tested for the presence of soil-inhabiting nematodes known to transmit viruses of concern to the Program. Growing areas found free of nematode vectors will not require chemical fumigation. Growing areas found infested with nematode vectors are required to be fumigated in accordance with the rates and practices recommended by Oregon State University. The growing areas will then be re-tested. Such tests and treatments shall be carried out under the supervision of the Department.

(6) Applicants shall be responsible for maintaining trueness to type of certified G4 nursery stock produced from registered G2 and G3 plants. The applicant shall develop a written program, in cooperation with the Department, so as to provide for monitoring of each cultivar for trueness to type.

(7) A participating nursery must maintain the following records for all registered G2 and G3 nursery stock in this program for a minimum of four (4) years:

(a) Records indicating the Latin name, variety or cultivar, rootstock, origin, date of introduction of the G1 or G2 plant materials to the facility, date of propagation in the registered G2 or G3 block, and field location including nursery row and planting;

(b) Records of sale and copies of all phytosanitary certificates issued;

(c) Maps of the facility or nursery indicating the growing areas and a detailed inventory for the registered G2 and G3 plants.

(8) The following requirements specifically apply to scion-blocks:

(a) A scion-block shall be located not less than 100 feet from any nonregistered cultivated plant of the Rosaceae family. The ground in a scion-block, and for a distance of 20-feet surrounding it, shall be kept either clean-cultivated or in an approved, properly controlled ground cover. Registered scion-block G2 and G3 trees shall be planted and maintained in a manner, and at sufficient distances,

so that branches of different varieties do not overlap. Each tree shall bear a permanent registration number;

(b) The rootstock and top-stock sources of the G2 and G3 scion-block trees shall have originated from G2 or G3 trees established under this certification program or from virus-tested G1 trees originating through the Clean Plant Center of the Northwest or other departmentally approved virus-tested sources. If the tree is scion-rooted, its source shall have met the above-mentioned requirements. Only registered G2 and G3 trees shall be permitted in the scion-block.

(9) The following requirements specifically apply to stool beds:

(a) Existing stool beds that index clean on the commonly used virus indicators or via testing approved by the Department shall qualify as registered G3 stool beds. New stool beds (those planted after July 1, 1980) shall have originated from G2 or G3 stock established under this certification program, or from virus-tested G1 plants originating through the Clean Plant Center of the Northwest or other departmentally approved virus-tested sources, and shall be located not less than 50 feet from nonregistered rosaceous hosts and not less than ten (10) feet from registered rosaceous plants. If the tree is scion-rooted, its source shall have met the requirements of this certification program. Only registered trees shall be permitted in the stool bed.

(b) A registered G2 or G3 stool bed shall be located not less than 50-feet from any nonregistered cultivated plant of the Rosaceae family. However, nonregistered stool beds may be located not less than ten feet from registered G2 or G3 stool bed plantings if such plantings were in production when they became subject to this certification program. The ground in a registered stool bed, and for a distance of ten feet surrounding it, shall be kept clean-cultivated;

(10) The following requirements specifically apply to seed-blocks:

(a) A Prunus seed-block shall be located not less than 100-feet from any nonregistered plant of the Prunus species. The ground in a seed-block and for a distance of 20-feet surrounding the seed-block shall be kept clean-cultivated or in an approved, controlled ground cover;

(b) The rootstock and top-stock sources of the seed-tree shall have originated from G2 or G3 trees established under this program or from virus-tested G1 trees originating through the Clean Plant Center of the Northwest or other Department approved virus-tested sources. If the tree is scion-rooted, its source shall have met the above requirements. Only registered trees shall be permitted in the seed-block.

(11) The following requirements specifically apply to scion blocks of containerized Malus, Pyrus, Cydonia, Chaenomeles, or Prunus species. All other requirements for growing scion blocks also apply (see (8)):

(a) The roots of trees being containerized must be free of soil prior to planting in the containers;

(b) The growing medium must consist of non-soil material, including but not limited to, expanded or baked clay pellets, ground coconut husks, coffee hulls, cocoa pods or rice husks, peat, perlite, sawdust, sphagnum, volcanic ash, cinder or vermiculite. The components of the growing medium must not have been previously used for growing plants or other agricultural purposes. The components of the growing medium must be mixed and maintained under conditions which preclude soil contamination or contamination by water run-off. Samples of the growing medium may be taken to verify the absence of soil;

(c) The containers must be set on a barrier that prevents the roots of the plants from permeating the soil or prevents direct contact with the soil, such as plastic, hard-packed clay, pavement, or a minimum of two (2) inches of coarse gravel. The site must be located so as to preclude soil contamination, either directly or through water run-off from drainage, flooding, irrigation, or other means.

(12) The following requirements apply specifically to tissue culture plant materials grown for scion and for rootstock. These requirements are in addition to the requirements specifically for scion blocks described in (8) and for stoolbeds as described in (9):

(a) Plants (explants) used to produce callus for tissue culture must be tested or indexed annually as required by this program;

(b) Plantlets (rooted shoots) regenerated from the tissue culture callus must be grown in a greenhouse or growth chamber and all measures and precautions must be taken to prevent the presence of any vectors in the greenhouse or growth chamber. Records of such measures taken, if they include pesticide use, must be maintained as required by OAR 603-057-0405 through 603-057-0410 and other Oregon Administrative Rules for licensed pesticide applicators as applicable;

(c) One regeneration of plantlets from the tissue culture callus will be certified under this program as G4 level material with no further testing or indexing provided all other requirements are met. This certification will last one (1) year from the date of introduction of the plantlets into the greenhouse. Plantlets may be planted as G3 level registered plants provided all other requirements, including testing, are met for scion as described in (8) and for stool beds as described in (9).

(13) The following requirements specifically apply to Oregon certified nursery stock, also known as G4 level material:

(a) A participating nursery must maintain the following records of all G4-level materials in this program for at least two (2) years.

(i) Records indicating the Latin name, variety or cultivar, rootstock, origin, date of introduction of the G2 materials to the facility, date of propagation in the registered G2 or G3 block, and field location including nursery row and planting.

(ii) Records of sale and copies of all phytosanitary certificates issued.

(iii) Maps of the facility or nursery indicating locations of Oregon certified nursery stock.

(b) All nursery stock grown for G4 certification shall be on rootstocks from registered G2, G3, or G4 trees except for stone fruit trees grown on peach seedlings. Such peach root-stocks shall be acceptable only if the seed transmissible virus content does not exceed five percent, and upon the prior approval of the Department being obtained. Clonal rootstocks used in the production of Oregon Certified Nursery Stock shall originate from registered stool beds;

(c) Nursery stock grown for G4 certification shall be planted sufficiently apart to maintain its identity and shall be kept clean-cultivated. Such nursery stock shall be designated as to rootstock, topstock, and interstock sources. Rebudding or regrafting of nursery row stock shall not be allowed unless such stock is reworked with budwood from the same registered scion-block;

(d) An official certification tag shall be utilized to designate G4-level trees produced from registered scion-source trees and which have been propagated on rootstocks produced from registered seed sources or stool bed trees, or which are self-rooted. Official certification tags must be attached to G4-level trees at time of sale.

Stat. Auth.: ORS 561, 571 & 632
Stats. Implemented: ORS 561, 571 & 632
Hist.: AD 17-1977, f. & ef. 7-15-77; DOA 14-2004, f. & cert. ef. 6-1-04; DOA 6-2007, f. & cert. ef. 3-16-07; DOA 5-2013, f. & cert. ef. 3-1-13

**603-051-0858
Procedures for Certification**

(1) In accordance with OAR 603-051-0855, certification and the supervision of activities relating thereto shall be in the Department. Inspection and testing procedures prescribed in this certification program may be carried out by the Washington State Department of Agriculture or the Department, and shall be conducted at such times and in such manner as is acceptable to the Department.

(2) The methods and procedures used for virus indexing shall conform to Clean Plant Center of the Northwest or Departmentally approved standards and shall be conducted in the manner and times determined by the Department.

(3) The Department reserves the right to visually inspect and test nursery rootstock in a planting for certification throughout the growing season. At the request of the Department, any undesirable rootstock may be rogued before propagation.

(4) All nursery stock meeting the requirements of this certification program shall have the variety, interstock and rootstock des-

ignated upon any tag evidencing the same as Oregon Certified Nursery Stock.

(5) The Department shall authorize the use of official certification tags for the identification of nursery stock or seed meeting the requirements of OAR 603-051-0855 to 603-051-0859, and therefore certified as Oregon Certified Nursery Stock. Such official certification tags shall be furnished by the Department to the qualified applicants therefore upon payment of the established cost of the Department for the tags so furnished.

(6) Any person selling, or offering for sale, any nursery stock or seed identified by tagging as Oregon Certified Nursery Stock shall be deemed to be responsible for the identity of such stock. All Oregon Certified Nursery Stock offered for sale shall be handled in accordance with accepted commercial practices and shall be identified by the tags described in the subsection.

(7) Certification shall be refused if plants have been propagated from registered trees determined to be infected by a virus or virus-like disease, or if other provisions of this certification program have been violated.

(8) A list of participating nurseries and certified nursery stock shall be provided to all participating nurseries and to other interested parties upon request.

Stat. Auth.: ORS 561, 571 & 632
Stats. Implemented: ORS 561, 571 & 632
Hist.: AD 17-1977, f. & ef. 7-15-77; DOA 14-2004, f. & cert. ef. 6-1-04; DOA 6-2007, f. & cert. ef. 3-16-07; DOA 5-2013, f. & cert. ef. 3-1-13

**603-051-0859
Application for Certification and Fees**

(1) Nurseries voluntarily participating in the certification program shall enter into a compliance agreement with the Department, which shall be submitted to the Department by March 31 of each year so as to provide sufficient time for inspection and indexing of registered G2 and G3 scion and seed trees and for the inspection of nursery stock to be submitted for certification. The nursery participation fee (see (4)) must be submitted with the compliance agreement by March 31 of each year.

(2) The compliance agreement shall contain the information required thereon, including the consent of the applicant for the Department to obtain propagating wood or expanded leaf tissues from any tree for inspection and testing purposes.

(3) Except as otherwise provided, fees charged by the certifying agency for certification are payable on or before July 1 of each year, and are for the sole purpose of defraying expenses incurred by the Department in the inspection, approval, or certification procedures provided for in this certification program, and for providing funds to the Department to support appropriate plant virus survey programs. Payment thereof shall not be construed as granting any right or privilege to the applicant.

(4) The fees payable under this section shall be determined in accordance with the fee schedule (see (4)(a)-(d)). Testing of Prunus, Malus, Pyrus, Chaenomeles, and Cydonia, materials will be performed annually by the Department. These fees shall be payable upon request of the Department:

(a) The fee for participation shall be \$200 annually per participating nursery;

(b) The fee shall be \$10.00 per sample per Ilarvirus (Prunus necrotic ring spot virus, prune dwarf virus, and apple mosaic virus) test requested;

(c) The fee shall be \$7.00 per sample per Tomato ring spot virus test requested;

(d) The fee shall be \$7.00 per sample per each additional virus test requested.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 561, 571 & 632
Stats. Implemented: ORS 561, 571 & 632
Hist.: AD 17-1977, f. & ef. 7-15-77; AD 17-1994, f. & cert. ef. 11-10-94; DOA 14-2004, f. & cert. ef. 6-1-04; DOA 6-2007, f. & cert. ef. 3-16-07; DOA 5-2013, f. & cert. ef. 3-1-13

Certification of Caneberry Nursery Stock

603-051-0955

Definitions

As used in these sections, unless the context requires otherwise:

- (1) "Caneberry" means any cultivated *Rubus* species.
- (2) "Certification" means the issuance of a certificate verifying that a particular quantity or lot of caneberry plants has been grown or propagated according to the provisions of OAR 603-051-0960.
- (3) "Certified Block" means a planting of caneberry plants that are first year propagation from Registered Stock.
- (4) "Certified Stock" means a class of caneberry plants that are first year or second year propagation from Registered Stock or first year propagation from first year Certified Stock.
- (5) "Department" means the Oregon State Department of Agriculture.
- (6) "Foundation Block" means a planting of Nuclear Stock caneberries for the production of Foundation Stock.
- (7) "Foundation Stock" means a class of caneberry plants that have been produced in a Foundation Block.
- (8) "Increase Block" means a planting of caneberry plants of Foundation Stock for the production of Registered or Certified Stock.
- (9) "Index" means to test for systemic disease infection by making a graft with tissue from the plant to be tested to an indicator plant or by other means of detection.
- (10) "Nuclear Stock" means caneberry plants of cultivars which were originally indexed and their clonal progeny which have been regularly reindexed and continuously protected from systemic disease infection by federal or state of Oregon agencies or plants from other states meeting standards established by the Dean of the School. Nuclear Stock is intended for planting in a Foundation Block.
- (11) "Off-Type" means any volunteer caneberry plant or any caneberry plant different from the cultivar as stated on the application for certification.
- (12) "Oregon Certified Caneberry Nursery Stock" means progeny plants propagated from Foundation, Registered, or Certified Stock and certified in accordance with these regulations.
- (13) "Registered Stock" means a class of caneberry plants that are first year propagation from Foundation Stock produced in an Increase Block.
- (14) "School" means the School of Agriculture, Oregon State University.

Stat. Auth.: ORS 561.190, 571 & 632
 Stats. Implemented: ORS 561, 571 & 632
 Hist.: AD 992(6-73), f. 6-4-73, ef. 6-15-73

603-051-0960

Requirements and Conditions for Certification

Certification by the Department shall not imply or be construed as any warranty of the Department, the school, or its employees as to the condition of caneberry nursery stock. The following requirements and conditions shall be met in order to qualify for consideration of certification of caneberry nursery stock:

(1) The applicant for such certification under these regulations shall be responsible for the selection of the location and the proper maintenance of a planting being grown. The applicant shall also be responsible for maintaining the identity of all said nursery stock. Land selected for the production of Foundation, Registered, or Certified Stock shall not have grown any solanaceous crop or any crop plant within the genus *Rubus* within the previous five years unless said plants were propagated in accordance with the provisions of these regulations. The selected site must be free of any evidence of the presence of *Agrobacterium rubi* or *A. tumefaciens* as indicated by the absence of:

- (a) Overgrowths or tumors on crowns, roots, stems, or leaves; and of
- (b) Excessive or abnormal development of organs with or without tumefactions;
- (c) The presence of subsections (a) or (b) of this section on any known host plants in the site or within 30 feet will be cause for rejection. The Department or school shall be notified by the applicant in advance of the planting, replanting, or digging of caneberry nursery

stock in order that necessary inspections may be made or approval granted prior to the performance thereof.

(2) Each planting shall be located in an area in which viruses or other systemic pathogens affecting caneberries are not prevalent and in which there is adequate isolation from plantings of caneberries producing fruit. Cultivars within a planting must be adequately separated in an approved manner. Prior to acceptance of the planting site one of the following procedures shall be followed by the nurseryman:

(a) Present acceptable records to the Department of nematode sampling of the land in question which show that plant parasitic nematodes are not present in harmful quantities; or

(b) Fumigate the land in accordance with approved commercial practices compatible with current recommendations of the Oregon State University Extension Service.

(3) For inspection purposes, one percent of the plants or 12 plants, whichever is less, from a Foundation Block must be allowed to produce mature fruit. Such plants are not to be harvested for certification and shall be removed from the planting after inspection for trueness-to-name.

(4) Foundation Blocks shall be enclosed by an approved screenhouse. A minimum of three percent of the individual plants planted therein that will be used for further propagation shall be tested biennially by indexing. Progeny plants will be identified by clone numbers.

(5) Each planting shall be kept in a thrifty growing condition and pests shall be kept under intensive control. Diseased or off-type plants will be rogued. Because of the problem of development of seedlings in the planting and the opportunity for flower infection by certain viruses, flowers will not be allowed in certified plantings except for section (3) of this rule.

(6) For purposes of determining eligibility of caneberry nursery stock for certification in accordance with OAR 603-051-0590 of these regulations, the following shall apply:

(a) To be acceptable for a planting in a Foundation Block a plant shall be:

(A) Nuclear Stock; or

(B) Foundation Stock which is a progeny of a plant from a Foundation Block that was tested the previous season in a program of indexing acceptable to the Department; or

(C) Progeny of screenhouse grown Foundation Block plants removed from Nuclear plants by no more than four years. The adequacy of the applicant's screenhouse shall be reviewed annually by the certifying agencies.

(b) To be acceptable for planting in an Increase Block, a plant shall be Nuclear or Foundation Stock;

(c) To be acceptable for planting in a Certified Block, a plant shall be Nuclear Stock, Foundation Stock, Registered Stock, or first-year Certified Stock. (See **Diagram 1**);

(d) Caneberry plants in outdoor Increase Blocks shall be planted in rows not less than eight feet apart;

(e) No plant separated from Foundation Stock by more than three years of vegetative propagation shall be eligible for certification.

[ED. NOTE: Diagrams referenced are available from the agency.]

Stat. Auth.: ORS 561.190, 571 & 632
 Stats. Implemented: ORS 561, 571 & 632
 Hist.: AD 992(6-73), f. 6-4-73, ef. 6-15-73

603-051-0965

Procedures for Certification

(1) In accordance with OAR 603-051-0950 of these regulations, certification and the supervision of activities relating thereto shall be in the respective agencies. Inspection and testing procedures prescribed in these regulations may be made by the school, the United State Department of Agriculture, or the Department, and shall be conducted at such times and in such manner as is acceptable to the certifying agencies. The Department at the request of the school, may enforce certification standards established by the school.

(2) Plants propagated from Foundation Stock are eligible for tagging as Registered Stock for one year only.

Oregon Standards for Asian Pears

(3) Plants propagated from Registered Stock are eligible for tagging as Certified Stock for two years only.

(4) Exceptions to sections (2) and (3) of this rule hereof may be made according to the discretion of the certifying agencies.

(5) Tags evidencing certification for varietal purity shall be issued by the Dean of the school, and tags certifying freedom from pests and diseases shall be issued by the Department, unless the two agencies agree to the use of a joint tag.

Stat. Auth.: ORS 561.190, 571 & 632

Stats. Implemented: ORS 561, 571 & 632

Hist.: AD 992(6-73), f. 6-4-73, ef. 6-15-73

603-051-0970

Application for Certification and Fees

(1) An application for certification shall be made on a form prescribed by the certifying agencies and shall be submitted sufficiently in advance of the time of planting so as to permit establishment of the origin of the planting stock, the determination of the suitability of location, and supervision of any treatment that may be required. The application shall include the consent of the applicant for the removal of plants from any planting for inspection or testing purposes.

(2) Fees charged by the certifying agencies for certification are payable at the time of the application and are for the sole purpose of defraying expenses incurred by the Department or school in the inspection, approval, or certification procedures provided for in these regulations, and payment thereof shall not be construed as granting any right or privilege to the applicant.

(3) The annual fees payable under this rule are:

(a) Screenhouse; Foundation Block — \$100 for 20 plants or less; \$1 for each additional plant;

(b) Field Planting; Increase Block — \$30 per 1/4 acre or portion thereof;

(c) Field Planting; Certified Block — \$30 per 1/4 acre or portion thereof;

(d) Greenhouse and Screenhouse; Increase or Certified Block — \$50 per Block minimum. Such minimum would apply towards any special service charges.

Stat. Auth.: ORS 561.190, 571 & 632

Stats. Implemented: ORS 561, 571 & 632

Hist.: AD 992(6-73), f. 6-4-73, ef. 6-15-73

603-051-0975

Refusal or Cancellation of Certification

Certification may be cancelled in accordance with the following:

(1) Failure to meet or maintain the requirements of these regulations.

(2) Any Foundation or increase Block in which any of the following are found:

(a) Off-type plants;

(b) Non-thrifty plants;

(c) Crown or cane gall infection;

(d) An injurious systemic disease;

(e) Plants infected by anthracnose disease to the extent that serious loss or damage may result;

(f) Serious nematode injury;

(g) Evidence of insects injurious to transplants.

(3) Any Certified Block in which any of the following are found:

(a) More than 0.25 percent off-type plants;

(b) More than one percent non-thrifty plants;

(c) More than 0.1 percent injurious systemic disease;

(d) More than 0.1 percent crown and cane gall;

(e) Anthracnose infected plants to the extent that serious loss or damage may result;

(f) Serious nematode injury;

(g) Evidence of insects injurious to transplants.

Stat. Auth.: ORS 561.190, 571 & 632

Stats. Implemented: ORS 561, 571 & 632

Hist.: AD 992(6-73), f. 6-4-73, ef. 6-15-73

603-051-0980

General

Compliance with the provisions of these standards shall not excuse failure to comply with provisions of applicable Federal or State laws. These standards shall apply to all recognized varieties of Asian pears including:

(1) Non-russeted types such as Nijisseiki, Shinseiki, Ya Li.

(2) Partially russeted types such as Kosui, Kikusui, Tsu Li (California origin).

(3) Complete russeted types such as Hosui, Chojuro, Japanese Golden Russet.

Stat. Auth.: ORS 561.190 & 632.905

Stats. Implemented: ORS 632.905

Hist.: AD 10-1992, f. & cert. ef. 9-9-92

603-051-0990

Definitions

(1) "Similar Varietal Characteristics" means the fruit in any lot and container are similar in shape, color of skin and flesh.

(2) "Mature" means that the fruit has reached a stage of development which will ensure the completion of the ripening process.

(3) "Overripe" means fruit is dead ripe, mealy or soft, and past commercial utility.

(4) "Clean" means the fruit is free from excessive dirt, dust, spray residue, or other foreign materials.

(5) "Well Formed" means the fruit is symmetrical and has shape characteristics of the variety, and that bumps or other roughness are permitted provided they do not more than slightly detract from the appearance.

(6) "Fairly Well Formed" means the fruit has the shape characteristics of the variety but slight bumps or other roughness are permitted provided they do not materially detract from appearance.

(7) "Carefully Packed" means the fruit shows no evidence of rough handling.

(8) "Injury" means any defect described in the Classification of Defects (OAR 603-051-1040), or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which more than slightly detracts from the appearance, or the edible or marketing quality.

(9) "Damage" means any defect described in the Classification of Defects (OAR 603-051-1040), or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality.

(10) "Serious Damage" means any defect more than 50 percent over allowable damage definition, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality.

(11) "Permanent Defects" means those which are not subject to change during shipment or storage, for example, shape, scars or growth cracks.

(12) "Condition Defects" means those defects which are subject to change during shipment or storage, for example, decay, soft, shriveling or bruises.

(13) "Fairly Uniform in Size" means that fruit in containers marked by diameter to denote size may not vary in diameter more than 1/2 inch.

(14) "Diameter" means the greatest dimension measured at right angles to a line from stem to blossom end.

(15) "Shipping Point" means the point of origin of the shipment in the producing area or at a port of loading for ship-stores or overseas shipment, or, in the case of shipments from outside the continental United States, the port of entry into the United States.

Stat. Auth.: ORS 561.190 & 632.905

Stats. Implemented: ORS 632.905

Hist.: AD 10-1992, f. & cert. ef. 9-9-92

603-051-1000

Grades

(1) "Oregon Extra Fancy" consists of Asian Pears which meet the following requirements:

(a) Basic requirements: Similar varietal characteristics, mature, not soft or overripe, carefully packed, clean and well formed;

(b) Must be free from worm holes, broken skins, scald, sprayburn or sunburn, drought spot, disease, insects and insect injury, freezing injury, internal breakdown and decay;

(c) Must be free from injury by bruises, leaf or limb rubs, discoloration, growth cracks, hail, scars, cork spot and mechanical or other means.

(2) "Oregon No. 1" consists of Asian Pears which meet the following requirements:

(a) Basic Requirements: Similar varietal characteristics, mature, not soft or overripe, carefully packed, clean and fairly well formed;

(b) Must be free from worm holes, insects, broken skins which are not healed, scald, freezing injury, internal breakdown and decay;

(c) Must be free from damage by bruises, leaf or limb rub, discoloration, growth cracks, hail, scab, scars, sprayburn or sunburn, drought spot, cork spot, insect injury, healed skinbreaks, other disease and mechanical or other means.

Stat. Auth.: ORS 561.190 & 632.905

Stats. Implemented: ORS 632.905

Hist.: AD 10-1992, f. & cert. ef. 9-9-92

603-051-1010

Tolerances

In order to allow for variations incident to proper grading and handling in each of the above grades, the following tolerances by counts, shall be permitted in any lot: Oregon Extra Fancy and Oregon No. 1:

(1) For defects at shipping point; eight percent for fruit which fails to meet the requirements of the specified grade; provided that included in this amount not more than four percent shall be allowed for defects causing serious damage, including in this latter amount not more than two percent of fruit affected by internal breakdown, freezing, or decay.

(2) For defects enroute or at destination; nine percent for fruit which fails to meet the requirements of the specified grade, provided that included in this amount not more than the following percentages shall be allowed for defects:

(a) Eight percent for permanent defects;

(b) Six percent for defects causing serious damage, including therein not more than four percent for serious damage by permanent defects and not more than two percent for fruit affected by internal breakdown or decay.

Stat. Auth.: ORS 561.190 & 632.905

Stats. Implemented: ORS 632.905

Hist.: AD 10-1992, f. & cert. ef. 9-9-92

603-051-1020

Application of Tolerances

The contents of individual containers in the lot, based on sample inspection, are subject to the following limitations. Individual samples shall consist of not less than 50 fruit, and shall not have more than double a specified tolerance except that at least two defective specimens may be permitted in any sample, provided that not more than one fruit affected by internal breakdown, freezing or decay be permitted in any sample and that the average for the entire lot is within the tolerances specified for the grade.

Stat. Auth.: ORS 561.190 & 632.905

Stats. Implemented: ORS 632.905

Hist.: AD 10-1992, f. & cert. ef. 9-9-92

603-051-1030

Standard Pack

(1) Fruit shall be fairly uniform in size and shall be packed in boxes, flats, lugs, or cartons and arranged according to approved and recognized methods. Containers shall be well filled and contents tightly packed, but shall not be excessively or unnecessarily bruised by overfilling or oversize. Fruit in the shown face of the container shall be reasonable representative in size and quality of the contents.

(2) When packed in closed containers the size shall be indicated by marking the container with the numerical count or the minimum size packed.

(3) Boxes, flats, lugs, or cartons:

(a) Fruit packed in cell containers or compartments, fiberboard fillers, or molded trays shall be of proper size for the cells, fillers, or molds in which they are packed, and conform to the marked count;

(b) In order to allow for variation incident to proper packing in containers, the number of fruit shall not vary more than two from the marked count.

(4) When numerical count is not shown, the minimum size shall be plainly marked on the container.

(5) In order to allow for variation incident to proper sizing and packing, not more than 10 percent of containers in any lot may fail to meet these requirements.

Stat. Auth.: ORS 561.190 & 632.905

Stats. Implemented: ORS 632.905

Hist.: AD 10-1992, f. & cert. ef. 9-9-92

603-051-1040

Classification of Defects

(1) Bruises:

(a) Injury — When any slight indentation of the fruit or discoloration extends more than 1/16 inch in depth. When not smooth, or aggregating more than the area of a circle 3/8 inch in diameter;

(b) Damage — When any slight indentation of the fruit or discoloration extends more than 1/8 inch in depth. When not smooth, or aggregating more than the area of a circle 1/2 inch in diameter.

(2) Leaf or Limbrub:

(a) Injury — When any leaf or limbrub is cracked, softened, more than very slightly depressed, not light in color, or exceeding an aggregate area of 3/4 inch in diameter;

(b) Damage — Any one of the following or any combination thereof, the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage:

(A) Any limbrubs which are cracked, softened, or more than slightly depressed;

(B) Black discoloration caused by limbrubs, which exceed an aggregate area of 3/8 inch in diameter;

(C) Dark brown discoloration or excessive roughness caused by limbrubs which exceed an aggregate area of 3/4 inch in diameter;

(D) Slightly rough, light colored discoloration caused by limbrubs which exceeds an aggregate area of smooth, light colored discoloration 3/4 inch in diameter;

(E) Smooth, light colored discoloration caused by limbrubs which exceeds an aggregate area of one inch in diameter.

(3) Russetting:

(a) Injury:

(A) Smooth skin varieties should not have any russetting. Full russeted varieties should not have rough russet marks;

(B) On Kosui and other partial russet varieties and on Hosui and other complete russet types, any amount of smooth russetting shall be permitted whether from natural causes or stimulated by artificial means; leaf whips or light limbrubs which resemble and blend into russeted areas shall be considered as russet.

(b) Damage — Russetting which exceeds the following:

(A) On all varieties excessively rough russetting (russetting which shows "frogging" or slight cracking) when the aggregate area exceeds 1/2 inch in diameter;

(B) On Nijisseiki and other clear skin varieties, no rough or thick russet nor slight russetting such as is characteristic of frost injury, when the aggregate area exceeds 1/2 inch in diameter;

(C) On Kosui and other partially russeted types, and on Hosui and other complete russet types, any amount of characteristic smooth russetting shall be permitted whether from natural causes, or stimulated by artificial means; leaf whips and light limbrubs which resemble and blend into russeted areas shall be considered as russet.

(4) Sprayburn and Sunburn:

(a) Injury — None allowed;

(b) Damage — Sunburn or sprayburn where the skin is blistered, cracked, or shows any tan or brownish color, or the shape of the pear is appreciably flattened, or the flesh is appreciably softened or changed in color, except that sprayburn of a russet blemish character shall be considered under the definition of blemish.

(5) Hail and Scars:

(a) Injury — Shallow hail marks or other similar depressions or scars where the injury affects an aggregate area for more than 1/8 inch in diameter;

(b) Damage — Shallow hail marks or other similar depressions or scars where the injury affects an aggregate area of more than 1/4 inch in diameter.

(6) Drought Spot:

(a) Injury — None allowed;

(b) Damage — Drought spot when more than one in number, or when the external injury exceeds an aggregate area of 3/8 inch, or when the appearance of the flesh is materially affected by corky tissue or brownish discoloration.

(7) Disease:

(a) Injury — None allowed;

(b) Damage:

(A) Scab spots which are black and which cover an aggregate area of more than 1/4 inch in diameter except that scab spots of a russet character shall be considered under the definition of russetting;

(B) Sooty blotch which is thinly scattered over five percent of the surface, or dark, heavily concentrated spots which affect an area of more than 3/8 inch in diameter.

(8) Insects:

(a) Injury — None allowed;

(b) Damage — More than one healed codling moth sting, or any insect sting which is over 3/32 inch in diameter, or other insect stings affecting the appearance to an equal extent.

(9) Healed Skin Breaks:

(a) Injury — None allowed;

(b) Damage:

(A) Small inconspicuous skin breaks less than 1/8 inch in diameter or depth, shall not be considered damage. In addition, not more than 15 percent of the pears in any container may have more than one skin break from 1/8 inch to 3/16 inch, inclusive, in diameter or depth;

(B) Any pear with one skin break larger than 3/16 inch in diameter or depth, or with more than one skin break 1/8 inch or larger in diameter or depth shall be considered damaged and scored against the grade tolerance.

(10) Discoloration:

(a) Injury:

(A) Black discoloration which exceeds an aggregate area of 1/4 inch in diameter;

(B) Dark brown discoloration which exceeds an aggregate area of 1/2 inch in diameter;

(C) Light colored discoloration which exceeds an aggregate area of 3/4 inch in diameter.

(b) Damage:

(A) Black discoloration which exceeds an aggregate area of 3/8 inch in diameter;

(B) Dark brown discoloration which exceeds an aggregate area of 3/4 inch in diameter;

(C) Light colored discoloration which exceeds an aggregate area of one inch in diameter.

(11) Growth Cracks:

(a) Injury:

(A) When not healed;

(B) When more than one in number;

(C) When more than 1/8 inch in depth;

(D) When more than 1/4 inch in length.

(b) Damage:

(A) When not healed and more than 1/8 inch in length or depth;

(B) When healed and more than 1/4 inch in depth;

(C) When healed and aggregating more than 1/2 inch in length.

(12) Cork Spot:

(a) Injury — When a pear has depressions or the flesh is more than slightly affected;

(b) Damage — When more than one is visible externally or when the flesh is more than materially affected.

Stat. Auth.: ORS 561.190 & 632.905

Stats. Implemented: ORS 632.905

Hist.: AD 10-1992, f. & cert. ef. 9-9-92

Rules for White Rot Certification of Vegetative *Allium* Seed

603-051-1050

Declaration of Policy

Certification of agricultural products, such as *Allium* seed is a function of the Department of Agriculture ORS 632.940. Participation by *Allium* seed companies and seed growers in the certification program shall be voluntary. These regulations may be reviewed annually by the Department and Program participants.

Stat. Auth.: ORS 632.900 - 632.990, 570.305 & 561.990

Stats. Implemented: ORS 632.940

Hist.: DOA 12-2005, f. & cert. ef. 3-11-05

603-051-1051

Definitions

As used in OAR 603-051-1050 to 603-051-1054, unless the context requires otherwise:

(1) "Department" means the Oregon Department of Agriculture.

(2) "*Allium*" refers to *Allium cepa*, *Allium sativum*, *Allium fistulosum* and *Allium ampeloprasum* for the purposes of this program.

(3) "*Allium* seed" refers to cloves and bulbs and the plants that form them. The seed harvested from such plantings are intended for use as vegetative seed for either future seed crops or for commercial plantings. Also included are any *Allium* plants grown from true seed to be harvested for vegetative bulbs and or cloves to be used as vegetative seed.

(4) "White rot" refers to the *Allium* disease incited by the fungal pathogen *Sclerotium cepivorum*.

(5) "Sclerotia" means the reproductive propagules of *Sclerotium cepivorum*.

(6) "Infested" means soil, fields, seedlots, boxes or equipment contaminated with sclerotia.

(7) "Infected" means *Allium* plants in which the pathogen is actively growing and decaying roots, cloves or bulb.

(8) "Field unit" means a planting of *Allium* separated from other *Allium* plantings by at least 20 feet. Certifiable field units may be planted from identical seed sources. Field units are certifiable only if planted with certified seed.

(9) "Certified seed" means seed that has been officially inspected and found to be free of white rot.

Stat. Auth.: ORS 632.900 - 632.990, 570.305 & 561.990

Stats. Implemented: ORS 632.940

Hist.: DOA 12-2005, f. & cert. ef. 3-11-05

603-051-1052

Requirements and Conditions for Certification

Certification by the Department shall not imply or be construed as any warranty of the Department or their employees as to the condition of the *Allium* seed. The following conditions shall be met in order to qualify for consideration of certification of vegetative *Allium* seed.

(1) The applicant for certification shall be responsible for the selection of the location and the proper maintenance of all plantings being grown. The applicant shall also be responsible for maintaining the identity of all *Allium* seed lots planted.

(2) Any field unit entered in this certification program shall be kept in a thrifty growing condition and free of plant pests. If in the judgment of the Department there is too much other disease present, or other conditions that preclude easily distinguishing plants with white rot symptoms from plants not infected with white rot, then the field unit will be deemed incapable of being certified.

(3) Plants growing in the field unit must be discernibly free of white rot to qualify for certification. Any plant or plants within the field unit found with white rot will disqualify the entire field unit from certification. A sample of the infected plants will be collected by the Department for confirmation. One or more of the infected plants within a field unit will be flagged by the Department.

(4) The Department will inspect the field units at least two weeks prior to termination of irrigation.

Stat. Auth.: ORS 632.900 - 632.990, 570.305 & 561.990

Stats. Implemented: ORS 632.940

Hist.: DOA 12-2005, f. & cert. ef. 3-11-05

603-051-1053

Procedures for Certification

(1) In accordance with ORS 632.940, certification and the supervision of activities relating thereto, shall be in the Department. Inspection and testing procedures prescribed in this certification program may be carried out by the Department, and shall be conducted at such times and in such a manner as is acceptable by the Department.

(2) The methods and procedures used for field inspections shall conform to Department standards and shall be conducted in a manner and time as determined by the Department.

(3) All *Allium* seed meeting the requirements of this certification program shall have identification evidencing the same as Oregon Certified *Allium* seed.

(4) The Department will provide an official certificate.

(5) Any person selling or offering for sale, any *Allium* seed identified by official certificate as Oregon Certified *Allium* Seed shall be deemed to be responsible for the identity of such stock. All Oregon Certified *Allium* Seed offered for sale shall be handled in accordance with accepted commercial practices.

(6) Certification shall be refused if any white rot is found within the field unit. Such field units shall be considered infested and ineligible for participation in the program.

Stat. Auth.: ORS 632.900 - 632.990, 570.305 & 561.990
 Stats. Implemented: ORS 632.940
 Hist.: DOA 12-2005, f. & cert. ef. 3-11-05

603-051-1054

Application for Certification and Fees

(1) Application for certification shall be made on a form prescribed by the Department and shall be submitted to the Department by March 15 of each year so as to provide sufficient time for inspection of *Allium* field units. The application must include a copy of the official documentation for the certified seed that has been planted in the field unit(s). The Department may refuse applications received after this date.

(2) The application shall contain the information required thereon, including the consent of the applicant for the Department to obtain samples for inspection and testing purposes.

(3) The ODA will operate this program on a cost-recovery basis. Fees charged by the Department are payable on or before December 31 of each year, and are for the sole purpose of defraying expenses incurred by the Department in the inspection, testing and certification procedures provided for in this certification program. Payment thereof shall not be construed as granting any right or privilege to the applicant.

Stat. Auth.: ORS 632.900 - 632.990, 570.305 & 561.990
 Stats. Implemented: ORS 632.940
 Hist.: DOA 12-2005, f. & cert. ef. 3-11-05

DIVISION 52

PEST AND DISEASE CONTROL

603-052-0020

Exemption from Quarantine Orders

(1) The department may issue special permits allowing movement into this state, or movement within this state, of restricted commodities not otherwise eligible for movements under the provisions of a quarantine order. Any movement under a special permit shall be subject to any conditions or restrictions set forth in the permit, and these conditions and restrictions may vary depending on the intended use of the commodity and the potential risk of escape or spread of the pest quarantined against.

(2) The provisions of a quarantine order shall not apply to experimental shipments of restricted commodities moved by, or at the request of, the U.S. Department of Agriculture.

(3) The provisions of this section shall take precedence over any exemption provision in a quarantine order that is in conflict herewith.

Stat. Auth.: ORS 561
 Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
 Hist.: AD 1-1987, f. & ef. 1-30-87

603-052-0030

Plum Curculio Quarantine

A quarantine is established against the following pest, its host and possible carriers:

(1) Pest. Plum curculio, *Conotrachelus nenuphar* (Herbst) (Coleoptera: *Curculionidae*), is a native weevil found throughout the eastern United States and Canada. It is a common and serious pest of all stone fruits and, to a lesser extent, of apple and pear. The larvae live within the fruit of their host plants.

(2) Area Under Quarantine:

(A) In the eastern United States and Canada, all states and provinces east of and including Manitoba, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma and Texas.

(B) In Utah, Box Elder County.

(3) Articles and Commodities Covered:

(a) Fresh fruit of all plants listed below:

(A) Apple (*Malus spp.*);

(B) Apricot (*Prunus persica*)

(C) Cherry, black (*P. serotina*);

(D) Cherry, Choke (*P. virginiana*);

(E) Cherry, pin (*P. pensylvanica*);

(F) Cherry, sand (*P. pumila*);

(G) Cherry, sour (*P. cerasus*);

(H) Cherry, sweet (*P. avium*);

(I) Crabapple (*Malus spp.*);

(J) Hawthorn (*Crataegus spp.*);

(K) Nectarine (*Prunus persica nectarina*);

(L) Peach (*P. persica*);

(M) Pear (*Pyrus communis*);

(N) Plum, American (wild) (*Prunus alleghaniensis*)

(O) Plum, beach (*P. maritima*);

(P) Plum, European (*P. domestica*);

(Q) Plum, Japanese (*P. salicina*);

(R) Prune (*P. spp.*)

(S) Quince (*Cydonia oblonga*).

(b) Soil or other growing medium within the drip zone of plants producing, or which have produced, fruit as listed in subsection (a) of this section.

(4) Restrictions:

(a) Certification Required. Articles and commodities covered which are produced in or shipped from the area under quarantine are prohibited entry into the state of Oregon unless each lot or shipment is accompanied by a certificate issued by and bearing the original or facsimile signature of the authorized agricultural official of the state from which the article or commodity is shipped evidencing compliance with subsections (c), (d), (f), or (g) of this section. No certificate is required for commodities meeting the requirements of subsections (b) or (e) of this section;

(b) Reshipments in Original Containers from Area Under Quarantine of Commodities Grown Outside Thereof. Commodities in original unopened containers, each bearing labels or other identifying marks evidencing origin outside the area under quarantine, may be reshipped to this state from any point within the area under quarantine;

(c) Repacked Commodities Admissible from Area Under Quarantine if Certified Grown Outside Thereof. Provided each lot or shipment is certified by an authorized agricultural official to have been grown outside the area under quarantine and that continued identity has been maintained while within the area under quarantine, the commodities may be repacked and shipped by common carrier from any point within the area under quarantine to this state. The certificate shall set forth the state in which commodities were grown, point of repacking and reshipment, amount and kind of commodities comprising the lot or shipment, and the names and addresses of the shipper and consignee;

(d) Apple Exposed to Controlled Atmosphere (CA) Storage Admissible Under Certificate. Apples which are exposed to controlled atmosphere (CA) storage for a continuous period of ninety (90) days, during which period the temperature within the storage room is maintained at thirty-eight degrees (38°) F (3.3° C) or less, may be admitted into Oregon provided said storage room or build-

ing is approved by the proper authorities in the state of origin as a controlled atmosphere facility and further provided each lot or shipment of such apples to Oregon is accompanied by a certificate, as stated in subsection (a) of this section, evidencing compliance with the minimum requirements of this section;

(e) Solid Frozen Fruits Exempt. No restrictions are placed by this regulation on the entry into this state of fruits which upon arrival are frozen solid and which are under refrigeration to assure their solid frozen state;

(f) Shipments from Cold Storage at 32° F (0° C). Commodities covered which are held in cold storage for a continuous period of forty (40) days or more, during which period the temperature within the storage room is maintained at thirty-two degrees Fahrenheit (32° F) (0° C) or less, may be admitted into Oregon provided each lot or shipment is accompanied by a certificate, as stated in subsection (a) of this section, evidencing compliance with the minimum requirements of this paragraph;

(g) Soil or Growing Media When Certified. Soil or growing media specified in subsection (3)(b) of this rule is admissible when certified as treated at origin in a manner approved by the Director

Stat. Auth.: ORS 561 & 570.305

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 19-1994, f. & cert. ef. 11-15-94; DOA 11-2011, f. & cert. ef. 7-20-11

Grape Quarantine

603-052-0051

Quarantine: Grape Pests and Diseases

(1) Establishing Quarantine: A quarantine is established against harmful pests and diseases of wine grapes.

(2) Area Under Quarantine: All states, districts, and territories of the United States, and in Oregon, any property where a harmful pest or disease is found (see Section (4)).

(3) Commodities Covered: Plants, cuttings, and all other plant parts of grape (*Vitis* species).

(4) Harmful Pests and Diseases: Grapevine fanleaf virus, grapevine leaf roll-associated viruses, grapevine corky bark disease agent, grapevine red blotch virus, grape phylloxera (*Daktulosphaira vitifoliae*), vine mealybug (*Planococcus ficus*), and European grapevine moth (*Lobesia botrana*), and Pierce's Disease (*Xylella fastidiosa*).

(5) Restrictions: All covered commodities are prohibited entry into the State of Oregon unless they meet the requirements in (a) through (e) below:

(a) Freedom from Soil: Only non-rooted grape cuttings or rooted plants produced in sterile soil-less media are permitted entry into Oregon. Grape cuttings and rooted plants must be treated with an approved insecticide effective against vine mealybug and any pests that may be present on the roots prior to shipment.

(b) Freedom from harmful pests and diseases: Cuttings, fruit, and plants must be free of harmful pests and diseases.

(A) Grape cuttings and rooted plants must be tested and found free of *Xylella fastidiosa*. Grape vine sampling and analysis procedure for *Xylella fastidiosa*:

(i) Samples shall be taken from plants located in lots identified for shipment to Oregon.

(ii) Samples from up to five individual plants may be combined (bulked) for analysis purposes.

(iii) Samples shall be composed of petiole and/or midrib tissue, with one sample comprised of three to five leaves from a single plant. If foliar symptoms are present, the symptomatic leaf tissue must be tested.

(iv) Analysis of samples for *X. fastidiosa* shall be done using ELISA or PCR testing by a laboratory operated by an official state or federal regulatory agency or by an approved cooperator. PCR testing must be conducted using a method approved by the Department.

(I) Sampling and analysis with ELISA or PCR of non-dormant (green) plant material must take place within 60 days before the date of shipment of the plants into Oregon.

(II) Sampling and analysis with ELISA or PCR of plants to be shipped dormant must take place prior to leaf drop, but within 60

days of leaf drop during the previous season. Alternatively, sampling and analysis of such plants with PCR must be done on newly emerged leaves no less than 10-days after bud break.

(v) Sampling and analysis of plant material shall be under the direct supervision of state or county regulatory officials.

(vi) Sampling of each lot intended for shipment to Oregon must be done in a manner that provides 95% confidence that an infestation level of 1.0% or higher will be detected as described in the International Standards for Phytosanitary Measures ISPM No. 31, last modified August 2011.

(B) Grape cuttings and rooted plants must be officially inspected and found free of grapevine fanleaf virus, grapevine leaf roll-associated viruses, grapevine corky bark disease agent, grapevine red blotch virus, and European grapevine moth prior to shipment. The cuttings and plants must be inspected during the season most appropriate for symptom expression and pest detection. Alternatively, the cuttings and plants must originate from an official certification program for freedom from grapevine fanleaf virus, grapevine leaf roll-associated virus, grapevine corky bark disease agent, grapevine red blotch virus, and European grapevine moth.

(c) Fruit may be imported under the following conditions:

(A) Table grapes must be commercially packed in compliance with USDA recommendations for protecting perishable food products shipped interstate by truck (USDA-Agricultural Marketing Service-Transportation and Marketing Programs, In: Protecting Perishable Foods During Transport by Truck, Handbook No. 669 (2008), pp. 40-41). Table grapes shipped under these conditions may be shipped without an official phytosanitary certificate.

(B) The wine grapes have been:

(i) Harvested from a county known to be free of vine mealybug or from a vineyard that has been officially inspected and found free of vine mealybug; or,

(ii) The fruit has been hand harvested from a vineyard infested with vine mealybug and shipped in a covered container. Any pomace resulting from pressing of the wine grapes must be placed in piles located away from vineyard rows and securely covered with clear plastic for four (4) weeks or composted for four (4) weeks or any other appropriate method approved by the Department before spreading in vineyards rows.

(d) Phytosanitary Certificate Required: All shipments must be accompanied by a phytosanitary certificate issued by an official of the state of origin certifying that the fruit, grape cuttings, or rooted plants have been inspected and to the best of the knowledge of the inspecting official are free from harmful pests and diseases. In addition, the phytosanitary certificate must certify that rooted plants were grown in sterile soil-less media and treated with a soil or systemic insecticide effective against vine mealybug and any other pests that may be present in the plant. The phytosanitary certificate must include one of following additional declarations: "Grape plants in this shipment originate from an area that has been officially surveyed and found free of *Xylella fastidiosa*," or "A representative sample of [fill in number tested] grape plants in this shipment has been tested and found free of *Xylella fastidiosa*."

NOTE: Depending on origin, other State quarantines may apply (e.g. glassywinged sharpshooter, European brown garden snail, Japanese beetle) and may require other additional declarations on the phytosanitary certificate.

(e) Notification of regulated commodity shipment of *Vitis* plants, cuttings, or similar propagative material is required as described in OAR 603-054-0027, Notification of Imported Trees and Shrubs. The Department may require that shipments be held until inspected and released. If the recipient is not a licensed nursery, the Department may charge established rates for time and mileage to recover the cost of inspection.

(6) Control and eradication methods for harmful pests and diseases. Control and eradication methods used shall only be those approved by the Department and will be based on the best available science. These methods may include:

(a) Destruction of infected plants or composting of infected fruit, including pomace;

(b) A directive specifying implementation of Departmentally approved mitigation measures to prevent the spread of the harmful pest or disease;

(c) A directive requiring the equipment, tools, and machinery used within an infested area be thoroughly cleaned of all dirt and debris by the use of steam under pressure.

(7) Properties within Oregon. Properties where harmful pests and diseases are known to occur must implement mitigation methods as approved by the Department to prevent further spread of the harmful pest or disease (see Section (6)).

(8) Violation of Quarantine. All covered commodities determined to be in violation of this quarantine, shall be immediately returned by the recipient to the point of origin or, at their option and without expense or indemnity paid by the Department, destroyed. Violation of this quarantine may result in a fine, if convicted, of not less than \$500 nor more than \$5,000 as provided by ORS 561.990(4). Violators may also be subject to civil penalties of up to \$10,000 as provided by 561.995 and 570.990 and 570.995; nursery license suspension or nursery license revocation.

(9) Exceptions. The Department, upon receipt of an application in writing, may issue a special permit allowing movement into this state, or movement within this state, of regulated commodities not otherwise eligible for movement under the provisions of this quarantine order. Movement of such commodities will be subject to any conditions or restrictions stipulated in the special permit, and these conditions and restrictions may vary depending upon the intended use of the commodity and the potential risk of escape or spread of a harmful pest or disease.

(10) Review. The Department and other interested parties shall review the quarantine pest list and restrictions biennially for accuracy and effectiveness.

Stat. Auth.: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 913(19-69), f. 12-26-69, ef. 1-25-70; AD 939(7-71), f. 8-18-71, ef. 9-1-71; Suspended by DOA 19-2001(Temp), f. & cert. ef. 9-11-01 thru 2-22-02; DOA 14-2002, f. & cert. ef. 5-23-02; DOA 2-2005, f. & cert. ef. 2-14-05; DOA 5-2010, f. & cert. ef. 1-28-10; DOA 12-2014, f. & cert. ef. 7-29-14; DOA 8-2015, f. & cert. ef. 5-29-15

Chestnut Blight in Other States

603-052-0075

Quarantine; Chestnut Blight

(1) A quarantine is established against chestnut blight, a disease of chestnuts (*Castanea* spp.) which is caused by the fungus *Cryphonectria parasitica* (*Endothia parasitica*), and against all insect pests of chestnuts, including: large chestnut weevil (*Curculio caryatrypes*), small chestnut weevil (*Curculio sayi*), nut curculio (*Conotrachelus* spp.), and oriental chestnut gall wasp (*Dryocosmus kuriphilus*).

(2) Area Under Quarantine. All states and districts of the United States are included.

(3) Commodities Covered. All trees, plants, cuttings, scions, tissue cultures, and nuts in shell of all species and varieties of chestnut (*Castanea* spp.) and chinquapin (*Castanopsis* spp.).

(4) Provisions of the Quarantine:

(a) From all states and districts east of and including Colorado, Montana, New Mexico, and Wyoming, no chestnut (*Castanea* spp.) or chinquapin (*Castanopsis* spp.) trees, plants, cuttings, scions, tissue cultures, and nuts in shell may be shipped into Oregon except by special permit by the Director of the Oregon Department of Agriculture as provided in OAR 603-052-0020;

(b) From all states west of Colorado, Montana, New Mexico, and Wyoming, trees, plants, cuttings, scions, tissue cultures, and nuts in shell of chestnut and chinquapin may be shipped into Oregon provided that each shipment is accompanied by a certificate bearing the original signature of an authorized agricultural official affirming that the plant material has been inspected and found free from chestnut blight, that the plant material has been grown in the shipping state for at least two years and that chestnut blight disease, large chestnut weevil, small chestnut weevil, nut curculio, *Conotrachelus* spp., and

oriental chestnut gallwasp are not known to occur in the production area. Such document shall be sent to the Oregon Department of Agriculture, c/o Plant Program Area Director, 635 Capitol Street, N.E., Salem, OR 97310, ten days prior to shipment of stock;

(c) Any and all varieties and species of the chestnut and chinquapin trees, (*Castanea* spp. and *Castanopsis* spp.), tissue cultures, parts or the nuts thereof arriving in the state of Oregon without proper documentation will be immediately sent out of the state or destroyed at the option and expense of the owner(s) or his or their responsible agent(s).

(5) Exemptions: No restrictions are placed by this quarantine upon the shelled nuts of all species and varieties of chestnut and chinquapin grown in and imported from foreign countries when reshipped into or arriving in this state in the unopened original container.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: Quarantine Order No. 27(A series), ef. 2-5-37; AD 2-1988, f. & cert. ef. 3-10-88; DOA 3-2013, f. & cert. ef. 3-1-13; DOA 5-2014, f. & cert. ef. 4-29-14

Quarantine Against Dutch Elm Disease and Elm Yellows Phytoplasma

603-052-0114

Quarantine; Dutch Elm Disease and Elm Yellows Phytoplasma

(1) Establishing a Quarantine. A quarantine is established against the fungus *Ophiostoma novo-ulmi*, currently the fungus that causes Dutch elm disease in North America and related species *O. ulmi* and elm yellows (*elm phloem necrosis*) phytoplasma.

(2) Areas under Quarantine:

(a) In Oregon, the counties of: Benton, Clackamas, Jackson, Lane, Linn, Malheur, Marion, Multnomah, Polk, Union, Washington and Yamhill

(b) All states and districts of the United States except Alaska, Arizona, Florida, Hawaii, New Mexico and Utah.

(3) Commodities Covered. All trees, plants, cuttings, scions, leaves, bark, roots, or other parts, except seed, of all species of elm (*Ulmus* spp.) and of the related genera *Zelkova* and *Planera*, including wood products manufactured from bark-bearing parts thereof. Tissue culture plantlets in sealed, sterile containers are exempt from this regulation.

(4) Restrictions:

(a) Commodities Prohibited from Quarantine Areas. All commodities described in section (3) of this rule originating or grown within or shipped from any state or district described in subsection (2)(b) of this rule, except as provided in subsection (b) of this section, are prohibited entry into the State of Oregon whether moved direct from said areas or diverted or reconsigned from any such areas. All tools or equipment utilized in the pruning or disposal of infected commodities are also prohibited entry into the State of Oregon unless they are decontaminated by an approved method therefore;

(b) Commodities Admitted Under Origin Certificate. Commodities described in section (3) of this rule may be permitted entry into the State of Oregon if each lot or shipment is accompanied by a certificate issued by an official state agency of the state of origin certifying the kind and amount of commodities covered by the certificate, that all such commodities are a product of the state from which shipped or of another state within which neither Dutch Elm Disease nor Elm Yellows phytoplasma is known to occur, that such commodities are free from the described disease, and setting forth in either case the name of the state where produced;

(c) Commodities Restricted Within Quarantine Areas. With exception of commercially produced nursery stock, commodities described in section (3) of this rule situated within the counties described in subsection (2)(a) of this rule, are prohibited movement within or outside said areas except for the transportation of such commodities to locations authorized by the Department for the burning, burial, or other approved method of disposal thereof. All tools or equipment utilized in the pruning or disposal of infected commodities are also prohibited movement within or outside said areas unless they are decontaminated by an approved method therefore.

Stat. Auth.: ORS 561.190, 561.510 - 561.600 & 570.305

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
 Hist.: AD 1088(11-76), f. 3-22-76, ef. 4-1-76; AD 24-1977, f. 10-25-77, ef. 11-15-77 ; AD 3-1995, f. & cert. ef. 4-5-95; DOA 3-2005, f. & cert. ef. 2-4-05; DOA 2-2007, f. & cert. ef. 1-30-07; DOA 3-2013, f. & cert. ef. 3-1-13

Blueberry Maggot Quarantine

603-052-0115

Quarantine; Blueberry Maggot

(1) Establishing Quarantine. A quarantine is established against blueberry maggot (*Rhagoletis mendax*).

(2) Area under Quarantine. All states, districts, and territories of the United States east of and including the States of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas. All states of the United States west of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas are not included therein.

(3) Commodities Covered. All fresh fruit of blueberry and blueberry plants (except when free from soil and growing media; clumps of soil or growing media larger than 1/2 inch diameter will be cause for rejection).

(4) All commodities covered are prohibited entry into Oregon from the area under quarantine with the exception of items listed in (5) below.

(5) Exceptions:

(a) No restrictions are placed by this quarantine upon the entry into the State of Oregon of fruits which upon arrival are frozen solid and which are held under refrigeration to assure their solid frozen state;

(b) Fruits affected by this quarantine, which have been held in cold storage for a continuous period of at least 40 days during which period the temperature in said cold storage area has been maintained at 32° F or less, may be admitted into the State of Oregon providing that the lot or shipment of the same is accompanied by an official certificate, issued by an agency of the state of origin authorized to do so, evidencing compliance with the requirements of this subsection.

(c) Fruits that are accompanied by an official certificate showing that they have been treated with a fumigant effective against blueberry maggot according to label instructions.

(6) Disposition of Commodities in Violation of Quarantine. All commodities described in section (3) of this rule inspected by the Department and determined to be in violation of this quarantine and not permitted entry pursuant to section (5) of this rule, shall be immediately returned by the person receiving the same to the point of origin or, at his option and without expense or indemnity paid by the Department, destroyed by such person.

Stat. Auth.: ORS 561.190, 561.510 - 561.600 & 570.305 - 570.325
 Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415?
 Hist.: AD 1033(20-74), f. 6-26-74, ef. 7-25-74; AD 10-1997, f. & cert. ef. 7-2-97; DOA 2-2007, f. & cert. ef. 1-30-07; DOA 7-2012, f. & cert. ef. 3-26-12

Quarantine Against Peach Yellows Phytoplasma

603-052-0116

Quarantine; Peach Yellows Phytoplasma

(1) Establishing a Quarantine. A quarantine is established against the disease of peach known as Peach Yellows Phytoplasma.

(2) Areas under Quarantine. Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, North Carolina, New Jersey, New York, Ohio, Pennsylvania, South Carolina, Texas, Tennessee, Virginia, and Ontario.

(3) Commodities Covered:

(a) Propagating parts, except seeds, and any tree budded or grafted on understock of the following species of plum which are symptomless carriers of Peach Yellows, phytoplasma:

- (A) Native American plum, *Prunus hortulana* and *P. americana*;
- (B) Common or European plum, *P. domestica*;
- (C) Japanese plum, *P. salicina*;
- (D) Myrobalan plum, *P. cerasifera*;
- (E) Othello plum, *P. cerasifera* var. *atropur-purea*;
- (F) Wild goose plum, *P. munsoniana*.

(b) All trees, roots, stalks, cuttings, grafts, scions, and buds of all species and varieties of *Prunus*;

(c) Any tree or bud grafted on peach or plum understock.

(4) Exceptions:

(a) Seedling trees or trees budded on admissible rootstock which are grown from seed and shipped in one growing season may be certified provided any budwood used in the production of such trees meets the conditions of subsection (c) of this section and Peach Yellows disease has not occurred during the growing season either on or within one mile of the growing ground property;

(b) Certificates may be issued for reshipment of dormant host trees and propagative parts which have been produced outside the areas under quarantine and have remained dormant while within such areas. Certificates shall state the name of the state where produced;

(c) Species and varieties other than symptom-less carriers may be shipped into this state provided they are properly labeled as to scientific name and each lot or shipment is accompanied by a state-of-origin inspection certificate certifying that the following conditions have been met:

(A) Adequate surveys have been made by state agricultural officials, at the proper time in relation to diseases and hosts, and as Peach Yellows disease has not been found during the last two growing seasons previous to digging the trees or taking the buds either on or within one mile of the growing grounds or bud source properties; and

(B) The growing premises have been free from any prohibited symptomless species of plum trees or any other tree growing on any prohibited species of plum understock and, during the last two growing seasons previous to digging the trees or taking the buds, any prohibited symptomless species of plum trees has not existed within one mile of the growing premises or bud source properties.

(5) Disposition of Commodities in Violation of Quarantine. Commodities shipped in violation of this quarantine shall be refused entry into this state and shall be immediately sent out of this state or, at his option and without expense to or indemnity paid by the Department, destroyed under departmental supervision by the person receiving the same. Violators may also be subject to civil penalties of up to \$10,000 as provide by Oregon Laws 1999, Chapter 390, section 2.

(6) Special Permits. This section does not apply to experimental shipments moved by, or at the request of, the United States Department of Agriculture. The Department, upon receipt of an application in writing, may issue a special permit allowing entry into this state of quarantined commodities for research purposes only. Movement of such commodities shall be subject to any conditions or restrictions stipulated in the permit.

Stat. Auth.: ORS 561.190, 561.510 - 561.600 & 570.305
 Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
 Hist.: AD 1041(31-74), f. 8-28-74, ef. 9-25-74; AD 1085(8-76), f. & ef. 3-11-76; AD 3-1995, f. & cert. ef. 4-5-95; DOA 6-2005, f. & cert. ef. 2-15-05; DOA 1-2006, f. & cert. ef. 1-13-06; DOA 7-2012, f. & cert. ef. 3-26-12; DOA 3-2013, f. & cert. ef. 3-1-13

Quarantine Against Peach Rosette Phytoplasma

603-052-0118

Quarantine; Peach Rosette Phytoplasma

(1) Establishing a Quarantine. A quarantine is established against the phytoplasma disease of peach known as Peach Rosette.

(2) Areas Under Quarantine. Alabama, Arkansas, Georgia, Illinois, Indiana, Kansas, Kentucky, Mississippi, Missouri, Oklahoma, South Carolina, Tennessee, Texas and West Virginia.

(3) Commodities Covered. The following commodities are hereby declared to be hosts or possible carriers of the disease herein quarantined, and are prohibited from entry into this state, either directly, indirectly, diverted, or reconsigned:

(a) Symptomless carriers of Peach Rosette, namely trees and propagating parts, except seed, of Wilson apricot (a variety of *Prunus armeniaca*) and Marianna plum (a hybrid variety of *P. cerasifera*) and any tree budded or grafted on Marianna plum understock;

(b) All trees, roots, stalks, cuttings, grafts, scions, or buds of *Prunus angustifolia*, *P. armeniaca*, *P. avium*, *P. besseyi*, *P. cerasus*, *P. davidiana*, *P. domestica*, *P. dulcis* (*P. amygdalus*), *P. mahaleb*, *P.*

persica, *P. pumila*, *P. salicina*, *P. tomentosa*, *P. triloba*, *P. virginiana*, and *Acer rubrum*;

(c) Any tree or bud grafted on peach or plum understock.

(4) Exceptions:

(a) Seedling trees or trees budded on admissible rootstocks which are grown from seed and shipped in one growing season may be certified, and provided any budwood used in the production of such trees meets the conditions of subsection (c) of this section, and Peach Rosette has not occurred during the growing season either on or within one mile of the growing ground property;

(b) Certificates may be issued for reshaping of dormant host trees and propagative parts which have been produced outside the areas under quarantine and have remained dormant while within such areas. Certificates shall state the name of the state where produced;

(c) Species and varieties other than symptom-less carriers may be shipped into this state provided they are properly labeled as to scientific name and each lot or shipment is accompanied by a state-of-origin inspection certificate certifying that the following conditions have been met:

(A) Adequate surveys have been made by state agricultural officials, at the proper time in relation to diseases and hosts, and no Peach Rosette has been found during the last two growing seasons previous to digging the trees or taking the buds either on or within one mile of the growing premises or bud source properties;

(B) The growing premises have been found free from Wilson apricot and Marianna plum trees and any other tree growing on Marianna plum understock and, during the last two growing seasons previous to digging the trees or taking the buds, Wilson apricot or Marianna plum trees have not existed within one mile of the growing premises or the bud source properties.

(5) Disposition of Commodities in Violation of Quarantine. Commodities shipped in violation of this quarantine shall be refused entry into this state and shall be immediately sent out of the state or, at his option and without expense to or indemnity paid by the Department, destroyed under departmental supervision by the person receiving the same. Violators may also be subject to civil penalties of up to \$10,000 as provided by Oregon Laws 1999, Chapter 390, section 2.

(6) Special Permits. This section does not apply to experimental shipments moved by, or at the request of, the United States agency. The Department, upon receipt of an application in writing, may issue a special permit allowing entry into this state of quarantined commodities for research purposes only. Movement of such commodities shall be subject to any conditions or restrictions stipulated in the permit.

Stat. Auth.: ORS 561.190, 561.510 - 561.600 & 570.305

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 1041(31-74), f. 8-28-74, ef. 9-25-74; AD 1086(9-76), f. & ef. 3-11-76; AD 3-1995, f. & cert. ef. 4-5-95; DOA 8-2005, f. & cert. ef. 2-15-05; DOA 7-2012, f. & cert. ef. 3-26-12

Quarantine Against Oak Wilt Disease

603-052-0120

Quarantine; Oak Wilt Disease

(1) Establishing a Quarantine. A quarantine is established against Oak Wilt Disease (*Ceratocystis fagacearum*).

(2) Area Under Quarantine. All states and districts of the United States.

(3) Commodities Covered. All rooted trees, seedling plants, cuttings, scions, bark, leaf mold, roots, or other unpeeled parts, except seed, of all species of oak (*Quercus* spp.), chestnut (*Castanea* spp.), chinquapin (*Castanopsis* spp.), and tanbark oak (*Lithocarpus densiflora*). Tissue clulture plantlets in sealed, sterile containers are exempt from this quarantine.

(4) Restrictions:

(a) Commodities Prohibited from Quarantine Areas: All commodities described in section (3) of this rule originating or grown within or shipped from any state or district described in section (2) of this rule, except as provided in subsection (b) of this section, are prohibited entry into the State of Oregon whether moved directly from said areas or diverted or reconsigned from any such area;

(b) Commodities Admitted Under Origin Certificate: Commodities described in section (3) of this rule may be permitted entry into Oregon provided each lot or shipment is accompanied by a certificate issued by an official agency of the state of origin certifying that all commodities covered by the certificate are a product of the state from which shipped or of another state, neither of which is known to have oak wilt disease occur; certifying that such commodities are free from the described disease; and setting forth in either case the name of the state where produced and the kind and amount of commodities covered by the certificate.

(5) Special Permits. The Department, upon receipt of an application in writing, may issue a special permit allowing entry into the state of quarantined commodities not otherwise eligible for movement under the provisions of this quarantine. Movement of such commodities will be subject to any conditions or restrictions stipulated in the special permit, and these conditions and restrictions may vary depending upon the intended use of the commodity and the potential risk of escape and spread of oak wilt.

Stat. Auth.: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 1087(10-76), f. 3-22-76, ef. 4-1-76; DOA 2-2007, f. & cert. ef. 1-30-07; DOA 5-2014, f. & cert. ef. 4-29-14

Quarantine Against Apple Maggot

603-052-0121

Quarantine; Apple Maggot

(1) Establishing a Quarantine. A quarantine is established against apple maggot (*Rhagoletis pomonella*), a dipterous insect of the family Tephritidae whose larval stages live within the fruit of their host plants and cause extensive damage to such fruit.

(2) Areas Under Quarantine:

(a) Within the State of Oregon: the counties of Benton, Clackamas, Clatsop, Columbia, Coos, Curry, Douglas, Gilliam, Hood River, Jackson, Josephine, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Sherman, Tillamook, Yamhill, Wasco, Washington, and the City of Pendleton in Umatilla County.

(b) In the western United States: California, Idaho, Utah and Washington.

(c) In the eastern United States: all states and districts east of and including the states of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma and Texas.

(3) Commodities Covered. From the areas under quarantine: all fresh fruit of hawthorne (haw); all non-commercial fresh fruit of pear; and all fresh fruit of apple (including crabapple).

(4) Restrictions:

(a) Certification Required. Commodities covered which are produced in or shipped from the area under quarantine are prohibited entry into the commercial apple producing counties of Gilliam, Grant, Hood River, Morrow, Sherman, Umatilla and Wasco counties of the State of Oregon unless each lot or shipment is accompanied by a certificate issued by and bearing the original or facsimile signature of the authorized agricultural official of the state from which the commodity is shipped evidencing compliance with subsection (e), (f), or (g) of this section. No certificate is required for commodities meeting the requirements of subsection (c) or (d) of this section;

(b) In the western U.S., not all counties in infested states have established populations of apple maggot. Provided each lot or shipment is certified by an authorized agricultural official to have been grown in a county not known to be infested with apple maggot, the commodities may be shipped to the Oregon counties of Gilliam, Grant, Hood River, Morrow, Sherman, Umatilla and Wasco.

(c) Reshipments in Original Containers if Commodities Grown Outside Area Under Quarantine. Commodities in original unopened containers, each bearing labels or other identifying marks evidencing origin outside the areas under quarantine, may be reshipped to the counties Gilliam, Grant, Hood River, Morrow, Sherman, Umatilla and Wasco of the State of Oregon from any point within the areas under quarantine;

(d) Repacked Commodities Admissible if Certified Grown Outside from Area Under Quarantine. Provided each lot or shipment is certified by an authorized agricultural official to have been grown outside the area under quarantine and that continued identity has been maintained while within the area under quarantine, the commodities may be repacked and shipped by common carrier from any point within the area under quarantine to the Oregon counties of Gilliam, Grant, Hood River, Morrow, Sherman, Umatilla and Wasco. The certificate shall set forth the state in which commodities were grown, point of repacking and reshipment, amount and kind of commodities comprising the lot or shipment, and the names and addresses of the shipper and consignee;

(e) Apples Exposed to Controlled Atmosphere (CA) Storage Admissible Under Certificate. Apples which are exposed to controlled atmosphere (CA) storage for a continuous period of 90 days, during which period the temperature within the storage room is maintained at 38° F (3.3°C) or less, may be admitted into the counties of Hood River, Morrow, Umatilla and Wasco of the State of Oregon provided said storage room or building is approved by the proper authorities in the state of origin as a controlled atmosphere facility and further provided each lot or shipment of such apples to the afore named Oregon counties is accompanied by a certificate, as stated in subsection (a) of this section, evidencing compliance with the minimum requirements of this section;

(f) Solid Frozen Fruits Exempt. No restrictions are placed by this regulation on the entry into the Oregon counties of Hood River, Morrow, Umatilla and Wasco of fruits which upon arrival are frozen solid and which are under refrigeration to assure their solid frozen state;

(g) Shipments from Cold Storage at 32° F (0°C). Commodities covered which are held in cold storage for a continuous period of 40 days or more, during which period the temperature within the storage room is maintained at 32° F (0°C) or less, may be admitted into the counties of Hood River, Morrow, Umatilla and Wasco of the State of Oregon provided each lot or shipment is accompanied by a certificate, as described in subsection (a) of this section, evidencing compliance with the requirements of this section.

(5) Exceptions:

(a) Based on a memorandum of agreement between the Oregon and Washington Departments of Agriculture, the Washington counties of Klickitat and Skamania and the Oregon counties of Hood River and Wasco are considered a single production area, and under the terms of this memorandum fresh commercial apple fruit produced in this production area may move freely throughout these counties. This exception shall be allowable only as long as such memorandum is in effect;

(b) Special Permits: The Director of the Oregon State Department of Agriculture may issue special permits admitting covered commodities not otherwise eligible for entry into of Gilliam, Grant, Hood River, Morrow, Sherman, Umatilla and Wasco counties of the State of Oregon from areas under quarantine subject to specific conditions and provisions which the director may prescribe to prevent introduction, escape or spread of the quarantined pests.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 7-1985, f. 9-16-85, ef. 10-1-85; DOA 5-2005, f. & cert. ef. 2-15-05

Quarantine Against European Corn Borer

603-052-0126

Quarantine; European Corn Borer

A quarantine is established effective October 15, 1969, against the following pest, its hosts, and possible carriers:

(1) Pest. European corn borer (*Ostrinia nubilalis*).

(2) Area Under Quarantine. All states and districts of the United States, except the States of Alaska, Arizona, California, Hawaii, Idaho, Nevada, New Mexico, Utah, and Washington.

(3) Infested Area. Entire States of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Iowa, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska,

New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, Wyoming, and the District of Columbia.

(4) Commodities Covered. (Restricted Products) Corn, broom-corn, sorghums, and Sudan grass, plants and all parts thereof (including shelled grain and stalks, ears, cobs, and all other parts, fragments, or debris of said plants); beans in the pod; beets; celery; peppers (fruits); endive; Swiss chard; and rhubarb (cut or plants with roots); cut flowers and entire plants of aster, chrysanthemum, calendula, cosmos, hollyhock, marigold, zinnia, Japanese hop, dahlia (except tubers without stems), and gladiolus (except corms without stems), are hereby declared to be hosts or possible carriers of the pest herein quarantined against.

(5) Restrictions:

(a) Definitions. As used in the quarantine and section:

(A) "Portions of Plants or Fragments Capable of Harboring Larva of European Corn Borer" means any portion of a host plant of any shape or size which cannot be passed through a 1/2-inch (1.27 cm) square aperture, and any completely whole, round, uncrushed section, portion, or piece of cob, stalk, or stem of one inch or more in length and 3/16-inch (0.48 cm) or more in diameter;

(B) "Official Certificate" means a document, issued by a duly authorized representative of the designated state, district, or federal department of agriculture, evidencing compliance with the provisions of this regulation and setting forth all information and facts hereinafter required;

(C) "Department" means the Department of Agriculture of the State of Oregon;

(D) "Shelled Grain" means the seeds or kernels separated from all other plant parts of corn, broomcorn, sorghum, and Sudan grass.

(b) Certification required on all shelled grain from area under quarantine. Except as provided in section (6) of this rule, each lot or shipment of shelled grain of corn, broomcorn, sorghums, and Sudan grass grown in or shipped from the area under quarantine described in section (2) of this rule, imported or brought into this state, must be accompanied by an official certificate evidencing compliance with one of the following conditions:

(A) Certificates on shelled grain grown in or shipped from the infested area described in section (3) of this rule, must either affirm that said grain has been passed through a 1/2-inch (1.27 cm) mesh screen or less, or otherwise processed prior to loading and is believed to be free from stalks, cobs, stems, or portions of plants or fragments capable of harboring larva of the European corn borer, and further, that the car or truck was free from stalks, cobs, stems, or such portions of plants or fragments at time of loading, or affirm that said grain has been fumigated by a method and in a manner prescribed by the Department, and setting forth the date of fumigation, dosage schedule, and kind of fumigant used;

(B) Certificate on shelled grain grown in and shipped from states under quarantine not listed in section (3) of this rule, must be issued by the proper official of the state wherein such grain was produced, affirming that all such grain covered by said certificate is a product of said state wherein no European corn borer is known to exist and that its continued identity has been maintained to assure no blending or mixing with grain, plants, or portions thereof produced in or shipped from infested areas described in section (3) of this rule;

(C) Any lot or shipment of shelled grain arriving in this state which is not accompanied by an official certificate as herein before required, or which is certified on the basis of freedom from contamination with portions of plants or fragments capable of harboring larva of European corn borer as defined above, and which is found to be so contaminated, shall be deemed to be in violation of this quarantine and regulation and subject to disposal as provided by law and by section (16) of this rule quarantine;

(D) All certificates issued in compliance with paragraph (A) or (B) of this subsection must also set forth the kind and quantity of the commodity constituting the lot or shipment covered thereby, the initials and number of the railway car, or license number in the case of truck, and the names and addresses of the shipper and consignee.

(6) Certain Grain Products Conditionally Exempt from Certification. Certification requirements of subsection (5)(b) of this rule, are hereby waived on shelled popcorn, seed for planting, and on individual shipments or lots of one hundred pounds or less of other clean, shelled grain, or comprised of packages of less than ten pounds, subject to inspection and freedom from portions of plants or fragments capable of harboring European corn borer.

(7)(a) Stalks, ears, cobs, or other parts, fragments, or debris of corn, broomcorn, sorghums, and Sudan grass admitted under disinfection or treatment certificate. Stalks, ears, cobs, or other parts, fragments, or debris of corn, broomcorn, sorghums, and Sudan grass grown in or shipped from the area under quarantine imported as such or as packing or otherwise, will be admitted into the State of Oregon only provided each lot or shipment is accompanied by an official certificate of the state from which shipped, affirming that all stalks, ears, cobs, or other parts, fragments, or debris of such plants accompanied thereby have been disinfected or sterilized by a method and in a manner prescribed by the Department, and setting forth the date and full particulars of treatment applied, except that stalks, ears, cobs, or other parts, fragments, or debris of said plants grown in and shipped from states under quarantine not listed in the infested area described in section (3) of this rule will be admitted into the State of Oregon provided each shipment or lot is accompanied by an official certificate of the state where produced, affirming that such product is a product of said state wherein no European corn borer is known to exist, and that continued identity of the product has been maintained to assure no handling or storage in association with stalks, ears, cobs, or other parts, fragments, or debris of such plants grown in or shipped from infested areas herein described;

(b) All certificates issued in compliance with this section (7) of this rule must also set forth the kind and quantity of the commodity constituting the lot or shipment covered thereby, the initials and number of the railway car, or license number in the case of truck, and the names and addresses of the shipper and consignee.

(8)(a) Certification required on certain vegetable and ornamental plants and plant products produced in or shipped from infested area. Except as provided in section (6) of this rule, beans in the pod, beets, celery, peppers (fruits), endive, Swiss chard, and rhubarb (cut or plants with roots); cut flowers and entire plants of aster, chrysanthemum, calendula, cosmos, hollyhock, marigold, zinnia, Japanese hop, dahlia (except tubers without stems), gladiolus (except corms without stems) produced in or shipped from the infested area described in section (3) of this rule, will be admitted into the State of Oregon only provided each lot or shipment is officially certified by an inspector of the Plant Quarantine Division of the U.S. Department of Agriculture or by the duly authorized official of the state where produced, evidencing that such plants, products, or cut flowers have been inspected or that the greenhouse or growing grounds where same were produced were inspected and no European corn borer was found, or that such plants, products, or cut flowers have been fumigated by a method and in a manner prescribed by the Department and setting forth the date of fumigation, dosage schedule, and kind of fumigant used;

(b) No restrictions are placed by this regulation on the entry into this state of such vegetable and ornamental plants and plant products produced in and shipped from any state not listed in section (3) of this rule.

(9) Certain Restricted Products Conditionally Exempt from Certification. Certification requirements of section (8) of this rule, are hereby waived on individual shipments or lots of certain restricted vegetables, ornamental plants, and plant products described therein, under and subject to the following conditions:

(a) In lots or shipments of ten pounds or less, beans in the pod, beets, peppers (fruits), endive, Swiss chard, and rhubarb (cut or plants with roots);

(b) During period November 30 to May 1, divisions without stems of the previous year's growth, rooted cuttings, seedling plants, and cut flowers of aster, chrysanthemum, calendula, cosmos, hollyhock, marigold, zinnia, and Japanese hop.

(10) Manufactured or Processed Products Exempt from Restriction. No restrictions are placed by this proclamation upon the

movement of the restricted products herein defined which are processed or manufactured in such a manner as to eliminate all danger of carrying the pest herein quarantined against.

(11) Certification Waived on Small Lots. Under section (16) of this rule and the European Corn Borer Exterior Quarantine, the Department may release small lots of shipments which may be adequately inspected in lieu of origin certification provided no living stage of European corn borer is found or the lot or shipment may be treated in an approved manner under official supervision. It is intended that this disposition will only apply to lots or shipments of a size which will permit a 100 percent inspection involving less inspection time and effort than would be required to issue rejection notices and hold for origin certification. Rejection notices need not be filed on the lots or shipments which are adequately inspected and released in lieu of origin certification.

(12) Fumigation Instructions. The articles listed in this quarantine will be admitted to the State of Oregon if they are accompanied by an official certificate, showing they have been fumigated with a fumigant effective against European corn borer according to label instructions.

(13) Disposition of Violations. Any or all shipments or lots of the quarantined articles enumerated in section (4) of this rule, arriving in Oregon in violation of this quarantine shall immediately be sent out of Oregon, or destroyed, or treated by a method approved by the Department, all at the expense of the owner or owners. All of such procedures shall only be carried out under and at the direction and/or order of the Department. The provisions of this section do not prohibit the Department from taking any other action or procedure authorized by law against persons or commodities or articles that are in violation of law or this quarantine.

[ED. NOTE: Diagrams referenced are available from the agency.]
Stat. Auth.: ORS 561.190, 561.510 - 561.600, 570.305, ORS 570.405 & 570.410 - 570.415
Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
Hist.: AD 906(12-69), f. 9-23-69, ef. 10-15-69; DOA 7-2012, f. & cert. ef. 3-26-12

Quarantine Against Japanese Beetle and Related Pests

**603-052-0127
Quarantine; Japanese Beetle, European Chafer and Oriental Beetle**

(1) Establishing a Quarantine. A quarantine is established against the pest known as Japanese beetle (*Popillia japonica*) European chafer (*Rhizotrogus majalis*), and Oriental beetle (*Anomala orientalis*), a member of the family Scarabaeidae, which in the larval stage feed on the roots of many plants and in the adult stage feed on the flowers, foliage and fruit of many plants.

(2) Areas Under Quarantine. The entire states of Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, the District of Columbia, the Provinces of Ontario, Quebec, and British Columbia, Canada, and any other state, territory or province where the presence of an established population of any of these insects is confirmed and effective eradication procedures have not been implemented. Any property(ies) in Oregon where Japanese beetles, European chafers, or Oriental beetles are found including a buffer zone that may be infested around the area where the pests were discovered.

(3) Commodities Covered. All life stages of the Japanese beetle, European chafer, and Oriental beetle, including eggs, larvae, pupae, and adults; and the following hosts or possible carriers of Japanese beetle:

(a) Soil, growing media, humus, compost, and manure (except when commercially packaged, and except soil samples under a federal Compliance Agreement);

(b) All plants with roots;

(c) Grass sod;

(d) Plant crowns or roots for propagation (except when free from soil and growing media; clumps of soil or growing media larger than 1/2 inch diameter will be cause for rejection);

(e) Bulbs, corms, tubers, and rhizomes of ornamental plants (except when free from soil and growing media; clumps of soil or growing media larger than 1/2 inch diameter will be cause for rejection); and

(f) Any other plant, plant part, article or means of conveyance when it is determined by the department to present a hazard of spreading live Japanese beetle due to either infestation, or exposure to infestation, by Japanese beetle.

(4) Restrictions. All commodities covered are prohibited entry into Oregon from the area under quarantine unless they have the required certification. Plants may be shipped from the area under quarantine into Oregon provided such shipments conform to one of the options below and are accompanied by a certificate issued by an authorized state agricultural official at origin. Note that not all protocols in the U.S. Domestic Japanese Beetle Harmonization Plan are acceptable for Oregon. Advance notification of regulated commodity shipment is required. The certifying official shall mail, FAX or e-mail a copy of the certificate to: Plant Program Area Director, Oregon Department of Agriculture, 635 Capitol Street NE, Salem, Oregon 97310, FAX: 503-986-4786, e-mail: quarantine@oda.state.or.us. The shipper shall notify the receiver to hold such commodities for inspection by the Oregon Department of Agriculture. The receiver must notify the Oregon Department of Agriculture of the arrival of commodities imported under the provisions of this quarantine and must hold such commodities for inspection. Such certificates shall be issued only if the shipment conforms fully with (a), (b), (c), (d), (e) or (f) below:

(a) Bareroot Plants. Plants with roots are acceptable if they are bareroot, free from soil and growing media (clumps of soil or growing media larger than 1/2 inch diameter will be cause for rejection). The certificate accompanying the plants shall bear the following additional declaration: "Plants are bareroot, attached clumps of soil or growing media are less than 1/2 inch in diameter." Advance notification required (see section 4 above).

(b) Production in an Approved Japanese Beetle Free Greenhouse/Screenhouse. All the following criteria apply. All media must be sterilized and free of soil. All stock must be free of soil (bareroot) before planting into the approved medium. The potted plants must be maintained within the greenhouse/screenhouse during the entire adult flight period. During the adult flight period the greenhouse/screenhouse must be made secure so that adult Japanese beetles can not gain entry. Security will be documented by the appropriate phytosanitary official. No Japanese beetle contaminated material shall be allowed into the secured area at any time. The greenhouse/screenhouse will be officially inspected by phytosanitary officials and must be specifically approved as a secure area. They shall be inspected by the same officials for the presence of all life stages of the Japanese beetle. The plants and their growing medium must be appropriately protected from subsequent infestation while being stored, packed and shipped. Certified greenhouse/screenhouse nursery stock may not be transported into or through any infested areas unless identity is preserved and adequate safeguards are applied to prevent possible infestation. Each greenhouse/screenhouse operation must be approved by the phytosanitary officials as having met and maintained the above criteria. The certificate accompanying the plants shall bear the following additional declaration: "The rooted plants (or crowns) were produced in an approved Japanese beetle free greenhouse or screenhouse and were grown in sterile, soilless media." Advance notification required (see section 4 above).

(c) Production During a Pest Free Window. The entire rooted plant production cycle will be completed within a pest free window, in clean containers with sterilized and soilless growing medium, i.e., planting, growth, harvest, and shipment will occur outside the adult Japanese beetle flight period, June through September. The accompanying phytosanitary certificate shall bear the following additional declaration: "These plant were produced outside the Japanese beetle flight season and were grown in sterile, soilless media." Advance notification required (see section 4 above).

(d) Application of Approved Regulatory Treatments. All treatments will be performed under direct supervision of a phytosanitary official or under compliance agreement. Treatments and procedures under a compliance agreement will be monitored closely throughout the season. State phytosanitary certificates listing and verifying the treatment used must be forwarded to Oregon via fax or electronic mail, as well as accompanying the shipment. Note that not all treatments approved in the U.S. Domestic Japanese Beetle Harmonization Plan are acceptable for Oregon. The phytosanitary certificate shall bear the following additional declaration: "The rooted plants are in soilless media and were treated to control *Popillia japonica* according to the criteria for shipment to category 1 states as provided in the U.S. Domestic Japanese Beetle Harmonization Plan and Oregon's Japanese beetle quarantine." Advance notification required (see section 4 above).

(A) Dip Treatment — B&B and Container Plants. Not approved.

(B) Drench Treatments — Container Plants Only. Not approved for ornamental grasses or sedges. Potting media used must be sterile and soilless, containers must be clean. Containers must be one gallon or smaller in size. Field potted plants are not eligible for certification using this protocol. This is a prophylactic treatment protocol targeting eggs and early first instar larvae. If the containers are exposed to a second flight season they must be retreated.

(i) Imidacloprid (Marathon 60WP). Apply one-half (0.5) gram of active ingredient per gallon as a prophylactic treatment just prior to Japanese beetle adult flight season (June 1, or as otherwise determined by the phytosanitary official). Apply tank mix as a drench to wet the entire surface of the potting media. A twenty-four (24) gallon tank mix should be enough to treat 120-140 one-gallon containers. Avoid over drenching so as not to waste active ingredient through leaching. During the adult flight season, plants must be retreated after sixteen (16) weeks if not shipped to assure adequate protection.

(ii) Bifenthrin (Talstar Nursery Flowable 7.9%). Mix at the rate of twenty (20) ounces per 100 gallons of water. Apply, as a drench, approximately eight (8) ounces of tank mix per six (6) inches of container diameter.

(C) Media (Granule) Incorporation — Container Plants Only. Containers must be one gallon or smaller in size. Not approved for ornamental grasses or sedges. All pesticides used for media incorporation must be mixed prior to potting and plants potted a minimum of thirty (30) days prior to shipment. Potting media used must be sterile and soilless; containers must be clean. The granules must be incorporated into the media prior to potting. Field potted plants are not eligible for treatment. This treatment protocol targets eggs and early first instar larvae and allows for certification of plants that have been exposed to only one flight season after application. If the containers are to be exposed to a second flight season they must be repotted with a granule incorporated mix or retreated using one of the approved drench treatments. Pesticides approved for media incorporation are:

(i) Imidacloprid (Marathon 1 G). Mix at the rate of five (5) pounds per cubic yard.

(ii) Bifenthrin (Talstar Nursery Granular or Talstar T&O Granular (0.2G)). Mix at the rate of 25 ppm or one-third (0.33) of a pound per cubic yard based on a potting media bulk density of 200.

(iii) Tefluthrin (Fireban 1.5 G). Mix at the rate of 25 ppm based on a potting media bulk density of 400.

(D) Methyl Bromide Fumigation. Nursery stock: methyl bromide fumigation at NAP, chamber or tarpaulin. See the California Commodity Treatment Manual for authorized schedules.

(e) Detection Survey for Origin Certification. Japanese Beetle Harmonization Plan protocol not approved. Alternative approved protocol: States listed in the area under quarantine may have counties that are not infested with Japanese beetle. Shipments of commodities covered may be accepted from these noninfested counties if annual surveys are made in such counties and adjacent counties and the results of such surveys are negative for Japanese beetle. In addition, the plants must be greenhouse grown in media that is sterilized and free of soil and the shipping nursery must grow all their own stock from seed, unrooted cuttings or bareroot material. A list

of counties so approved will be maintained by the Oregon Department of Agriculture. Agricultural officials from a quarantined state or province may recommend a noninfested county be placed on the approved county list by writing for such approval and stating how surveys were conducted giving the following information:

- (A) Areas surveyed;
- (B) How survey was carried out;
- (C) Number of traps;
- (D) Results of survey;
- (E) History of survey;

(F) If county was previously infested, give date of last infestation. If infestations occur in neighboring counties, approval may be denied. To be maintained on the approved list, each county must be reapproved every twelve (12) months. Shipments of commodities covered from noninfested counties will only be allowed entry into Oregon if the uninfested county has been placed on the approved list prior to the arrival of the shipment in Oregon. The certificate must have the following additional declaration: "The plants in this consignment were produced in sterile, soilless media in (name of county), state of (name of state of origin) that is known to be free of Japanese beetle." Advance notification required (see section 4 above).

(f) Privately owned house plants obviously grown, or certified at the place of origin as having been grown indoors without exposure to Japanese beetle may be allowed entry into this state without meeting the requirements of section (4). Contact the Oregon Department of Agriculture for requirements: Plant Program Area Director, Oregon Department of Agriculture, 635 Capitol Street NE, Salem, Oregon 97301, telephone: 503/986-4644, FAX: 503/986-4786, e-mail: quarantine@oda.state.or.us.

(g) Infested properties in Oregon: Confirmation of an infestation of Japanese beetle, European chafer, or Oriental beetle must be made by the ODA or an official cooperator. ODA will notify the property owner(s) and develop a response plan. The goal of the plan will be eradication as soon as possible. The plan may require cooperative measures by the property owner(s) to supplement measures taken by ODA.

(5) Exceptions. Upon written request, and upon investigation and finding that unusual circumstances exist justifying such action, the department may issue a permit allowing entry into this state of commodities covered without meeting the requirements of section (4). However, all conditions specified in the permit shall be met before such permit will be recognized.

(6) Violation of Quarantine. All covered commodities described in section (3) of this rule found to be in violation of this quarantine shall be returned immediately to point of origin by the Oregon receiver, or at the owner's option be destroyed under the supervision of the department, without expense to or indemnity paid by the department. Violation of this quarantine may result in a fine, if convicted, of not less than \$500 nor more than \$5,000, as provided by ORS 561.990(4). Violators may also be subject to civil penalties of up to \$10,000 as provided by Oregon Laws 1999, chapter 390, section 2; nursery license suspension or nursery license revocation.

Stat. Auth.: ORS 561.020, 561.190, 561.510 & 570.305
 Stats. Implemented: ORS 561.510
 Hist.: AD 12-1977, f. 6-6-77, ef. 6-20-77; AD 7-1988(Temp), f. & cert. ef. 8-2-88; DOA 10-1998, f. & cert. ef. 12-30-98; DOA 27-2000, f. & cert. ef. 10-13-00; DOA 9-2006, f. & cert. ef. 3-22-06; DOA 7-2008, f. & cert. ef. 2-8-08; DOA 4-2010, f. & cert. ef. 1-28-10; DOA 3-2013, f. & cert. ef. 3-1-13

Quarantine Against Exotic Phytophagous Snails

603-052-0129

Quarantine; Against Exotic Phytophagous Snails

(1) Establishing Quarantine. A quarantine is established against exotic phytophagous snails that are members of the Phylum Mollusca of the Class Gastropoda characterized by a calcareous shell covering the visceral hump. This quarantine applies to exotic phytophagous snails in any stage of development, and includes, but is not limited to: brown garden snail (*Cornu aspersum* Müller), white garden snail (*Theba pisana* Müller), milk snail (*Otala lactea* Müller), giant African snail (*Achatina* spp.), giant South American snail (*Megalobulimus oblongus* Müller), and all other exotic phy-

tophagous snails (hereafter, "exotic phytophagous snails") except for species on the approved species list (OAR 603-052-1320). These snails are very important garden and agricultural pests causing severe damage to leaves and fruits of many plants.

(2) Areas Under Quarantine. The entire states of Arizona, California, Hawaii, Michigan, New Mexico, Texas, Utah, Washington, and any other state or territory where exotic phytophagous snails are established.

(3) Covered Commodities. Exotic phytophagous snails in any stage of development. Grass sod and all plants with roots in soil and any other plant material or articles capable of transporting exotic phytophagous snails into Oregon are hereby declared to be hosts or possible carriers of the pests herein quarantined and are prohibited entry into this state directly, indirectly, diverted, or reconsigned unless there is compliance with section (4) of this rule.

(4) Conditions:

(a) Covered commodities from regulated areas may be permitted entry into Oregon only when such commodities are accompanied by a certificate of quarantine compliance issued by an authorized official from the state of origin which certifies that it has been determined by official inspection immediately prior to shipment that such covered commodities were found to be free of all life stages of exotic phytophagous snails or that such commodities originate from an area determined by official inspection to be free of exotic phytophagous snails. The original certification document shall be forwarded to the Oregon State Department of Agriculture, Plant Program Area, 635 Capitol St. NE, Salem, Oregon 97310, immediately by First Class mail or fax (503) 986-4786. Each lot or shipment of the covered commodities shall be accompanied by a copy of the above described certification document. The Oregon receiver to whom the commodities are shipped shall notify the department immediately upon receipt of such commodities and shall hold the same until they are released by the department.

(b) Cut greens, cut flowers and soil-free plants including bare root plants, plant crowns, roots for propagation, bulbs, corms, tubers, and rhizomes of plants washed free of adherent soil are excepted from the quarantine, if such plant materials are found upon inspection not to be infested with exotic phytophagous snails or are found not to bear soil accumulations sufficient to carry or obscure any life stage of exotic phytophagous snails.

(c) Certified and noncertified covered commodities shall not be shipped together in the same transporting vehicle, and any such mixing of certified and noncertified covered commodities shall nullify certification and result in the rejection of the entire shipment of covered commodities. Upon inspection and determination by the Oregon State Department of Agriculture that the transporting vehicle or any properly certified covered commodities are infested with any life stage of exotic phytophagous snails, such shipment shall be found in violation of this quarantine.

(5) Heliculture Prohibited. Raising, maintaining, selling, shipping and/or holding live exotic phytophagous snails for any purpose within the State of Oregon is prohibited except for species on the approved species list (OAR 603-052-1320).

(6) Disposition of Commodities in Violation of the Quarantine. All covered commodities described in section (3) of this rule found to be in violation of this quarantine shall be returned immediately to point of origin by the Oregon receiver, or at the receivers option be destroyed under the supervision of the department, without expense to or indemnity paid by the department.

(7) Exceptions. Upon request, and upon investigation and finding that unusual circumstances exist justifying such action, the department may issue a permit allowing entry into this state of covered commodities without meeting the requirements of subsection (4)(a) of this rule. However, all conditions specified in the permit shall be met before such permit will be recognized.

Stat. Auth.: ORS 561 & 570
 Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
 Hist.: AD 14-1983, f. 11-15-83, ef. 12-1-83; AD 12-1997, f. & cert. ef. 7-31-97; DOA 8-1999, f. & cert. ef. 5-14-99; DOA 1-2006, f. & cert. ef. 1-13-06; DOA 2-2007, f. & cert. ef. 1-30-07; DOA 7-2008, f. & cert. ef. 2-8-08; DOA 3-2009, f. & cert. ef. 2-13-09; DOA 3-2013, f. & cert. ef. 3-1-13; DOA 2-2014, f. & cert. ef. 2-14-14

Cherry Fruit Fly Control Areas in Hood River, Lane, Linn, Marion, Polk, Umatilla, Union, and Wasco Counties

603-052-0150

Control Areas and Procedures

(1) As authorized by ORS 570.405 to 570.435, a control area is established in each of the following counties for the protection of the cherry industry in that area through the eradication or control of the cherry fruit fly, *Rhagoletis indifferens*:

- (a) Hood River County;
- (b) Lane County;
- (c) Linn County;
- (d) Marion County;
- (e) Polk County;
- (f) Sherman County;
- (g) Umatilla County;
- (h) Union County;
- (i) Yamhill County; and
- (j) The portion of Wasco county, north of Warm Springs Reservation.

(2) In order to prevent the buildup of western cherry fruit fly, cherry orchards in the control area must be maintained using approved IPM practices.

(3) Approved IPM practices, including spray formulations, are those recommended by the Oregon State Extension Service as described for specific control areas in the following extension documents:

(a) For Hood River and Wasco counties: Pest Management Guide for Tree Fruits in the Mid-Columbia Area. EM 8203, Oregon State University Extension Service.

(b) For Lane, Linn, Marion, Polk and Yamhill counties: Pest Management Guide for the Willamette Valley, EM 8329, Oregon State University Extension Service.

(c) For Umatilla and Union counties Cherry Fruit Fly Pest Management for control areas in Umatilla and Union counties. EM 8587, Oregon State University Extension Service.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 603, f. & ef. 10-31-58; AD 974(7-72), f. 7-27-72, ef. 8-15-72; AD 1073(19-75), f. & ef. 12-5-75; AD 11-1977, f. 5-10-77, ef. 5-20-77; DOA 4-2005, f. & cert. ef. 2-14-05; DOA 1-2006, f. & cert. ef. 1-13-06; DOA 2-2007, f. & cert. ef. 1-30-07; DOA 11-2011, f. & cert. ef. 7-20-11; DOA 7-2012, f. & cert. ef. 3-26-12; DOA 2-2014, f. & cert. ef. 2-14-14

Wasco County Control Area Apple Maggot, San Jose Scale and Codling Moth

603-052-0153

Definitions

As used in OAR 603-052-0154 to 603-052-0158, unless the context requires otherwise:

(1) "Host Tree" means cherry (*Prunus spp.*), pears (*Pyrus spp.*), apples (*Malus spp.*) and Hawthorns (*Crataegus spp.*) and may include other rosaceous hosts of Apple Maggot (*Rhagoletis pomonella*) as may be deemed necessary by the Department.

(2) "Insect" means Apple Maggot (*Rhagoletis pomonella*)(Walsh), San Jose Scale (*Diaspidiotus perniciosus*)(Comstock) and Codling Moth (*Cydia pomonella*)(Linnaeus).

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 13-1981, f. 7-24-81, ef. 8-7-81; DOA 3-2009, f. & cert. ef. 2-13-09; DOA 11-2011, f. & cert. ef. 7-20-11

603-052-0154

Control Area

A control area as authorized by ORS 570.405 to 570.415 is hereby created for the control of Apple Maggot, San Jose Scale and Codling Moth within the boundaries of Wasco County, Oregon.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 13-1981, f. 7-24-81, ef. 8-7-81

603-052-0155

Intent and Purpose

It is the intent and purpose of OAR 603-052-0153 to 603-052-0158 to prevent the buildup and spread of insects from tree to tree and orchard to orchard, particularly from areas not properly treated, or from areas untreated or abandoned, to commercial cherry, pear and apple trees or orchards. It is also the intent and purpose of said rules to reduce the use of pesticides within the control area so as to decrease insect resistance to pesticides. Also, it is the intent and purpose of said rules to more effectively carry out insect control efforts by enabling area-wide spraying programs of commercial orchards in the control area.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 13-1981, f. 7-24-81, ef. 8-7-81

603-052-0156

Control by Spraying

(1) All host trees including, but not limited to, those in commercial orchards and those on residential, public, and abandoned property within the control area which are in near proximity to commercial pear and apple orchards, shall be sprayed by the owner or person in possession thereof by using the agricultural chemicals at the rate, at the times and in the manner recommended by Oregon State University (whether by its own publications, approval of other publications, or otherwise).

(2) In order to determine whether the Apple Maggot has infested any of the control area, and to determine the emergence dates of the adult Apple Maggot in the control area, the Department or its contractors may annually inspect any of the areas described in section (1) of this rule.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 13-1981, f. 7-24-81, ef. 8-7-81

603-052-0157

Inspection Procedures

In order to determine whether the provisions of OAR 603-052-0156 have been complied with by the persons obligated to do so, the Department may inspect any field, orchard, residential property, public property, or abandoned property within the control area. If such person has been found to have failed, neglected, or refused to comply with the provisions of such rule, the Department may by written order delivered or mailed to the owner or person in possession, direct that the host plants or host trees be removed and destroyed in accordance with the provisions of OAR 603-052-0158. The Department may consult with any ad hoc plant pest control advisory committee established in the control area in order to ascertain whether adequate insect controls have been undertaken by particular persons and whether such persons have been advised of the necessity to control the described insects.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 13-1981, f. 7-24-81, ef. 8-7-81

603-052-0158

Control Procedures

(1) The order of the Department referred to in OAR 603-052-0157 may direct that infested host plants or host trees be completely uprooted; cut off near the ground level and the stump immediately treated with an effective herbicide; or killed in place so as not to harbor insect pests. Additionally, the Department may direct that any subsequent sprouts or regrowth of such trees also be killed.

(2) If it is determined that the order described in OAR 603-052-0157 has not been complied within five days after its issuance, the failure to so comply shall be deemed to be a violation of ORS 570.410 and subject the person to whom the order was directed to the penalty provisions of ORS 570.990.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 13-1981, f. 7-24-81, ef. 8-7-81

Jackson County Control Area Pear and Apple Insects

603-052-0160

Definitions

As used in OAR 603-052-0165 to 603-052-0185, unless the context requires otherwise:

(1) "Host Tree" means Pear (*Pyrus spp.*), apples (*Malus spp.*) and Hawthorns (*Crataegus spp.*) and may include other rosaceous hosts of Apple Maggot (*Rhagoletis pomonella*)(Walsh) deemed necessary by the Oregon Department of Agriculture.

(2) "Insect" means Codling Moth (*Cydia pomonella*)(Linnaeus), Apple Maggot (*Rhagoletis pomonella*), and Pear Pyslla (*Psylla pyricola*)(Foester).

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 3-1977, f. 2-9-77, ef. 3-1-77; AD 16-1981, f. 7-24-81, ef. 8-7-81; DOA 3-2009, f. & cert. ef. 2-13-09; DOA 11-2011, f. & cert. ef. 7-20-11

603-052-0165

Control Area

A control area as authorized by ORS 570.405 to 570.415 is hereby created for the control of the insects Codling Moth, Apple Maggot and Pear Psylla within the boundaries of Jackson County, Oregon.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 3-1977, f. 2-9-77, ef. 3-1-77; AD 16-1981, f. 7-24-81, ef. 8-7-81

603-052-0170

Intent and Purpose

It is the intent and purpose of OAR 603-052-0160 to 603-052-0185 to prevent the build-up and spread of insects from tree to tree and orchard to orchard, particularly from areas not properly treated, or from areas untreated or abandoned, to commercial pear and apple trees or orchards. It is also the intent and purpose of said rules to reduce the use of pesticides within the control area so as to decrease insect resistance to pesticides. Also, it is the intent and purpose of said sections to more effectively carry out insect control efforts by enabling area-wide spraying programs of commercial orchards in the control area.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 3-1977, f. 2-9-77, ef. 3-1-77

603-052-0175

Control by Spraying

(1) All host trees including, but not limited to, those in commercial orchards and those on residential, public, and abandoned property within the control area which are in near proximity to commercial pear and apple orchards, shall be sprayed by the owner or person in possession thereof by using the agricultural chemicals at the rate, at the times and in the manner recommended by Oregon State University (whether by its own publications, approval of other publications, or otherwise).

(2) In order to determine whether the Apple Maggot has infested any of the control area, and to determine the emergence dates of the adult Apple Maggot in the control area, the Department or its contractors may annually inspect any of the areas described in section (1) of this rule.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 3-1977, f. 2-9-77, ef. 3-1-77; AD 16-1981, f. 7-24-81, ef. 8-7-81

603-052-0180

Inspection Procedures

In order to determine whether the provisions of OAR 603-052-0175 have been complied with by the persons obligated to do so, the Department may inspect any field, orchard, residential property, public property, or abandoned property within the control area. If such person has been found to have failed, neglected, or refused to comply with the provisions of such rule, the Department may by written

order delivered or mailed to the owner or person in possession, direct that the host plants or host trees be removed and destroyed in accordance with the provisions of OAR 603-052-0185. The Department may consult with any ad hoc plant pest control advisory committee established in the control area in order to ascertain whether adequate insect controls have been undertaken by particular persons and whether such persons have been advised of the necessity to control the described insects.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 3-1977, f. 2-9-77, ef. 3-1-77

603-052-0185

Control Procedures

(1) The notice of the Department referred to in OAR 603-052-0180 may direct that infested pear and apple trees be completely uprooted; cut off near the ground level and the stump immediately treated with an effective herbicide; or killed in place so as not to harbor insect pests. Additionally, the Department may direct that any subsequent sprouts or regrowth of such trees also be killed.

(2) If it is determined that the order described in OAR 603-052-0180 has not been complied within five days after its issuance, the failure to so comply shall be deemed to be a violation of ORS 570.410 and subject the person to whom the order was directed to the penalty provisions of ORS 570.990.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 3-1977, f. 2-9-77, ef. 3-1-77

Josephine County Control Area Apple Maggot

603-052-0187

Definitions

As used in OAR 603-052-0188 to 603-052-0192, unless the context requires otherwise:

(1) "Host Tree" means pears (*Pyrus spp.*), apples (*Malus spp.*) and Hawthorns (*Crataegus spp.*) and may include other rosaceous hosts of Apple Maggot (*Rhagoletis pomonella*)(Walsh) as may be deemed necessary by the Oregon Department of Agriculture.

(2) "Insect" means Apple Maggot (*Rhagoletis pomonella*)(Walsh). efforts by enabling areawide spraying programs of commercial orchards in the control area.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 17-1981, f. 7-24-81, ef. 8-7-81; DOA 11-2011, f. & cert. ef. 7-20-11

603-052-0188

Control Area

A control area as authorized by ORS 570.405 to 570.415 is hereby created for the control of Apple Maggot within the boundaries of Josephine County, Oregon.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 17-1981, f. 7-24-81, ef. 8-7-81

603-052-0189

Intent and Purpose

It is the intent and purpose of OAR 603-052-0187 to 603-052-0192 to prevent the buildup and spread of insects from tree to tree and orchard to orchard, particularly from areas not properly treated, or from areas untreated or abandoned, to commercial pear and apple trees or orchards. It is also the intent and purpose of said rules to reduce the use of pesticides within the control area so as to increase insect resistance to pesticides. Also, it is the intent and purpose of said rules to more effectively carry out insect control efforts by enabling areawide spraying programs of commercial orchards in the control area.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 17-1981, f. 7-24-81, ef. 8-7-81

603-052-0190

Control by Spraying

(1) All host trees including, but not limited to, those in commercial orchards and those on residential, public, and abandoned property within the control area which are in near proximity to commercial pear and apple orchards, shall be sprayed by the owner or person in possession thereof by using the agricultural chemicals at the rate, at the times and in the manner recommended by Oregon State University (whether by its own publications, approval of other publications, or otherwise).

(2) In order to determine whether the Apple Maggot has infested any of the control area, and to determine the emergence dates of the adult Apple Maggot in the control area, the Department or its contractors may annually inspect any of the areas described in section (1) of this rule.

Stat. Auth.: ORS 561 & 570
 Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
 Hist.: AD 17-1981, f. 7-24-81, ef. 8-7-81

603-052-0191

Inspection Procedures

In order to determine whether the provisions of OAR 603-052-0190 have been complied with by the persons obligated to do so, the Department may inspect any field, orchard, residential property, public property, or abandoned property within the control area. If such person has been found to have failed, neglected, or refused to comply with the provisions of such rule, the Department may by written order delivered or mailed to the owner or person in possession, direct that the host plants or host trees be removed and destroyed in accordance with the provisions of OAR 603-052-0192. The Department may consult with any ad hoc plant pest control advisory committee established in the control area in order to ascertain whether adequate insect controls have been undertaken by particular persons and whether such persons have been advised of the necessity to control the described insects.

Stat. Auth.: ORS 561 & 570
 Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
 Hist.: AD 17-1981, f. 7-24-81, ef. 8-7-81

603-052-0192

Control Procedures

(1) The order of the Department referred to in OAR 603-052-0191 may direct that infested host plants or host trees be completely uprooted; cut off near the ground level and the stump immediately treated with an effective herbicide; or killed in place so as not to harbor insect pests. Additionally, the Department may direct that any subsequent sprouts or regrowth of such trees also be killed.

(2) If it is determined that the order described in OAR 603-052-0191 has not been complied within five days after its issuance, the failure to so comply shall be deemed to be a violation of ORS 570.410 and subject the person to whom the order was directed to the penalty provisions of ORS 570.990.

Stat. Auth.: ORS 561 & 570
 Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
 Hist.: AD 17-1981, f. 7-24-81, ef. 8-7-81

Hood River County: Control and Eradication of Insects and Diseases in Pear, Quince, Apple, Peach, and Apricot Trees and Orchards

603-052-0260

Hood River Control Area: Insect Pests and Diseases in Fruit Trees

A control area as authorized by ORS 570.405 to 570.415 is hereby created for the control of insects, pests and diseases related to, but not limited to, Apple scab, *Pseudomonas* blight, *Coryneum* blight, Fire blight, Codling Moth, Pear psylla, San Jose scale, Peach leaf curl, Twig borer, Shot hole borer, Apple Maggot and Oriental fruit moth within the boundaries of Hood River County, Oregon.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
 Hist.: AD 818(6-66), f. 4-12-66, ef. 4-27-66; AD 874(5-68), f. 4-1-68, ef. 4-15-68; AD 14-1981, f. 7-24-81, ef. 8-7-81

603-052-0265

Definitions

As used in OAR 603-052-0260 to 603-052-0280, unless the context requires otherwise:

(1) "Disease Organisms" means the diseases *Pseudomonas* blight (*Pseudomonas syringae*), *Coryneum* blight (*Coryneum carpophilum*), Peach leaf curl (*Taphrina deformans*), Fire blight (*Erwinia amylovora*), and Apple scab (*Venturia inaequalis*).

(2) "Host Plant" or "Host Tree" means Pear (*Pyrus spp.*), Quince (*Cydonia spp.*), Apple (*Malus spp.*), Peach (*Prunus spp.*), and Apricot (*Prunus spp.*), Hawthorn (*Crataegus spp.*), and may include other rosaceous hosts of Apple Maggot as deemed necessary by the Oregon Department of Agriculture.

(3) "Insect" means Codling Moth (*Cydia pomonella*)(Linnaeus), Oriental Fruit Moth (*Grapholitha molesta*)(Busck), Pear psylla (*Psylla pyricola*)(Foerster), San Jose Scale

(*Diaspidiotus perniciosus*)(Comstock), Shot Hole Borer (*Scolytus rugulosus*)(Müller), Apple Maggot (*Rhagoletis pomonella*)(Walsh) and Peach Twig Borer (*Anarsia lineatella* Zeller).

Stat. Auth.: ORS 561 & 570
 Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
 Hist.: AD 818(6-66), f. 4-12-66, ef. 4-27-66; AD 874(5-68), f. 4-1-68, ef. 4-15-68; AD 1106(27-76), f. & ef. 9-15-76; AD 14-1981, f. 7-24-81, ef. 8-7-81; DOA 16-2008, f. & cert. ef. 7-11-08; DOA 3-2009, f. & cert. ef. 2-13-09; DOA 11-2011, f. & cert. ef. 7-20-11

603-052-0270

Intent and Purpose

It is the intent and purpose of OAR 603-052-0260 to 603-052-0290 of this order, in part and not limited to, to prevent the build-up and the spread of injurious plant and tree pests from tree to tree and orchard to orchard; particularly from areas not properly treated, or from areas untreated or abandoned, to commercial or semi-commercial trees.

Stat. Auth.: ORS 570
 Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
 Hist.: AD 818(6-66), f. 4-12-66, ef. 4-27-66; AD 874(5-68), f. 4-1-68, ef. 4-15-68

603-052-0275

Control by Spraying

(1) All host plants and host trees including, but not limited to, those in commercial orchards and those on residential, public, and abandoned property within the control area shall be sprayed by the owner or person in possession thereof by using the agricultural chemicals or pesticide formulations, at the rate, at the times, and in the manner recommended by Oregon State University (whether by its own publications, approval of other publications, or otherwise).

(2) In order to determine whether the Apple Maggot has infested any of the control area, and to determine the emergence dates of the adult Apple Maggot in the control area the Department or its contractor may annually inspect any of the areas described in section (1) of this rule.

Stat. Auth.: ORS 561 & 570
 Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
 Hist.: AD 818(6-66), f. 4-12-66, ef. 4-27-66; AD 874(5-68), f. 4-1-68, ef. 4-15-68; AD 1106(27-76), f. & ef. 9-15-76; AD 14-1981, f. 7-24-81, ef. 8-7-81

603-052-0280

Inspection and Control Procedures

(1) In order to determine whether the provisions of OAR 603-052-0275 have been complied with by the persons obligated to do so, the Department may inspect any field, orchard, residential property, public property, or abandoned property within the control area. If such person has been found to have failed, neglected, or refused to comply with the provisions of such section, the Department may, by written order delivered or mailed to the owner or person in pos-

session, direct that the host plants or host trees be removed and destroyed in accordance with the provisions of section (2) of this rule.

(2) The only approved method for removal and destruction of host plants or host trees is as follows:

(a) Digging out of the trees or plants and their complete root structures; or

(b) Cutting down the trees or plants and thereafter treating the remaining stump and root systems thereof with an effective chemical to prevent their regrowth or resprouting.

(3) If within five days after the issuance of the order described in section (1) of this rule it is determined that said order has not been complied with, such failure to comply shall be deemed to be a violation of ORS 570.410 and so subject the person to whom the order was directed to the penalty provisions of ORS 570.990.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 818(6-66), f. 4-12-66, ef. 4-27-66; AD 874(5-68), f. 4-1-68, ef. 4-15-68; AD 1106(27-76), f. & ef. 9-15-76

603-052-0328

Klamath County Mint Disease Control Area Order

(1) As authorized by ORS 570.405 to 570.415, a control area is established for the protection of the mint industry in Klamath County, Oregon, against the introduction and spread of *Verticillium* wilt disease caused by pathogens *Verticillium* spp. Such area includes all of Klamath County, Oregon.

(2) The following methods are to be used in the control area described in section (1) of this rule, to prevent the introduction of and control the spread of *Verticillium* wilt disease in the control area:

(a) Mint propagation material imported into the control area for production of new mint fields shall be limited to greenhouse-grown, nuclear generation rooted tip cuttings certified by the Oregon State University Seed Certification Program; certified by similar official certification programs in Colorado, Idaho, Montana, or Washington; or other Department-approved official certification programs of a comparable level;

(b) All mint root stocks planted within the control area must be certified in accordance with the requirements of subsection (a) of this section, be certified by the Oregon State University Seed Certification Program in Klamath County as Field Class IV or better root stocks, or have been inspected by the Department in accordance with subsection (f) of this section;

(c) All farm equipment used in the commercial production of mint must be cleaned free of soil and plant debris using methods approved by Oregon State University or the Department prior to entering the control area;

(d) Mint growers shall provide the Department with complete maps showing the location of all mint fields, and whether they were planted with certified or noncertified root stocks. The source of certification or inspection shall be shown for each field planted;

(e) Mint growers shall retain documentation of the sources of mint root stocks for any new plantings. New plantings shall be mapped and the maps submitted to the Department on or before June 15 of each year that this control area Order is in effect; and

(f) The Department shall inspect mint fields not eligible for Oregon State University certification for the presence of *Verticillium* wilt symptoms upon a request of the grower. Such requests shall be mailed to the Department on or before June 15. Phytosanitary certificates shall be issued only for those fields found free of *Verticillium* wilt symptoms and inspected after June 15 and prior to harvest of the mint for oil production. The Department shall assess the established site charges for time and mileage for any such inspections.

(3) Violation: Any violation of this Order shall be deemed to be in violation of ORS 570.410 and subject the violator to the penalty provisions of ORS 570.990. Additionally, any mint stock found to be in violation of this Order shall be destroyed or disposed of in a manner prescribed by the Department.

(4) Review: This control area order will be reviewed beginning in the first quarter of 1999 by the Department, Oregon State University, mint growers, mint oil companies and other interested parties.

Stat. Auth.: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: DOA 3-1998, f. & cert. ef. 3-27-98

Allium White Rot Control Areas

603-052-0347

Control Area and Procedures in Malheur County

(1) As authorized by ORS 570.405 to 570.435, a control area is established for the protection of the onion industry in the following described area through the eradication or control of Allium white-rot disease caused by *Sclerotium cepivorum*. Such control area includes all of Malheur County.

(2) The following methods of control are declared to be the proper methods to be used in the control area described in section (1) of this rule, for the control and prevention of the introduction of Allium white-rot disease into the area:

(a) No person shall import into the control area for the purpose of propagation any bulbs, sets, or seedlings of onion, garlic, leek, chive, shallots, or other Allium spp. with the following exceptions:

(A) The bulbs, sets, or seedlings were produced in adjacent Idaho counties covered by the Idaho Rules Governing White-Rot Disease of Onion (IDAPA 02.06.07) in Ada, Bingham, Blaine, Boise, Bonneville, Canyon, Cassia, Elmore, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Owyhee, Payette, Power, Twin Falls, and Washington counties;

(B) The onion (*Allium cepa*) bulbs, sets, or seedlings were produced in Maricopa County, Arizona and were shipped in new single-use containers. Each shipment must be accompanied by a state phytosanitary certificate declaring the bulbs, sets, or seedlings were produced in Maricopa County and were officially inspected and found free of Allium white rot. Recipients and sellers of such onion bulbs, sets, or seedlings are required to notify the Oregon Department of Agriculture – Ontario Field Office, PO Box 459, Ontario, OR 97914, Phone: 541-889-5274, Fax: 541-889-5077, of the incoming shipment(s) not less than two (2) days prior to arrival;

(b) Commercial onion propagation within the control area shall be limited to production from seed, or if vegetative propagative material is used, that material must be produced within the control area or within the counties described in subsection (a) of this section;

(c) Garlic (*Allium sativum*) propagation within the control area shall be limited to production in home gardens for personal use;

(d) Except as provided in subsections (d) and (e) of this section, no person shall in any manner import or move machinery, tools, or equipment into the control area, which have previously been used in any manner on fields outside the control area where the host plants named in subsection (a) of this section have been cultivated. Machinery, tools, or equipment may be imported or moved into the control area if they are first cleaned and sterilized to the satisfaction of and with the prior approval of the Department. The cleaning shall include the thorough removal of all dirt by the use of steam under pressure. Sterilization shall be accomplished by the use of steam. For the purposes of this subsection, “machinery, tools, or equipment” includes, but is not limited to, farm trucks, harvesters, and tillage equipment;

(e) Machinery, tools, or equipment utilized in the adjacent Idaho Counties covered by the Idaho Rules Governing White-Rot Disease of Onion in Ada, Bingham, Blaine, Boise, Bonneville, Canyon, Cassia, Elmore, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Owyhee, Payette, Power, Twin Falls, and Washington counties are exempt from the prohibitions in subsection (d) of this section;

(f) The Department may stop the movement into or within the control area of any machinery, tools, or equipment, which have not been cleaned and sterilized as provided in this subsection, until such machinery, tools, or equipment are so cleaned and sterilized.

(3) Culls and waste from onions imported from outside of the control area must be disposed of in an approved landfill or must be treated in a manner that the Department has determined will render *S. cepivorum* sclerotia non-viable.

(4)(a) The Department may inspect any onions or onion planting areas within the control area during any time of the year to determine whether the disease organism is present therein. If the Department finds that any onions, whether or not being transported, or any fields are infested with the disease organism, it shall by written order, delivered or mailed to the onion grower or field owner, direct the control and eradication of the infestation, and may prior to issuance of the order, seize any infected onions which are separated from the land on which grown;

(b) Movement of such onions within the control area or removal of such from the control area may be carried out only with the Department's prior approval and under its supervision.

(5) Control and eradication methods used shall only be those approved by the Department and will be based on the best available science. These methods may include:

(a) The destruction of any infected onions;

(b) A directive specifying implementation of Departmentally approved mitigation measures to prevent the spread of *S. cepivorum*;

(c) Prohibit the pasturing of animals on any infested area;

(d) A directive that equipment, tools, and machinery used on an infested area be cleaned and sterilized as described in section (3) of this rule prior to removal from said area.

(6) The Department may, with the consent of the owner, allow use of an infested growing area as an experimental plot by Oregon State University for onion white-rot research. Such use shall be subject to the prior approval of, and supervised by the Department.

(7) The Department, upon receipt of an application in writing, may issue a Director's Exemption allowing movement into or within this control area of regulated commodities not otherwise eligible for movement under the provisions of this control area order. An advisory committee consisting of Malheur County onion growers, packers, and processors shall review each application and provide input to the Director of the Department of Agriculture. Membership on the advisory committee shall be approved by the Department and the committee shall consist of three growers, two packers, and one processor. The committee must provide input to the Director within thirty (30) days of receipt of the application for review. The Director retains the final authority to approve or deny Director's Exemption requests. Movement of such commodities will be subject to any conditions or restrictions stipulated in the Director's Exemption, and these conditions and restrictions may vary depending upon the intended use of the commodity and the potential risk of escape or spread of *S. cepivorum*.

(8) The Department and other interested parties shall review the control area requirements biennially for accuracy and effectiveness.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 2-1977, f. 2-9-77, ef. 3-1-77; DOA 4-2008, f. & cert. ef. 1-11-08; DOA 12-2009, f. & cert. ef. 8-21-09; DOA 20-2010, f. & cert. ef. 11-23-10; DOA 7-2013, f. & cert. ef. 4-26-13

Onion Yellow Dwarf Control Areas

603-052-0350

Control Area — Yellow Dwarf — Marion County

(1) A control area is established within the boundaries described in section (2) of this rule, all in Marion County, for the protection of the onion industry against the introduction into or the spread within that area of Yellow Dwarf disease of onions.

(2) The area is described beginning at a point on U.S. Highway 99E at the junction of said highway with Blossom Drive or otherwise known as County Road 619; thence west and north on County Road 619 to its junction with County Road 616; thence west and north on County Road 616 to its junction with Market Road 24; thence northwest on Market Road 24 to its intersection with Market Road 36; thence northeast on Market Road 36 to its junction with County Road 615; thence east on County Road 615 to its junction with U.S. Highway 99E; thence northeast on U.S. Highway to a point on U.S. Highway 99E designated as "X" or as otherwise designated as follows: Beginning at an iron pipe marking the initial point of County Road 620, said iron pipe being 5.8225 chains south from the northwest corner of the W. P. Harpole D.L.C. No. 60 in T6S R2W of the W.M.,

Marion County, Oregon, thence southwest along the east line of the U.S. Highway 99E 19.973 chains which is point "X." Starting at point "X" thence east 47.28 chains along the south line of a field deeded to J.W. Fitts and Gladys B. Fitts (registered on page 45 of Volume 438 on March 21, 1952 of said county records) to an iron pipe; thence north along the east line of said field 18.064 chains to County Road 620; thence north in a straight line to a pavement known as Market Road 6; thence east on Market Road 6 to its junction with County Road 624; thence south on County Road 624 for approximately 24.52 chains to the centerline of a meandering stream; thence northeasterly along the center line of the meandering stream to its junction with the east boundary of section 10; thence north along the east boundary of section 10 for approximately 20.12 chains to its junction with Market Road 6; thence east on Market Road 6 to its junction with Market Road 51; thence southeasterly on Market Road 51 to a point where Market Road 51 turns southwesterly; thence southwesterly and south on Market Road 51 to its junction with County Road 634; thence westerly on County Road 634 to its junction with County Road 631; thence south on County Road 634 to its southeast corner; thence on an imaginary line in a southwesterly direction to the eastern angle corner of County Road 629; thence south on County Road 629 to its junction with Market Road 52; thence west on Market Road 52 to its junction with County Road 628; thence south on County Road 628 to its junction with County Road 725; thence westerly on County Road 725 to its junction with U.S. Highway 99E; thence southwesterly to the junction of said highway with County Road 619, the point of beginning.

(3) The following methods of eradication and control are declared to be the proper methods to be used in the control area described in section (2) of this rule, for the eradication and prevention of the introduction into that area of yellow dwarf disease of onions:

(a) No person shall use green onion plants, onion sets, or onion bulbs for planting for the production of onions within the control area;

(b) All cull or waste onions shall be removed from the control area prior to April 1 of each year; provided, however, that in the case of onions sorted after such date, the cull and waste onions shall be removed within 24 hours after sorting;

(c) No cull or waste onions shall be dumped or maintained within the control area after April 1 of each year; provided, however, in the case of onions sorted after such date, cull or waste onions shall not be dumped or maintained within the control area for longer than 24 hours after sorting;

(d) All onions in which, upon inspection, Aphid are found shall be removed from the control area within 48 hours of the written notice by the Department to the owner or person in charge of such onions of such infestation. The owner or person in charge of any building in which onions infested with Aphid are found, shall completely clean such building and adjoining buildings and premises of all onion bulbs following the removal of the infested onions;

(e) The owner or person in charge of any field shall remove all onions, including volunteer onions, remaining from the harvest of the preceding year in such field prior to April 1 of each year, or as the volunteer onions appear, after such date.

Stat. Auth.: ORS 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 575, f. 5-2-58, ef. 5-5-58

Control Area — Yellow Dwarf — Yamhill and Washington Counties

603-052-0355

Control Area — Yellow Dwarf — Yamhill and Washington Counties

(1) A control area is established within the boundaries described in section (2) of this rule, all in Yamhill and Washington Counties, for the protection of the onion industry against the introduction into or the spread within that area of yellow dwarf disease of onions.

(2) The area is described beginning at N.W. corner of section 2, Yamhill County, extending south between sections 2 and 3, approximately 27.75 chains to north line of Bridge farmer donation land claim at the N.W. corner of L.O. Griebler (or Taylor) 63 acre farm; thence southwesterly following the westerly line of said tract approximately 41 chains; thence south 75 degrees 21 minutes east 19.11 chains; thence south 70 degrees 50 minutes east 6.49 chains; thence south 23 degrees 27 minutes west 12.90 chains to center of County Road 269, 31.75 chains to the most southerly corner of the David Bridge farmer claim; thence easterly about 40 rods to the N.E. corner of the S.E. 1/4 of the N.W. 1/4 of section 11, Township 2 S., Range 4 W; thence south approximately 22 chains to center of County Road 268; thence easterly along center of said County Road approximately 12-1/2 chains to the westerly line of the Rose Crunican 100 acre tract; thence southerly along the westerly line of said Crunican tract approximately 19 chains to the S.W. Corner of said Crunican tract; thence east approximately 11.50 chains to the N.W. corner of the Frank Phillips tract; thence south along the west line of the Frank Phillips tract 20 chains to the south line of section 11; thence east along county road 267 approximately 14 chains to the S.E. corner of section 11; thence south along a line between sections 13 and 14, approximately 35 chains to the center of the State Highway; thence southwesterly along the line of the State Highway to a line between the Kate A. Branda (or G. and M. Anderson) Farm and the C.W. McConahey (or James H. and Florence M. Jones) farm; thence east along said line about 18 chains to the center of the old County Road 273; thence northeasterly along County Road 273 approximately 3/4 mile to the intersection with Market Road No. 4; thence southeasterly following center of Market Road No. 4 about 1 mile; thence easterly still following Market Road No. 4 about 1/2 mile to intersection of County Road 116; thence north-westerly along County Road 116 about 3/4 mile to north line of section 18 being terminus of County Road 116 in Yamhill County; thence continuing northerly in sections 7 and 6, Township 2S., Range 3 W., W.M. in the center of Washington County Road No. A-28 and A-83 to the intersection of County Road A-83 with east line of section 36, Township 1 S., Range 4 W., W.M.; thence north in the center of the County Road along the east line of said section 36 to the southerly terminus of County Road 269; thence northerly in the center of County Road 269 to the N.E. corner of said section 36; thence west along the north line of said section 36 approximately 3/4 mile to its intersection with the center of the Tualatin River; thence upstream in the center of said river to the west line of section 35, Township 1 S., Range 4 W., W.M.; thence south to the N.W. corner of section 2, Township 2 S., Range 4 W., W.M., and the place of beginning.

(3) The following methods of eradication and control are declared to be the proper methods to be used in the Control Area described in section (2) of this rule, to provide for the eradication from and prevention of the introduction into that area of yellow dwarf disease of onions:

(a) No onions may be produced within the Control Area except by the planting of seed. The production of onions by the use of green plants, onion sets, or bulbs is prohibited;

(b) All onion culls and waste onions shall be destroyed in a manner or by a method that will completely prevent growth, prior to March 1, or immediately after sorting in the case of any onions sorted after that date;

(c) All onions in common storage in which Aphid are found shall be removed from the Control Area prior to April 1, and such infested storage houses and adjoining premises shall be completely cleaned of all onion bulbs following such removal. All onions in such storage in which aphid are not found prior to April 1 shall be subject to reinspection, and if Aphid are found present shall be immediately removed from the district and the houses and premises shall be thoroughly cleaned;

(d) All onions remaining in fields within the Control Area after harvest shall be destroyed prior to November 1, of the current year, and in the event any remain in the field after this cleanup, they shall be removed and destroyed prior to March 1 of the following year;

(e) All onion bulbs remaining in seed producing areas within the Control Area shall be removed and destroyed prior to November 1.

(4) Any person, firm, or corporation that violates either in whole or in part, any of the provisions of this section, upon conviction shall be subject to the penalties provided in ORS 570.990.

Stat. Auth.: ORS 570
 Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
 Hist.: AD 204, f. 3-16-45, ef. 4-1-45; DOA 1-2006, f. & cert. ef. 1-13-06

Onion Maggot Control Area in Malheur County

603-052-0360

Control Area: Onion Maggot — Malheur County

(1) A control area is established within the boundaries of Malheur County for the protection of the onion industry by the eradication or control of the insect pest known as the onion maggot. This control area order is based on IPM principles first recognized and used by Malheur County growers in 1957.

(2) The following methods of eradication and control are declared to be the proper methods used in this control area order:

(a) All cull or waste onions in Malheur County shall be disposed of by a method approved by this control order prior to March 15 each year; for onions sorted after that date until July 1, the resulting cull and waste onions shall be disposed of within one week after such sorting;

(b) Disposal of cull or waste onions shall be accomplished only as set forth below:

(A) Disposal by covering in a dump site approved by the Oregon Department of Environmental Quality (DEQ). Culls and onion debris shall be dumped and covered by at least 12 inches of onion-free soil by March 15 each year;

(B) Disposal by animal feeding. Culls and onion debris shall be completely removed from feeding areas by March 15 and buried under 12 inches of onion-free soil. Onions tramped into the soil so they cannot be removed shall be plowed to a depth of 12 inches;

(C) Disposal by chopping or shredding. Chopped or shredded onion debris that is incapable of sprouting may be returned to the field at a tonnage rate no higher than the DEQ-approved rate of 80 tons per acre and plowed to a depth where no onion parts are exposed on the surface;

(D) Composting. All onion debris shall be incorporated into the compost bed and completely covered by 12 inches of onion-free soil;

(E) Disposal of residue in onion producing fields. Commercial onion fields where sort out bulbs are left at harvest shall be disked to destroy the bulbs and shall be plowed to a depth of at least 12 inches by March 15 each year. Seed bulbs shall be disposed of in the same manner following the last harvest. The owner of the field is ultimately responsible for compliance with this rule;

(F) If inclement weather prevents plowing, the culls will be treated with an EPA-labeled insecticide currently listed in the PNW Insect Control Handbook at prescribed intervals until proper disposal occurs.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
 Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
 Hist.: AD 590, f. 9-10-58, ef. 9-28-58; AD 784(8-64), f. 4-29-64, ef. 5-15-64; AD 4-1995, f. & cert. ef. 4-5-95; DOA 3-1999, f. & cert. ef. 1-29-99; DOA 1-2006, f. & cert. ef. 1-13-06; DOA 2-2007, f. & cert. ef. 1-30-07; DOA 7-2008, f. & cert. ef. 2-8-08; DOA 3-2009, f. & cert. ef. 2-13-09

Bean Disease Control Area; Malheur County

603-052-0385

Malheur County Bean Disease Control Area and Procedures

(1) As authorized by ORS 570.405 to 570.435, a control area is established for the protection of the bean seed industry in the following described area through the eradication or control of seedborne bacterial diseases, specifically: Halo Blight caused by *Pseudomonas syringae* pv. *phaseolicola*; Common Bean Blight caused by *Xanthomonas axonopodis* pv. *phaseoli* (= *X. campestris* pv. *phaseoli* and *Xanthomonas campestris* pv. *phaseoli* var. *fuscans*); Bacterial Brown Spot caused by *Pseudomonas syringae* pv. *syringae* (only strains virulently pathogenic to *Phaseolus* sp.); Bacterial Wilt caused

by *Curtobacterium flaccumfaciens* pv. *flaccumfaciens*; *Anthraconose* caused by *Colletotrichum lindemuthianum* (teleomorph = *Glomerella lindemuthiana*), soybean cyst nematode caused by *Heterodera glycines*, Asian soybean rust caused by *Phakopsora pachyrhizi*, or any variations or new strains of these diseases, which are recognized as virulently pathogenic and seedborne, and/or a potential threat to seed production, all of which are hereafter referred to as diseases of beans; such control area includes all of Malheur County, Oregon.

(2) The following methods of control are declared to be the proper methods to be used in the control area described in section (1) of this rule, for the control and prevention of the introduction of diseases of beans. All non-Phaseolus species beans, from whatever source, used for planting purposes within Malheur County must meet the requirements as dictated in Section 7 of this rule. All Phaseolus species bean seed from whatever source, used for planting purposes within Malheur County are subject to the following:

(a) Phaseolus species bean seed grown in Malheur County for planting in Malheur County:

(A) Shall be certified in accordance with the procedures and provisions of section (3) of this rule;

(B) Shall have a Malheur County planting certificate number assigned by the Department;

(C) Shall have been Departmentally inspected or bear approved tags; and

(D) Shall have been grown and inspected for two consecutive preceding generations in Malheur County under rill irrigation prior to growing under sprinkler irrigation.

(b) Imported bean seed grown west of the Continental Divide in the contiguous states:

(A) May not be grown under sprinkler irrigation in Malheur County;

(B) Must have an approved phytosanitary certificate from the state of origin affirming freedom from the diseases listed in section (1) of this rule, based on growing season and windrow inspection, this seed may be planted in Malheur County only with the prior approval of the Department and provided that each field planted within Malheur county is submitted for Departmental inspections; and

(C) Shall successfully pass standard testing methods conducted by the Department from officially drawn samples; except

(D) Idaho grown bean seed shall be exempt from the requirements of this paragraph provided that:

(i) It has been certified for in-state planting by the Idaho State Department of Agriculture;

(ii) It bears Idaho State Department of Agriculture inspected or approved tags;

(iii) It is certified by the Idaho State Department of Agriculture or their official cooperator to have been grown and inspected for two consecutive preceding generations in Idaho under rill irrigation prior to planting for growing under sprinkler irrigation in Malheur County;

(iv) Imported bean seed grown east of the Continental Divide in the contiguous states or in foreign countries or otherwise ineligible for planting in Malheur County may be planted in Malheur County only on Departmentally approved Trial Grounds, and are subject to the provisions of section (6) of this rule.

(3) All bean fields in Malheur County shall be subject to entry and inspection by the Department. Growing season inspections of all bean fields shall be done as many times as deemed necessary by the Department, in accordance with the following:

(a) Bean fields grown for seed to be certified for planting in Malheur County shall be inspected by the Department during the growing season and in the windrow, including:

(A) Such bean fields grown under rill irrigation shall be inspected a minimum of one time during the growing season before plants mature seed, and again in the windrow;

(B) Such bean fields grown under sprinkler irrigation shall be inspected a minimum of two times during the growing season before plants mature seed, and once in the windrow; and,

(C) The tolerance for the diseases (identified in section (1) of this rule) in any field or part thereof for seed to be certified for planting in Malheur County shall be zero.

(b) Bean crops requiring field inspections to qualify for phytosanitary certifications shall be subject to the same inspection requirements and tolerances as set forth in subsection (a) of this section;

(c) Oregon State University certification inspections may replace the Departmental inspections for certification of seed for planting in Malheur County, if appropriate growing season and windrow inspection requirements as set forth in subsection (a) of this section are met;

(d) Every grower, seed company, or handler of bean seed for planting crops to be grown in Malheur County shall submit his written request to the Department to make the inspections required under this Bean Disease Control Area Order, on or before July 1 of each year. Such written request shall include acreage, general location of field, method of irrigation, name and address and telephone number of applicant.

(4) Eradication methods used shall only be those approved by the Department, including:

(a) Any bean seed found or known to be contaminated with disease which is now within the boundaries of Malheur County shall not be planted in Malheur County;

(b) Any bean fields within the boundaries of Malheur County which show contamination of disease shall be destroyed in part or in total as may be required to eliminate the presence of disease in the field, by and at the expense of the grower, or landlord, or his authorized agents. The Department shall notify the grower, or landlord, or his authorized agents, of the method and extent of destruction and any safeguards to be taken against disease spread;

(c) The true identity of a regulated disease on growing plants or plants in the windrow will be based upon the observance of symptoms of a regulated disease and, when necessary to establish identity or pathogenicity, standard testing methods to be conducted by the Department, including:

(A) The definitive verification of identity or pathogenicity shall include isolation of the suspected pathogen and inoculation of seedlings of a known susceptible host;

(B) Until verification of the suspected pathogen is completed the involved planting shall be placed under quarantine for a period of 30 days subject to review or extension as determined by the Department, and entry to the quarantined area shall be restricted to the grower, his agents, the Departmental officials, or persons authorized in writing by the Department, who shall be required to take all necessary sanitary precautions, as prescribed by the quarantine order, to safeguard against the possible spread of the suspected regulated disease; and

(C) The true identity of a regulated disease when found in or on seed shall be based on standard laboratory testing methods, the positive results of which shall be conclusive that the plants are subject to this control order, unless the owner of the seed requests verification of pathogenicity to be performed at his expense.

(d) When any regulated disease is verified by the Department, the grower or seed company shall be notified by the Department of such findings, and shall have 48 hours to view the involved planting or laboratory results prior to any action being taken by the Department.

(5) Exemption and special situations to these requirements are as follows:

(a) Any commercial or garden beans first found infected during windrow inspection, are exempt from destruction if the diseased portion of the field and an appropriate buffer area (not less than a 50-foot radius) surrounding the infected site are promptly destroyed;

(b) Beans for processing or fresh consumption are exempt from destruction if the diseased portion of the field is destroyed or harvested within five days after first detection or laboratory verification of the disease, and the crop residue is promptly and completely plowed under after harvest;

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(c) A field contaminated with brown spot (*P. syringae* pv. *syringae*) may be eligible for a Special Permit as dictated in Section 8 of this rule and at the discretion of the Department.

(6) Trial Grounds are defined as parcels of land approved by the Department to be set aside for research, testing, or increase of: bean seed grown on Trial Grounds in Malheur County during previous seasons; bean seed eligible for planting in Malheur County; or bean seed otherwise ineligible for planting within the Malheur County. Trial Grounds shall be utilized in accordance with the following:

(a) They shall be under the supervision of technically trained personnel approved by the Department;

(b) The land upon which they are situated shall be owned or leased by the grower and, if leased, a copy of the lease shall accompany the application for approval;

(c) Applications for approval shall be submitted to the Department prior to May 20 of any year and shall contain:

(A) The name of supervisor in charge;

(B) The location and size of the Trial Ground; and

(C) A detailed varietal planting plan (if the original planting plan is changed, the Department shall be notified).

(d) An applicant may have more than one Trial Ground approved, provided a separate application is submitted for each Trial Ground and provided it meets the requirements of this section;

(e) Any seed grown on Trial Grounds to be released to farmer growers for replanting within Malheur County or requiring phytosanitary certification shall meet the inspection requirements of section (3) of this rule;

(f) All information submitted with the approval applications shall be deemed to be confidential under ORS 192.500(1)(b) and (c);

(g) Experimental Plots are defined as subdivision areas within Trial Grounds used for the introduction of imported seed otherwise ineligible for planting in Malheur County. A maximum of one pound of bean seed per variety may be planted in an Experimental Plot without standard testing, except as noted in this section;

(h) Introduction Plots are defined as subdivision areas within Trial Grounds used for the introduction or increase of imported bean seed grown east of the Continental Divide or in foreign countries, imported bean seed from west of the Continental Divide not meeting the requirements of section (2) of this rule, any bean seed previously grown in Malheur County, or any bean seed eligible for planting in Malheur County. A maximum of two (2) acres per variety in any given year may be planted in an Introduction Plot. Imported seed shall have successfully passed standard testing methods conducted by the Department from officially drawn samples prior to planting. Only one Introduction Plot may be maintained by a holder of more than one approved Trial Ground;

(i) Trial Grounds shall be subject to the following restrictions and inspection procedures:

(A) All machinery used in production of bean seed on Trial Grounds shall be disinfected to the satisfaction of the Department prior to the movement to other bean field;

(B) There shall be a minimum of four growing season and one windrow inspection, by the Department, for which the fees and charges will be \$7.50 per acre (or fraction thereof) per inspection of seed from east of the Continental Divide or foreign countries; and \$3.50 per acre (or fraction thereof, see OAR 603-045-0315) per inspection of seed from west of the Continental Divide; and

(C) If disease is found on Trial Ground, none of the seed produced on that Trial Ground may be certified but shall under go one additional year of Trial Ground growing to assure that contamination did not occur.

(7) Non-Phaseolus species beans grown in Malheur County for planting must meet the following conditions:

(a) Requirements for planting non-Phaseolus species beans in Malheur County:

(A) Malheur County origin seeds are from a lot that has been inspected in accordance with these rules and has been issued official inspected or approved tags;

(B) Idaho-grown non-Phaseolus species bean seed shall be exempt from the requirements of this paragraph provided that:

(i) It has been certified for in-state planting by the Idaho State Department of Agriculture;

(ii) It bears Idaho State Department of Agriculture inspected or approved tags;

(iii) It is certified by the Idaho State Department of Agriculture or their official cooperators as having been inspected in the growing season and pre-harvest or in the windrow for diseases of bean.

(C) Imported seed from areas other than Idaho must be certified and issued official tags by the seed certification agency of the state of origin and be accompanied by an official state phytosanitary certificate verifying the seed was inspected, tested, and found free of diseases of bean.

(b) Every grower, seed company, or handler of non-Phaseolus species bean seed for planting crops to be grown in Malheur County shall submit his written request to the Department to make growing season and pre-harvest or windrow inspections on or before July 1 of each year. Such written request shall include acreage, general location of field, method of irrigation, name and address and telephone number of applicant.

(c) The tolerance for the diseases of bean in any field or part thereof for non-Phaseolus bean seed to be certified for planting in Malheur County shall be zero. Eradication of said diseases of bean shall be performed as described in section (4) of this rule.

(8) Special Permits: The Department, upon receipt of an application in writing, may issue a Special Permit allowing movement into this state, or movement within this state, of regulated commodities not otherwise eligible for movement under the provisions of this quarantine order. Movement of such commodities will be subject to any conditions or restrictions stipulated in the Special Permit, and these conditions and restrictions may vary depending upon the intended use of the commodity and the potential risk of escape or spread of the regulated pests as described in Section 1 of this rule.

(9) Review of quarantine: The Department and other interested parties shall review the quarantine requirements biennially for accuracy and effectiveness.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 5-1978, f. 5-17-78, ef. 6-10-78; DOA 9-2005, f. & cert. ef. 2-15-05; DOA 1-2006, f. & cert. ef. 1-13-06; DOA 13-2014, f. & cert. ef. 8-20-14; DOA 8-2015, f. & cert. ef. 5-29-15

Potato Disease Control Area; Wallowa County

603-052-0390

Wallowa County Potato Disease Control Area and Procedures

(1) As authorized by ORS 570.405 to 470.435 a control area is established for the protection of the seed potato industry in Wallowa County against the introduction and spread of potato diseases, including viruses and pests. Such area includes all of Wallowa County, Oregon.

(2) The following methods are to be used in the control area described in section (1) of this rule for the control of potato diseases and pests within the control area and to prevent the introduction of such diseases and pests into Wallowa County:

(a) All potato seed imported into the control area shall have a Federal-State Shipping Point inspection and certification prior to entering the control areas;

(b) All potato seed planted in the control area for the purpose of producing commercial or seed quality potatoes shall be of a quality which meets the minimum requirements of the Oregon State University potato seed certification standards for Generation III, VT-SC Stock established via stem-cutting, and must be eligible for recertification in the growing area. Recertification quality shall be based on a winter test and must meet the Oregon State University potato seed certification standard for Generation III, VT-SC winter test tolerances;

(c) All potato seed sold in the control area for the purpose of home garden or noncommercial potato production shall be of a quality which meets the minimum requirements of the Oregon State University potato seed certification standards for Oregon Foundation Class;

(d) Copies of all certification tags and shipping point certificates shall be forwarded to the Department for final approval of potato seed stock intended for use in the production of commercial or seed quality potatoes within the control area; and

(e) All cull potatoes accumulated at the time potatoes are dug and moved into storage shall be destroyed within 30 days thereof, and all cull potatoes accumulated during shipment process shall also be destroyed within 30 days thereof.

(3) Exceptions to the requirements specified in subsection (2)(b) of this rule shall be permitted only when planting stock of the quality specified in said subsection is not available for certain potato varieties. Varieties or clones considered under this exception shall be converted to the requirements set forth in subsection (2)(b) of this rule as soon as seed stock is available. Potato seed intended for use in production of commercial or seed quality potatoes which do not meet the recertification requirements of subsection (2)(b) of this rule are subject to the following limitations:

(a) Written approval to plant such potato seed stock shall be secured from the Department prior to planting in the control area;

(b) Such potato seed stock shall be limited to no more than twenty cwt. for any one variety, and for each cwt. of such variety planted at least ten tubers must be virus-tested in accordance with standards established under the Oregon State University seed potato certification program, and such variety of potato seed stock shall be brought up to the Oregon State University potato seed certification standards for Generation III, VT Stock within three years;

(c) All such potato seed stock shall be planted in accordance with the following procedures:

(A) Tuber Unit: a tuber unit shall consist of two or more seed pieces produced from a single tuber. The seed pieces so produced from a single tuber shall be planted in successive hills in the seed row with two or more hills skipped between tuber units;

(B) Single Drops: uncut single tubers selected from the allowable twenty cwt. may be planted as single drops provided that the single drop planting area is clearly marked within the field.

(4) Persons subjected to subsection (2)(b) of this rule shall have three years within which to convert their seed stock programs so as to meet the requirements set forth in said subsection, and seed stock used for the 1983 planting season shall meet the requirements of subsection (2)(b) of this rule.

(5) Any violation of this rule shall be deemed to be a violation of ORS 570.410 and subject the violator to the penalty provisions of ORS 570.990. Additionally, any potato seed found to be in violation of this rule shall be destroyed or disposed of in a manner prescribed by the Department.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 415

Hist.: AD 3-1980, f. 4-22-80, ef. 5-12-80

Potato Disease Control Area; Union County

603-052-0395

Union County Potato Disease Control Area and Procedures

(1) As authorized by ORS 570.305 and 570.405, a control area is established for the protection of the seed potato industry in Union County against the introduction and spread of potato diseases, including viruses and pests. Such area includes all of Union County, Oregon north of the Craig Mountain Range: i.e. all of Union County north of a west to east line starting at the intersection of the Western border of Union County and the northern border of T4S R34E sec 34 and continuing due east to the eastern border of Union County at the northern border of T4S R43E sec 31.

(2) The following methods are to be used in the control area described in section (1) of this rule for the control of potato diseases and pests within the control area and to prevent the introduction of such diseases and pests into Union County:

(a) All potato seed imported into the control area shall have a Federal-State Shipping Point inspection and certification prior to entering the control area;

(b) All potatoes planted in the control area for the purpose of producing seed quality or commercial potatoes shall meet the min-

imum disease tolerances of OSU Potato Seed Certification Standards for generation 2 (field year 3) stock and must be eligible for re-certification in the growing area based upon a winter grow-out test. All production larger in scope than a home garden (potatoes not grown for re-sale in commercial markets are considered home garden or noncommercial potato production) must be entered into the OSU Seed Certification Program as a seed production field or into the Uncertified Field Inspection Program as a commercial production field;

(c) All potato seed sold in the control area for the purpose of home garden or noncommercial potato production shall be of a quality that meets the minimum requirements of the Oregon State University potato seed certification standards for Oregon G4 or earlier generations;

(d) All cull potatoes accumulated at the time potatoes are dug and moved into storage shall be destroyed within 30 days, and all cull potatoes accumulated during shipment process shall also be destroyed within 30 days;

(e) Diseases, such as potato late blight, or viruses vectored by aphids require preventative management. Therefore, appropriate control measures are required throughout the growing season to prevent late blight infection or buildup of insects that vector viruses. Specific ways to prevent these problems require using widely accepted methods such as found in the Pacific Northwest Disease/Insect Management Handbooks, or as recommended by local experts in disease/insect control.

(f) All farm equipment related to potato production (used to till and level farm ground or handle potatoes), must be steam cleaned or power washed to remove all soil and plant debris before entering the control area.

(3) Potatoes in transit through the control area shall be in containers or vehicles covered or sealed to prevent lost of tubers or soil.

(4) Destruction of volunteer potatoes. Each grower within the control area is responsible for destroying volunteer potatoes growing on summer fallow, set-aside, non-cultivated, and rotational crop areas of the grower's property. In the event that the grower fails to destroy such plants, the Director may order them destroyed at the expense of the grower. Volunteers in rotation crops should be controlled in the best way possible.

(5) Potatoes in home gardens may be subject to inspection by the Oregon Department of Agriculture should the need arise, and effective control measures shall be taken if necessary.

(6) Any violation of this rule shall be deemed to be a violation of ORS 570.410 and subject the violator to the penalty provisions of ORS 570.990 and 570.995, including civil penalties of up to \$10,000. Additionally, any potato seed found to be in violation of this rule shall be destroyed or disposed of in a manner prescribed by the Department. The grower shall pay the cost of destruction.

Stat. Auth.: ORS 561.190, 570.305 & 570.405

Stats. Implemented: ORS 571.057

Hist.: DOA 10-2008, f. & cert. ef. 2-28-08

Cherry Bark Tortrix Quarantine

603-052-0450

Quarantine; Cherry Bark Tortrix

(1) Establishing a Quarantine. A quarantine is established against the pest known as cherry bark tortrix, *Enarmonia formosana* (Scopoli).

(2) Areas Under Quarantine. The entire state of Washington, the province of British Columbia, and any other state, territory or province where the presence of an established population of cherry bark tortrix is confirmed and effective eradication procedures have not been implemented, as determined by the Director of the Oregon Department of Agriculture. In Oregon, Multnomah and Clackamas counties.

(3) Commodities Covered. The cherry bark tortrix, *Enarmonia formosana* (Scopoli); host plants of the cherry bark tortrix, including all species of the genera, *Crataegus*, *Cydonia*, *Malus*, *Prunus*, *Pyracantha*, *Pyrus* and *Sorbus*; and unseasoned firewood derived from trees of these host plant genera. Uninfested nursery stock plants of these genera that are less than two inches in diameter are exempted from the quarantine.

(4) Restrictions. Regulated commodities shall not be shipped or moved directly or indirectly from the regulated areas into the state of Oregon unless accompanied by a permit or certificate issued by a state or federal agriculture official from the regulated area and based upon the following conditions:

(a) The regulated plants have been grown in a screened greenhouse or screenhouse adequate to exclude the adults of cherry bark tortrix; or

(b) Such regulated plants have been treated in accordance with a fumigation schedule approved in writing by the Director of the Oregon Department of Agriculture; or

(c) Each dormant, defoliated, regulated host plant shall be inspected by an authorized agricultural official of the regulated state or province for the presence of cherry bark tortrix and found free of any evidence of infestation by that pest;

(d) Portions of states or provinces listed in the area under quarantine may have counties that are not infested with cherry bark tortrix. Shipments of covered commodities may be accepted from these noninfested counties if annual surveys are made in such counties and the results of such surveys are negative for cherry bark tortrix. A list of counties so approved will be maintained by the Oregon Department of Agriculture. Agricultural officials of a quarantined state or province may recommend a noninfested county be placed on the approved county list by writing for such approval and giving the following information: areas surveyed, how the survey was carried out, personnel involved and, if the county was previously infested, date of last infestation. If heavy infestations occur in neighboring counties, approval may be denied. To be maintained on the approved list, each county must be reapproved every twelve (12) months. Shipments of and covered commodities from noninfested counties will only be allowed entry into Oregon if the uninfested county has been placed on the approved list prior to the arrival of the shipment in Oregon.

(5) Persons shipping regulated commodities into the state of Oregon must comply with Oregon's notification requirement for imported tree and shrub nursery stock, OAR 603-054-0027.

(6) The person to whom the regulated commodities are shipped shall hold the articles until they are inspected and released by a duly appointed inspector of the state of Oregon.

Stat. Auth.: ORS 561.190, 561.510 - 561.600 & 570.305
 Stats. Implemented: ORS 561.190, 561.510 - 561.600 & 570.305
 Hist: AD 6-1996, f. & cert. ef. 6-10-96; DOA 7-2005, f. & cert. ef. 2-15-05; DOA 2-2007, f. & cert. ef. 1-30-07

Rust-Resistant Varieties of Barberry, Mahonia, and Mahoberberis

603-052-0825

Hazelnut Nursery Stock Control Area

(1) A control area is established as authorized under ORS 561.510 and 570.405 to protect Oregon's hazelnut industry from the introduction of Eastern filbert blight, caused by the fungus *Anisogramma anomala*. Eastern filbert blight causes stem cankers in ornamental and commercial hazelnuts leading to a decline in productivity and eventual death of the plant. Eastern filbert blight does occur in the Pacific Northwest but new commercial varieties of hazelnut are resistant to the local strain. However, a more virulent strain of Eastern filbert blight occurs in other areas that would have a severe impact on Oregon's ornamental and commercial hazelnut industries if it were introduced into Oregon. The strains of Eastern filbert blight cannot be readily distinguished by standard laboratory testing methods.

(2) This control area includes the entire state of Oregon.

(3) The following definitions apply to ORS 603-052-0825:

(a) "Hazelnut plants" means plants and plant parts of *Corylus* species.

(b) "Pest Free Area" means an area where Eastern filbert blight does not occur as demonstrated by scientific evidence and, where appropriate, this condition is being officially maintained.

(c) "Director" means the director of the Oregon Department of Agriculture or the director's authorized representative.

(d) "Micropropagate" means plant propagation using aseptic laboratory techniques and an artificial culture medium.

(4) To prevent the introduction of Eastern filbert blight, hazelnut plants shown to be a host of Eastern filbert blight that are imported into the control area must meet at least one of the following conditions. A phytosanitary certificate with an additional declaration corresponding to one of the options below is required.

(a) The hazelnut plants must originate from a pest free area.

(b) The importer of the hazelnut plants agrees to the following conditions:

(A) A maximum of 25 plants of each cultivar will be imported.

(B) The plants will be segregated in a greenhouse or similar secure location for a post-entry quarantine period of two (2) years.

(C) An official inspector will inspect the plants twice per year during the post-entry quarantine period. At least one inspection will take place during the dormant season. Plants that pass all inspections will be released from post-entry quarantine with no further restrictions. Plants on which Eastern filbert blight is detected must be destroyed immediately at the importer's expense.

(c) The importer of the hazelnut plants will import a maximum of 25 plants of each cultivar for the specific purpose of micropropagation. The micropropagated plants may be released from post-entry quarantine provided an official inspection reveals no evidence of disease while the plants are growing in the artificial culture medium. Parent plants must be maintained as described in (4)(b) or destroyed.

(d) The hazelnut plants are micropropagated and are shipped in an artificial culture medium in sealed containers.

(e) Hazelnut nuts must be free of green twigs and other green plant debris before being imported into the control area. Notification and phytosanitary certificates are not required for shipments of hazelnut nuts.

(5) Notification of regulated commodity shipment is required. The shipper shall mail, FAX or e-mail documents including the phytosanitary certificate of compliance, listing the type and quantity of plants, address of shipper, address of recipient, test results, contact numbers to: Nursery Program Supervisor, Plant Division, Oregon Department of Agriculture, 635 Capitol Street NE, Salem, Oregon 97301; FAX 503-986-4786; e-mail: quarantine@oda.state.or.us. The department may require that shipments be held until inspected and released. In addition, field grown plants may be required to be held for up to two years so they can be inspected for the disease as necessary before final release. ODA will contact importers within one business day of the receipt of notification, if the hazelnut plants must be held for inspection.

(6) Violation of the control area may result in a fine, if convicted, of not less than \$500 nor more than \$5,000 as provided by ORS 561.990. Violators may also be subject to civil penalties of up to \$10,000 as provided by 570.410, 570.990, and 570.995; nursery license suspension or nursery license revocation. Commodities shipped in violation may be treated, destroyed or returned to their point of origin at the importer's expense.

(7) The need for this control area and its effectiveness will be reviewed by the department and other interested parties biennially.

Stat. Auth.: ORS 570.405?
 Stats. Implemented: ORS 561.510
 Hist.: DOA 22-2008, f. & cert. ef. 10-16-08; DOA 5-2014, f. & cert. ef. 4-29-14

Commercial Potatoes to be Grown from "Certified Seed"

603-052-0830

Commercial Potatoes Produced in Oregon to be Grown from "Certified Seed"

(1) As authorized by ORS 570.405 to 570.435, a control area is established for the protection of the Oregon potato industry against the introduction and spread of serious bacterial, fungal, viral, and nematode diseases of potatoes. Such control area includes all of the state of Oregon.

(2) The following methods of control are declared to be proper methods to be used in the control area described in section (1) of this rule:

(a) All commercial potato plantings in Oregon in excess of one acre in size shall be propagated from “certified seed” only;

(b) All Oregon potato growers shall be responsible for obtaining proper certification documents or tags to verify that all seed potatoes used for potato propagation comply with this rule. Such documents shall be retained by the grower for one calendar year and shall be provided to the Oregon Department of Agriculture upon written request for such documentation. Such documentation shall include the total weight of certified seed potatoes received by the grower in questions, and shall be issued only by a legal certifying agency in the state or country of origin. Falsification of seed potato certification documents shall be deemed to be in violation of ORS 570.410;

(c) Oregon Department of Agriculture officials may sample any potato seed lot for the purpose of testing and verification of compliance with “certified seed” only standards. Such department official may enter any potato field for the purpose of conducting inspections which may be required to carry out this rule;

(d) Definitions: “Certified seed” shall be limited to seed which meets those standards established for “certified seed” by the representing agency officially recognized by the state or country of origin.

(3) Exceptions to the “certified seed” only requirement may be permitted by the Director of the Oregon Department of Agriculture when availability of “certified seed” does not allow compliance with this rule. Such exceptional permit shall be obtained prior to planting. Specific requirements may be stipulated in the Director’s permit.

(4) Any violation of this rule shall be deemed to be a violation of ORS 570.410 and may subject the violator to the penalty provisions of 570.990.

Stat. Auth.: ORS 561 & 570
 Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
 Hist.: AD 5-1990, f. & cert. ef. 3-19-90

Brassicaceae Production Districts

603-052-0860

Brassicaceae Production Districts and Rapeseed Control Areas

As provided in ORS 570.405 and 570.450, the Oregon Department of Agriculture may establish control areas for the production of Brassicaceae so as to protect against plant diseases, plant pests or other conditions as may constitute a menace to the horticultural, agricultural or forest industries of Oregon. The Department may also establish the conditions for the production of Brassicaceae including rapeseed, for the general protection of the horticultural, agricultural or forest industries of Oregon by excluding from established control areas Brassica spp. or rapeseed plants that if, not managed in accordance with these rules, may be a menace to such areas and generally to horticultural, agricultural or forest industries.

Stat. Auth.: ORS 561.190, 570.405, & 570.450
 Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415 & 570.450
 Hist.: AD 19-1990, f. & cert. ef. 10-15-90; AD 7-1991(Temp), f. & cert. ef. 7-22-91; AD 19-1991, f. & cert. ef. 12-5-91; DOA 18-2005, f. & cert. ef. 10-28-05; DOA 14-2009, f. & cert. ef. 9-16-09; DOA 3-2010, f. & cert. ef. 1-21-10; DOA 24-2012(Temp), f. & cert. ef. 8-10-12 thru 1-31-13; DOA 1-2013, f. & cert. ef. 2-6-13; DOA 11-2013, f. & cert. ef. 10-21-13; DOA 1-2015, f. & cert. ef. 1-13-15

603-052-0861

General Production Area/Protected Districts

The seeding and growing of Brassicaceae by any person for any purpose in the state of Oregon shall be subject to the regulations of the general production area and, if applicable, a protected district as described in these rules. The Willamette Valley Protected District as described in HB 2427 (2013) is governed by 2013 Oregon Laws Chapter 724.

Stat. Auth.: ORS 561.190, 561.510-561.600, 570.305, 570.405, 570.410-570.415 & 570.450
 Stats. Implemented: ORS 570.405-570.415 & 570.450
 Hist.: DOA 1-2013, f. & cert. ef. 2-6-13; DOA 11-2013, f. & cert. ef. 10-21-13; DOA 1-2015, f. & cert. ef. 1-13-15

603-052-0862

Definitions

Unless the context requires otherwise, the following terms are defined as indicated:

(1) “Blackleg” means the disease of crucifer crops and Brassicaceae species caused by the fungi *Leptosphaeria maculans* (asexual stage = *Phoma lingam*) and *Leptosphaeria biglobosa*.

(2) “Brassicaceae” means any genera and species in the plant family Brassicaceae including, but not limited to, all species of *Brassica* and *Sinapis*, and *Raphanus sativus*.

(3) “Cover crop brassica” means any species of Brassica that is grown as a cover crop and is not allowed to flower.

(4) “Department” means the department of agriculture of the state of Oregon.

(5) “Director” means the director of the department or the Director’s duly authorized representative.

(6) “Forage brassica” means any species of Brassica that is grown for animal/livestock feed and is not allowed to flower.

(7) “Person” means an individual, firm, partnership, corporation, company, society, association, cooperative, two or more persons having a joint or common interest, or any unit or agency of local, state, or federal government.

(8) “Producer” means any person who is the owner, tenant, or operator of land who has an interest in, and is entitled to receive all or any part of the proceeds from the sale of any commodity produced on that land.

(9) “Rapeseed “ means plants of the species *Brassica napus*, *Brassica rapa*, *Brassica juncea*, or other Brassica species grown for the purpose of edible or industrial oil production. Canola is a rapeseed and means any plant of the genus Brassica in which seeds having a high oil content are the primary economically valuable product and that have a high erucic acid content suitable for industrial uses or a low erucic acid content suitable for edible oils.

(10) “Field” For the purpose of this rule a field may include one or more contiguous plots of land managed as a single unit. These plots may be separated by an unimproved farm road, ditch or hedgerow.

Stat. Auth.: ORS 561.190, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415 & 570.450
 Stats. Implemented: ORS 570.405 - 570.415 & 570.450
 Hist.: DOA 1-2013, f. & cert. ef. 2-6-13; DOA 11-2013, f. & cert. ef. 10-21-13; DOA 1-2015, f. & cert. ef. 1-13-15

603-052-0870

General Production Area

All lands in Oregon constitute the General Production Area for the purposes of controlling pests and diseases of Brassicaceae. With the exception of prepackaged seed lots of Brassicaceae of one-half (0.5) ounce or less for home use and transplants for home use, Brassicaceae production in the General Production Area is subject to the following best management practices:

(1) All Brassicaceae seed stock intended for commercial planting that trades in commerce in the General Production Area must be accompanied by an official test stating that the untreated seed is free from blackleg (*Leptosphaeria maculans*); and

(2) All Brassicaceae seed stock must also be treated prior to planting. Treatment methods approved by the Department for blackleg control include:

(a) Hot water treatment for 25- to 30-minutes at 50°C (122°F); and

(b) Treatment with a fungicide registered for the purpose of treating Brassicaceae seed for blackleg control.

(3) To prevent buildup of blackleg, blackrot, and other diseases and pests, Brassicaceae may not be grown on the same plot of land in two consecutive years or not more than two years in every five.

(4) Brassicaceae crops grown in the General Production Area but transported into or through protected districts are subject to the transport and other requirements of the protected district through which the Brassicaceae is transported.

(5) Any volunteer or uncontrolled Brassicaceae in and around production fields must be rogued out or otherwise eliminated by the producer.

(6) Fields in which blackleg (*Leptosphaeria maculans*) has been detected and officially confirmed by the Department must be treated in a manner approved by the Department. The Department shall issue a treatment plan to the producer in the form of an Administrative Directive. Such treatments shall be at the expense of the producer or producers, or their responsible agent or agents. The treatment plan may include some or all of the following activities:

- (a) Foliar fungicide applications;
- (b) Roguing out infected plant materials;
- (c) Post-harvest residue management;
- (d) Crop destruction.

(7) The Department and other interested parties shall review these General Production Area requirements biennially for accuracy and effectiveness.

NOTE: Information on laboratories in Oregon approved by the Department for conducting official seed tests is available from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, 503-986-4620.
 Stat. Auth.: ORS 561.190 & 570.405
 Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415 & 570.450
 Hist.: AD 19-1990, f. & cert. ef. 10-15-90; AD 7-1991(Temp), f. & cert. ef. 7-22-91; DOA 18-2005, f. & cert. ef. 10-28-05; DOA 14-2009, f. & cert. ef. 9-16-09; DOA 24-2012(Temp), f. & cert. ef. 8-10-12 thru 1-31-13; DOA 1-2013, f. & cert. ef. 2-6-13; DOA 11-2013, f. & cert. ef. 10-21-13; DOA 1-2015, f. & cert. ef. 1-13-15

603-052-0880

Protected Districts; Prohibitions

(1) Growth of rapeseed seed crops for edible or industrial oil production requires special care and isolation. Rapeseed may be grown within the following protected districts only in accordance with those rules governing each protected district, except that rapeseed grown in the Willamette Valley Protected District as described in HB 2427 (2013) is governed by 2013 Oregon Laws Chapter 724. The following are protected districts:

- (a) Willamette Valley Protected District;
- (b) Central Oregon Protected District;
- (c) Northeast Oregon Protected District;
- (d) Malheur/Idaho Protected District.

(2) No person shall violate any provision of those rules governing each protected district.

Stat. Auth.: ORS 561.190, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415 & 570.450
 Stats. Implemented: ORS 570.405 - 570.415 & 570.450
 Hist.: AD 19-1990, f. & cert. ef. 10-15-90; AD 7-1991(Temp), f. & cert. ef. 7-22-91; AD 19-1991, f. & cert. ef. 12-5-91; DOA 18-2005, f. & cert. ef. 10-28-05; DOA 1-2008, f. & cert. ef. 1-7-08; DOA 14-2009, f. & cert. ef. 9-16-09; DOA 3-2010, f. & cert. ef. 1-21-10; DOA 24-2012(Temp), f. & cert. ef. 8-10-12 thru 1-31-13; DOA 1-2013, f. & cert. ef. 2-6-13; DOA 11-2013, f. & cert. ef. 10-21-13; DOA 1-2015, f. & cert. ef. 1-13-15

603-052-0882

Willamette Valley Protected District

This Willamette Valley Protected District as described in HB2427 (2013) is governed by 2013 Oregon Laws Chapter 724. The Willamette Valley Protected District is as provided in the Oregon Department of Agriculture's (2013) map available from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, 503-986-4552.

Stat. Auth.: ORS 561.190, 570.305, 570.405, 570.412, 570.415 & 570.450
 Stats. Implemented: 2013 HB 2427, ORS 570.305, 570.405, 570.410, 570.412, 570.415 & 570.450
 Hist.: DOA 1-2013, f. & cert. ef. 2-6-13; DOA 11-2013, f. & cert. ef. 10-21-13; DOA 9-2014(Temp), f. & cert. ef. 7-7-14 thru 1-3-15; DOA 1-2015, f. & cert. ef. 1-13-15

603-052-0884

Central Oregon Protected District

(1) The following area is designated as the Central Oregon Protected Area: the entire counties of Crook, Deschutes and Jefferson.

(2) Forage brassica and cover crop brassica may be grown but shall not be allowed to flower.

(3) Rapeseed seed crops are prohibited in the Central Oregon Protected District except under Research Permit (see 603-052-0901(1)). All rapeseed grown under research permit must meet the following conditions:

(a) Within the Central Oregon Protected District the required isolation distance shall be not less than three miles;

(b) The location of all rapeseed fields must be recorded at the appropriate Oregon State University County Extension Office at least ten days prior to planting;

(c) All planting, harvest, and transportation equipment shall be cleaned to prevent any inadvertent spread of rapeseed from the field;

(d) All unbagged loads of rapeseed transported within the protected district must be in enclosed bins or in containers lined and covered in a manner to prevent seed loss; and

(e) Any volunteer or uncontrolled rapeseed in or around production fields must be prevented from flowering by the producer.

Stat. Auth.: ORS 561.190, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415 & 570.450
 Stats. Implemented: ORS 570.405 - 570.415 & 570.450
 Hist.: DOA 1-2013, f. & cert. ef. 2-6-13; DOA 11-2013, f. & cert. ef. 10-21-13; DOA 1-2015, f. & cert. ef. 1-13-15

603-052-0886

Northeast Oregon Protected District

(1) The following area is designated as the Northeast Oregon Protected District: the entire counties of Baker, Union and Wallowa, except the following part of Wallowa County which is designated as a general production area: Township 4N, Range 43E; Township 4N, Range 44E; Township 4N, Range 45E; Township 5N, Range 43E; Township 5N, Range 44E; and Township 5N, Range 45E; and those portions of Township 6N, Range 43E; Township 6N, Range 44E; and Township 6N, Range 45E falling within the State of Oregon.

(2) Forage brassica and cover crop brassica may be grown but shall not be allowed to flower.

(3) Rapeseed seed crops are allowed in the Northeast Oregon Protected District subject to the following requirements:

(a) Within the Northeast Oregon Protected District the required isolation distance from any crops with which rapeseed could cross-pollinate shall be not less than two miles;

(b) The location of all rapeseed fields must be recorded at the appropriate Oregon State University County Extension Office at least ten days prior to planting;

(c) All planting, harvest, and transportation equipment shall be cleaned to prevent any inadvertent spread of rapeseed from the field;

(d) All unbagged loads of rapeseed transported through or within the protected district must be in enclosed bins or in containers lined and covered in a manner to prevent seed loss; and

(e) Any volunteer or uncontrolled rapeseed in or around production fields must be prevented from flowering by the producer.

Stat. Auth.: ORS 561.190, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415 & 570.450
 Stats. Implemented: ORS 570.405 - 570.415 & 570.450
 Hist.: DOA 1-2013, f. & cert. ef. 2-6-13; DOA 11-2013, f. & cert. ef. 10-21-13; DOA 1-2015, f. & cert. ef. 1-13-15

603-052-0888

Malheur/Idaho Protected District

(1) The following area is designated as the Malheur/Idaho Protected District: in Malheur County, a 3-mile wide strip of land along the Idaho border from the point where Payette County, Idaho's northern border intersects Malheur County's eastern border, south to the point where Highway 95 crosses the Oregon border. This strip of land borders Idaho's rapeseed production district IV (IDAPA 02.06.13) where rapeseed production is prohibited. The rest of Malheur Co. is a general production area.

(2) Forage brassica and cover crop brassica may be grown but shall not be allowed to flower.

(3) Rapeseed seed crops are prohibited in the Malheur/Idaho Protected District.

Stat. Auth.: ORS 561.190, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415 & 570.450
 Stats. Implemented: ORS 570.405 - 570.415 & 570.450
 Hist.: DOA 1-2013, f. & cert. ef. 2-6-13; DOA 11-2013, f. & cert. ef. 10-21-13; DOA 1-2015, f. & cert. ef. 1-13-15

603-052-0901

Research, Summary, Changes

(1) Research Permits. The Department may issue research permits in any protected district providing exemptions to the rapeseed control area rules for the purpose of research. Persons requesting a research permit shall petition the Department in writing and include the following:

(a) Research must include the involvement of an accredited university;

(b) All applicable conditions of rapeseed production must be met including pinning of fields;

(c) The Director retains the final authority to approve or deny research permit requests. Any action under a research permit shall be subject to any conditions or restrictions set forth in the permit, and these conditions and restrictions may vary depending on the proposed action and its potential risk.

(2) Summary. The Department will maintain a summary of rapeseed fields produced under a research permit with the Department including locations of acres planted, number of acres planted, dates planted, and contact persons.

(3) Changes to Rapeseed Control Area Rules. Interested persons may petition the Department to amend or repeal these rules, including designation changes creating or removing protected district status, by following the procedures in the Administrative Procedures Act, ORS 183.390.

Stat. Auth.: ORS 561.190, 561.510-561.600, 570.305, 570.405, 570.410-570.415 & 570.450

Stats. Implemented: ORS 570.405-570.415 & 570.450

Hist.: DOA 1-2013, f. & cert. ef. 2-6-13; DOA 11-2013, f. & cert. ef. 10-21-13

603-052-0921

Violations

(1) No person shall violate any control area rule governing the production of Brassicaceae in Oregon.

(2) Consistent with ORS 561.280 and 570.405 and in addition to any other lawful remedy, the Director may bring an action to enjoin the violation or threatened violation of any provision of 570.405 and 570.450 or its rules. Such action may be filed in the circuit court of Marion County or in the county in which the violation or threatened violation occurs or is about to occur. Consistent with applicable law, the relief requested may include, but is not limited to, an order for summary destruction of any rapeseed crop.

(3) Notice of Noncompliance and Plan of Correction. In addition to, or in lieu of, any action to enjoin enforcement of these rules, the Director may issue a Notice of Noncompliance and Plan of Correction to any person.

(a) A Notice of Noncompliance informs the person to whom the notice is directed of the violation, including a reference to the particular statute or administrative rules involved, and the location of the violation;

(b) A Plan of Correction directs the person to whom the plan of correction is directed to perform those actions necessary to comply with the particular statute or administrative rules involved;

(A) Specifies a reasonable period of time by which compliance is to be achieved not to exceed five (5) calendar days after the notice is received;

(B) May include requirements for the person to whom the plan of correction is directed to report the completion of specific actions;

(c) A Notice of Noncompliance and Plan of Correction is issued by the Director, is an order other than contested case for purposes of judicial review, and must be served personally or by registered or certified mail.

(d) Failure to perform any of the requirements of a Plan of Correction may be considered by the Director as a failure to correct the violation within the period of time set for correction by the Director in the Notice of Noncompliance and Plan of Correction and may result in any lawful enforcement including, but not limited to, those remedies described in subsection (2) of this section.

Stat. Auth.: ORS 561.190, 561.510 - 561.600, 570.305, 570.405, 570.410 - 570.415 & 570.450

Stats. Implemented: ORS 570.405 - 570.415 & 570.450

Hist.: DOA 1-2013, f. & cert. ef. 2-6-13; DOA 11-2013, f. & cert. ef. 10-21-13; DOA 1-2015, f. & cert. ef. 1-13-15

603-052-1020

Quarantine Against Powdery Mildew of Hops

(1) Establishing Quarantine: A quarantine is established against the powdery mildew disease of hops caused by the fungus *Podosphaera macularis* (Wallr.) U. Braun & S. Takam. (= *Sphaerotheca humuli* (DC.) Burr. and *Podosphaera humuli* (DC) Bur-rill), arabis mosaic viruses, hop stunt viroid, ilarviruses, and *Verticillium* wilt caused by hop strains of *Verticillium albo-atrum*.

(2) Area under Quarantine: All states and districts of the United States, except those counties in the states of Washington and Idaho covered by a comparable quarantine.

(3) Commodities Covered: Plants and all plant parts of hops, *Humulus lupulus*, excepting kiln dried cones of hops are prohibited entry into this state directly, indirectly, diverted or reconsigned. All used hop farming equipment entering the state from the area under quarantine (see Section (2)) must be pressure-washed or similarly cleaned to remove all plant debris and soil prior to entry.

(4) Conditions: Covered commodities from the area under quarantine are prohibited.

(5) Special Permits: Persons wishing to import covered commodities from the area under quarantine must apply in writing for a Special Permit as authorized by OAR 603-052-0020. Applications for Special Permits must list the prospective buyer and seller; the number, and origin of stock; location of proposed planting site; and any other relevant information. Special Permits, when granted, will list required safeguards to prevent disease establishment.

(6) Disposition of Commodities in Violation of the Quarantine: All covered commodities described in section (3) of this rule found to be in violation of this quarantine shall be returned immediately to point of origin by the Oregon receiver, or at the receiver's option be destroyed under the supervision of the Oregon Department of Agriculture without expense to or indemnity paid by the Oregon Department of Agriculture. Violation of this quarantine may result in a fine, if convicted, of not less than \$500 no more than \$5,000, as provided by ORS 561.990. In addition, violators may be subject to civil penalties of up to \$10,000 as provided by 561.995.

Stat. Auth.: ORS 561 & 570.305

Stats. Implemented: ORS 561.190, 561.510 - 561.600 & 570.305

Hist.: AD 7-1993(Temp), f. & cert. ef. 5-26-93; AD 20-1993, f. & cert. ef. 12-14-93; AD 10-1996, f. & cert. ef. 9-5-96; DOA 4-1998, f. & cert. ef. 5-11-98; DOA 12-1999, f. & cert. ef. 6-4-99; DOA 4-2009, f. & cert. ef. 4-9-09; DOA 17-2012, f. & cert. ef. 6-6-12; DOA 10-2013, f. & cert. ef. 10-10-13

603-052-1025

Quarantine; Small Broomrape

(1) Establishing Quarantine. A quarantine is established to prevent the spread of small broomrape, *Orobanche minor*, within Oregon and to protect markets for Oregon seed crops. This quarantine is established under ORS 561.510 and 561.540 to protect Oregon's agricultural industries from the artificial spread of small broomrape. Small broomrape is not widely prevalent within or distributed throughout the state of Oregon. Small broomrape is dangerous to Oregon's agricultural industries because it parasitizes the root systems of host crop plants in the legume, potato, carrot and sunflower families. Clover is the most susceptible host. Damage includes direct yield losses, up to and including crop failure, as well as possible market losses due to restrictions imposed by trading partners on commodities potentially contaminated with small broomrape seed.

(2) Area under Quarantine: State of Oregon.

(3) Commodities Covered: Small broomrape plants including seeds, clover (*Trifolium pretense*, *T. repens*, and *T. subterraneum*) seed, and soil, commodities and equipment that may be contaminated with small broomrape seeds.

(4) Provisions of the Quarantine:

(a) Imported red clover seed lots must have been cleaned by a process that includes, at a minimum, the stages in (4)(b)(A)-(C) below or an official seed sample must be taken and tested prior to planting to ensure freedom from contamination by small broomrape seed. Contaminated lots will be returned or destroyed without expense or indemnity paid by the State.

(b) All red clover seed lots harvested in counties west of the Cascade Mountains must be cleaned by an approved process before transport, purchase, sale or offering for sale. Approved cleaning processes must include, at a minimum, all the stages in (A)–(C) below. Seed lots meeting this requirement need not be sampled and tested for small broomrape contamination.

- (A) Air separator;
- (B) Indent roller;
- (C) Gravity separator.

(c) Alternative cleaning processes may also be acceptable if approved by the Department. Cleaning facilities using alternative processes must be under compliance agreement with the Department.

(d) The Department may take random samples of finished red clover seed lots from cleaners meeting the requirements of (b) or (c) above and test them for small broomrape. The cost of this random sampling and testing will be born by the Department. If small broomrape is found, cleaning of red clover seed will be curtailed until the cleaning process is reviewed and problems corrected. All available clover seed lots from that cleaner will be sampled and tested for small broomrape. Any infested lots will be re-cleaned and released only after testing negative for small broomrape. The costs of all follow-up sampling and testing after a positive find will be the responsibility of the cleaner. The cleaner will be put under compliance agreement before additional lots of red clover seed may be cleaned.

(e) Seed lots not meeting the cleaning requirements outlined in (b) or (c) above must be officially sampled, tested and found free of small broomrape seeds before transport, purchase, sale or offering for sale. Upon request, Department inspectors will draw official seed samples, which will be analyzed at a laboratory using a USDA-approved protocol for small broomrape testing. Costs of sampling and testing will be the responsibility of the grower or other responsible party. Contact: Market Access and Certification Programs, Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301. Telephone: (503) 986-4620. Any seed lots found to contain small broomrape seed are prohibited from transport, purchase, sale, or offering for sale until they are re-cleaned, re-tested and determined to be free from small broomrape.

(f) Screenings from seed lots contaminated with small broomrape shall be disposed of in a manner that will devitalize the seed or eliminate the risk of spread of the weed such as pelletization, burning or burying.

(5) Violation of this quarantine may result in a fine, if convicted, of not less than \$500 not more than \$5,000, as provided by ORS 561.990(4). Violators may also be subject to civil penalties of up to \$10,000 as provided by Oregon Laws 1999, chapter 390, section 2. Commodities harvested or shipped in violation of this quarantine shall be treated or destroyed without expense or indemnity paid by the State.

Stat. Auth.: ORS 561.510 & 561.190
 Stats. Implemented:
 Hist.: DOA 6-2000, f. & cert. ef. 2-24-00; DOA 33-2000, f. & cert. ef. 12-15-00; DOA 15-2003, f. & cert. ef. 4-18-03; DOA 7-2012, f. & cert. ef. 3-26-12; DOA 3-2014, f. & cert. ef. 2-20-14

603-052-1030

Control Area Against Rough Bluegrass in Union County

(1) As authorized by ORS 570.405, a control area is established in Union County against the production or handling of rough bluegrass, *Poa trivialis*, since such production or handling would pose a potential threat of contamination to currently established grass seed production in the area.

- (2) Extent of Control Area: all of Union County
- (3) Commodities Covered: Rough bluegrass (*Poa trivialis*), including any hybrids of the species.
- (4) Prohibited Acts:

(a) All commodities covered in section (4) of this rule are prohibited from being planted, grown, cleaned, conditioned or handled in Union county;

(b) Any rough bluegrass which is planted, grown, cleaned, conditioned or handled in Union County is subject to destruction as determined by the Director of the Oregon Department of Agriculture.

Such destruction shall be at the expense of the owner or owners or their responsible agent or agents.

Stat. Auth.: ORS 570.405
 Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.405 & 570.410 - 570.415
 Hist.: AD 14-1994, f. & cert. ef. 9-9-94

603-052-1040

Control Area Against Rough Bluegrass in Morrow and Umatilla Counties

(1) As authorized by ORS 570.405, a control area is established in Morrow and Umatilla Counties against the production or handling of rough bluegrass, *Poa trivialis*, since such production or handling would pose a potential threat of contamination to currently established grass seed production in the area.

(2) Extent of Control Area: all of Morrow and Umatilla Counties.

(3) Commodities Covered: rough bluegrass (*Poa trivialis*), including any hybrids of the species.

(4) Prohibited Acts:

(a) All commodities covered in section (3) of this rule are prohibited from being planted, grown, cleaned, conditioned or handled in Morrow and Umatilla Counties;

(b) Any rough bluegrass which is planted, grown, cleaned, conditioned or handled in Morrow or Umatilla Counties is subject to destruction as determined by the Director of the Oregon Department of Agriculture. Such destruction shall be at the expense of the owner or owners or their responsible agent or agents.

Stat. Auth.: ORS 570.405
 Stats. Implemented: ORS 570.405
 Hist: AD 15-1995, f. & cert. ef. 8-29-95

603-052-1050

Control Area Against Creeping Annual Bluegrass in Union County

(1) As authorized by ORS 570.405, a control area is established in Union County against the production or handling of the perennial creeping type of annual bluegrass, *Poa annua* var. *reptans*, since such production or handling would pose a potential threat of contamination to currently established grass seed production in the area.

(2) Extent of Control Area: all of Union County.

(3) Commodities Covered: perennial creeping type annual bluegrass, *Poa annua* var. *reptans*, including any hybrids of the species.

(4) Prohibited Acts:

(a) All commodities covered in section (3) of this rule are prohibited from being planted, grown, cleaned, conditioned or handled in Union County.

(b) Any *Poa annua* var. *reptans* which is planted, grown, cleaned, conditioned or handled in Union County is subject to destruction as determined by the Director of the Oregon Department of Agriculture. Such destruction shall be at the expense of the owner or owners or their responsible agent or agents.

Stat. Auth.: ORS 561.190 & 570.405
 Stats. Implemented: ORS 570.405
 Hist: AD 3-1997, f. & cert. ef. 6-4-97

603-052-1060

Control Area Against Creeping Annual Bluegrass in Morrow and Umatilla Counties

(1) As authorized by ORS 570.405, a control area is established in Morrow and Umatilla Counties against the production or handling of the perennial creeping type of annual bluegrass, *Poa annua* var. *reptans*, since such production or handling would pose a potential threat of contamination to currently established grass seed production in the area.

(2) Extent of Control Area: all of Morrow and Umatilla Counties.

(3) Commodities Covered: perennial creeping type annual bluegrass, *Poa annua* var. *reptans*, including any hybrids of the species.

(4) Prohibited Acts:

(a) All commodities covered in section (3) of this rule are prohibited from being planted, grown, cleaned, conditioned or handled in Morrow and Umatilla Counties.

(b) Any *Poa annua* var. *reptans* which is planted, grown, cleaned, conditioned or handled in Morrow or Umatilla Counties is subject to destruction as determined by the Director of the Oregon Department of Agriculture. Such destruction shall be at the expense of the owner or owners or their responsible agent or agents.

Stat. Auth.: ORS 561.190 & 570.405
Stats. Implemented: ORS 570.405
Hist: AD 3-1997, f. & cert. ef. 6-4-97

**603-052-1080
Firewood Restrictions To Prevent Transport Of Invasive Species**

(1) This rule is established as authorized under ORS 561.510, 570.305 and 570.720 to protect the State of Oregon from the introduction of invasive species, including non-native wood-boring insects and plant diseases, transported on firewood from outside the Pacific Northwest. The requirements set forth in this rule do not apply to any non-firewood product or logs for industrial use.

(2) The following definitions apply to OAR 603-052-1080 and 603-052-1090:

(a) "Approved Pacific Northwest Firewood" is a labeling standard for firewood sold by a firewood producer who complies with the provisions of section (4)(a)(C) of this rule.

(b) "Approved Pest Free" is a labeling standard (i.e., source labeling requirement) for firewood that complies with the provisions of sections (4)(b)(A) of this rule.

(c) "Department" means the Oregon Department of Agriculture.

(d) "Firewood" means any whole or split pieces of wood less than 48" in length or other wood of any tree species cut into a form and size appropriate for use for fuel wood uses, such as home heating or campfires. Compressed wood bricks, pellets, and other processed wood products used for fuel wood uses such as home heating or campfires are excluded from this definition.

(e) "Firewood seller" means any person or business that supplies or sells firewood.

(f) "Invasive Species" means nonnative organisms that cause economic or environmental harm and are capable of spreading to new areas of the state.

(g) "Knowingly" means acting with awareness, deliberateness, or intention.

(h) "Pacific Northwest" means the states of Oregon, Washington, and Idaho.

(i) "Person" means an individual, organization, corporation or partnership, other than the Department, public authority, county, town, city, municipal agency or public corporation.

(j) "Phytosanitary certificate" means an official document issued by an exporting county, state, or country to verify a shipment has been officially inspected and meets the import requirements of the State of Oregon.

(k) "Plant Pest" means a disease, microscopic organism, insect, nematode, arthropod, parasite or any other biotic agent capable of having a significant adverse effect on the environmental quality of Oregon or of causing a significant level of economic damage in Oregon, including but not limited to damage to agricultural, horticultural or forest plants, crops, commodities or products.

(l) "Source" means the state from which the firewood was harvested.

(m) "Untreated Firewood" means any firewood that has not been treated in accordance with the provisions of section (4)(b)(A)(Approved Pest Free) of this rule.

(n) "Violation" means the failure to comply with any requirement of these rules. Each day a violation continues after the time established for compliance shall be considered a separate violation unless the department finds that a different period of time is more appropriate to describe a specific violation event.

(3) No person shall transport, by any means, untreated firewood into the State of Oregon, for sale or use within the State from any location outside of the Pacific Northwest.

(4) Restrictions on transport, sale, or possession of untreated firewood within Oregon:

(a) Pacific Northwest-harvested firewood:

(A) Persons who cut and burn firewood in Oregon for personal use are exempt from these documentation, treatment, and labeling requirements.

(B) Firewood harvested and then sold in the Pacific Northwest does not need to be treated or labeled.

(C) Optional labeling for untreated Pacific Northwest Firewood: Sellers of Pacific Northwest Firewood:

(i) May choose to use the "Approved Pacific Northwest Firewood" designation on firewood that has its source wholly within the Pacific Northwest and outside of declared quarantine areas for invasive species (ORS 561.510, 561.560, OAR 603-052-1230). A summary of Oregon's plant quarantines is available at <http://nationalplantboard.org/laws/index.html>.

(ii) Firewood sellers using the optional "Approved Pacific Northwest Firewood" label shall maintain records that include, at a minimum, the source(s) of the firewood for a minimum of one (1) year. Upon request, such records shall be made available for inspection to the Department.

(iii) Are required to provide to all purchasers (except to the final end-use customer, unless requested), the source of the firewood and the contact name of the seller.

(D) Landowners who occasionally allow or charge a fee for cutting firewood on their land for personal use in Oregon are not considered sellers.

(b) Firewood harvested from outside the Pacific Northwest:

(A) Firewood from outside the Pacific Northwest must be heat treated to a minimum wood core temperature of 60°C (140°F) for at least 60 minutes or equivalent treatment as approved by the Department. Air drying of firewood is insufficient and is not approved by the Department. Post treatment firewood must be stored in a manner to minimize re-infestation.

(B) Treated firewood meeting the standard in (A) above, whether harvested from the PNW or elsewhere may be labeled as "Approved Pest Free."

(C) Sellers of "Approved Pest Free" firewood shall maintain, for at least two (2) years from the date of treatment, records that document the source of the wood, the treatment method and the volume of firewood treated. Official phytosanitary certificates from a firewood seller's State Department of Agriculture or official equivalent may be used to verify the treatment method and volumes of treated firewood produced. Regulatory officials shall be allowed to inspect such records and the facilities used to treat and store the firewood upon request.

(D) Using an "Approved Pest Free" label fraudulently is subject to civil penalties as described in section (5).

(5) Violation of this rule. Violators of this rule will be subject to civil penalties of up to \$10,000 as provided by ORS 561.995 and described in OAR 603-054-0070. Commodities shipped in violation of this rule may be treated, destroyed, or returned to the point of origin without expense or indemnity paid by the state. Civil penalties recovered under this section shall be deposited in the Invasive Species Control Account ORS 570.810.

Stat. Auth.: ORS 570.305, 561.510, 570.720
Stats. Implemented: ORS 570.720
Hist.: DOA 28-2012, f. & cert. ef. 12-3-12

**603-052-1090
Civil Penalty Matrix**

(1) Magnitude of violation: The commission of prohibited acts specified below has been determined to be a minor, moderate, or major violation.

(a) Minor:

(A) Failure to maintain proper certificates or paperwork as required.

(B) Importing firewood for personal use that does not meet the requirements of this rule from outside the Pacific Northwest.

(b) Moderate: Importing firewood for other than personal use that does not meet the requirements of this rule from outside the Pacific Northwest.

(c) Major:

(A) Knowingly importing infested or infected firewood that does not meet the requirements of this rule from outside the Pacific Northwest.

(B) Knowingly representing untreated or improperly treated firewood as Approved Pest Free firewood.

(C) Tampering with, altering, misrepresenting or falsifying in any manner official documents issued by a plant regulatory official. Providing false information required for issuance of documents. Using falsified documents.

(2) Standard civil penalties will be as follows. The Director may consider extenuating circumstances in assigning a penalty.

1st Violation — 2nd Violation — 3rd & Subsequent Violation

Minor: Notice of violation — \$100 — \$300

Moderate: \$300 — \$900 — \$1,800

Major: \$5,000 — \$7,500 — \$10,000

Stat. Auth.: ORS 570.305, 561.510, 570.720

Stats. Implemented: ORS 570.720

Hist.: DOA 28-2012, f. & cert. ef. 12-3-12

Imported Timber Products Inspection Program

603-052-1100

Purpose

These rules guide the Oregon State Department of Agriculture, Plant Division, in administering its Imported Timber Products Inspection Program, as provided in ORS 570.700 to 570.710.

Stat. Auth.: ORS 561.190, 570.305 & 570.700 - 570.710

Stats. Implemented: ORS 570.705 & 570.710

Hist.: AD 7-1996, f. & cert. ef. 6-12-96

603-052-1110

Definitions

The following definitions apply to OAR 603-052-1100 to 603-052-1130:

(1) "Imported" means timber products from any source outside North America and includes those states in Mexico not adjacent to the United States. Also included are timber products brought into another state or states and subsequently shipped into Oregon. Shipments of untreated timber products transiting Oregon are not considered to be imported if they enter and leave the state without having been unloaded from their original conveyance and if they remain in Oregon less than 120 hours.

(2) "Person" means any federal, state or local government or government agency, political subdivision, individual, public or private corporation, partnership, association, firm, trust, estate, or any other legal entity whatever.

(3) "Untreated" means not previously treated so as to completely eliminate external and internal insect pests and plant pathogens. Timber products are considered untreated if they are treated in such a way that some, but not all, potential insect pests and plant pathogens are eliminated. For example, logs which are debarked and fumigated are considered untreated because fungi and insects deep within the wood could survive these treatments.

(4) "Treated" timber products are those that have been processed so as to completely eliminate all potential insect pests and plant pathogens, e.g. kiln-drying or sterilization by heat (at least 71.1° C for 75 minutes measured at the core).

(5) "Importer" is the person who takes first delivery in this state of imported, untreated timber products.

Stat. Auth.: ORS 561.190, 570.305 & 570.700 - 570.710

Stats. Implemented: ORS 570.705 & 570.710

Hist.: AD 7-1996, f. & cert. ef. 6-12-96

603-052-1120

Notification

(1) The importer of untreated timber products shall notify the Oregon Department of Agriculture in writing or by FAX (Oregon Dept. of Agriculture, Plant Division, 635 Capitol St. NE, Salem, OR 97310; FAX (503) 986-4786) at least seven days in advance of the estimated date of arrival of each shipment. Notification shall include:

- (a) Estimated date and time of arrival;
- (b) Planned unloading site(s);
- (c) Estimated unloading time;
- (d) Contact person, phone and FAX numbers.

(2) Within twenty-one days after arrival of the shipment, the importer shall present to the department a copy of the bill of lading and, if the imported material is scaled, a copy of the scaling bureau scale certificate(s). The importer may use any scaling method approved by the department. The fee schedule in 603-052-1130 will be applied to the gross scale on the bureau certificate(s).

Stat. Auth.: ORS 561.190, 570.305 & 570.700 - 570.710

Stats. Implemented: ORS 570.705 & 570.710

Hist.: AD 7-1996, f. & cert. ef. 6-12-96

603-052-1130

Fees

(1) Treated timber products are not subject to these fees.

(2) The importer of untreated timber products shall pay to the Oregon Department of Agriculture a timber products health program fee according to the following schedule:

(a) Wood chips: 50 cents per bone dry ton.

(b) Timber products other than wood chips: \$5 per one thousand board feet.

(c) Minimum charge will be \$50.

(3) If the imported untreated timber products are not scaled, the department will use the following conversion factors: 4.8 cubic meters equals one thousand board feet for logs or 2.4 cubic meters equals one thousand board feet for lumber applied to the quantities listed on the bill of lading.

(4) The department will invoice the importer for the amount payable. The importer shall pay the appropriate fee within 30 days after taking delivery of such products. For purposes of this program, the issue date of the department invoice will be considered the official date delivery was taken.

Stat. Auth.: ORS 561.190, 570.305 & 570.700 - 570.710

Stats. Implemented: ORS 570.705 & 570.710

Hist.: AD 7-1996, f. & cert. ef. 6-12-96

603-052-1150

Laboratory Fees for Official, Regulatory and Service Samples

(1) The following fees and charges are established for laboratory or other testing services including sample processing, analysis and issuance of certificates or official reports. The basic fee for official, regulatory, and service samples is established at \$70.00 per hour, with a minimum fee of \$35.00.

(2) The fees and charges for specific routine tests are:

(a) Spore wash and microscopic examination per fungal species — \$50;

(b) Fifty-seed stain and immunoblot for endophyte — \$85;

(c) Seed, soil, or tissue test for nematodes — \$35;

(d) Visual exam for regulated pests — \$60 for pesticide treated seed and \$50 for untreated seed;

(e) Visual exam for regulated contaminants — \$45;

(f) Visual exam for regulated pests and regulated contaminants — \$70;

(g) Isolation on standard media — \$35;

(h) Growing media pH and conductivity — \$35;

(i) Seed grow out for bacteria — \$140;

(j) ELISA for virus detection in seed — \$140.;

(k) Molecular analysis for regulated pests — \$140.

Stat. Auth.: ORS 561, 571 & 632

Stats. Implemented: ORS 561.190, 571.145 & 632.940

Hist.: DOA 9-2003, f. & cert. ef. 1-14-03; DOA 10-2006, f. & cert. ef. 3-22-06;

DOA 13-2010, f. & cert. ef. 8-9-10

603-052-1200

Quarantine; Noxious Weeds

(1) Establishing Quarantine. A quarantine is established against the noxious weeds listed herein. Noxious weeds have been declared a menace to the public welfare (ORS 569.180 and 569.350) because of the environmental degradation that occurs when they become established.

(2) Areas Under Quarantine. The entire state of Oregon and all other States of the United States and all foreign countries.

(3) Covered Plants. For purposes of this rule the term "plants" applies to whole plants, plant parts, and seeds. This rule applies to all "A" and "B" state designated noxious weeds listed herein, except

as provided in section (6). Plants on the Federal Noxious Weed List (7 C.F.R. 360.200) are also covered by this rule, with the exception of Japanese blood grass, *Imperata cylindrica*, var. Red Baron and Chinese water spinach, *Ipomoea aquatica*.

(4) "A" weeds

(a) "A" designated weeds. Weeds of known economic importance which occur in the state in small enough infestations to make exclusion, eradication, or containment possible; or which are not known to occur, but their presence in neighboring states makes future occurrence in Oregon seem imminent.

(b) "A" weeds are controlled through exclusion, early detection, and rapid response (EDRR). Control of "A" weeds is a high priority for Oregon Department of Agriculture (ODA) and the primary goal is to prevent introduction and permanent establishment of "A" weeds. If "A" weeds are introduced, and eradication is not feasible, the secondary goal is to implement control measures to contain the "A" weeds to as small an area as possible so as to prevent widespread occurrence in Oregon.

(c) When "A" weeds are detected, control actions are mandatory and the goal of such control is eradication. Any person owning or occupying property upon which "A" weeds are detected must contact the Oregon Department of Agriculture within 48 hours of detection.

(d) Upon detection of "A" weeds, ODA may develop a survey, eradication, and monitoring plan to control or eradicate detected weeds. ODA may either develop and conduct appropriate measures to control or eradicate such weeds or may enter into a contract for the purpose of controlling or eradicating "A" weeds.

(e) Control or eradication of "A" weeds may be implemented at no cost to a person owning or controlling land within this state upon which "A" weeds are detected. However, ODA may request any person owning or controlling land within this state to control, prevent the spread of, or eradicate where feasible "A" weeds, subject to supervision of such activities by the ODA.

(f) If ODA or a county are unable to control or eradicate "A" weeds on private property, any person owning or controlling land within this state must control and take measures to eliminate or prevent the possibility of spread of "A" weeds to other lands and ownerships. Control measures for "A" weeds must be implemented in a timely manner as determined by ODA. Treatments must provide sufficient levels of control to make progress toward the goal of eradication.

(g) ODA inspectors may access all lands within Oregon for the purpose of ORS 569.175 to 569.195 including carrying out the control or eradication of "A" weeds.

(h) Any person owning or controlling land within this state found in violation of ORS 569.175 to 569.195 or these rules may be subject to fines up to the maximum for Class B violations.

(i) The following is a list of "A" weeds:

- African rue — *Peganum harmala*;
- Camelthorn — *Alhagi pseudalhagi*;
- Coltsfoot — *Tussilago farfara*;
- Cordgrass:
- Common — *Spartina anglica*;
- Dense-flowered — *Spartina densiflora*;
- Saltmeadow — *Spartina patens*;
- Smooth — *Spartina alterniflora*;
- European water chestnut — *Trapa natans*;
- Flowering rush — *Butomus umbellatus*;
- Giant hogweed — *Heracleum mantegazzianum*;
- Goatgrass:
- Barb — *Aegilops triuncialis*;
- Ovate — *Aegilops ovata*;
- Goatsrue — *Galega officinalis*;
- Hawkweed:
- King-devil — *Hieracium piloselloides*;
- Mouse-ear — *Hieracium pilosella*;
- Orange — *Hieracium aurantiacum*;
- Yellow — *Hieracium floribundum*;
- Hydrilla — *Hydrilla verticillata*;
- Japanese dodder — *Cuscuta japonica*;
- Kudzu — *Pueraria lobata*;
- Matgrass — *Nardus stricta*;
- Oblong spurge — *Euphorbia oblongata*;
- Paterson's curse — *Echium plantagineum*;
- Purple nutsedge — *Cyperus rotundus*;

- Silverleaf nightshade — *Solanum elaeagnifolium*;
 - Squarrose knapweed — *Centaurea virgata*;
 - Starthistle:
 - Iberian — *Centaurea iberica*;
 - Purple — *Centaurea calcitrapa*;
 - Syrian bean-caper *Zygophyllum fabago*;
 - Thistle:
 - Plumeless — *Carduus acanthoides*;
 - Smooth distaff — *Carthamus baeticus*;
 - Taurian — *Onopordum tauricum*;
 - Woolly distaff — *Carthamus lanatus*;
 - White bryonia — *Bryonia alba*;
 - Yellow floating heart — *Nymphoides peltata*;
 - Yellowtuft — *Alyssum murale*, *A. corsicum*;
- (5) "B" Weeds:

(a) "B" designated weeds means weeds of economic importance which are regionally abundant, but which may not occur or have limited distribution in some counties. "B" weeds shall be managed on a priority basis as resources allow. Control of "B" weeds may vary according to ODA-established priorities as well as site-specific or case-by-case factors. When available, biological control may be the primary long-term control strategy.

(b) The goal of "B" weed management is control and prevention of new infestations of "B" weeds in Oregon. ODA may advise persons owning or controlling lands upon which "B" weeds are detected on the control of "B" weeds on those lands as well as how to prevent "B" weeds from infesting new lands. As determined by ODA or a county, "B" weeds may be controlled or eradicated in the same manner as "A" weeds when "B" weeds appear in parts of the state where they were not previously detected or established.

(c) Pursuant to ODA's determination as to treatment of "B" weeds, ODA may develop a regional control plan or cooperate with a county, local entity, or persons owning or controlling private lands to develop and implement a plan to control "B" weeds. ODA may assist with implementing control measures.

(d) Persons owning or controlling lands where "B" weeds are detected may request assistance from their respective local County Weed Inspector.

(e) Cost-share assistance grants may be available for the control of State listed noxious weeds to any person owning or occupying land upon which "A" or "B" weeds are detected. If within a county weed control district or special weed control district the county may provide assistance by applying for cost-share assistance grants. Information on cost-share assistance grants may be found at ODA's Plant Division website.

(f) As determined by ODA, biological control agents may be available for some "B" weeds. Information on the current availability of biological control agents is provided on ODA's Plant Division website. Releases of some biological control agents targeting noxious weeds may require reporting to ODA for tracking purposes.

(g) The following is a list of "B" weeds:

- Armenian (Himalayan) blackberry — *Rubus armeniacus* (*R. procerus*, *R. discolor*);
- Biddy-biddy — *Acaena novae-zelandiae*;
- Broom:
- French — *Genista monspessulana*;
- Portuguese — *Cytisus striatus*;
- Scotch — *Cytisus scoparius*;
- Spanish — *Spartium junceum*;
- Buffalobur — *Solanum rostratum*;
- Butterfly bush — *Buddleja davidii* (*B. variabilis*)* (*Plants being sold in Oregon that are labeled "Butterfly Bush" are assumed to be *B. davidii* and will be subject to a stop sale order. ODA approved sterile varieties of *Buddleja* that produce less than 2% viable seed and inter-specific hybrids that are not regulated, and may be propagated and sold if labeled with the approved variety name. Information concerning process, criteria and approved seedless varieties is available online at: <<http://oregon.gov/ODA/PLANT/NURSERY/>>);
- Common bugloss — *Anchusa officinalis*;
- Common crupina — *Crupina vulgaris*;
- Common reed — *Phragmites australis*;
- Creeping yellow cress — *Rorippa sylvestris*;
- Cutleaf teasel — *Dipsacus laciniatus*;
- Dodder — *Cuscuta* spp.;
- Dyers woad — *Isatis tinctoria*;
- English ivy — *Hedera helix* (*H. hibernica*);
- Eurasian watermilfoil — *Myriophyllum spicatum*;
- False brome — *Brachypodium sylvaticum*;

Field bindweed — *Convolvulus arvensis*;
 Garlic mustard — *Alliaria petiolata*;
 Geranium:
 Herb Robert — *Geranium robertianum*;
 Shiny leaf geranium — *Geranium lucidum*;
 Gorse — *Ulex europaeus*;
 Halogeton — *Halogeton glomeratus*;
 Houndstongue — *Cynoglossum officinale*;
 Indigo bush — *Amorpha fruticosa*;
 Johnsongrass — *Sorghum halepense*;
 Jointed goatgrass — *Aegilops cylindrica*;
 Jubata grass — *Cortaderia jubata*;
 Knapweeds:
 Diffuse — *Centaurea diffusa*;
 Meadow — *Centaurea pratensis*;
 Russian — *Acroptilon repens*;
 Spotted — *Centaurea stoebe* (*C. maculosa*);
 Knotweeds:
 Giant — *Fallopia sachalinensis* (*Polygonum*);
 Himalayan — *Polygonum polystachyum*;
 Japanese — *Fallopia japonica* (*Polygonum*);
 Kochia — *Kochia scoparia*;
 Lesser celandine — *Ranunculus ficaria*;
 Meadow hawkweed — *Hieracium caespitosum*;
 Mediterranean sage — *Salvia aethiops*;
 Medusahead rye — *Taeniatherum caput-medusae*;
 Old man's beard — *Clematis vitalba*;
 Parrot's feather — *Myriophyllum aquaticum*;
 Perennial peavine — *Lathyrus latifolius*;
 Perennial pepperweed — *Lepidium latifolium*;
 Poison hemlock — *Conium maculatum*;
 Policeman's helmet — *Impatiens glandulifera*;
 Puncturevine — *Tribulus terrestris*;
 Purple loosestrife — *Lythrum salicaria*;
 Ragweed — *Ambrosia artemisiifolia*;
 Rush skeletonweed — *Chondrilla juncea*;
 Saltcedar — *Tamarix ramosissima*;
 Small broomrape — *Orbanche minor*;
 South American waterweed — *Egeria densa* (*Elodea*);
 Spanish heath — *Erica lusitanica*;
 Spikeweed — *Hemizonia pungens*;
 Spiny cocklebur — *Xanthium spinosum*;
 Spurge laurel — *Daphne laureola*;
 Spurge:
 Leafy — *Euphorbia esula*;
 Myrtle — *Euphorbia myrsinites*;
 Sulfur cinquefoil — *Potentilla recta*;
 Swainsonpea — *Sphaerophysa salsula*;
 Tansy ragwort — *Senecio jacobaea*;
 Thistles:
 Bull — *Cirsium vulgare*;
 Canada — *Cirsium arvense*;
 Italian — *Carduus pycnocephalus*;
 Musk — *Carduus nutans*;
 Scotch — *Onopordum acanthium*;
 Slender-flowered — *Carduus tenuiflorus*;
 Toadflax:
 Dalmatian — *Linaria dalmatica*;
 Yellow — *Linaria vulgaris*;
 Tree of heaven — *Ailanthus altissima*;
 Velvetleaf — *Abutilon theophrasti*;
 Water primrose — *Ludwigia peploides*, *L. hexapetala*, *L. grandiflora* ssp.;
 Whitetop:
 Hairy — *Lepidium pubescens*;
 Lens-podded — *Lepidium chalapensis*;
 Whitetop (hoary cress) — *Lepidium draba*;
 Yellow archangel — *Lamium galeobdolon*;
 Yellow flag iris — *Iris pseudacorus*;
 Yellow nutsedge — *Cyperus esculentus*;
 Yellow starthistle — *Centaurea solstitialis*;

(6) Exemptions:

(a) Agricultural seed as defined in Oregon's Seed Law, ORS 633.511 to 633.750, is exempt from this quarantine but subject to the noxious weed seed tolerances in OAR 603-056-0205.

(b) Other commodities, such as, but not limited to, wheat are exempt from this quarantine to the extent that they are contaminated with noxious weed seed.

(7) Prohibited and Permitted Acts

(a) All plants covered in section (3) of this rule are prohibited entry into the State of Oregon.

(b) All plants listed in section (3) of this rule are prohibited from transport, purchase, sale or offering for sale in the State of Oregon.

(c) All plants listed in section (3) of this rule are prohibited from being propagated in the State of Oregon.

(d) All plants listed in section (3) may be collected from the wild in areas that are already infested with the specific species that is collected, provided that the plants, plant parts, or seed are not used for propagation or sale within the State of Oregon.

(8) Disposition of Plants in Violation of the Quarantine. All covered plants listed in section (3) of this rule are found to be in violation of this quarantine shall be returned immediately to point of origin by the Oregon receiver, if from out of state, or at the owner's option be destroyed under the supervision of ODA, without expense to or indemnity paid by ODA.

(9) Exceptions. The director may issue a permit allowing entry into this state, propagation, or research on plants covered by this rule, upon request, and upon investigation and finding that unusual circumstances exist justifying such action, and that the benefits of granting the permit outweigh the potential harm that may result from the requested action. The director may impose specific conditions on any permit issued hereunder, and the permit may be canceled for failure to meet the conditions therein. Any permit issued under this section shall be for a limited duration not to exceed one year.

Stat. Auth.: ORS 561.190, 561.510 & 569

Stats. Implemented: ORS 561.510

Hist.: DOA 5-1999, f. & cert. ef. 4-5-99; DOA 13-2000, f. & cert. ef. 5-8-00; DOA 7-2002, f. & cert. ef. 2-1-02; DOA 26-2002, f. & cert. ef. 12-10-02; DOA 27-2004, f. & cert. ef. 12-28-04; DOA 1-2006, f. & cert. ef. 1-13-06; DOA 2-2007, f. & cert. ef. 1-30-07; DOA 11-2008, f. & cert. ef. 3-7-08; DOA 6-2010, f. & cert. ef. 2-4-10; DOA 17-2011, f. & cert. ef. 9-29-11; DOA 3-2013, f. & cert. ef. 3-1-13; DOA 3-2014, f. & cert. ef. 2-20-14

603-052-1205

Weed-Free Tree Seedling Nurseries

(1) Nursery-grown tree seedlings for commercial forest production can spread noxious weeds if they become contaminated with weed seeds. In order to prevent the spread of noxious weeds, it is necessary to keep them out of the seedling production fields at nurseries that grow conifer and hardwood seedlings for commercial forest plantings. Noxious weeds found in seedling nurseries include, but are not limited to, yellow nutsedge, thistles, St. Johnswort, creeping yellow cress, and quackgrass. OAR 603-052-1200 has a complete list of noxious weeds quarantined in Oregon.

(2) To prevent the establishment and spread of noxious weeds via tree seedlings used for commercial forest plantings, seedling production fields must be kept noxious weed-free.

(3) Currently the preferred method of treatment of seedling production fields, though not the only acceptable treatment, is fumigation with methyl bromide prior to seeding or transplanting of seedlings. This rule is intended as a bridge to ensure effective noxious weed control until technically viable and economically feasible alternative controls and methods can be developed and tested. Active testing of alternatives is underway but has not yet proven operationally successful. This section (3) of this rule may be repealed on December 31, 2018 unless a thorough review as to its importance results in a finding that it is still necessary.

Stat. Auth.: ORS 570.505 & 571.200

Stats. Implemented: ORS 570.505 & 571.200

Hist.: DOA 23-2008, f. & cert. ef. 10-31-08; DOA 7-2014, f. & cert. ef. 5-1-14

Control Area For Giant Reed (Cane)

Grass *Arundo donax* in Oregon

603-052-1206

Definitions

As used in OAR 603-052-1206 to 603-052-1211 unless the context requires otherwise:

(1) "Giant reed" or "giant cane grass" means the plant species *Arundo donax* L. For purposes of this rule the term "giant reed" or "giant cane grass" applies to whole plants, plant parts, rhizomes, harvested plant parts, and seeds. For purposes of this rule, "giant reed" or "giant cane grass" does not include variegated varieties of giant reed as defined in subsection (4) of this section.

(2) "Feral giant reed" means whole plants of the plant species *Arundo donax* growing outside of permitted production areas or as otherwise inconsistent with this rule.

(3) “Riparian area” means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, dependent upon surface or subsurface water, that reveals through the zone’s existing or potential soil-vegetation complex the influence of such surface or subsurface water.

(4) “Special Flood Hazard Area” means an area inundated during the 1% annual flood (also known as 100-year flood or a base flood) as determined from the January 2011 version of the Flood Insurance Rate Maps of the Federal Emergency Management Agency (FEMA) available through the Department of Land Conservation and Development at: <http://oregonriskmap.com/index.php?option=com_content&view=category&id=11&Itemid=12>.

(5) “Variegated varieties of giant reed” means horticultural varieties of *Arundo donax* with striped or spotted leaves. Variegated varieties may include but are not limited to varieties marketed as “Peppermint Stick,” “Variegata,” and “Golden Chain,” or other ornamental varieties that can be visually distinguished from “giant reed” or “giant cane grass.”

(6) “Wetland” means areas that are naturally inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Stat. Auth.: ORS 570.405

Stats. Implemented: ORS 570.405

Hist.: DOA 29-2012, f. & cert. ef. 12-12-12

603-052-1209

Purpose

Giant reed, *Arundo donax*, is a promising bio-energy crop because of its high biomass yield. It is also grown as an ornamental and as a source of reeds for woodwind instruments. Giant reed is highly invasive in riparian areas in some regions of the United States such as California, Texas, and Florida. It is the intent and purpose of OAR 603-052-1206 to 603-052-1211 to balance goals to develop new agricultural crops and support renewable energy development from agricultural feedstocks while protecting natural resources and preventing the establishment of giant reed in riparian areas where it could cause major negative impacts to the natural resources of the State of Oregon.

Stat. Auth.: ORS 570.405

Stats. Implemented: ORS 570.405

Hist.: DOA 29-2012, f. & cert. ef. 12-12-12

603-052-1211

Control Area

(1) As authorized by ORS 570.405, a statewide control area is established to reduce the risk of uncontrolled spread of giant reed into the environment in order to protect the horticultural, agricultural or forest industries of the state.

(2) Extent of Control Area: All of the State of Oregon.

(3) Commodities Covered: All life stages of giant reed, *Arundo donax*.

(4) Prohibited Acts:

(a) Giant reed is prohibited from being imported, planted, propagated, or grown except as allowed in this rule in sections (5) through (7) below.

(b) Giant reed shall not be planted, grown, or stored in riparian areas, wetlands, or special flood hazard areas (100-year flood plains) or in a 100 ft. buffer beyond the edge of riparian areas, wetlands, or flood hazard areas.

(5) Permit Requirements:

(a) Except as specified in OAR 603-053-1211(7)(b), giant reed shall not be planted or grown in Oregon without a permit from the Oregon Department of Agriculture (ODA).

(b) Applications for permit must be in writing to ODA and include specific locations, detailed maps of the field locations, and any water bodies in the vicinity of all proposed field locations. Applications for a permit to produce giant reed must be sent to: Plant Program Area Director, Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97304 or emailed to: <dhilburn@oda.state.or.us>.

(c) ODA will review the application upon its receipt and share the application information with noxious weed control officials in the county(ies) where production of giant reed is grown or proposed to be grown.

(d) ODA may deny an application or may issue a permit with any conditions as may be necessary to prevent the uncontrolled spread of giant reed or as necessary to protect the horticultural, agricultural or forest industries of the state. Conditions that ODA may require include, but are not limited to, conditions requiring notification to ODA of the dates when giant reed fields are planted and are taken out of production, annual updates on field locations, or any other precautions related to site-specific risk factors presented by a proposed growing location.

(e) Permit holders will be assessed an annual fee of \$2.00 per acre payable to ODA before planting and every twelve months thereafter, to cover the cost of monitoring fields where giant reed is produced and the cost of surveys for feral giant reed in the environment. Monitoring and surveys are necessary to ensure that giant reed has not escaped outside of contracted production areas and is necessary for enforcing the terms of the control area established in this rule.

(f) Any equipment used in giant reed production fields must be cleaned free of soil and plant debris prior to leaving production fields.

(g) Planting stock collected from the wild outside of Oregon must be washed free of soil and must be accompanied by a phytosanitary certificate indicating that the stock has been inspected and found free of soil and harmful pests, diseases, and weeds.

(h) In vitro and container-grown giant reed planting stock imported for biofuel production must meet plant health requirements for nursery stock entering Oregon from the state of origin.

(i) In-state producers of biofuel planting stock are subject to the same requirements as biofuel producers if plants are field grown. In vitro and containerized production of biofuel planting stock in Oregon does not require a bond or a permit, but containerized giant reed planting stock shall not be planted, grown, or stored in riparian areas, wetlands, or special flood hazard areas (100-year flood plains) or in a 100 ft. buffer beyond the edge of riparian areas, wetlands, or flood hazard areas.

(j) Green giant reed must not be transported outside the fields where it is grown unless it is in a covered container or the load is tarped. Harvested giant reed that is conditioned (crushing, chipping, chopping, or shredding) and dried in the field need not be transported in closed containers and such loads need not be tarped (e.g. bales of giant reed).

(6) Bond; Conditions for Ceasing Production of Giant Reed:

(a) Contractors (or growers if there is no contractor) for the production of giant reed for other than ornamental or woodwind reed purposes (see (7) below) must supply a bond or another form of acceptable collateral furnished by a surety company authorized to do business in Oregon in favor of the State of Oregon through its Department of Agriculture. The amount of the bond/collateral will be \$100/acre up to a maximum of \$1,000,000. The permit will not be issued until the Department has received the bond/collateral. The purpose of the bond is to cover any and all costs associated with the detection and eradication of giant reed inside or outside of production fields if the Department determines feral giant reed must be eradicated in order to protect the agricultural, horticultural or forest resources of the State. The bond/collateral must be in place for the duration of permitted production and remain effective for 3 years after production ceases.

(b) The holder of a permit for the production of giant reed that ceases production of giant reed must completely eradicate giant reed in a manner that prevents former giant reed production fields from becoming a source of propagules that could lead to accidental spread of giant reed in the wild.

(c) Any holder of a permit issued by ODA must monitor any and all areas upon which giant reed was produced under permit for at least three years after production ceases to ensure that all giant reed plants are killed and any source of propagules are eradicated. ODA may require additional monitoring time as it determines is necessary to assure complete eradication of giant reed from areas under contract for production.

(d) Any and all costs associated with eradication of giant reed in production fields and adjacent property owned or controlled by the producer after production has ceased is the responsibility of the permit holder.

(e) Oregon State University Research and Extension Centers are exempt from sections (5)(a) and (6)(a) of this rule for the purpose of allowing research related to giant reed production and control.

(7) Conditions for Ornamental and Woodwind Reed Plantings: Giant reed has been used as an ornamental plant in Oregon for many years. It is also grown as a source for woodwind reeds. Ornamental or woodwind reed plantings could result in feral populations. In order to lower the risk of ornamental or woodwind reed plants becoming feral, giant reed is being phased out of the nursery trade. Variegated varieties such as “Peppermint Stick,” “Variegata,” and “Golden Chain,” may continue to be grown and sold in Oregon unless ODA and State Weed Board list giant reed as a noxious weed.

(a) After December 31, 2013, only variegated varieties of giant reed may be sold in Oregon for ornamental or woodwind reed purposes.

(b) A permit is not required for ornamental or woodwind reed plantings of variegated varieties of giant reed totaling less than 1/4 acre.

(c) Ornamental and woodwind reed plantings of giant reed existing before these rules were adopted will not be considered feral unless they are in Special Flood Hazard Areas or the ODA determines such populations are becoming invasive. Any plantings of giant reed or variegated varieties of giant reed over 1/4 acres are subject to the permitting requirements in OAR 603-052-1211(5).

(d) If the ODA and the State Weed Board determine giant reed is a noxious weed, all ornamental uses of giant reed shall terminate and all production will require a permit.

(8) Eradication and Control of Giant Reed:

(a) Except as stated in (7) above, ODA considers giant reed plants detected outside of contracted production fields as feral plants, which shall be eradicated or controlled.

(b) Any person owning or occupying property upon which feral giant reed is detected must contact the ODA within 48 hours of detection.

(c) Upon detection of feral giant reed, ODA may develop a survey, eradication, and monitoring plan to control or eradicate detected feral giant reed. Consistent with its authorities, ODA may develop and conduct appropriate measures to control or eradicate feral giant reed, may enter into a contract for the purpose of controlling or eradicating feral giant reed, or take any measures necessary to control or eradicate feral giant reed consistent with law.

(d) Control or eradication of feral giant reed may be implemented at no cost to a person owning or controlling land within this state upon which feral giant reed is detected. However, ODA may request any person owning or controlling land within this state to control, prevent the spread of, or eradicate feral giant reed, subject to supervision of such activities by ODA.

(e) If ODA is unable to control or eradicate feral giant reed on private property, then consistent with the provision of ORS 570.405(2), any person owning or controlling land within this state must take measures to eliminate or prevent the possibility of spread of feral giant reed to other lands and ownerships. Control measures for feral giant reed must be implemented in a timely manner as determined by ODA. Treatments must provide sufficient levels of control to make progress toward the goal of eradication.

(9) Review:

(a) ODA will conduct a thorough review of these rules after PGE’s test burn (now scheduled for 2014) and before large acreages of giant reed are planted. The best available science, experience with test plots, survey results, and plans for expansion of giant reed production will be taken into consideration when determining whether these rules should be amended.

(b) Before December 31, 2022, the Department will conduct a thorough review of the effectiveness and necessity for this rule. If by that date giant reed has not been declared a noxious weed by ODA and the State Weed Board, the bond/collateral requirement (6)(a) sunsets unless specifically extended via amendment to this rule.

Stat. Auth.: ORS 570.405

Stats. Implemented: ORS 570.405

Hist.: DOA 29-2012, f. & cert. ef. 12-12-12; DOA 3-2014, f. & cert. ef. 2-20-14

603-052-1221

Quarantine; Glassy-Winged Sharpshooter

(1) Establishing a Quarantine. A quarantine is established against glassy-winged sharpshooter, *Hoalodisca coagulata*. This quarantine is established under ORS 561.510 and 561.540 to protect Oregon’s agricultural industries from the artificial spread of glassy-winged sharpshooter. Glassy-winged sharpshooter is a vector of Pierce’s disease, *Xylella fastidiosa* (see OAR 603-052-0051), in grapes and other diseases of important horticultural plants. Glassy-winged sharpshooter is not known to be established in Oregon. Introduction of glassy-winged sharpshooter could result in serious damage to vineyards in Oregon and cause trade restrictions on many other host plants.

(2) Area under Quarantine: Mexico; the entire States of Alabama, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, and Texas; and any other state found to be infested with glassy-winged sharpshooter during the life of this quarantine. In Oregon, any property where glassy-winged sharpshooter is found.

(3) Commodities Covered: All plants referenced in Appendix A. This does not include cut flowers, cut foliage, leafless budwood, grafting wood, or dormant, leafless nursery stock except all types of propagative material of grape plants (*Vitis* spp.) (see (4)(c) below). All life stages of the glassy-winged sharpshooter, including eggs, nymphs, and adults.

(4) Provisions of the Quarantine: All shipments of covered commodities from areas under quarantine outside the state of Oregon are prohibited unless they meet the conditions below:

(a) Covered commodities, except grape plants (*Vitis* spp., see (4)(b)), originating from the area under quarantine including infested counties in California: Fresno, Imperial, Kern, Los Angeles, Madera, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Tulare, Ventura, and any other county found to be infested with glassy-winged sharpshooter during the life of this quarantine, must meet either (A) or (B) below.

NOTE: An infestation is defined as an established, reproducing population as evidenced by positive trap catches or sightings over more than one generation of the glassy-winged sharpshooter or more than one life stage of the glassy-winged sharpshooter found on plants not including regulatory interceptions on recently imported plants.

(A) Originate from nurseries under compliance agreement with the state of origin Department of Agriculture requiring adherence to specific protocols to ensure that shipped host nursery stock is free of glassy-winged sharpshooter; or

(B) Have been treated with a registered pesticide effective at killing all stages of glassy-winged sharpshooter prior to shipment as near to the time of shipping as is reasonably possible. A phytosanitary certificate or certificate of quarantine compliance must accompany the shipment with one of the following additional declarations: “All glassy-winged sharpshooter host plants in this shipment have been grown in a nursery under compliance agreement with the [fill in state] Department of Agriculture to ensure freedom from glassy-winged sharpshooter,” or: “All glassy-winged sharpshooter host plants in this shipment have been treated with [fill in name and rate of pesticide] for glassy-winged sharpshooter.”

(b) Grape plants (*Vitis* spp.) from the area under quarantine, including infested counties in the state of California (see (4)(a)), must be treated for glassy-winged sharpshooter as in (4)(b)(A) or (B) above. A phytosanitary certificate must accompany the shipment with one of the following additional declarations: “Grape plants (*Vitis* spp.) in this shipment have been treated for glassy-winged sharpshooter with [fill in name and rate of pesticide],” or “Grape plants (*Vitis* spp.) in this shipment have been grown under a compliance agreement with the [fill in state] Department of Agriculture to ensure freedom from glassy-winged sharpshooter.”

(c) Notification of regulated commodity shipment is required as described in OAR 603-054-0027. The shipper shall mail, FAX or e-mail documents including the phytosanitary certificate or certificate of quarantine compliance, listing the type and quantity of plants, address of shipper, address of recipient, test results if required in

(4)(c) above, and contact phone numbers to: Nursery Program Supervisor, Plant Division, Oregon Department of Agriculture, 635 Capitol Street NE, Salem, Oregon 97301; FAX: 503/986-4786; e-mail: quarantine@oda.state.or.us. The Department may require that shipments be held until inspected and released.

(d) Sites within Oregon where glassy-winged sharpshooter is found associated with covered commodities imported from the area under quarantine must be treated with a registered pesticide effective at killing all stages of glassy-winged sharpshooter. All imported host material received from areas under quarantine must be treated as well as all other host material in a reasonable buffer zone approved by the Oregon Department of Agriculture. Host material within the spray block may not be moved or sold until after it is treated. In cases where spray blocks include more than one owner, each owner will be responsible for spraying host material on their own property.

(5) Violation of quarantine. Violation of this quarantine may result in a fine, if convicted, of not less than \$500 nor more than \$5,000, as provided by ORS 561.990(4). Violators may also be subject to civil penalties of up to \$10,000 as provided by Oregon Laws 1999, chapter 390, section 2; nursery license suspension or nursery license revocation. Commodities shipped in violation of this quarantine may be treated, destroyed or returned to their point of origin without expense or indemnity paid by the State. [Appendix not included. See ED. NOTE.]

(6) Exceptions. The Department, upon receipt of an application in writing, may issue a special permit allowing movement into this state, or movement within this state, of regulated commodities not otherwise eligible for movement under the provisions of this quarantine order. Movement of such commodities will be subject to any conditions or restrictions stipulated in the special permit, and these conditions and restrictions may vary depending upon the intended use of the commodity and the potential risk of escape or spread of a harmful pest or disease.

(7) Review. The Department and other interested parties shall review the quarantine and restrictions biennially for accuracy and effectiveness.

[ED. NOTE: Tables & Appendices referenced are available from the agency.]
 Stat. Auth.: ORS 561.190, 561.510 & 561.540
 Stats. Implemented: ORS 570.305
 Hist.: DOA 35-2000, f. & cert. ef. 12-15-00; DOA 1-2006, f. & cert. ef. 1-13-06; DOA 2-2007, f. & cert. ef. 1-30-07; DOA 7-2008, f. & cert. ef. 2-8-08; DOA 2-2014, f. & cert. ef. 2-14-14; DOA 12-2014, f. & cert. ef. 7-29-14

603-052-1230

Quarantine: *Phytophthora ramorum*

(1) Establishing a quarantine: A quarantine is established against *Phytophthora ramorum*, the cause of sudden oak death and other plant diseases. This quarantine is established under ORS 561.510 and 561.540 to protect Oregon’s agricultural industries and natural resources from the artificial spread of *P. ramorum*. This pathogen causes mortality in susceptible oak (*Quercus* spp.), tanoak (*Notholithocarpus densiflorus* syn. *Lithocarpus densiflorus*), rhododendron (*Rhododendron* spp.), viburnum (*Viburnum* spp.), evergreen huckleberry (*Vaccinium ovatum*), and other plant species. In other susceptible plants it causes leaf spots, twig dieback and/or stem cankers. Methods for exclusion of commodities potentially infected with this disease and procedures for eradication of incipient infections are prescribed in this quarantine.

(2) Area under quarantine:

(a) The following counties in California: Alameda, Contra Costa, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, and Trinity;

(b) The following portion of Curry County that lies inside the area starting at the point where the mouth of the Rogue River meets the Pacific Ocean and continuing east along the Rogue River to the northeast corner of T35S R12W section 31, then south to the northeast corner of T38S R12W section 18, then east to the northeast corner of T38S R12W section 13, then south to the northeast corner of T38S R12W section 25, then east to the northeast corner of T38S R11W section 29, then south to the northeast corner of T40S R11W

section 8, then east to the northeast corner of T40S R11W section 10, then south to the state border with California, then west to the intersection of the Oregon/California state border with US Highway 101, and then northwest along US Highway 101 to the intersection with West Benham Lane and then west along West Benham Lane and continuing directly west to the Pacific Coastline; then following the coastline north-northwest back to the point of beginning;

(c) Any country, state, county, province or area covered by the federal Domestic Quarantine for *Phytophthora ramorum*, 7 CFR 301.92;

(d) Any property in Oregon where *P. ramorum* is found, including a buffer zone of up to three (3) miles surrounding the infested site during any eradication or containment program.

(3) The following definitions apply to ORS 603-052-1230:

(a) “Best management practices” is defined as any actions or activities that can be used to prevent or eliminate new *P. ramorum* infections.

(b) “Disease-free area” means an area located more than one-quarter (1/4) mile from the generally infested area, or any other infested sites, which has been officially surveyed within the past 6-months and found free of *P. ramorum*.

(c) “Generally-infested area” means the area within the quarantine boundary where *P. ramorum* has been commonly found or in which there is reason to believe *P. ramorum* is present because of the proximity, one-quarter (1/4) mile or less, to known infested sites. A map showing the generally infested area is available from the Oregon Department of Agriculture, http://www.oregon.gov/ODA/CID/PLANT_HEALTH/, 635 Capitol St. NE, Salem, OR 97301, telephone: 503-986-4620.

(d) “Hosts and associated plants” means plants on the USDA APHIS List of Regulated Hosts and Plants Proven or Associated with *Phytophthora ramorum*, effective date November 27, 2013.

NOTE: This list is available from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, telephone: 503-986-4644.

(e) “Infested site” is defined as the area within fifty (50) feet of one or more plants officially confirmed as infected with *P. ramorum*.

(f) “Treatment area” is defined as the area delimited by the Oregon Department of Agriculture (ODA) or an official cooperator in which treatments to eliminate or reduce *P. ramorum* inoculum and sources thereof is required or recommended. The treatment area may range from 50 to 300 or more feet from infected or symptomatic plants.

(g) “Type 1” is defined as an infested site(s) that because of its geographical location in relationship to other infested sites, surrounding flora, and based on the best available data on disease spread, is considered to be of highest risk for advancing further spread of *P. ramorum* into previously un-infested areas. By definition, Type 1 sites are typically located outside of the generally infested area.

(h) “Type 2” is defined as an infested site(s) that because of its geographical location in relationship to other infested sites, surrounding flora, and based on the best available epidemiological data on disease spread, is considered to be of less risk for advancing further spread of *P. ramorum* into previously un-infested areas. By definition, Type 2 sites are typically located inside of the generally infested area.

(i) “Non-commercial” is defined as any activity or entity that does not in some sense involve commerce, relative to similar activities that do have a commercial objective.

(j) “Nursery stock” is defined in ORS 571.005. Tissue culture plantlets in sealed, sterile containers are exempt from this regulation;

(4) Commodities regulated:

(a) All plants and plant parts of hosts and associated plants: Examples of regulated commodities include all portions of the plants including, but not limited to nursery stock, logs, bark, wood chips, mulch, firewood, sawdust, green waste, other plant products that may contain bark or foliage;

(b) Any other plant found to be naturally infected with *P. ramorum*, any product or article that an official inspector determines to present a risk of spreading *P. ramorum*, and all life stages of *P. ramorum*.

(5) Provisions of the quarantine: Movement out of the quarantined area of regulated commodities originating from the area under quarantine, and any other area found to be infested with *P. ramorum* during the life of this quarantine, is prohibited unless one of the following requirements has been met:

(a) The regulated commodity meets the official treatment and certification requirements for interstate movement as defined in the federal domestic quarantine, 7 CFR 301.92. The regulated commodity must be accompanied by an official certificate that includes the following additional declaration “The (type of covered commodity) from (name of county or other location identifier) has been treated for *Phytophthora ramorum* as required prior to shipment.” As applicable, the specific requirements of the treatment must be recorded on the official certificate;

(b) Provisions for Douglas fir, grand fir, alder, and other non-hosts and non-bole hosts (as defined in 7 CFR 301.92) harvested within the quarantine area, including the generally-infested area. Logs and firewood of non-hosts and non-bole hosts are not regulated per 7 CFR 301.92 and can move freely within or outside the quarantine area. Soil, needles, foliage, and plant debris (including branches less than or equal to one (1) inch in diameter) must stay within the quarantine area.

(c) Provisions for tanoak logs and firewood harvested within the quarantine area.

(A) Tanoak logs and firewood - Intrastate. Tanoak logs and firewood may be shipped intrastate provided the logs were harvested from a disease-free area and the logs and firewood are safeguarded from contamination prior to shipment out of the quarantine area.

(B) Tanoak logs and firewood - Interstate. Tanoak logs and firewood may be shipped interstate provided the logs and firewood were harvested from a disease-free area, have been debarked according to federal requirements (see 7 CFR 301.92), and are accompanied by an official phytosanitary certificate verifying the debarking of the logs and firewood prior to shipment.

(C) Tanoak logs and firewood harvested within the generally-infested area are not eligible for movement outside of the quarantine area.

(d) Nursery stock grown in a quarantined county or area may be eligible for shipment to and within Oregon providing the nursery is part of an official certification program and has been inspected and tested as required by the federal domestic quarantine, 7 CFR 301.92, for *P. ramorum*. The official certificate must include the following additional declaration: “The (covered commodity) from (name of county or other location identifier) has met the *Phytophthora ramorum* quarantine requirements for shipment into and within Oregon.”

NOTE: Recipients of tree and shrub nursery stock imported into the state must notify the ODA no later than two business days after its arrival as required by OAR 603-054-0027.

(e) Soil and potting media from the quarantine area at a known infested site or from within four (4) meters of an infected host plant must be sterilized before shipment. The soil or potting media must reach a minimum temperature of 50 degrees C (122 degrees F) for 30-minutes measured at the center of the mass of soil or potting media. Soil or potting media that has never been associated with the covered commodities is exempt. Treatments must be officially verified. The official certificate must include the following additional declaration “The (soil or potting media) from (name of county or other location identifier) has been treated for *Phytophthora ramorum* as required prior to shipment.” The length and temperature of the treatment must be recorded on the official certificate.

(6) Infested properties in Oregon: Confirmation of a *P. ramorum* infection must be made by the ODA or an official cooperator. The required response depends on whether the infested site is of high priority (Type 1) or normal priority (Type 2) in terms of importance for slowing disease spread as determined by ODA or an official cooperator. The ODA or an official cooperator will notify the landowner when a Type 1 infested site has been detected on their property.

(a) Type 1 sites must be treated as quickly as possible in accordance with USDA APHIS’s Official Regulatory Protocol for *Phytophthora ramorum* Detections in Residential or Landscaped Commercial Settings, last revised January 15, 2013 or the USDA Forest

Service, USDA APHIS, National Association of State Foresters, and National Plant Board’s National Framework for Managing Sudden Oak Death caused by *Phytophthora ramorum* in Forests and Wildlands, October 2011. Subject to the availability of funds dedicated to the rapid treatment of *P. ramorum* infested sites, the cost of treatment will be borne by the State.

NOTE: These protocols are available from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, telephone: 503-986-4644. Affected property owners will be issued infestation and treatment area location and treatment requirements in the form of an Administrative Directive. For public and private forested lands, the Oregon Departments of Agriculture and Forestry (ODF) will work with the landowner to develop a treatment plan that will be based on the best available science. The treatment plan may include some or all of the following activities:

- (A) Cutting and piling susceptible trees and shrubs;
- (B) Burning the wood and plant debris when safe to do so;
- (C) Herbicide treatment of stumps, standing trees, and sprouts;
- (D) Fungicide application;
- (E) Sampling and monitoring;
- (F) Replanting with suitable plant species to meet landowner objectives and to prevent intensification and spread of the disease.

(b) On Type 2 sites disease suppression through the implementation of best management practices is encouraged. Subject to availability of funds dedicated to the suppression of *P. ramorum* in urban and forested environments, a cost-share program may be available through the ODF to help defray costs of implementing best management practices to suppress disease spread (Oregon Department of Forestry, 415 Redwood Street, Brookings, OR 97415, telephone: 541-469-5040). A landowner with a Type 2 site may, after consultation with the ODA and ODF, allow use of their infested site(s) for *P. ramorum*-related research by Oregon State University, ODF, or ODA. Trees killed by *P. ramorum* within an infected Type 2 treatment area may be used as firewood under the following conditions:

- (A) The firewood from the infected tree(s) is for non-commercial use only;
- (B) The firewood does not leave the generally-infested area or any other infested site outside of the generally-infested area.

NOTE: Best management practices for managing *P. ramorum* infestations within the generally infested area are available on the California Oak Mortality website, <http://www.suddenoakdeath.org>, or from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, telephone: 503-986-4644, or the Oregon Department of Forestry - Coos Bay, 63612 Fifth Road, Coos Bay, 97420, telephone: 541-267-4136.

(7) Infested nurseries in Oregon: Confirmation of a *P. ramorum* infestation must be made by the ODA or an official cooperator. Nurseries are required to eradicate the disease as quickly as possible in accordance with USDA APHIS’s Official Regulatory Protocol for Nurseries Containing Plants Infected with *Phytophthora ramorum* Version 8.2, revised March 27, 2014. Infected nurseries must also notify their customers of shipments of high-risk nursery stock [Camellia, Kalmia, Pieris, Rhododendron (including Azalea), and Viburnum] to non-regulated areas as required by the Federal Order for *Phytophthora ramorum*, (DA-2012-53, December 10, 2012). Nurseries from within the federally regulated area for *P. ramorum* (7 CFR 301.92) are subject to the following requirements:

(a) Nurseries from which *P. ramorum* has been detected in multiple growing seasons will be required to implement best management practices as described in USDA APHIS’s official regulatory protocols for positive nurseries for the mitigation of *Phytophthora* disease in plants for planting. Alternatively, such nurseries may enter Oregon’s Grower Assisted Inspection Program;

(b) Nurseries within the federally regulated area that ship interstate and from which *P. ramorum* has been detected since March 31, 2011, must comply with the requirements as described by the Federal Order Domestic Quarantine *Phytophthora ramorum* (DA-2014-02, January 10, 2014);

(c) Nurseries within the federally regulated area that do not ship interstate and from which *P. ramorum* has been detected since March 31, 2011, must be inspected annually as described in 7 CFR 301.92;

(d) Nurseries within the federally regulated area that ship interstate and from which *P. ramorum* has not been detected since March 31, 2011, must be inspected as described in ORS 571.145.

(e) Nurseries within the federally quarantined area must be inspected as described in 7 CFR 301.92.

NOTE: These best management practices and protocols and information about the GAIP for nurseries are available from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, telephone: 503-986-4644.

(8) Special permits: The Department, upon receipt of an application in writing, may issue a special permit allowing movement into this state, or movement within this state, of regulated commodities not otherwise eligible for movement under the provisions of this quarantine order. Movement of such commodities will be subject to any conditions or restrictions stipulated in the permit, and these conditions and restrictions may vary depending upon the intended use of the commodity and the potential risk of escape or spread of *P. ramorum*.

(9) Violation of quarantine: Violation of this quarantine may result in a fine, if convicted, of not less than \$500 no more than \$5,000, as provided by ORS 561.990. In addition, violators will be subject to civil penalties of up to \$10,000 as provided by 561.995. Commodities shipped in violation of this quarantine may be treated, destroyed or returned to their point of origin without expense or indemnity paid by the state.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.510 - 561.545, 570.105 - 570.190, & 570.990 - 570.995

Hist.: DOA 1-2001(Temp), f. & cert. ef. 1-5-01 thru 4-4-01, DOA 5-2001, f. & cert. ef. 3-27-01; DOA 1-2005, f. & cert. ef. 1-24-05; DOA 4-2006, f. & cert. ef. 3-10-06; DOA 7-2007, f. & cert. ef. 3-27-07; DOA 5-2008, f. & cert. ef. 1-16-08; DOA 5-2009, f. & cert. ef. 4-9-09; DOA 21-2010, f. & cert. ef. 12-17-10; DFW 14-2011, f. & cert. ef. 9-9-11; DOA 6-2012, f. & cert. ef. 3-22-12; DOA 4-2013, f. & cert. ef. 3-1-13; DOA 5-2014, f. & cert. ef. 4-29-14; DOA 14-2014, f. & cert. ef. 8-22-14; DOA 9-2015, f. & cert. ef. 7-23-15

603-052-1236

Biopharmaceutical Crops

(1) As authorized by ORS 561.738 and 561.740 a system is established for joint federal-state oversight of biopharmaceutical crops in Oregon.

(2) Memoranda of understanding (MOU's).

(a) ORS 561.740 authorizes the Director of Agriculture and an appointee of the Director of Human Services to enter into a MOU or other state-federal cooperative agreement designed to increase state input to the federal biopharmaceutical crop permitting system on issues and requirements of specific interest to the State. These rules clarify the procedures for carrying out the provisions of ORS 561.740.

(b) ODA and DHS will enter into a separate MOU or other cooperative agreement to clarify how they will interact during the joint review of a biopharmaceutical crop permits and oversight of biopharmaceutical crop production.

(3) Federal Regulations. Federal permit regulations related to genetically engineered crops are contained in 7 CFR, Part 340. As part of the permit process (7 CFR, Part 340.4 (14)(c)), USDA submits the application and initial review (minus confidential business information (CBI)) to the department of agriculture of the State of destination.) ORS 561.740(2)(a) authorizes certain Oregon state officials from the departments of Agriculture and Human Services to receive CBI and keep it confidential if the application is for a biopharmaceutical crop.

(4) ODA/DHS Review of Federal Biopharmaceutical Crop Permit. The intent of ODA/DHS review is not to duplicate the efforts of USDA, rather to allow ODA/DHS to provide input on Oregon-specific issues and requirements. ODA/DHS officials may not disclose CBI revealed to them as part of this process.

(5) Public Input

(a) ODA will maintain a list of interested parties requesting notification in the event the State receives a biopharmaceutical crop permit application. Notification to interested parties will be done via email. Only non-CBI will be shared with interested parties and other members of the public.

(b) If ten or more people or an association with ten or more members requests a public information meeting, ODA will conduct such a meeting pursuant to ORS 192.610 to 192.710 in the county of the proposed biopharmaceutical planting to answer questions and gather input. Notice of the meeting will be via email and will include the list of interested parties and the OSU County Extension office in

the county of the proposed planting so that local growers can be invited. The meeting notice will also be posted on ODA's website as will addresses for sending comments via postal mail or email. All input received by the end of the public information meeting will be supplied to the ODA and DHS officials reviewing the application for their consideration.

(c) The period for public comment will be 30 days or as long as possible if the State receives the application with less than 30 days before any USDA-imposed deadlines related to maximum review periods outlined in 7 CFR, Part 340.4(14)(c).

(6) State Response. After thorough review, ODA, in consultation with DHS, will jointly issue a letter to USDA with signatures of designated officials from both agencies. If either agency has concerns, those concerns will be expressed in the joint letter. The letter will recommend approval, approval with additional safeguards, or denial of the biopharmaceutical crop permit application.

(7) Monitoring.

(a) In coordination with USDA, and to the extent resources are available, ODA/DHS officials will participate in inspecting and monitoring of biopharmaceutical crops and take action if it is determined that there is evidence an existing or proposed biopharmaceutical crop is likely to endanger human health, the environment, Oregon agriculture, horticulture, or forest production.

(b) The costs of any required remedial action, which may include crop destruction, are the responsibility of the permit applicant.

(8) State Fees. The applicant will be billed at a maximum rate of \$100/hour for state services related to the authorization and oversight of biopharmaceutical crop production, including but not limited to permit application review, site inspections, monitoring, administration and enforcement. Invoices will be sent quarterly by the ODA. DHS will receive its share of payments received via interagency transfer. Total fees charged under this paragraph may not exceed \$10,000 for each federal permit and the resulting production.

Stat. Auth.: ORS 561.738 & 561.740

Stats. Implemented: ORS 561.190

Hist.: DOA 7-2010, f. & cert. ef. 2-4-10

603-052-1240

Bentgrass Control Area in Jefferson County

(1) Definitions: As used in this rule:

(a) "Modern biotechnology" means genetic modification of organisms by recombinant DNA techniques.

(b) "Conventionally bred" means traditional plant breeding not involving genetic modification of organisms by recombinant DNA techniques.

(c) "Willamette Valley counties" include: Benton, Clackamas, Lane, Linn, Marion, Multnomah, Polk, Washington, and Yamhill counties in Oregon.

(2) As authorized in ORS 570.405, a control area is established in Jefferson County to regulate the production of bentgrass. This control area is designed to provide physical separation between varieties of bentgrass produced using techniques of modern biotechnology and conventionally bred varieties with which they might cross-pollinate.

(3) Extent of Control Area: The control area consists of all of the following parcels in central Jefferson County, Oregon:

(a) In T10S, R13E, W.M.: sections 2, 3, 4, 5, 11, 13, 14, and 24 in their entirety; the portions of sections 10, 15, 22, 23, 26, and 35 lying east of U.S. Hwy 26; the portion of section 25 lying west of Adams Drive; the NW, SE, SW, quarter sections and the western half of the NE quarter section of section 12; the western half of the SW and NW quarter sections of section 1; the NW quarter corner of the NW quarter section of section 36, plus;

(b) In T9S, R13E W.M.: sections 28, 33, 34, and 35 in their entirety; the portions of sections 16, 20, 21, and 29 lying on the Agency Plains and above the canyon rim; the southern half of section 32 and the eastern half of the NE quarter section of section 32.

(4) Commodities Covered: bentgrass (all *Agrostis* spp.). All other crops, plants, and commodities are exempt from provisions of this regulation except processing of other grass seed crops as regulated in section (5)(c) below.

(5) Prohibited Acts:

(a) Only varieties of bentgrass that have been developed using the techniques of modern biotechnology may be planted, grown, cleaned, conditioned or handled in the control area. Conventionally bred bentgrass varieties may not be planted, grown, cleaned, conditioned or handled within the control area. This regulation applies only to bentgrass.

(b) Bentgrass fields within the control area must not be located closer than one-quarter mile from fields of conventionally bred bentgrass varieties located outside the control area. All field borders, ditch banks, and roadsides within 165 feet of the bentgrass fields must be kept free of *Agrostis* spp. Waterways leaving bentgrass fields must be kept free of *Agrostis* spp. for a distance of 165 feet.

(c) The bentgrass seed produced within the control area must be processed at a seed cleaning and packaging facility located within the control area. No conventionally bred varieties of grass seed of any type shall be cleaned or packaged at this facility.

(d) Bentgrass seed produced in the control area must be transported from the field to the cleaning and packaging facility in enclosed containers. Processed bentgrass seed produced in the control area may not leave the control area except in sealed commercial containers.

(e) Combine(s) used to harvest bentgrass in the control area must not be used for any other crop. Dedicated combine(s) no longer being used to harvest bentgrass in the control area must be fumigated to devalitize all bentgrass seeds and thoroughly cleaned. Other equipment used in the harvesting and transporting of unprocessed bentgrass seed must be thoroughly cleaned before leaving the control area. Containers such as poly bags used to transport unprocessed bentgrass seed and straw must not be used for other agricultural commodities or must be thoroughly cleaned before being used for other agricultural commodities to avoid cross-contamination.

(f) All bentgrass straw produced in the control area must be burned within the control area or processed in a way that devalitizes bentgrass seeds, e.g. pelletizing. If processing occurs outside the area, the straw must travel to the processing plant in enclosed containers.

(g) Stand removal following final harvest will include the following steps: watering to promote regrowth, application of an effective herbicide (such as fluazifop or glufosinate), and shallow tillage (not plowing). The next crop must tolerate a selective herbicide that kills bentgrass and roguing or such herbicide must be used to control bentgrass volunteers. Other methods of stand removal, e.g. fumigation, may be acceptable. Growers should send a written request for approval of alternative methods to: Administrator, Plant Division, Oregon Department of Agriculture, 635 Capitol St., Salem, OR, 97301.

(h) Varieties of bentgrass that have been developed using the techniques of modern biotechnology may not be planted in Willamette Valley counties in order to prevent cross-pollination with traditionally bred varieties. This includes both seed production fields and all non-production plantings such as sod farms, golf course putting greens, tees, and fairways. Research plots are allowed in Willamette Valley counties under permit/notification from the United States Department of Agriculture.

(6) Violations: Any bentgrass or other grass seed not in compliance with the provisions of this rule is subject to destruction as determined by the Director of the Oregon Department of Agriculture. Such destruction shall be at the expense of the owner or owners or their responsible agent or agents. Violators of this control area are subject to the penalties provided by 570.410 and 570.990, including civil penalties up to \$10,000.

Stat. Auth.: ORS 561.190 & 570.405

Stats. Implemented: ORS 570.405

Hist.: DOA 19-2002, f. & cert. ef. 7-23-02; DOA 2-2006, f. & cert. ef. 2-6-06; DOA 2-2008, f. & cert. ef. 1-7-08

603-052-1241

Quarantine: *Rathayibacter toxicus*

(1) Establishing a quarantine. A quarantine is established against *Rathayibacter toxicus*, the cause of bacterial gummosis of seed heads. This quarantine is established under ORS 561.510 and 561.540 to protect Oregon's agricultural industries and natural resources from the artificial spread of *R. toxicus*. This bacterium

causes a disease that infects ryegrass and other grass species, severely limiting seed production. *Rathayibacter toxicus* also produces a toxin that can contaminate grass seeds, hay, and other plant parts; this toxin can be fatal to mammals. Methods for exclusion of commodities potentially infected with this disease and procedures for eradication of incipient infections are prescribed in this quarantine.

(2) Area under quarantine. All areas outside of the State of Oregon where *R. toxicus* is known to occur and any property within the State of Oregon where *R. toxicus* is detected;

(3) Commodities regulated. All plants and plant parts including seed of the following regulated commodities: species of grass known to be hosts for *Anguina* seed gall nematodes, including *Lolium* species, *Dactylis* species, and *Agrostis* species, and all known hosts of *R. toxicus*, including *Phalaris* species, *Vulpia myuros* (Rat's tail fescue), *Austrodanthonia caespitosa* (= *Danthonia caespitosa*, common wallaby-grass), *Avena sativa* (common oat), and *A. caespitosa* (= *Deschampia caespitosa*, tufted hairgrass). All life stages of *R. toxicus*.

(4) Provisions of the quarantine. Regulated commodities originating from the area under quarantine, and any other area found to be infested with *R. toxicus* during the life of this quarantine, are prohibited unless one of the following requirements has been met:

(a) The regulated commodity originates from an area that is free from *R. toxicus* based on official surveys conducted by an official entity recognized by a National Plant Protection Organization. The regulated commodity must be accompanied by an official certificate that includes the following additional declaration: "The shipment originates from an area known to be free from *Rathayibacter toxicus* based on official survey." Official survey data supporting this statement must be presented to the Oregon Department of Agriculture upon request.

(b) The regulated commodity has been tested in an official laboratory recognized by a National Plant Protection Organization using a protocol approved by the Department and has tested free from *R. toxicus*. The regulated commodity must be accompanied by an official certificate that includes the following additional declaration: "The shipment is free from *Rathayibacter toxicus* based on official laboratory testing." An official laboratory test report must be presented to the Oregon Department of Agriculture upon request.

(NOTE: A list of laboratory testing protocols approved by the Department is available from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, telephone 503-986-4620.)

(5) The Oregon Department of Agriculture may require additional sampling and testing of covered commodities imported from an area or areas where *R. toxicus* is known to occur, including all areas described in Section (2). The party in possession of said seed lot(s) while in the State of Oregon shall be responsible for all fees for sample collection and testing. Fees shall be applied as described in OAR 603-052-1150 and 603-056-0305.

(6) Infested properties in Oregon: Confirmation of a *R. toxicus* infection must be made by the Department or an official cooperater. Affected property owners will be issued treatment requirements for the known infested area in the form of an Administrative Directive. The treatment requirements may include, but not be limited to, the following activities:

- (a) Mandatory crop rotation;
- (b) Herbicide treatments;
- (c) Field burning;
- (d) Field inspections, including testing;
- (e) Planting of certified seed;
- (f) Equipment sanitation;

(g) Mandatory official sampling and testing of grass seed lots from future production within infested properties.

(7) Special permits: The Department, upon receipt of an application in writing, may issue a Special Permit allowing movement into this state, or movement within this state, of regulated commodities not otherwise eligible for movement under the provisions of this quarantine order. Movement of such commodities will be subject to any conditions or restrictions stipulated in the Special Permit, and these conditions and restrictions may vary depending upon the intended use of the commodity and the potential risk of escape or spread of *R. toxicus*.

(8) Violation of quarantine: Violation of this quarantine may result in a fine, if convicted, of not less than \$500 no more than \$5,000, as provided by ORS 561.990. In addition, violators may be subject to civil penalties of up to \$10,000 as provided by ORS 561.995. Any seed lots found to contain *R. toxicus* must be treated, destroyed or returned to their point of origin at the owner's expense without expense or indemnity paid by the state.

(9) Review of quarantine: The Department and other interested parties shall review the quarantine requirements biennially for accuracy and effectiveness.

Stat. Auth.: ORS 561.190, 561.510–561.540, 561.990–561.995
 Stats. Implemented: ORS 561.510–561.540
 Hist.: DOA 1-2014, f. & cert. ef. 1-15-14

603-052-1245

Blueberry Nursery Stock Control Area

(1) A Control area is established as authorized under ORS 570.405 to 570.435 to protect Oregon's blueberry fruit industry from the introduction of blueberry scorch virus. Blueberry scorch virus is an aphid-borne plant disease that causes necrosis of leaves and flowers in blueberry leading to a decline in productivity. Blueberry scorch virus does occur in the Pacific Northwest but does not cause symptoms on the commonly grown varieties. However, a more virulent strain of blueberry scorch virus occurs in other areas that would have a severe impact on Oregon's blueberry industry if it were introduced into Oregon. The strains of blueberry scorch virus cannot be readily distinguished by standard laboratory testing methods.

(2) This control area includes the entire state of Oregon.
 (3) The following definitions apply to ORS 603-052-1245:

(a) "Host plant" means plants and plant parts of *Vaccinium corymbosum*, *Vaccinium macrocarpon*, *V.membranaceum*, and *Sambucus nigra* are symptomless carriers of blueberry scorch virus and are also considered host plants.

(b) "Pest Free Area" means an area where blueberry scorch virus does not occur as demonstrated by scientific evidence and in which, where appropriate, this condition is being officially maintained.

(c) "Director" means the director of the Oregon Department of Agriculture or the director's authorized representative.

(d) "Micropropagated" means plant propagation using aseptic laboratory techniques and an artificial culture medium.

(4) To prevent the introduction of blueberry scorch virus, plants and plant parts of *Vaccinium corymbosum* and any other host plants of blueberry scorch virus that are imported, planted, sold, or offered for sale within the control area must meet at least one of the following conditions. A phytosanitary certificate with an additional declaration corresponding to one of the options below is required.

(a) The host plants must originate from a pest free area.
 (b) The host plants are certified in accordance with the regulations of an official certification program in the state or province of origin that includes testing and inspection for blueberry viruses and is approved by the director.

(c) The host plants are free of blueberry scorch virus based on an official laboratory test using a protocol approved by the director.

(d) The host plants are micropropagated and/or grown in an insect-proof greenhouse or screenhouse and originate from mother plants that have been tested and found free of blueberry scorch virus.

(e) Blueberry fruit must be free of leaf tissue and other plant debris before being imported into the control area. Notification and phytosanitary certificates are not required for shipments of blueberry fruit.

(f) The ODA will operate official testing and certification programs on a cost-recovery basis. Fees charged by the Department are payable on or before December 31 of each year, and are for the sole purpose of defraying expenses incurred by the Department in conducting official testing procedures provided for in this control area order. Payment thereof shall not be construed as granting any right or privilege to the program participant.

(5) Notification of regulated commodity shipment is required. The shipper shall mail, FAX or e-mail documents including the phytosanitary certificate of compliance, listing the type and quantity of plants, address of shipper, address of recipient, test results, contact

numbers to: Nursery Program Supervisor, Plant Division, Oregon Department of Agriculture, 635 Capitol Street NE, Salem, Oregon 97301; FAX 503-986-4786; e-mail: quarantine@oda.state.or.us. The department may require that shipments be held until inspected and released.

(6) Violation of the control area may result in a fine, if convicted, of not less than \$500 nor more than \$5,000 as provided by ORS 561.990. Violators may also be subject to civil penalties of up to \$10,000 as provided by 570.410, 570.990, and 570.995; nursery license suspension or nursery license revocation. Commodities shipped in violation may be treated, destroyed or returned to their point of origin at shippers expense.

(7) Review of this Control area: The necessity for this quarantine and its effectiveness will be reviewed by the department and other interested parties annually.

Stat. Auth.: ORS 570.405
 Stats. Implemented: ORS 561.510
 Hist.: DOA 8-2002, f. & cert. ef. 2-1-02; DOA 15-2006, f. & cert. ef. 7-13-06;
 DOA 5-2014, f. & cert. ef. 4-29-14

Importation, Possession, and Release of Terrestrial Invertebrates

603-052-1300

Purpose and General Information

(1) The purpose of these rules is to protect Oregon's agriculture, economy, biodiversity, natural resources, and native species from harmful plant pests (ORS 570.205). These rules further this goal by regulating human activities associated with plant pests capable of causing significant economic damage in this state or capable of having a significant adverse effect on the environmental quality of Oregon.

Stat.Auth.: 570.205, 570.210 & 570.215
 Stats. Implemented: ORS 570.215
 Hist.: DOA 19-2011, f. & cert. ef. 10-13-11

603-052-1310

Definitions

As used in these rules, unless the context or a specially applicable definition requires otherwise:

(1) "Approved species" means an invertebrate species that is not a plant pest that the Department has placed on the approved list.

(2) "Department" or "ODA" means the Oregon Department of Agriculture.

(3) "Import or importation" means to bring or cause live invertebrates to be transported into Oregon by any means.

(4) "Invertebrate" means an animal without a backbone.

(5) "Plant pest" is defined in ORS 570.205.

(6) "Species" means a unit of classification of animals, which are capable of interbreeding and producing fertile offspring.

(7) "Wildlife" means animals covered by Oregon Department of Fish and Wildlife rules, ORS 496.004 and OAR 635-045-002.

Stat.Auth.: 570.205, 570.210 & 570.215
 Stats. Implemented: ORS 570.215
 Hist.: DOA 19-2011, f. & cert. ef. 10-13-11

603-052-1320

Approved Species (Non-Regulated)

(1) Invertebrate species listed as approved may be imported, possessed, sold, purchased, exchanged, transported, or released in Oregon without a permit from the Department. This applies only to stock collected within the continental United States. Species marked with an asterisk (*) have additional restrictions as noted below the sections in which they appear.

(2) A permit for the importation, possession, or intrastate transportation of some ODA-approved species may be required by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine: (http://www.aphis.usda.gov/plant_health/permits/organism/index.shtml).

(3) Live invertebrates not on the list of approved invertebrates in any life stage may not be imported, possessed, sold, purchased, exchanged, transported, or released in the state unless a permit is first obtained from the Department.

(4) These rules apply to all life stages, but do not apply to dead specimens.

(5) These rules do not apply to marine or aquatic invertebrates.

(6) Placement on this list does not constitute an endorsement by the Department of the efficacy of listed biological control agents, suitability of listed invertebrates as pets, or anything else except that trade in listed species does not pose a plant pest risk in Oregon.

(7) The following is a list of approved invertebrates that may be imported, possessed, sold, purchased, exchanged, transported, or released in Oregon. This list provides the common name, scientific name, and common use.

(a) Snails (Gastropoda).

Spike-topped apple snail, *Pomacea diffusa*.
For other Mollusks defined as wildlife (shellfish), e.g. clams, mussels, and oysters, see Department of Fish and Wildlife rules: ORS 506.011 and OAR 635-056-0050.

(b) Earthworms (Annelida).

Grey worm, *Aporrectodea caliginosa* (bait, pet food).
Compost earthworm, *Eisenia veneta* (composter, pet food, bait).
Grindal worm or pot worm, *Enchytraeus buchholzi* (pet food).
Red worm, *Lumbricus rubella* (composter, pet food, bait).
European earthworm, *Lumbricus terrestris* (composter, pet food, bait).
Earthworm, *Lumbricus variegatus* (composter, pet food, bait).
No common name, *Stylaria* spp. (education, research).

(c) Crustacea.

Pillbug, *Armadillium* spp. (education).
Land hermit crab, *Coenobita clypeatus* (pet).
Sowbug, *Oniscus* spp. (education).
For other Crustacea defined as wildlife (shellfish), e.g. shrimp, crabs, crayfish, see Department of Fish and Wildlife rules: ORS 506.011 and OAR 635-056-0050.

(d) Millipedes (Diplopoda).

Giant African millipede, *Archispirostreptus gigas* (pet).
Giant African black millipede, *Lophostreptus* (= *Scaphiostreptus*) *rutilans* (education, pet).
Desert millipede, *Orthoporus ornatus*, *O. texicolens* (pet).
Millipede, *Spirobolus* spp. (education).
Giant millipede, *Thyrophygus* spp. (education, pet).

(e) Mites (Acari).

Flour mite, *Acaris siro* (predator mite food).
Bindweed gall mite, *Aceria malherbae* (weed biocontrol agent).
Tulip bulb mite, *Aceria tulipae* (research).
Predatory mite, *Amblyseius barkeri* (arthropod biocontrol agent).
Predatory mite, *Amblyseius cucumeris* (arthropod biocontrol agent).
Predatory mite, *Amblyseius degenerens* (arthropod biocontrol agent).
Spider mite predator, *Amblyseius hibisci* (mite biocontrol agent).
Spider mite predator, *Amblyseius mckenziei* (arthropod biocontrol agent).
Dried fruit mite, *Carpoglyphus lactis* (predator mite food).
Rush skeletonweed gall mite, *Eriophyes chondrillae* (weed biocontrol agent).
Spider mite predator, *Galendromus occidentalis* (mite biocontrol agent).
Dust mite, *Lepidoglyphus destructor* (predator mite food).
Fungus gnat larval predator, *Statiolaelaps aculeifer*, *S. miles* (insect biocontrol agent).
Spider mite predator, *Mesoseiulus longipes* (mite biocontrol agent).
Spider mite predator, *Neoseiulus californicus* (mite biocontrol agent).
Spider mite predator, *Neoseiulus fallacis* (mite biocontrol agent).
Cyclamen mite, *Phytonemus pallidus* (research).
Spider mite predator, *Phytoseiulus persimilis* (mite biocontrol agent).
Gorse spider mite, *Tetranychus lintearius* (weed biocontrol agent).
Two-spotted spider mite, *Tetranychus urticae* (research).
Mold mite, *Tyrophagus putrescentiae* (predator mite food).
Fungus gnat larval predator, *Stratiolaelaps scimitus* (insect biocontrol agent).

(f) Spiders (Araneae).

Pink toed tarantula, *Avicularia avicularia* (education, pet).
Mexican redknee tarantula, *Brachypelma smithi* (education, pet).
Greenbottle blue tarantula, *Chromatopelma cyaneopubescens* (education, pet).
Chilean rose-haired tarantula, *Grammastola rosea* (education, pet).
Texan brown tarantula, *Aphonopelma hentzi* (education, pet).
Cellar spider, *Pholcus phalangoides* (education).
Wolf spider (Family Lycosidae) (education)*.
Orb weaver spider, (Family Araneidae) (education)*.
*only from stock collected in the Pacific Northwest

(g) Scorpions.

Emperor scorpion, *Pandinus imperator* (education, pet).

(h) Dragonflies and Damselflies (Odonata).

Dragonfly, *Aeschna* spp. (education).

(i) Roaches (Blattaria).

Giant cockroach, *Blaberus* spp. (education, pet).
Orange-spotted cockroach, *Blaptica dubia* (pet food).

Oriental cockroach, *Blatta orientalis* (education, research).
German cockroach, *Blattella germanica* (education, research).
Hissing cockroach, *Gromphadorhina oblongonata* (education, pet).
Madagascar hissing cockroach, *Gromphadorhina portentosa* (education, pet).
American cockroach, *Periplaneta americana* (education, research).

(j) Isoptera (Termites).

Western subterranean termite, *Reticulitermes hesperus* (education).
Western dampwood termite, *Zootermopsis angusticollis* (education).

(k) Crickets and Grasshoppers (Orthoptera).

House cricket, *Acheta domestica* (education, pet food).
Tropical house cricket, *Gryllobates sigillatus* (education, pet food)

(l) Mantids (Mantodea).

European mantis, *Mantis religiosa* (education, insect biocontrol agent).
Chinese mantis, *Tenodera aridifolia sinensis* (education, insect biocontrol agent).

(m) True Bugs (Hemiptera).

Western boxelder bug, *Boisea rubrolineata* (education).
Western tarnished plant bug, *Lygus hesperus* (education).
Tarnished plant bug, *Lygus lineolaris* (education).
Large milkweed bug, *Oncopeltus fasciatus* (education).
Insidious flower bug, *Orius insidiosus* (insect biocontrol agent).

(n) Plant Lice, Mealybugs, Scales, and Whiteflies (Homoptera).

Bluegreen aphid, *Acyrtosiphon kondoi* (research).
Pea aphid, *Acyrtosiphon pisum* (research).
Cowpea aphid, *Aphis craccivora* (research).
Bean aphid, *Aphis fabae* (research).
Melon or cotton aphid, *Aphis gossypii* (research).
Corn root aphid, *Aphis maidiradicis* (research).
Oleander aphid, *Aphis nerii* (research).
Rose scale, *Aulacaspis rosae* (research).
Foxglove aphid, *Aulacorthum solani* (research).
Cabbage aphid, *Brevicoryne brassicae* (research).
Artichoke aphid, *Capitophorus elaeagni* (research).
Carrot aphid, *Cavariella aegopodii* (research).
Woolly apple aphid, *Eriosoma lanigerum* (research).
Boat gall aphid, *Hayhurstia atriplicis* (research).
Oystershell scale, *Lepidosaphes ulmi* (research).
Turnip aphid, *Lipaphis pseudobrassicae* (research).
Potato aphid, *Macrosiphum euphorbiae* (research).
Rose aphid, *Macrosiphum rosae* (research).
Green peach aphid, *Myzus persicae* (research).
European fruit lecanium, *Parthenolecanium corni* (research).
Longtailed mealybug, *Pseudococcus longispinus* (research).
European fruit scale, *Quadraspidiotus ostreaeformis* (research).
Bird cherry oat aphid, *Rhopalosiphum padi* (research).
Greenbug, *Schizaphis graminum* (research).
English grain aphid, *Sitobion avenae* (research).
Spotted alfalfa aphid, *Therioaphis trifolii* (research).
Greenhouse whitefly, *Trialeurodes vaporariorum* (research).

(o) Thrips (Thysanoptera).

Tobacco thrips, *Frankliniella fusca* (research).
Western flower thrips, *Frankliniella occidentalis* (research).
Predatory six-spotted thrips, *Scolothrips sexmaculatus* (mite biocontrol agent)*.
Gladiolus thrips, *Thrips simplex* (research).
Onion thrips, *Thrips tabaci* (research).

(p) Lacewings (Neuroptera).

Common green lacewing, *Chrysopa carnea* (insect biocontrol agent).
Green lacewing, *Chrysopa rufilabris* (insect biocontrol agent).

(q) Beetles (Coleoptera).

St. Johnswort borer, *Agrilus hyperici* (weed biocontrol agent).
Brown dot leafy spurge flea beetle, *Aphthona cyparissiae* (weed biocontrol agent).
Black dot leafy spurge flea beetle, *Aphthona czwalinae* (weed biocontrol agent).
Copper or amber leafy spurge flea beetle, *Aphthona flava* (weed biocontrol agent).
Brown-legged leafy spurge flea beetle, *Aphthona lacertosa* (weed biocontrol agent).
Black dot leafy spurge flea beetle, *Aphthona nigricutis* (weed biocontrol agent).
Broad-nosed seed head weevil, *Bangasternus fausti* (weed biocontrol agent).
Yellow star thistle bud weevil, *Bangasternus orientalis* (weed biocontrol agent).
Scotch broom bruchid, *Bruchidius villosus* (weed biocontrol agent).
Pea weevil, *Bruchus pisorum* (education, research).
Cowpea weevil, *Callosobruchus maculatus* (education, research).
Histerid beetle, *Carcinops pumilio* (insect biocontrol agent).
Corn sap beetle, *Carpophilus dimidiatus* (education, research).
Dried fruit beetle, *Carpophilus hemipterus* (education, research).
Canada thistle stem weevil, *Ceutorhynchus litura* (weed biocontrol agent).

Klamathweed beetle, *Chrysolina hyperici* (weed biocontrol agent).
 Klamathweed beetle, *Chrysolina quadrigemina* (weed biocontrol agent).
 Mealybug destroyer, *Crytolaemus montrouzieri* (insect biocontrol agent).
 Knapweed root weevil, *Cyphlocleonus achates* (weed biocontrol agent).
 Dermestid beetles, *Dermestes* spp. (education, museum specimen preparation).
 Yellow star thistle hairy weevil, *Eustenopus villosus* (weed biocontrol agent).
 Scotch broom seed weevil, *Exapion fuscirostre* (weed biocontrol agent).
 Gorse seed weevil, *Exapion ulicis* (weed biocontrol agent).
 Black-margined loosestrife beetle, *Galerucella californiensis* (weed biocontrol agent).
 Golden loosestrife beetle, *Galerucella pusilla* (weed biocontrol agent).
 Toadflax seed capsule weevil, *Gymnetron antirrhini* (weed biocontrol agent).
 Convergent ladybeetle, *Hippodamia convergens* (insect biocontrol agent).
 Loosestrife root weevil, *Hyllobius transversovittatus* (weed biocontrol agent).
 Yellow star thistle flower weevil, *Larinus curtus* (weed biocontrol agent).
 Lesser knapweed flower weevil, *Larinus minutus* (weed biocontrol agent).
 Blunt knapweed flower weevil, *Larinus obtusus* (weed biocontrol agent).
 Cigarette beetle, *Lasioderma serricorne* (education, research).
 Tansy ragwort flea beetle, *Longitarsus jacobaeae* (weed biocontrol agent).
 Toadflax stem weevil, *Mecinus janthinus* (weed biocontrol agent).
 Puncturevine seed weevil, *Microlarinus lareynii* (weed biocontrol agent).
 Puncturevine stem weevil, *Microlarinus lypriformis* (weed biocontrol agent).
 Loosestrife seed weevil, *Nanophyes marmoratus* (weed biocontrol agent).
 Red-necked leafy spurge stem borer, *Oberea erythrocephala* (weed biocontrol agent).
 Bess beetle, *Odontotaenium disjunctus* (education).
 Merchant grain beetle, *Orzaepphilus mercator* (education).
 Sawtoothed grain beetle, *Orzaepphilus surinamensis* (education).
 Mediterranean sage root weevil, *Phrydiuchus tau* (weed biocontrol agent).
 Lesser grain borer, *Rhyzopertha dominica* (education).
 Spider mite destroyer, *Stethorus punctillum* (biocontrol).
 Granary weevil, *Sitophilus granaria* (education).
 Granary weevil, *Sitophilus oryzae* (education).
 Bronze knapweed root borer, *Sphenoptera jugoslavica* (weed biocontrol agent).
 Drugstore beetle, *Stegobium paniceum* (education).
 Yellow mealworm, *Tenebrio molitor* (education, pet food).
 Yellow mealworm, *Tenebrio obscurus* (education, pet food).
 Cadelle, *Tenebroides mauritanicus* (education).
 Red flour beetle, *Tribolium castaneum* (education, research).
 Confused flour beetle, *Tribolium confusum* (education, research).
 Giant mealworm, *Zophobas morio* (education, pet food).
(r) Butterflies and Moths (Lepidoptera).
 Sulfur knapweed moth, *Agapeta zoegana* (weed biocontrol agent).
 Polyphemus moth, *Antheraea polyphemus* (education)*.
 St. Johnswort moth, *Aplocera plagiata* (weed biocontrol agent).
 Silkworm, *Bombyx mori* (education, research).
 Almond moth, *Cadra cautella* (research).
 Raisin moth, *Cadra figulilella* (research).
 Toadflax moth, *Calophasia lunula* (weed biocontrol agent).
 Butterworm, *Chilecomadia moorei* (pet food), USDA permit and irradiation required.
 Russian thistle or tumbleweed casebearer, *Coleophora klimeschiella* (weed biocontrol agent).
 Russian thistle stem-mining moth or tumbleweed stem moth, *Coleophora parthenica* (weed biocontrol agent).
 Orange sulfur or alfalfa caterpillar, *Colias eurytheme* (education, releases).
 Mexican jumping bean, *Cydia deshaisiana* (education, pet).
 Monarch Butterfly, *Danaus plexippus*, (education, releases)*
 *Monarch butterfly importation and release from out-of-state sources is prohibited to allow biogeographical research related to determining why wild monarch populations in Oregon are declining.
 Mediterranean meal moth, *Ephesia kuehniella* (education).
 Saltmarsh caterpillar, *Estigmene acrea* (education)*.
 Greater wax moth, *Galleria mellonella* (education, pet food, research).
 Corn earworm/cotton bollworm/tomato fruitworm, *Helicoverpa zea* (research).
 Tobacco budworm, *Heliothis virescens* (research).
 Brown house moth, *Hofmannophila pseudopretella* (research).
 Ceanothus silk moth, *Hylaphora euryalus* (education, release)*.
 Whitelined sphinx moth, *Hyles lineata* (education).
 Scotch broom twig miner, *Leucoptera spartifoliella* (weed biocontrol agent).
 Tomato hornworm, *Manduca quinquemaculata* (education, research).
 Tomato hornworm, *Manduca sexta* (education, research).
 Spotted knapweed seedhead moth, *Metzneria paucipunctella* (weed biocontrol agent).
 Mourning cloak, *Nymphalis antiopa* (education, release).
 Rusty tussock moth, *Orgyia antiqua* (research).
 Western tiger swallowtail butterfly, *Papilio rutulus* (education, release).

Anise swallowtail butterfly, *Papilio zelicaon* (education, release).
 Cabbage white or imported cabbageworm, *Pieris rapae* (education).
 Indian meal moth, *Plodia interpunctella* (education, pet food, research).
 Meal moth, *Pyralis farinalis* (education, pet food, research).
 Woolly bear, *Pyrrarctia isabella* (education)*.
 Beet Armyworm, *Spodoptera exigua* (research).
 Cabbage looper, *Trichoplusia ni* (research).
 Cinnabar moth, *Tyria jacobaeae* (weed biocontrol agent).
 Red admiral, *Vanessa atlanta* (education, release).
 Painted ladies, *Vanessa cardui*, *V. virginianensis* (education, release).
 *only from stock collected in the western U.S.

(s) Diptera (Flies).

Aphid predator midge, *Aphidoletes aphidimyza* (insect biocontrol agent).
 Ragwort seed head fly, *Botanophila seneciella* (weed biocontrol agent).
 Darkwinged fungus gnats, *Bradysia* spp. (research).
 Blow and bottle flies, *Calliphora* spp. (education).
 Knapweed peacock fly, *Chaetorellia acrolophi* (weed biocontrol agent).
 Yellow star thistle peacock fly, *Chaetorellia australis* (weed biocontrol agent).
 Mosquito, *Culex* spp. (education, research).
 Rush skeletonweed gall midge, *Cystiphora schmidti* (weed biocontrol agent).
 Seedcorn maggot, *Delia platura* (research).
 Vinegar fly, *Drosophila melanogaster* (education, pet food, research).
 Vinegar fly, *Drosophila mohavensis* (education, research).
 Vinegar fly, *Drosophila hydei* (education, research).
 Vinegar fly, *Drosophila virilis* (education, research).
 European hover fly, *Eristalis tenax* (bait).
 Black soldier fly, *Hermetia illucens* (composter).
 Serpentine leafminer, *Liriomyza brassicae* (research).
 Filth fly parasitoid, *Musciidifurax zaraptor* (insect biocontrol agent).
 Filth fly parasitoid, *Nasonia vitripennis* (insect biocontrol agent).
 Grey flesh fly, *Sarcophaga bullata* (education, research).
 Filth fly parasitoid, *Spalangia cameroni* (insect biocontrol agent).
 Filth fly parasitoid, *Spalangia endius* (insect biocontrol agent).
 Green clearing fly, *Terellia virens* (seed biocontrol agent).
 Banded gall fly, *Urophora affinis* (seed biocontrol agent).
 Canada thistle stem gall fly, *Urophora cardui* (weed biocontrol agent).
 UV knapweed seed head fly, *Urophora quadrifasciata* (weed biocontrol agent).
 Yellow star thistle gall fly, *Urophora sirunaseva* (weed biocontrol agent).
 Bull thistle seed head gall fly, *Urophora stylata* (weed biocontrol agent).

(t) Ants, Bees, and Wasps (Hymenoptera).

Weevil larva parasitoid, *Anisopteromalus calandrae* (insect biocontrol agent).
 Aphid parasitoid, *Aphidius aphidimyza* (insect biocontrol agent).
 Aphid parasitoid, *Aphidius colemani* (insect biocontrol agent).
 Aphid parasitoid, *Aphidius ervi* (insect biocontrol agent).
 Aphid parasitoid, *Aphidius matricariae* (Insect biocontrol agent).
 Italian honeybee, *Apis mellifera ligustica* (pollinator).
 European honeybee, *Apis mellifera mellifera* (pollinator).
 Bumblebees native to Oregon, e.g. *Bombus vosnesenskii*, *B. appositus*, *B. bifarius*, *B. californicus*, *B. griseocolis*, *B. melanopygus*, *B. mixtus*, *B. nevadensis*, *B. sitkensis* (pollinators).
 Egg and larval parasitoid of stored product pests, *Bracon hebetor* (insect biocontrol agent).
 Egg and larval parasitoid of stored product pests, *Cotesia plutellae* (insect biocontrol agent).
 Whitefly parasitoid, *Encarsia formosa* (insect biocontrol agent).
 Whitefly parasitoid, *Eretmocerus californicus* (insect biocontrol agent).
 Aphid parasitoid, *Lysiphlebus testaceipes* (insect biocontrol agent).
 Alfalfa leafcutter bee, *Megachile rotundata* (pollinator).
 Alkali bee, *Nomia melanderi* (pollinator).
 Blue orchard bee or mason bee, *Osmia lignaria propinqua* (pollinator).
 Harvester ant, *Pogonomyrmex owyhee* (education).
 Harvester ant, *Pogonomyrmex salinus* (education).
 Parasitoid of Lepidoptera eggs, *Trichogramma minutum* (insect biocontrol agent).
 Parasitoid of Lepidoptera eggs, *Trichogramma pretiosum* (insect biocontrol agent).
 Parasitoid of Lepidoptera eggs, *Trichogramma platneri* (insect biocontrol agent).
 Aphid parasitoid, *Trioxys pallidus* (insect biocontrol agent).
 Stat.Auth.: 570.205, 570.210 & 570.215
 Stats. Implemented: ORS 570.215
 Hist.: DOA 19-2011, f. & cert. ef. 10-13-11; DOA 3-2013, f. & cert. ef. 3-1-13; DOA 2-2014, f. & cert. ef. 2-14-14

603-052-1330

Changes to List of Approved Invertebrates

(1) Interested persons may petition the Department to make changes or additions to the list of approved invertebrates by fol-

lowing the procedures in the Administrative Procedures Act, ORS 183.390.

(a) The agency must either deny the petition or initiate rule-making within 90 days of receiving the petition. In deciding whether to grant or deny a petition the Department may request additional information from the petitioner necessary for completing a determination of whether the invertebrate is capable of having a significant adverse effect on the environmental quality of this state or causing significant level of economic damage in Oregon.

(b) The Department may deny a petition if information provided by the petitioner is insufficient to allow the Department to make a science-based assessment of whether an invertebrate poses a significant risk of adverse effect to the environmental quality of this state or a significant level of economic damage in Oregon.

Stat.Auth.: 570.205, 570.210 & 570.215
Stats. Implemented: ORS 570.215
Hist.: DOA 19-2011, f. & cert. ef. 10-13-11

603-052-1340 Permits

(1) The Department may issue a permit allowing the possession or movement of a plant pest within this state only if the Department determines that the proposed possession or movement will not create a hazard to agricultural, forest or horticultural interests within the state or to the environmental quality of the state or upon conditions the Department may specify in any permit.

(2) Person requesting a permit shall petition the Department in writing and include any additional information the Department determines is necessary for review of such application.

(3) The Director of the Department of Agriculture retains the final authority to approve or deny special permit requests. Any action under a permit obtained from the Department shall be subject to any conditions or restrictions set forth in the permit. Permit conditions and restrictions may vary depending on the proposed action and its potential risk as determined by the Department.

(4) Any permit holder who does not comply with the conditions of a permit issued by the Department may be deemed in violation of ORS 570.205 and 570.215 and these rules.

Stat.Auth.: 570.205, 570.210 & 570.215
Stats. Implemented: ORS 570.215
Hist.: DOA 19-2011, f. & cert. ef. 10-13-11

603-052-1350 Premises and Permit Accessible to Department Officials

Department officials shall have access to the premises where the invertebrates are housed and to the permit during normal business hours. The permit holder must keep a copy of the permit until it expires, the invertebrates are no longer alive, or for one year after release if release is allowable under the permit.

Stat.Auth.: 570.205, 570.210 & 570.215
Stats. Implemented: ORS 570.215
Hist.: DOA 19-2011, f. & cert. ef. 10-13-11

603-052-1360 Violations

(1) A plant pest, other than a plant pest possessed or moved in compliance with these rules is a public nuisance.

(2) The Department may abate a public nuisance as described in ORS 570.105–570.190 including the summary processes described in 570.170 and 570.180.

(3) Any and all invertebrates possessed or moved in violation of these rules must be returned immediately to the point of origin by the Oregon receiver. The owner or person possessing or moving invertebrates in violation of these rules shall return such invertebrates to the point of origin under the direction of the Department and at the expense of the possessor, owner, or agent of the owner.

(4) If the owner or person possessing or moving invertebrates in violation of these rules fails to ship such invertebrates to the point of origin, or at the discretion of the Department, such invertebrates may be treated or destroyed under supervision of the Department at the expense of the possessor, owner, or agent of the owner.

(5) As provided in ORS 570.225(3), the Department is not required to compensate a person for any loss incurred by the possessor, owner, or agent of the owner under these rules.

Stat.Auth.: 570.205, 570.210 & 570.215
Stats. Implemented: ORS 570.215
Hist.: DOA 19-2011, f. & cert. ef. 10-13-11

603-052-1370 Civil Penalties

(1) In addition to any applicable fine or other penalty, the Department may impose a civil penalty not to exceed \$10,000 if a person violates these rules or the conditions of a permit obtained from the Department pursuant to OAR 603-052-1340 above. See OAR 603-054-0070 for the civil penalty matrix.

Stat.Auth.: 570.205, 570.210 & 570.215
Stats. Implemented: ORS 570.215
Hist.: DOA 19-2011, f. & cert. ef. 10-13-11

DIVISION 53

INSPECTION FEES

603-053-0100

Fees and Charges for Hop Sampling and Analytical Services

The following fees and charges are established for hop sampling and analytical services:

(1) Lot inspection — \$1.25 per bale (Minimum Charge — \$35 per lot);

(2) 17¢ per bale additional for brewers value;

(3) Supplemental Certificate — \$6 per certificate.

Stat. Auth.: ORS 561.190, 570.450, 632 & 633
Stats. Implemented: ORS 632.940 & 632.945
Hist.: AD 455, f. 7-14-53, ef. 7-27-53; AD 1100(21-76), f. & ef. 7-20-76; AD 11-1981, f. & ef. 7-6-81; AD 14-1986, f. & ef. 10-27-86; AD 15-1991, f. & cert. ef. 9-10-91

603-053-0200

Inspection Fees For Agricultural Products

The following fees and charges are established for grading, inspection, and certification of horticultural and agricultural products and processes. Fees will be established in an amount reasonably necessary to cover the cost of providing grading, inspection, certification and auditing in the Shipping Point Inspection program and administration of the program pursuant to ORS 632.940:

(1) Separate fees and hourly rates for inspection of fresh products at specific facilities may be available upon request. At the option of the department, fees and hourly rates may be established for specific facilities at an amount reasonably necessary to cover the cost of services rendered. Such fees and hourly rates shall be calculated by determining the costs, including administrative overhead, for providing the service to the specific facility. Fees and rates established pursuant to this section supersede the fee schedule and rates established herein.

(2) Regular inspection and Expense Guarantee: Regular inspection fees are established in an amount reasonably necessary to cover the cost of providing the services and administration of the program in each of the Shipping Point Inspection Districts. An expense guarantee may be part of the regular inspection charges. Expense Guarantee: When service is requested that will require the assignment of an inspector at a point where the volume of work, at regular fee schedule, would not be adequate to cover the costs of the service, an expense guarantee may be required. This guarantee may include:

(a) A charge for a minimum of four hours of service at a rate of \$ 60 per hour unless otherwise specified by contract;

(b) Travel time at the rate of \$ 60 per hour;

(c) Mileage at the rate per mile established by the Department of Administrative Services;

(d) Eight hours per day at \$ 60 per hour for a minimum of five days per week Monday through Friday during the assignment;

(e) When regular fees equal or exceed the Expense Guarantee, the regular Fee Schedule shall apply;

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(f) Credit may be given towards the Expense Guarantee for any work performed for other applicants;

(g) Overtime charges shall be in addition to the Expense Guarantee.

(3) Fresh Product Grade and Condition Certification:

(a) All Fresh Fruit and Vegetables (except Onions and Potatoes):

(A) 65 lbs. Or less net — 6-1/2¢ per container;

(B) Bulk or bulk bins — \$ 3.25 per ton

(b) Brine Cherries:

(A) 15,500 lbs. or less — \$ 43;

(B) 15,501 to 31,250 lbs. — \$ 50;

(C) 31,251 to 37,500 lbs. — \$ 57;

(D) Quantities in excess of 37,500 lbs. — 18¢ per cwt. for the overage;

(c) Onions: — 12¢ per cwt.

(d) Potatoes: — 12¢ per cwt.;

(A) Certified Seed — 12¢ per cwt.;

(B) Diversion — 8¢ per cwt.

(e) Tree Nuts;

(A) Filberts Inshell — 20¢ per cwt.;

(B) Walnuts Inshell — 28¢ per cwt.;

(C) Filbert Kernels — 38¢ per cwt.;

(D) Shelled Walnuts — 48¢ per cwt.

(4) Inspection of Product for Processing: Fees and hourly rates for inspecting fruits and vegetables intended for processing shall be established on a separate, uniform basis for each facility. The fees and hourly rates shall be set at an amount reasonably necessary to cover the cost of services rendered. Such fees and hourly rates shall be calculated by determining the costs, including administrative overhead, for providing the service to the specific facility.

(5) Certification and Third-Party Audit Services Fees: All certification and third-party audit services will be provided on a first come, first served basis as qualified auditing staff is available. These include: USDA National Organic Program (NOP) certification, USDA Good Agricultural Practices/Good Handling Practices (GAP/GHP), USDA Produce GAPs Harmonized Standard, Global Food Safety Initiative benchmarked audit schemes and additional industry or private standards as requested. Audit fees will be applied to all services for accredited programs or for additional audit standards as requested by the industry. The cost for such services may include:

(a) A charge for a minimum of four hours of service at a rate of \$92 per hour;

(b) Travel time at the rate of \$92 per hour;

(c) Mileage, lodging and per diem reimbursed at rates established by the Department of Administrative Services;

(d) Annual application fees for USDA National Organic Program (NOP) certification at \$250 for first-time applicants and \$100 for renewal applications; and

(e) Certification fees for Global Food Safety Initiative benchmarked schemes at \$300 per certificate, or per site.

(6) Minimum Certificate Charge: When small lots are written up to meet a specific need in an operating packing house, of a commodity which is being inspected on a regular basis, the minimum certificate charge shall be calculated on the regular schedule for that commodity with a \$ 10 minimum fee.

(7) Mileage Charges: Mileage may be charged in addition to all inspection fees or time charges, at the rate per mile established by the Department of Administrative Services, when travel is required.

(8) Special Services or Determinations: When platform inspections, checkloading, checkweighing, count certification, sealing, or other special services are requested, then at the option of the Department the fee, hourly charge, and/or the minimum number of hours per day, per week or period, may be agreed upon by prior written contractual agreement between the applicant or applicants and the Department. In no case, however, shall such charges be less than is necessary to completely reimburse the Department for its total costs of furnishing such services. The provisions of this section supersede the other fee schedules and provisions relating thereto.

(9) Off Grade or Size Certification: When containers of reject-off grade commodity are not emptied by the close of the business day, an

off grade certificate shall be issued covering the total amount of rejected commodity and the regular fee schedule shall be applied.

(10) Overtime Charges: For all inspection services performed during the following times (which will be considered overtime), the regular inspection fees or hourly charges shall be charged plus \$ 30 per hour for all time involved. Overtime charges shall be figured to the nearest one-half hour:

(a) After eight hours shed operation (per scheduled shift) or 6:00 p.m., whichever comes first, on Monday through Friday of each week;

(b) At any time on Saturdays or Sundays; and

(c) At any time on any day which is declared by law to be a holiday for state employees.

(11) Overtime Service Charge: The minimum overtime service charge for Saturdays, Sundays and other legal holidays shall be four hours.

(12) No Service Days: No service will be given on Thanksgiving, Christmas, or New Years days.

(13) Standardization Inspection Charges: Produce requiring inspection under ORS 632, arriving on Oregon terminal markets without evidence of inspection or without request for inspection being made to the Department prior to arrival will be assessed double the applicable fee stated in the fee schedule and a state certificate will be issued.

(14) Extra Service Charge: When extra service is requested in conjunction with grade and condition certification, an additional charge at the applicable fee stated per hour may be made for additional time used to make these determinations. Time shall be figured to the nearest 1/2 hour.

(15) Additional Certificates: When it is necessary to issue extra certificates, certificate copies, or superceded certificates, a charge of \$ 10 for each certificate shall be made. When the cost to issue the certificates exceed \$10, the hourly rate shall apply. When it is necessary to issue extra certificates or supercede certificates due to errors of Inspection Service, no charge will be made.

(16) Phytosanitary or Federal FV-294 Certificates or Federal FV-184 Certificates (extra service charge for sampling and inspection):

(a) When in conjunction with and at the time of grade inspection — 2¢ per cwt.;

(b) When not grade inspected or at time of inspection, the hourly inspection fee will apply plus — 2¢ per cwt.;

(c) Minimum service charge for each certificate issued — \$10.

(17) Fumigation Certificates: When fumigation certification is requested, a charge at the applicable rate per hour will be made for all time required, including travel time, plus mileage at a rate established by the Department of Administrative Services.

Stat. Auth.: ORS 561.190, 632.940 & 632.945

Stats. Implemented: ORS 632.940 & 632.945

Hist.: AD 562, f. & ef. 10-7-57; AD 611, f. 7-10-59; AD 672, f. 6-29-61; AD 767, f. & ef. 7-17-63; AD 799(6-65), f. 6-30-65, ef. 7-15-65; AD 854(26-67), f. 9-26-67, ef. 10-1-67; AD 886(16-68), f. 8-21-68, ef. 10-1-68; AD 904(10-69), f. 8-29-69, ef. 9-8-69; AD 973(6-72), f. 7-11-72, ef. 8-1-72; AD 1037(27-74), f. 8-20-74, ef. 9-11-74; AD 1069(15-75), f. 9-5-75, ef. 9-25-75; AD 13-1979, f. 9-28-79, ef. 10-1-79; AD 10-1983, f. & ef. 8-22-83; AD 2-1991, f. & cert. ef. 2-15-91; AD 17-1992, f. & cert. ef. 11-30-92; AD 11-1994, f. 8-30-94, cert. ef. 9-1-94; AD 9-1996, f. & cert. ef. 7-26-96; DOA 7-1999, f. & cert. ef. 4-26-99; DOA 28-2000, f. & cert. ef. 10-13-00; DOA 27-2002, f. & cert. ef. 12-23-02; DOA 19-2006, f. & cert. ef. 11-2-06; DOA 18-2012, f. & cert. ef. 6-12-12

603-053-0300

Produce Dealers License Fees

The following annual produce dealer license fees are established as provided for in ORS 585.050:

(1) Wholesale Produce Dealers License — \$70. In addition, each wholesale produce dealer shall pay a fee of \$5 for each motor vehicle used by the wholesale produce dealer in business to transport produce.

(2) Retail Produce Peddlers License — \$15. This fee entitles the retail produce peddler to the use of one vehicle. The retail produce dealer shall pay an additional \$15 for each additional vehicle used in the business.

(3) Produce Cash Buyers License — \$65. Cash buyers may purchase a motor vehicle produce license for \$5 for each vehicle used in the produce business, if desired.

Stat. Auth.: ORS 561 & 585
 Stats. Implemented: ORS 585.010 - 585.220
 Hist.: AD 10-1990, f. & cert. ef. 5-16-90

Shipping Point Advisory Committee

603-053-0400

Definitions

(1) "Department" means the Department of Agriculture of the State of Oregon.

(2) "Director" means the Director of the Department of Agriculture.

(3) "Shipping Point Inspection Program (SPI)" means the state and/or federal inspection program for fruits, vegetables and nuts.

Stat. Auth.: ORS 561.190, 632.940 & 632.945
 Stats. Implemented: ORS 632.940 & 632.945
 Hist.: DOA 6-1999, f. & cert. ef. 4-26-99

603-053-0410

Purpose

The Department will establish an advisory committee for the Shipping Point Inspection Program (SPI). The SPI Advisory Committee will represent a balanced cross section of the affected industries as well as a geographic representation across the state. The Committee's primary role is to advise the Department on matters relating to the administration of the Shipping Point Inspection Program and may make recommendations concerning the inspection and certification services rendered by the Department.

Stat. Auth.: ORS 561.190, 632.940 & 632.945
 Stats. Implemented: ORS 632.940 & 632.945
 Hist.: DOA 6-1999, f. & cert. ef. 4-26-99

603-053-0420

Committee Members

The SPI Advisory Committee will consist of 13 members representing applicants of the SPI Program including growers, shippers, packers, and processors. Members shall be appointed by the Director. The term of each member will be three years from the date of appointment, except initial terms of one, two and three years will be used to stagger the terms of the Committee members. Vacancies in office will be filled by appointment for the unexpired term.

Stat. Auth.: ORS 561.190, 632.940 & 632.945
 Stats. Implemented: ORS 632.940 & 632.945
 Hist.: DOA 6-1999, f. & cert. ef. 4-26-99; DOA 22-2001, f. & cert. ef. 9-20-01

603-053-0430

Officers and Ex Officio

The Director or an official representative shall serve as ex-officio members without the right to vote.

Stat. Auth.: ORS 561.190, 632.940 & 632.945
 Stats. Implemented: ORS 632.940 & 632.945
 Hist.: DOA 6-1999, f. & cert. ef. 4-26-99; DOA 22-2001, f. & cert. ef. 9-20-01

603-053-0440

Meetings

The Committee will meet at the call of the Director or an official representative at least once annually. A majority of the members constitutes a quorum (7 members constitutes a quorum), a majority vote of the quorum at any meeting shall constitute an official action (a minimum of 4 members).

Stat. Auth.: ORS 561.190, 632.940 & 632.945
 Stats. Implemented: ORS 632.940 & 632.945
 Hist.: DOA 6-1999, f. & cert. ef. 4-26-99; DOA 22-2001, f. & cert. ef. 9-20-01

603-053-0450

Travel and Miscellaneous Expenses

Each member of the Committee, may, with the approval of the Director, be reimbursed for the actual and necessary expenses incurred in the performance of his or her official duties. However, members may not receive any consideration for serving on the Committee. The reimbursement shall be made at the rate established by the Department of Administrative Services. The Department will pro-

vide Committee members with the State of Oregon Travel Expense Detail Sheets to be completed within 60 days of incurred expenses.

Stat. Auth.: ORS 561.190, 632.940 & 632.945
 Stats. Implemented: ORS 632.940 & 632.945
 Hist.: DOA 6-1999, f. & cert. ef. 4-26-99

DIVISION 54

NURSERIES

Nursery License Fee Schedule

603-054-0016

License Fees: Growers and Collectors

(1) The license fee for nursery growers, other than greenhouse growers of herbaceous plants, and for collectors of native plants shall be as follows: If Annual Sales are — The license fee is:

- (a) Up to \$20,000 = \$129;
- (b) \$20,001-\$100,000 = \$129 plus .0040 over \$20,000;
- (c) \$100,001-\$200,000 = \$449 plus .0037 over \$100,000;
- (d) \$200,001-\$500,000 = \$819 plus .0030 over \$200,000;
- (e) \$500,001-\$2,000,000 = \$1,719 plus .0018 over \$500,000;
- (f) \$2,000,001 & above = \$4,419 plus .00052 over \$2,000,000;
- (g) Maximum Fee = \$20,000.

(2) In addition to the annual license fee above, there will be a research assessment equal to .0002 of annual sales. The minimum research assessment is \$10.

(3) In addition to the annual license fee (1) and research assessment fee (2) above, there will be an assessment for the Plant Pest and Disease Emergency Response Fund. The assessment will be adjusted annually to maintain a fund balance of \$250,000 and will not exceed .0002 of annual sales.

Stat. Auth.: ORS 561 & 571
 Stats. Implemented: ORS 571.057
 Hist.: AD 8-1986, f. & ef. 5-22-86; AD 11-1995(Temp), f. & cert. ef. 6-14-95; AD 13-1997, f. & cert. ef. 7-31-97; Administrative correction 8-26-97; DOA 2-2003, f. & cert. ef. 1-7-03; DOA 9-2006, f. & cert. ef. 3-22-06; DOA 3-2008, f. & cert. ef. 1-7-08; DOA 13-2008, f. & cert. ef. 4-15-08; DOA 6-2014, f. & cert. ef. 5-1-14

603-054-0017

License Fees: Greenhouse Growers of Herbaceous Plants

(1) The license fee for greenhouse growers of herbaceous plants shall be as follows: If Annual Sales are — The license fee is:

- (a) Up to \$20,000 = \$129;
- (b) \$20,001-\$100,000 = \$129 plus .0016 over \$20,000;
- (c) 100,001-\$200,000 = \$257 plus .0013 over \$100,000;
- (d) \$200,001-\$500,000 = \$387 plus .00064 over \$200,000;
- (e) \$500,001-\$2,000,000 = \$579 plus .00057 over \$500,000;
- (f) \$2,000,001 & above = \$1,434 plus .00052 over \$2,000,000;
- (g) Maximum Fee = \$20,000.

(2) In addition to the annual license fee above, there will be a research assessment equal to .0002 of annual sales. The minimum research assessment is \$10.

(3) In addition to the annual license fee (1) and research assessment fee (2) above, there will be an assessment for the Plant Pest and Disease Emergency Response Fund. The assessment will be adjusted annually to maintain a fund balance of \$250,000 and will not exceed .0002 of annual sales.

Stat. Auth.: ORS 561 & 571
 Stats. Implemented: ORS 571.057
 Hist.: AD 8-1986, f. & ef. 5-22-86; AD 11-1995(Temp), f. & cert. ef. 6-14-95; AD 13-1997, f. & cert. ef. 7-31-97; Administrative correction 8-26-97; DOA 2-2003, f. & cert. ef. 1-7-03; DOA 9-2006, f. & cert. ef. 3-22-06; DOA 3-2008, f. & cert. ef. 1-7-08; DOA 13-2008, f. & cert. ef. 4-15-08; DOA 6-2014, f. & cert. ef. 5-1-14

603-054-0018

License Fees: Dealers, Florist and Landscape Contractors

(1) The license fee for dealers, florist, and landscape contractors shall be as follows: If annual purchases (live plant material only, cut flowers are exempt) are The license fee is:

- (a) Up to \$20,000 = \$129;
- (b) \$20,001-\$100,000 = \$129 plus .0016 over \$20,000;

- (c) 100,001-\$200,000 = \$257 plus .0013 over \$100,000;
- (d) \$200,001-\$500,000 = \$387 plus .00064 over \$200,000;
- (e) \$500,001-\$2,000,000 = \$579 plus .00057 over \$500,000;
- (f) \$2,000,001 & above = \$1,434 plus .00052 over \$2,000,000;
- (g) Maximum Fee = \$20,000.

(2) In addition to the annual license fee above, there will be a research assessment equal to .0002 of annual purchases. The minimum research assessment is \$10.

(3) In addition to the annual license fee (1) and research assessment fee (2) above, there will be an assessment for the Plant Pest and Disease Emergency Response Fund. The assessment will be adjusted annually to maintain a fund balance of \$250,000 and will not exceed .0002 of annual purchases.

Stat. Auth.: ORS 561 & 571
 Stats. Implemented: ORS 571.057
 Hist.: AD 8-1986, f. & ef. 5-22-86; AD 11-1995(Temp), f. & cert. ef. 6-14-95; AD 13-1997, f. & cert. ef. 7-31-97; Administrative correction 8-26-97; DOA 2-2003, f. & cert. ef. 1-7-03; DOA 9-2006, f. & cert. ef. 3-22-06; DOA 3-2008, f. & cert. ef. 1-7-08; DOA 13-2008, f. & cert. ef. 4-15-08; DOA 6-2014, f. & cert. ef. 5-1-14

**603-054-0020
 Fees for European Pine Shoot Moth Survey**

The fee for licensed nurseries or Christmas tree growers requesting European pine shoot moth survey is established at \$85 per location (field) per year.

Stat. Auth.: ORS 561 & 571
 Stats. Implemented: ORS 571.145
 Hist.: DOA 2-2003, f. & cert. ef. 1-7-03

**603-054-0024
 Fees for Issuance of Phytosanitary and Other Certificates**

The following fees and charges are established for inspections requested by nurseries in order to issue state or federal phytosanitary certificates and any other certificate that requires inspection prior to issuance of such certificates. The base charge for certificates will be \$25 each. The USDA administrative charge for federal phytosanitary certificates will be \$12 for federal phytosanitary certificates completed by ODA personnel or \$6 for federal phytosanitary certificates issued through PCIT.

Stat. Auth.: ORS 561 & 571
 Stats. Implemented: ORS 571.145
 Hist.: DOA 2-2003, f. & cert. ef. 1-7-03; DOA 9-2006, f. & cert. ef. 3-22-06; DOA 3-2008, f. & cert. ef. 1-7-08; DOA 4-2010, f. & cert. ef. 1-28-10; DOA 6-2014, f. & cert. ef. 5-1-14

**603-054-0027
 Notification of Imported Trees and Shrubs**

(1) Recipients of tree and shrub nursery stock imported into the state of Oregon from any out-of-state source are required to notify the Oregon Department of Agriculture. Notification shall be via mail, FAX or e-mail to: Nursery Program Supervisor, Plant Division, Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301; FAX 503-986-4564; quarantine@oda.state.or.us.

(2) For purposes of this section, "tree and shrub nursery stock" means woody forest and ornamental trees, shrubs and vines grown or kept for propagation or sale, including bareroot, balled and burlaped, and containerized plants, liners, budwood, seedlings and cuttings. Fruit, seeds and tissue culture plantlets are not considered tree and shrub nursery stock.

(3) Notice under (1) of this section in advance of arrival of the shipment is encouraged but must be no later than two business days (Monday through Friday) after its arrival. Notification shall include the species of plant(s), quantities, source, and recipient's contact information. Copies of regular shipping documents, e.g. load lists, with this information are encouraged. ODA may approve alternative notification systems if such systems allow ODA at least one business day to determine if an inspection is necessary.

(4) ODA will contact nurseries within one business day of receipt of notification if the tree and shrub nursery stock must be held for inspection under ORS 571.220 and 570.305. Recipients are not obligated to hold the imported tree and shrub nursery stock for inspection unless contacted directly by an ODA inspector, except that the imported tree and shrub nursery stock must not be sold or dis-

tributed to untraceable buyers, e.g. final consumers, for one business day after notifying ODA.

(5) Failure to comply with this rule could result in criminal penalties authorized in 571.991 of up to \$5,000. Violation of this rule by a licensed nursery may also result in license suspension or revocation.

Stat. Auth.: ORS 570.305 & 571.220
 Stats. Implemented: ORS 561.190
 Hist.: DOA 9-2004, f. & cert. ef. 3-12-04; DOA 5-2007, f. & cert. ef. 3-16-07

**603-054-0030
 Inspection and Service Fees for Unlicensed Nursery Persons**

The fees for inspection and special services performed for persons not required to be licensed pursuant to ORS Chapter 571 are as follows:

(1) Inspections and issuance of phytosanitary or other certificates at locations or premises of persons requesting such service shall be \$60 per hour, chargeable to the nearest one-quarter hour, with a minimum of \$45 for each inspection or issuance of a certificate.

(2) Inspections and issuance of phytosanitary certificates or other certificates at a State Department of Agriculture facility shall be \$20 for each such certificate for non-commercial shipments (less than \$1000 value) and \$35 per certificate for commercial shipments (greater than \$1000 value).

(3) Fees for laboratory services will be sufficient to recover the costs of such services.

Stat. Auth.: ORS 561 & 571
 Stats. Implemented: ORS 561.020 & 571.145
 Hist.: AD 2-1978, f. & ef. 1-19-78; AD 4-1979, f. & ef. 4-22-79; AD 1-1983, f. & ef. 1-4-83; AD 14-1997, f. & cert. ef. 7-30-97; DOA 2-2003, f. & cert. ef. 1-7-03; DOA 6-2014, f. & cert. ef. 5-1-14

**603-054-0035
 License Fees for Christmas Tree Growers**

(1) The annual license fee for Christmas tree growers beginning May 15, 2008, shall be a basic charge of \$62 plus an acreage assessment as follows: \$3 per acre for 40 or fewer acres, plus an additional \$2.60 per acre for more than 40 acres but not more than 100 acres, plus an additional \$2.10 per acre for more than 100 acres but not more than 200 acres, plus an additional \$1.60 per acre for more than 200 acres. The annual license fee for Christmas tree growers beginning May 15, 2009, shall be a basic charge of \$64 plus an acreage assessment as follows: \$3 per acre for 40 or fewer acres, plus an additional \$2.70 per acre for more than 40 acres but not more than 100 acres, plus an additional \$2.20 per acre for more than 100 acres but not more than 200 acres, plus an additional \$1.70 per acre for more than 200 acres. The annual license fee for Christmas tree growers beginning May 15, 2010, shall be a basic charge of \$66 plus an acreage assessment as follows: \$3 per acre for 40 or fewer acres, plus an additional \$2.80 per acre for more than 40 acres but not more than 100 acres, plus an additional \$2.30 per acre for more than 100 acres but not more than 200 acres, plus an additional \$1.80 per acre for more than 200 acres. The annual license fee for Christmas tree growers beginning May 15, 2011, shall be a basic charge of \$68 plus an acreage assessment as follows: \$3 per acre for 40 or fewer acres, plus an additional \$2.90 per acre for more than 40 acres but not more than 100 acres, plus an additional \$2.40 per acre for more than 100 acres but not more than 200 acres, plus an additional \$1.90 per acre for more than 200 acres. The annual license fee for Christmas tree growers beginning May 15, 2012, shall be a basic charge of \$70 plus an acreage assessment as follows: \$3 per acre for 40 or fewer acres, plus an additional \$3 per acre for more than 40 acres but not more than 100 acres, plus an additional \$2.50 per acre for more than 100 acres but not more than 200 acres, plus an additional \$2 per acre for more than 200 acres.

(2) The total license fee shall not exceed \$5,000.

(3) To assist Christmas tree growers in determining their appropriate license fee, a license fee calculator can be found at: http://oda.state.or.us/dbs/christmas_tree_fee/calculator.lasso

Stat. Auth.: ORS 571.530
 Stats. Implemented: ORS 571.530
 Hist.: AD 11-1985, f. & ef. 11-27-85; AD 8-1987, f. & ef. 6-3-87; AD 6-1994, f. & cert. ef. 7-1-94; DOA 9-2008, f. & cert. ef. 2-15-08

Civil Penalties for Violations of ORS Chapters 561, 570 & 571

603-054-0040

Intent

Civil penalties encourage compliance with plant protection and marketing regulatory requirements. The intent of this civil penalty regulation is to implement the authority provided by the Oregon Legislature in order to protect Oregon’s natural resources and enhance the marketing of our agricultural products. Communication is an important first step in reaching the Department of Agriculture’s goal of educating the public and industry into compliance with its regulatory requirements. Occasionally, however, the violation is so obvious and threatening that stronger measures are appropriate in the first instance. Enforcement serves as an important, though usually secondary, educational tool.

Stat. Auth.: 1999 OL 390
 Stats. Implemented: 1999 OL 390
 Hist.: DOA 3-2001, f. & cert. ef. 1-5-01; DOA 10-2005, f. & cert. ef. 2-15-05

603-054-0045

Definitions

In addition to the definitions set forth in ORS 561.005, 570.005, 570.105, and 571.005, the following will apply:

- (1) “Abatement”: Action by a person to comply with a cited violation of the rules or statutes.
- (2) “Director”: The Director of the Department of Agriculture, or the Director’s designee.
- (3) “Good cause”: Means a cause beyond the reasonable control of the person. “Good cause” exists when it is established by satisfactory evidence that factors or circumstances are beyond the control of a rational and prudent person of normal sensitivity, exercising ordinary common sense.
- (4) “Magnitude of Violation”: Means the seriousness of a violation with respect to how it is categorized. The prohibited acts shall be categorized as a Major violation, Moderate violation, or Minor violation.

(5) “Repeat violation”: A violation that has not been fully corrected by the date ordered or subsequent violation of the same rule, order or statute.

(6) “Violation”: The breach of a person’s duty to comply with ORS Chapters 561, 570, or 571 or any regulation, rule or order issued thereunder.

Stat. Auth.: 1999 OL 390
 Stats. Implemented: 1999 OL 390
 Hist.: DOA 3-2001, f. & cert. ef. 1-5-01; DOA 10-2005, f. & cert. ef. 2-15-05

603-054-0050

Consolidation of Proceedings

Each and every violation is a separate and distinct offense. In cases of continuing violations, proceedings for the assessment of multiple civil penalties for multiple violations against a person may be consolidated into a single hearing.

Stat. Auth.: 1999 OL 390
 Stats. Implemented: 1999 OL 390
 Hist.: DOA 3-2001, f. & cert. ef. 1-5-01; DOA 10-2005, f. & cert. ef. 2-15-05

603-054-0055

Notice of Violation and Assessment of Civil Penalties

(1) Notice of a violation shall inform the person of the existence of a violation, the actions required to resolve the violation and the consequences of continued non-compliance.

(2) The Director shall prescribe a reasonable time for the abatement of a violation of ORS 561, 570 or 571. Upon timely request, the Director may extend this time for good cause shown. The request should state any good cause that supports the request.

(3) Violations occurring after the time prescribed for the elimination of the violation shall be considered repeat violations.

(4) Persons receiving a notice of proposed civil penalty under these rules shall have twenty (20) calendar days to request a hearing. If a request is not received on the 20th day after the notice is served, the Department may issue a default order. The Department file is designated as the record in cases of default.

(5) Notice of violation shall be in writing and shall be sent by registered or certified mail to the last known address on file with the Department of Agriculture. The notice shall include, but not be limited to:

(a) A reference to the particular section of the statute and/or administrative rule involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties assessed, and how it was calculated;

(d) A person’s right to request a hearing within twenty (20) days of receipt of the notice and explanation of how a hearing may be requested;

(e) A statement that the notice becomes a final order unless the Department receives a written request for a hearing from the person whom the civil penalty is addressed within twenty (20) days from the receipt of the notice;

(f) A statement that the person is entitled to an informal conference with the Department to attempt resolution of the violation and penalty prior to commencement of a formal contested case hearing.

(6) Civil penalties shall be due and payable within twenty (20) days of receipt of the final order of violation or when the notice is converted to a final order because the person has defaulted.

(7) Any time after the service of the written notice of assessment of a civil penalty, the Director may compromise, reduce or settle any unpaid civil penalty at any amount that the Director deems appropriate in his or her discretion. As provided by ORS 183.415(5), any compromise, reduction or settlement authorized by the Director shall be final and not subject to judicial review.

Stat. Auth.: 1999 OL 390
 Stats. Implemented: 1999 OL 390
 Hist.: DOA 3-2001, f. & cert. ef. 1-5-01; DOA 10-2005, f. & cert. ef. 2-15-05

603-054-0060

Hearing Procedures

All hearings shall be conducted pursuant to the applicable contested case procedures as outlined in ORS 183.310 to 183.550 and the Attorney General’s Uniform and Model Rules of Procedure (OAR Chapter 137, 1999).

Stat. Auth.: 1999 OL 390
 Stats. Implemented: 1999 OL 390
 Hist.: DOA 3-2001, f. & cert. ef. 1-5-01; DOA 10-2005, f. & cert. ef. 2-15-05

603-054-0065

Entry of Order and Appeal Rights

(1) If a person, having received a notice of violation(s), fails to request a hearing as specified in OAR 603-054-0055(5)(d), or if after the hearing the person is found to be in violation of the provisions of these rules, a final order may be entered by the department assessing a civil penalty.

(2) The Director or his/her designate shall sign the order.

(3) The final order, if not appealed or not sustained on appeal, shall constitute a judgement and may be recorded with the county clerk in any county of this state. The penalty provided in the order so recorded becomes a lien upon the title of any interest and real property in the county owned by the person against whom the order is entered.

Stat. Auth.: 1999 OL 390
 Stats. Implemented: 1999 OL 390
 Hist.: DOA 3-2001, f. & cert. ef. 1-5-01; DOA 10-2005, f. & cert. ef. 2-15-05

603-054-0070

Civil Penalty Schedule Matrix

(1) In addition to any other penalty provided by law, the Director may assess a civil penalty for violation of any provision of ORS Chapters 561, 570 and 571 relating to agricultural orders, quarantine rules and regulations, director’s exemptions, compliance agreements, control area orders, failure to pay imported timber inspection fee, unlicensed activity as grower, dealer or agent for the plant nursery, and unlicensed activity as a Christmas tree grower. The amount of any civil penalty shall be determined using the following matrix. The amount of an initial civil penalty shall not exceed \$5,000 and any

subsequent civil penalties for a repeat occurrence of the same prohibited act shall not exceed \$10,000 per violation. [Matrix not included. See ED. NOTE.]

(2) Magnitude of violation: The commission of any prohibited act specified below has been determined to be a violation of ORS Chapter 561, 570 or 571 and is subject to a civil penalty. The commission of each prohibited act has been categorized as to its magnitude of violation as follows:

(a) Major:

(A) Knowingly importing or transferring infested or infected plant material, or other regulated items or regulated organisms into or within Oregon in violation of an agricultural quarantine order, quarantine rules and regulations, director’s exemption, compliance agreement, or control area order.

(B) Using falsified or altered certificates or other official documents issued by a federal, state or county phytosanitary official.

(C) Tampering with, altering, misrepresenting or falsifying in any manner official documents issued by a plant regulatory official.

(D) Providing false information required for issuance of documents or official certificates as required under agricultural quarantine orders, quarantine rules and regulations, director’s exemptions, compliance agreements, control area orders, or imported timber products inspection program.

(E) Substituting uninspected plant material or regulated items for plant material or regulated items covered by a Department inspection.

(F) Willful violation: a violation that is committed knowingly by a person, or the person’s agent, who intentionally or knowingly disobeys or recklessly disregards the requirements of a statute, regulation, rule, or order.

(G) Repeat violations.

(b) Moderate:

(A) Failure to license or refusal to license as a Christmas Tree Grower; Nursery Stock Grower or Collector of Native Plants; Greenhouse Grower of Herbaceous Plants; Nursery Dealer, Florist or Landscape Contractor.

(B) Importing or transferring infested or infected plant material, or other regulated items or regulated organisms into or within Oregon in violation of an agricultural quarantine order, quarantine rules and regulations, director’s exemption, compliance agreement, or control area order.

(C) Knowingly falsifying all or part of any application for registration or licensing.

(D) Failure to pay imported timber products program inspection fees.

(E) Growing plants or conducting other activities requiring a compliance agreement with the Department, without entering into said compliance agreement.

(c) Minor:

(A) Failure to maintain proper certificates or paperwork as required by an agricultural quarantine order, quarantine rules and regulations, director’s exemption, compliance agreement, control area order, or the timber products inspection program.

(B) Failure to notify the Department as required by an agricultural quarantine order, quarantine rules and regulations, director’s exemption, compliance agreement, control area order, or the timber products inspection program.

(C) Transporting or accepting for transportation plant material or regulated items that do not carry the official inspection documents required by the Department.

[ED. NOTE: Matrices referenced are available from the agency.]

Stat. Auth.: 1999 OL 390

Stats. Implemented: 1999 OL 390

Hist.: DOA 3-2001, f. & cert. ef. 1-5-01; DOA 10-2005, f. & cert. ef. 2-15-05

603-054-0075

Mitigating Circumstances

During the process of determining the amount of civil penalty to be assessed, the Director may take into consideration any factors which may have an influence on the particular case. Such factors may include whether the violation appears to be accidental or willful and repeated, whether the violation is a first time offense or if there is a

history of violations and the degree of cooperation shown by the person involved in the violation.

Stat. Auth.: 1999 OL 390

Stats. Implemented: 1999 OL 390

Hist.: DOA 3-2001, f. & cert. ef. 1-5-01; DOA 10-2005, f. & cert. ef. 2-15-05

603-054-0080

License Requirement for Persons Doing Landscaping Business

The Department, as required by ORS 571.045(2), hereby establishes that any person doing landscaping business that stores plants for more than one year, operates as a grower, dealer or agent, keeps plants for propagation, advertises nursery stock for sale, or sells nursery stock, must obtain a nursery license.

Stat. Auth.: ORS 561 & 571

Stats. Implemented: ORS 571.045

Hist.: DOA 2-2003, f. & cert. ef. 1-7-03

DIVISION 55

BEES AND OREGON STANDARDS OF BEE COLONY STRENGTH FOR COLONIES USED IN COMMERCIAL POLLINATION OF CROPS

603-055-0100

Apiary Registration Fees

The following annual apiary registration fees are established by authority provided in ORS 602.090:

(1) The annual registration fee shall be \$10 for every person who owns or is in charge of five or more colonies located in this state.

(2) For each late registration, after July 1, the fee shall double to \$20 for registration.

Stat. Auth.: ORS 561.190 & 602.090

Stats. Implemented: ORS 602.090

Hist.: AD 7-1992, f. & cert. ef. 6-3-92; AD 2-1994, f. & cert. ef. 2-8-94

DIVISION 56

HAY AND SEED

Seeds

603-056-0030

Definitions

The following definitions shall apply to seed law violations, civil penalty enforcement actions, seed dealer licensing, license suspension, license revocation and license reinstatement:

(1) “Agricultural Seed” means fiber, forage and grass crop seed and any other kind of seed or bulblet commonly recognized in this state as agricultural seed or as lawn or turf seed, and mixtures of any such seed.

(2) “Certified,” as applied to agricultural, vegetable or cereal grain seed, means inspected and labeled by and in accordance with the standards and rules and regulations adopted by the Oregon State University Seed Certification Program, or in accordance with similar standards established by some similar regularly constituted authority in another state or county.

(3) “Director” means the Director of the Department of Agriculture, or the Director’s agent.

(4) “Flagrant” means any violation where the department has evidence that the respondent had knowledge of the law and knowingly committed a violation.

(5) “Inert Matter” includes stone, dirt, leafage, stems, badly broken seed, other similar matter and masses of spores.

(6) “Labeling” includes all labels and other printed, written or graphic representations in any form on the container of any seeds or accompanying or pertaining to any seeds, whether in bulk or in containers, and includes representations on invoices.

(7) “Other Crop Seed” means that part of any lot or sample of seed that consists of the seed of cereal grain and agriculture and vegetable seeds other than those named on the label.

(8) "Percentage of Hard Seed" means the percentage of pure seed of any lot or sample that remains in its normal hard condition at the close of a standard germination test.

(9) "Percentage of Germination" means the percentage of pure seed of a lot or sample that produces satisfactory sprouts before the close of a standard germination test.

(10) "Person" includes individuals, companies, corporations, associations, firms, partnerships joint stock companies, public and municipal corporations.

(11) "Probation" means a period of time set by the director during which a licensee may continue to operate, but only under the conditions established by the director.

(12) "Prohibited Noxious Weed Seed" means the seed of weeds which when established are highly destructive, competitive and difficult to control by ordinary good cultural practice.

(13) "Pure Seed" means the agricultural or vegetable seed of which there is the largest percentage by weight in any unmixed lot or sample and, in the case of mixtures, includes any agricultural or vegetable seed consisting of not less than 5 percent by weight of the kind or kinds of seed under consideration, as distinguished from other crop seed, weed seed and inert matter.

(14) "Restricted Noxious Weed Seed" means the seed of such weeds as are very objectionable in fields, laws and gardens but can be controlled by good cultural practice.

(15) "Retail Seed Dealer" means any person who sells, offers or holds for sale, agricultural or vegetable seed to ultimate consumers or users for planting purposes.

(16) "Revocation" means withdrawal of license and any authorization to sell, offer or expose for sale any agricultural or vegetable seed under conditions for which a license is required.

(17) "Suspension" means a period of time set by the director during which a licensee is prohibited from selling, offering or exposing for sale any agricultural or vegetable seed under conditions for which a license is required, including, but not necessarily limited to providing information about price, quality, availability, payment terms or any other information specific to a sale.

(18) "Vegetable Seed" means the seed of those crops usually grown in Oregon in gardens or on truck farms or for canning and freezing purposes and generally known and sold under the name of vegetable seed.

(19) "Violation" means a transgression of any statute, rule, order, license, permit or any part thereof and includes both acts and omissions.

(20) "Wholesale Seed Dealer" means any person who sells, offers or holds for sale, agricultural or vegetable seed to retailers, distributors, brokers or other wholesalers for resale.

Stat. Auth.: ORS 561 & 633
 Stats. Implemented: ORS 633.711
 Hist.: AD 5-1996, f. & cert. ef. 6-7-96

**603-056-0050
 Seed Dealer License Applications**

(1) Before the department issues any license required under ORS 633.700, the applicant shall submit a completed application and appropriate annual license fee. The application shall include the following:

(a) Names and titles of each person requesting the license. If the applicant is a partnership, corporation, business entity, association, governmental subdivision or public or private organization, the applicant shall also submit the names and titles of each partner, agent, manager and principle of that entity;

(b) Location(s) of the business, including a mailing address;

(c) Phone numbers;

(d) Ownership structure, e.g. proprietorship, partnership, corporation, limited liability company, etc.;

(e) If an applicant or any of its associated officers, agents, or partners have had or have been a party to violations of the Federal Seed Act, the Oregon Seed Law or any other state seed law within the 36 months prior to the date of the application, and has received a penalty or penalties totaling \$10,000 or more, or involving probation or suspension of a license, all such violations shall be listed.

(2) First time wholesale licensees shall be furnished copies of the Oregon Seed Law and the Oregon Administrative Rules Chapter 603, Division 56 relating to seed dealings.

(3) Oregon Department of Agriculture staff shall contact first time licensees during their initial annual licensing period in order to provide education to aid in complying with Oregon seed laws and regulations.

Stat. Auth.: ORS 561 & 633
 Stats. Implemented: ORS 633.711
 Hist.: AD 5-1996, f. & cert. ef. 6-7-96

**603-056-0060
 Probation, Suspension, Revocation and Re-issuance of License**

ORS 561.305 provides the department with the authority to refuse to issue, refuse to renew, revoke or suspend any license where it finds the licensee has violated state laws or regulations. ORS 633.680 gives the director the authority to make administrative rules to cover licensing, suspension, revocation, and reinstatement of seed dealer licenses; the following penalties apply to seed law violations:

(1) Probation shall be imposed for any issuance of a civil penalty and conditions of probation shall be related to violations of the Oregon Seed Law:

(a) Probation shall be established for the purpose of monitoring and documentation of corrective actions of the licensee which relate to previous violations;

(b) The duration of a probationary period shall be at least one year for fines of \$10,000 or more.

(c) If, in the opinion of the director, persons on probationary status have complied with regulatory requirements and have corrected conditions related to issuance of a violation, the director may terminate probation before the probationary period has expired.

(2) Suspension of license may be imposed for:

(a) Failure to pay appropriate fees;

(b) Repeated violations of the Oregon Seed Law;

(c) Failure to adhere to probationary conditions;

(d) Multiple and/or flagrant violations of the Oregon Seed Law;

(e) Failure to cooperate in matters under investigation.

(3) Licenses may be revoked for:

(a) Continuing failure to pay appropriate fees;

(b) Multiple suspensions;

(c) Multiple flagrant violations of the Oregon Seed Law;

(d) Continuing failure to cooperate in matters under investigation.

(4) Re-issuance of license: a suspended license may be reinstated following correction of items listed in section (2) of this rule or upon the completion of a suspension period. A revoked license may be re-issued following correction of items listed in 603-056-0060 section (3) above, as determined by the director.

Stat. Auth.: ORS 561 & 633
 Stats. Implemented: ORS 633.711
 Hist.: AD 5-1996, f. & cert. ef. 6-7-96

**603-056-0095
 Seed Dealer License Fees**

The following designated annual license fees shall be applicable to each described activity under authority of ORS 633.700:

(1) Seed retailer: \$40; and

(2) Seed wholesaler: \$500.

Stat. Auth.: ORS 561.190 & 633.700

Stats. Implemented: ORS 633.700

Hist.: AD 30-1977, f. & ef. 12-30-77; AD 3-1990, f. & cert. ef. 3-16-90; AD 5-1991(Temp), f. 6-28-91, cert. ef. 7-1-91; AD 1-1992, f. & cert. ef. 2-3-92; AD 12-1993(Temp), f. 8-20-93, cert. ef. 8-23-93; AD 18-1993, f. & cert. ef. 12-1-93; DOA 18-2000 f. & cert ef. 6-14-00; DOA 11-2014, f. & cert. ef. 7-28-14

**603-056-0105
 Labeling of Seed Containers**

(1) The labeling of seed containers or bins, required by ORS 633.520, 633.531, 633.541 and 633.545, shall not be smaller than eight point type.

(2) The person who sells, offers for sale or transports agricultural or vegetable seed within this state shall be responsible for the required labeling.

(3) In addition to the statutory labeling requirements, seed packaged in hermetically sealed containers shall also be labeled to indicate that the seed has been preconditioned as to moisture content and that the container has been hermetically sealed. The hermetically sealed containers may also be labeled with the statement “germination test valid until (month and year),” but the date shall not be more than 36 months after the test date.

(4) As provided in ORS 633.520(1), in addition to the name of the kind, the following seeds shall be labeled with one of the variety names or the statement “variety not stated”: Alfalfa; Bahiagrass; Barley; Bean, field; Beet, field; Brome, smooth; Broomcorn; Clover, crimson; Clover, red; Clover, white; Corn, field; Corn, pop; Cotton; Cowpea; Fescue, tall; Flax; Lespedeza, striate; Millet, foxtail; Millet, pearl; Oat; Pea, field; Peanut; Rice; Rye; Safflower; Sorghum; Sorghum-Sundangrass, hybrid; Soybean; Sudangrass; Sunflower; Tobacco; Trefoil, birdsfoot; Wheat, common; and Wheat, durum. In the event two or more varieties of agricultural seed are packaged in one container, the label shall contain the kind, variety and percentage of each, in addition to the term “mixture” or “mixed seed.”

Stat. Auth.: ORS 561 & 633
 Stats. Implemented: ORS 633.520, 633.531, 633.541 & 633.545
 Hist.: AD 8-1983, f. & ef. 7-19-83

603-056-0125

Lot Sizes

(1) In order to facilitate the Department’s activities under ORS 633.670 and 633.680, the following agricultural seeds shall be limited to lot sizes of 55,000 pounds each:

- (a) Bentgrass (*Agrostis* species);
- (b) Bluegrass (*Poa* species);
- (c) Brome, smooth (*Bromus* species);
- (d) Clover (*Trifolium* species);
- (e) Fescue (*Festuca* species);
- (f) Meadow Foxtail (*Alopecurus pratensis*);
- (g) Orchardgrass (*Dactylis glomerata*);
- (h) Ryegrass, perennial (*Lolium perenne*);
- (i) Timothy (*Phleum pratense*);
- (j) Wheatgrass (*Agropyron* species);
- (k) Ryegrass, Annual or Italian (*Lolium-multiflorum*);
- (l) Ryegrass, Wimmera (*Lolium rigidum*);
- (m) Vetch, Hairy (*Vicia villosa*);
- (n) Vetch, Other (*Vicia* spp.).

(2) There shall be allowed a five percent tolerance in determining compliance with the provisions of section (1) of this rule.

(3) All laboratory analysis or test reports shall indicate the lot size applicable to the sampled seed.

(4) The lot size limitations established in section (1) of this rule shall not apply to agricultural seeds in lots contained in a single container exceeding 55,000 pounds, so long as such seed remains in such container (i.e., railroad hopper car).

Stat. Auth.: ORS 561 & 633
 Stats. Implemented: ORS 633.680
 Hist.: AD 1039(29-74), f. 8-20-74, ef. 9-11-74; AD 1064(10-75), f. 7-21-75, ef. 8-11-75; AD 8-1983, f. & ef. 7-19-83

Sod Quality Seed Standards

603-056-0130

Labeling of Sod Quality for Varieties of Agricultural Seed

In addition to the labeling requirements of ORS 633.520 and rules promulgated thereunder, and in the event seed is found to meet the sod quality standards established by the Department, the seed varieties as described in OAR 603-056-0145, may be labeled as “Oregon Sod Quality Seed” by the permanent attachment of a tag, as prescribed in 603-056-0135, to the container thereof. As used in this rule “permanent” means until delivery of the seed to the ultimate purchaser.

Stat. Auth.: ORS 561 & 633
 Stats. Implemented: ORS 633.680
 Hist.: AD 1040(30-74), f. 8-20-74, ef. 9-11-74; AD 9-1982, f. & ef. 9-9-82

603-056-0135

Description and Use of Tags for Sod Quality Seed

(1) The official tag referred to in OAR 603-056-0130 shall be prepared and issued by the Department; be numerically identified; and set forth the kind and variety, lot number and date of issuance. Duplicate tags shall be attached to each container of the lot of seed qualifying as sod quality. No person shall attach such tag to any container or lot not qualifying as therein indicated nor remove such tag prior to delivery of the seed to the ultimate purchaser.

(2) A sample form of the tag is herewith reproduced for informational purposes (coloring of which may be modified). (See **Exhibit 1.**)

[ED. NOTE: Exhibits referenced are available from the agency.]
 Stat. Auth.: ORS 561 & 633
 Stats. Implemented: ORS 633.680
 Hist.: AD 1040(30-74), f. 8-20-74, ef. 9-11-74; AD 9-1982, f. & ef. 9-9-82; AD 8-1983, f. & ef. 7-19-83

603-056-0140

Application, Fees, and Procedures for Sod Quality Qualification

Any person desiring to have his seed qualify as “Oregon Sod Quality Seed” shall:

(1) Request the Department or Oregon State University obtain seed samples for this purpose. Should such sampling be apart from and in addition to that performed by the Department or Oregon State University in their regulatory or other certification activity, the person requesting such sampling shall pay to the Department the fees chargeable for sampling under OAR 603-056-0305. In addition, such person shall pay to the Department a fee of \$.20 each for the issuance of the tags described in 603-056-0135.

(2) The testing of such seed samples obtained shall be performed by authorized personnel of Oregon State University in accordance with the standards prescribed in OAR 603-056-0145.

(3) The person requesting such seed qualification shall be responsible for having a copy of the seed test results communicated by Oregon State University to the Department.

(4) If the sample subject to testing for “Oregon Sod Quality Seed” qualification is from a regularly Certified Seed lot, only part of which is to be qualified as “Oregon Sod Quality Seed,” then a separate sample shall be required from that part of the lot to be so qualified.

(5) Notwithstanding any other provisions of this section, the Director may accept sod quality testing results from laboratories that are recognized by Oregon State University for Seed Certification testing.

Stat. Auth.: ORS 561.190, 632 & 633.680
 Stats. Implemented: ORS 633.680
 Hist.: AD 1040(30-74), f. 8-20-74, ef. 9-11-74; AD 11-1981, f. & ef. 7-6-81; AD 9-1982, f. & ef. 9-9-82; AD 16-1991, f. & cert. ef. 9-10-91; DOA 7-1998, f. & cert. ef. 8-10-98; DOA 16-1999, f. & cert. ef. 7-1-99; DOA 19-2000, f. & cert. ef. 6-14-00

603-056-0145

Standards for Sod Quality Certification

(1) The seed lots submitted shall meet all standards for certification by Oregon State University.

(2) The seed standards for “Oregon Sod Quality Seed” of hard fescue, sheep fescue, blue fescue, Kentucky bluegrass, red fescue, chewings fescue, perennial ryegrass, bentgrass and tall fescue shall be as set out in Table 1.

(3) “Noxious Weed” and “Crop and Weed” analyses shall be based on a 20 gram sample for hard fescue, sheep fescue and blue fescue, 25 gram sample for Kentucky bluegrass (except a 10 gram *Poa annua* search), 30 gram sample for red fescue and chewings fescue, 50 gram sample for ryegrass and tall fescue, and a 2-1/2 gram sample for bentgrass. Testing shall be discontinued when results of the tests exceed the maximum limits set forth in Table 1.

[ED. NOTE: Tables referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 & 633.520
 Stats. Implemented: ORS 633.680
 Hist.: AD 1040(30-74), f. 8-20-74, ef. 9-11-74; AD 1060(6-75), f. 5-30-75, ef. 6-25-75; AD 2-1979, f. & ef. 1-29-79; AD 9-1982, f. & ef. 9-9-82; AD 3-1990, f. & cert. ef. 3-16-90; AD 1-1991, f. & cert. ef. 1-14-91; DOA 25-2000, f. & cert. ef. 9-15-00; DOA 10-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 12-20-11; DOA 18-2011, f. & cert. ef. 10-4-11

603-056-0160

Labeling of Endophyte Fungus Tested Grass Seed

(1) In addition to the labeling requirements of ORS 633.520, and rules promulgated thereunder, and in the event forage grass seed is found to meet the tolerance standard for endophyte fungus, as specified in OAR 603-056-0170(3), then the forage grass seed may be labeled as having been satisfactorily tested for endophyte fungus through the attachment of a tag prescribed in section (2) of this rule.

(2) The tag referred to in section (1) of this rule shall be prepared and issued by the Department, be numerically identified, and set forth the date, lot number and kind of seed. Duplicate tags shall be attached to each container of the lot of qualifying seed. A sample form of the prescribed tag is herewith reproduced for informational purposes (see **Exhibit 2**). An applicant for endophyte fungus testing shall pay the Department a fee of \$.20 for each tag or duplicate tag issued.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 561.190 & 633.680

Stats. Implemented: ORS 633.680

Hist.: AD 12-1983, f. & ef. 9-20-83; AD 16-1991, f. & cert. ef. 9-10-91; DOA 19-2000, f. & cert. ef. 6-14-00

603-056-0165

Application and Fees for Endophyte Fungus Testing

(1) An application for endophyte fungus testing shall be made on a form prescribed by the Department, which shall include the consent of the applicant for the Department to enter premises in order to obtain seed samples for testing purposes.

(2) At the time seed samples are obtained, unless the Department specifies a later time, the applicant shall pay to the Department a fee as set forth in 603-052-1150. The fees specified in this rule are for the purpose of defraying expenses incurred by the Department, and any other cooperating agency, in carrying out the sampling and testing procedures to determine the existence of endophyte fungus in forage grass seed, and payment of the fee shall not be construed as granting any right or privilege to an applicant.

Stat. Auth.: ORS 561.190 & 633.680

Stats. Implemented: ORS 633.680

Hist.: AD 12-1983, f. & ef. 9-20-83; AD 16-1991, f. & cert. ef. 9-10-91; DOA 9-2003, f. & cert. ef. 1-14-03

603-056-0170

Procedures and Tolerance Standard for Endophyte Fungus Testing

(1) Sampling of forage grass seed shall be performed by the Department on a random basis so as to obtain a representative sample of the lot of seed. Sampling procedures shall be consistent with those set forth in the **Joint Rules and Regulations for the Enforcement of the Federal Seed Act**, 7 CFR SS201.201–201.230.

(2) Testing of forage grass seed samples shall include the seed staining technique or other scientifically recognized diagnostic tests for the presence of endophyte fungus in grass seed. Testing shall be performed by the Department, or in whole or in part by such other cooperating agency it may designate.

(3) A forage grass seed sample shall be considered satisfactorily tested for endophyte fungus, *Epichloe typhina* (*Acremonium coenophialum*), or the metabolites thereof, if the test of the seed sample indicates a level of five percent or less.

Stat. Auth.: ORS 561 & 633

Stats. Implemented: ORS 633.680

Hist.: AD 12-1983, f. & ef. 9-20-83

Noxious Weed Seed Tolerances

603-056-0205

Prohibited and Restricted Noxious Weed Seed

(1) As provided in ORS 633.561 and 633.571, the following are declared as prohibited noxious weed seeds:

- (a) Austrian peaweed (*Sphaerophysa salsula*);
- (b) Bearded creeper (*Crupina vulgaris*);
- (c) Bindweed or wild morningglory (*Convolvulus arvensis*);
- (d) Camelthorn (*Alhagi camelorum*);
- (e) Dalmatian toadflax (*Linaria dalmatica*);
- (f) Dyers woad (*Isatis tinctoria*);

- (g) Fieldcress, Austrian (*Rorippa austriaca*);
- (h) Garlic, wild (*Allium vineale*);
- (i) Goatgrass, jointed (*Aegilops* spp.);
- (j) Halogeton (*Halogeton glomeratus*);
- (k) Italian and slenderflower thistle (*Carduus pycnocephalus* and *C. tenuiflorus*);

(l) Knapweeds Russian, diffuse, spotted and squarrose (*Centaurea [=Acroptilon] repens*, *C. diffusa*, *C. maculosa* and *C. virgata*);

- (m) Musk thistle (*Carduus nutans*);
- (n) Perennial pepperweed (*Lepidium latifolium*);
- (o) Quackgrass (*Elytrigia [=Agropyron] repens*);
- (p) Ragwort, tansy (*Senecio jacobaea*);
- (q) Serrated tussock (*Nasella trichotoma*);
- (r) Skeletonweed (*Chondrilla juncea*);
- (s) Sowthistle, perennial (*Sonchus arvensis*);
- (t) Spurge, leafy (*Euphorbia esula*);
- (u) Starthistles, Malta, yellow, Iberian and purple (*Centaurea melitensis*, *C. solstitialis*, *C. iberica* and *C. calcitrapa*);
- (v) Thistle, Canada (*Cirsium arvense*);
- (w) White top (*Cardaria draba* and its varieties, and *C. pubescens*).

(2) As provided in ORS 633.561 and 633.571, the following are declared as restricted noxious weed seeds with the maximum allowable number of seeds per pound: Maximum Allowed Per Pound:

- (a) Bedstraw (*Galium tricornis*) — 45;
- (b) Dodder (*Cuscuta* spp.) — 9;
- (c) Johnsongrass (*Sorghum halepense*) — 5;
- (d) Ragweed (*Ambrosia artemisiifolia*) — 18;
- (e) Medusahead rye (*Elymus caput-medusae*) — 45;
- (f) St. Johnswort or goatweed (*Hypericum perforatum*) — 180.

(3) Any lot of agricultural seed or vegetable seed found containing prohibited noxious weed seeds or restricted noxious weed seeds in excess of the allowable number per pound, may be embargoed, seized or detained as authorized by ORS 633.670(3). The embargoed, seized or detained seed may be released if treated to destroy the viability of the noxious weed seed. Any treatment to destroy the viability of noxious weed seed shall include the grinding or incineration of the screenings so that no whole noxious weed seed are visible upon inspection.

Stat. Auth.: ORS 561 & 633

Stats. Implemented: ORS 633.680

Hist.: AD 8-1983, f. & ef. 7-19-83; AD 1-1989(Temp), f. & cert. ef. 1-26-89; AD 7-1989, f. & cert. ef. 5-26-89; AD 5-1996, f. & cert. ef. 6-7-96

603-056-0210

Embargo, Seizure, Detention or Quarantine of Seed

Any embargo or seizure of agricultural seed or vegetable seed under the authority of ORS 633.670(3), and any quarantine or detention of agricultural seed or vegetable seed under the authority of 633.690, shall conform to the requirements of 561.605 to 561.630 relating to the exercise of the Department's seizure, detention and embargo powers.

Stat. Auth.: ORS 561 & 633

Stats. Implemented: ORS 633.680

Hist.: AD 8-1983, f. & ef. 7-19-83

Commodity Inspection

603-056-0305

Regular Fees and Charges for Seed Sampling and Inspection

The following fees and charges are established for the services indicated. For Official Verification services, including but not limited to: fumigation, seed treatment, check-weighing and check loading, a charge of \$48 per hour shall apply. Chargeable time shall be computed to the nearest one-half hour, but shall not include travel time from the Department office to an inspection point. For Official Sampling services, a charge of \$36 minimum shall apply for each call:

- (1) \$36 for the first lot sampled;
- (2) \$6 for each additional lot sampled;
- (3) In instances where the first lot sampled and subsequent additional lots sampled equal an amount less than \$48 per hour; an hourly

charge of \$48 per hour shall apply. Chargeable time shall be computed to the nearest one-half hour, but shall not include travel time from the Department office to an inspection point.

(4) The Department shall charge a fee of \$50, for each occurrence, when services are requested and the seed lot is inaccessible.

Stat. Auth.: ORS 561.190, 632 & 633.680

Stats. Implemented: ORS 561, 632 & 633.680

Hist.: AD 865(1-68), f. 1-22-68, ef. 2-1-68; AD 1100(21-76), f. & ef. 7-20-76; AD 11-1981, f. & ef. 7-6-81; AD 8-1983, f. & ef. 7-19-83; AD 16-1991, f. & cert. ef. 9-10-91; DOA 19-2000, f. & cert. ef. 6-14-00; DOA 11-2010, f. & cert. ef. 7-12-10

603-056-0310

Phytosanitary Certificates

(1) Certificate issuance (five copies) — \$5.

(2) Each additional copy — \$1.

(3) Each lot must be officially sampled and the sample must be current; complete information necessary for issuance of the certificate must be received by the Department in writing; and in the case of seed, an official seed laboratory report received indicating the lot meets import requirements of the receiving country prior to issuance. Field inspections are required for some seed exported to some countries.

Stat. Auth.: ORS 561.190, 632 & 633.680

Stats. Implemented: ORS 561, 632 & 633.680

Hist.: AD 865(1-68), f. 1-22-68, ef. 2-1-68; AD 11-1981, f. & ef. 7-6-81; AD 8-1983, f. & ef. 7-19-83; AD 16-1991, f. & cert. ef. 9-10-91; DOA 19-2000, f. & cert. ef. 6-14-00

603-056-0315

Field Inspection Fees and Charges Relating To Seed

The fees and charges for seed field inspections required for the issuance of certificates by the Department are established at \$6.50 per acre for each field with a minimum fee of \$50 for each field inspected and a maximum fee of \$450 per field. The fee for processing all applications for field inspection shall be \$3 for each application; this includes applications for inspecting bean seed fields for certification for replanting in Malheur County. Bean seed fields inspected for certification for replanting in Malheur County shall have inspection fees of \$3.50 per acre per inspection with a minimum per field charge of \$30. Applications must be postmarked by April 1 for fall planted or perennial crops and May 1 for spring planted crops. Late applications may be charged the established rate for time and mileage, which is higher than the fees listed above.

Stat. Auth.: ORS 561, 632 & 633

Stats. Implemented: ORS 561, 632 & 633.680

Hist.: AD 865(1-68), f. 1-22-68, ef. 2-1-68; AD 1100(21-76), f. & ef. 7-20-76; AD 11-1981, f. & ef. 7-6-81; AD 8-1983, f. & ef. 7-19-83; AD 18-1994, f. & cert. ef. 11-10-94; DOA 3-2000, f. & cert. ef. 1-11-00; DOA 10-2010, f. & cert. ef. 4-21-10

603-056-0320

Miscellaneous Fees and Charges for Seed Sampling and Inspection

In the event the conditions of the request, or in the event an applicant's failure to have seed, hay or straw available for inspection or service at the designated time and place, results in the need for additional mileage or time, such shall be charged in accordance with the regular fees and charges prescribed in OAR 603-056-0305.

Stat. Auth.: ORS 561, 632 & 633

Stats. Implemented: ORS 561, 632 & 633.680

Hist.: AD 865(1-68), f. 1-22-68, ef. 2-1-68; AD 1100(21-76), f. & ef. 7-20-76; DOA 19-2000, f. & cert. ef. 6-14-00

Germination Standards

603-056-0400

Germination of Vegetable Seeds

(1) The Oregon Standards of germination percentages as established are as follows: **Kind of Seed — Oregon Standard Germination:**

- (a) Asparagus — 70;
- (b) Beans (other than Limas) — 70;
- (c) Beans, Lima (large) — 70;
- (d) Beans, Lima (small) — 80;

- (e) Beets — 65;
- (f) Broccoli — 75;
- (g) Brussels Sprouts — 70;
- (h) Cabbage — 75;
- (i) Carrot — 55;
- (j) Cauliflower — 75;
- (k) Celery — 55;
- (l) Celery cabbage — 75;
- (m) Celeriac — 55;
- (n) Chard, Swiss — 65;
- (o) Chicory — 65;
- (p) Citron — 65;
- (q) Collard — 80;
- (r) Corn (sweet) — 75;
- (s) Cucumber — 80;
- (t) Dill — 60;
- (u) Egg plant — 60;
- (v) Endive — 70;
- (w) Kale (edible) — 75;
- (x) Kohl Rabi — 75;
- (y) Leek — 60;
- (z) Lettuce — 80;
- (aa) Muskmelon — 75;
- (bb) Mustard — 75;
- (cc) Okra — 50;
- (dd) Onion — 70;
- (ee) Parsley — 60;
- (ff) Parsnip — 60;
- (gg) Peas — 80;
- (hh) Peppers — 55;
- (ii) Pumpkin — 75;
- (jj) Radish — 75;
- (kk) Rutabaga — 75;
- (ll) Salsify — 75;
- (mm) Spinach — 60;
- (nn) Squash — 75;
- (oo) Tomatoes — 75;
- (pp) Turnips — 80;
- (qq) Watermelons — 70.

(2) Vegetable seeds and packages of such vegetable seeds may be labeled with the words “Oregon Standard Germination” in lieu of the approximate percentage of germination when the percentage of germination of such seed is equal to or greater than the percentage established in these standards.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561 & 633

Stats. Implemented: ORS 633.680

Hist.: AD 213, f. 7-9-45, ef. 7-16-45; AD 930(15-70), f. 12-17-70, ef. 1-15-71; Administrative Reformatting 1-8-98

Seed in Hermetically Sealed Containers; Packaging, Germination Tests, and Labeling

603-056-0410

Germination Tests

The germination test for agricultural and vegetable seed in hermetically sealed containers shall have been completed within the following period, exclusive of the calendar month in which the test was completed, immediately prior to shipment, delivery, transportation, or sale:

- (1) In the case of agricultural or vegetable seeds shipped, delivered, transported, or sold to a dealer for resale, 18 months;
- (2) In the case of agricultural or vegetable seeds for sale or sold at retail, 36 months.

Stat. Auth.: ORS 561.190 & 633.680

Stats. Implemented: ORS 633.680

Hist.: AD 865(1-68), f. 1-22-68, ef. 2-1-68

603-056-0415

Conditions of Packaging

The following conditions are considered as a minimum for packaging seed in hermetically sealed containers:

(1) A container shall not allow water vapor penetration through any wall, including the wall seals, greater than 0.05 gram of water per 24 hours per 100 square inches of surface at 100°F with a relative humidity on one side of 90 percent and on the other of zero percent. Water vapor penetration or WVP is measured by the standards of the U.S. Bureau of Standards as:

gm. H20/24 hr./100 sq.in./100°F/90%RH V. 0% RH

(2) The percentage of moisture, on a wet weight basis, of agricultural or vegetable seeds subject to the provisions of this rule shall not exceed the following: Maximum Percent Seed Moisture:

- (a) Gramineae Family:
 - (A) Sweet corn — 8.0;
 - (B) Kentucky bluegrass — 8.0;
 - (C) Red Fescue — 8.0;
 - (D) Perennial ryegrass — 8.0.
- (b) Liliaceae Family: Onion, leek, chive, welsh onion — 6.5;
- (c) Chenopodiaceae Family:
 - (A) Beet, chard — 7.5;
 - (B) Spinach — 8.0.
- (d) Cruciferae Family: Cabbage, broccoli, cauliflower, collards, Chinese cabbage, kale, turnip, rutabaga, kohlrabi, Brussels sprouts, mustard, radish — 5.0;
- (e) Leguminosae Family:
 - (A) Snap bean, lima bean, pea — 7.0;
 - (B) Crimson clover — 8.0.
- (f) Umbelliferae Family:
 - (A) Carrot, celery, celeriac — 7.0;
 - (B) Parsnip — 6.0;
 - (C) Parsley — 6.5.
- (g) Solanaceae Family:
 - (A) Tomato — 5.5;
 - (B) Pepper — 4.5;
 - (C) Eggplant — 6.0.
- (h) Cucurbitaceae Family:
 - (A) Cucumber, muskmelon, squash, pumpkin — 6.0;
 - (B) Watermelon — 6.5.
- (i) Compositae Family: Lettuce — 5.5;
- (j) All other agricultural or vegetable seed not listed above — 8.0;

(k) Turf or Pasture Seed Mixtures — 8.0.

(3) A tolerance of one (1.0) percent moisture is applicable to the maximum percentage of moisture listed in section (2) of this rule and the percentage of moisture found by an official test. The percentage of moisture shall be determined by the air oven method.

Stat. Auth.: ORS 561 & 633

Stats. Implemented: ORS 633.680

Hist.: AD 865(1-68), f. 1-22-68, ef. 2-1-68; AD 8-1983, f. & ef. 7-19-83

Treated Seed; Use of Toxic Substances and Labeling of Containers

603-056-0431

Chemically Treated Seed

(1) As used in this rule:

(a) "Treated seed" means agricultural seed, including grain intended for planting purposes, and vegetable seed, which have been injected, coated, sprayed or otherwise intentionally exposed to a pesticide as defined in ORS 634.006(8);

(b) "Common name of the pesticide" means the name or abbreviation of a name of the substance as it appears on the pesticide label.

(2) In addition to the labeling requirements of ORS 633.520, 633.531 and 633.541, each container of treated seed shall:

(a) Be labeled in compliance with any direction for labeling treated seed as indicated on the label of the seed treatment pesticide;

(b) Be clearly labeled that the seed has been treated, e.g., "treated seed — (common name of the pesticide)," "this seed treated with (common name of the pesticide)"; "(common name of the pesticide) treated," or "treated with (common name of the pesticide) — do not use for feed." If there is no common name of the pesticide the generally known chemical name, or abbreviation of the name, shall be used. The term "mercurial," "mercury," "mercury compound," or

"mercurial seed treatment" may be used as the common name of the seed treatment pesticide containing mercury or a form of mercury.

(3) In addition to the labeling requirements of section (2) of this rule, if the seed treatment pesticide is one determined to be harmful to humans or other vertebrate animals, then the containers of the treated seed shall:

(a) Be labeled with a sign of a skull and crossbones, and the word "Poison" printed in red on a white background or the reverse thereof;

(b) Be labeled with a warning or caution statement identifying the particular hazards involved in handling the treated seed (e.g., skin contact, inhalation, swallowing), and a statement of any known characteristics of poison from the pesticide along with the identity of an antidote and method of administering it, which label shall substantially conform to the same information on the label of the seed treatment pesticide.

(4) Only those pesticides registered for seed treatment purposes by the U.S. Environmental Protection Agency or by the Department may be used for seed treatment.

Stat. Auth.: ORS 561 & 633

Stats. Implemented: ORS 633.680

Hist.: AD 8-1983, f. & ef. 7-19-83

Civil Penalty for Seed Law Violation

603-056-0460

Civil Penalty and License Suspension or Revocation Authority

As provided in Chapter 633, Oregon Laws 1989, any person who violates any provision of ORS 633.511 to 633.750, a rule adopted pursuant thereto or the terms or conditions of any order issued by the State Department of Agriculture under 633.511 to 633.750, after notice and contested case hearing in accordance with 183.310 to 183.550, shall be subject to a civil penalty not to exceed \$2,500 per violation and/or a suspension or revocation of their seed dealers license as provided in ORS 561.305 and OAR 603-056-0060. If a civil penalty is imposed, the department shall issue a written notice to the person being assessed the penalty. The notice shall be by certified mail to the person's last known address, and shall set forth therein the maximum amount of such penalty, the reason for the assessment and the date and place the civil penalty is to be paid. The person shall also be informed as to the procedures by which the contested case will be heard, their rights in the hearing, the import and effect of the hearing, and their rights and remedies with respect to actions taken by the department. Such contested cases will be conducted under the guidelines of ORS 183.413 to 183.470. Each violation may be a separate and distinct offense, and in the case of a separate distinct offense.

Stat. Auth.: ORS 561 & 633

Stats. Implemented: ORS 633.711

Hist.: AD 3-1990, f. & cert. ef. 3-16-90; AD 5-1996, f. & cert. ef. 6-7-96

603-056-0480

Violations and Penalties

(1) Selling, offering for sale or exposing for sale in the state of Oregon any agricultural or vegetable seed which is not labeled or is mislabeled as to kind, variety, origin, lot number, other crop seed, weed seed, inert matter, name and number of restricted noxious weed seeds, percentage of germination, percentage of hard seed, month and year of testing, name and address of labeller or seller of seed, month and year beyond which any inoculant is no longer claimed to be effective appropriate information and warning of any chemical treatments used and net quantity of contents. Penalty — \$100 to \$1,000.

(2) Selling, offering for sale or exposing for sale in the state of Oregon any agricultural or vegetable seed which is mislabeled as to the variety name on seed varieties protected by the Plant Variety Protection Act. Penalty — \$500 to \$2,500.

(3) Selling, offering for sale or exposing for sale in the state of Oregon any agricultural or vegetable seed which contains any prohibited noxious weed seeds as listed. Penalty — \$100 to \$1,000.

(4) Selling, offering for sale or exposing for sale in the state of Oregon any agricultural or vegetable seed which contains restricted noxious weed seeds in excess of the permissible numbers established per pound in OAR 603-056-0205(2). Penalty — \$100 to \$500.

(5) Selling or offering for sale in the state of Oregon any agricultural or vegetable seed that has not been tested to determine the percentage of germination within the preceding 18 months (except hermetically sealed seed to be sold at retail which shall be tested within 36 months of sale.) Penalty — \$100 to \$1,000.

(6) Selling or offering for sale in the state of Oregon any agricultural or vegetable seed that is represented as being certified, but which had not been produced under an official certification Department of Agriculture program. Penalty — \$500 to \$2,500.

(7) Use of any certification, endophyte or sod quality labels, tags or seals on agricultural or vegetable seeds being exposed or offered for sale that do not meet the requirements for use of such labels, tags or seals. Penalty — \$500 to \$2,500.

(8) Failure to keep proper records and documentation as required by Oregon seed law and the Federal Seed Act. Penalty — \$100 to \$1,000.

(9) Failure to comply with an officially ordered quarantine of any agricultural or vegetable seed. Penalty — \$500 to \$2,500.

(10) Falsification of records pertaining to any dealing with agricultural or vegetable seed. Penalty — \$500 to \$2,500.

(11) Tampering with, or falsification in any manner of official samples of any agricultural or vegetable seeds. Penalty — \$2,500.

(12) Interference with or noncooperation with any county, state or federal official involved in any official activities pertaining to agricultural or vegetable seeds. Penalty — \$500 to \$2,500.

(13) Selling or offering for sale in the state of Oregon any agricultural or vegetable seeds without a valid Oregon seed dealers license. Penalty:

(a) Retail — \$100;

(b) Wholesale — \$500.

Stat. Auth.: ORS 561 & 633

Stats. Implemented: ORS 633.711

Hist.: AD 3-1990, f. & cert. ef. 3-16-90

603-056-0490

Mitigating Circumstances

During the process of determining the amount of civil penalty to be assessed, the director may take into consideration any factors which have an influence on the particular case. Such factors may include the number of containers or pounds of seed involved, whether the violation appears to be accidental or flagrant and intentional, whether the violation is a first time offense or if there is a history of violations and the degree of cooperation shown by the person involved in the violation. Any person adversely affected or aggrieved by the Department's order of a civil penalty is entitled to judicial review of the order as provided in ORS 183.480 to 183.500.

Stat. Auth.: ORS 561 & 633

Stats. Implemented: ORS 633.711

Hist.: AD 3-1990, f. & cert. ef. 3-16-90

DIVISION 57

PESTICIDE CONTROL

General

603-057-0001

Definitions

In addition to the definitions set forth in ORS 634.006, the following shall apply (1) "Accident" means an undesirable and unintended event, caused by the use or application of pesticides, that adversely affects the environment.

(2) "Compatibility" means the properties of a pesticide that permit its use with other chemicals without undesirable results being caused by such combination.

(3) "Competence" means the proficiency in the performance of activities related to pesticide application, the degree of which is directly related to the nature of such activities.

(4) "Common Exposure Route" means a likely way (oral, dermal, respiratory) by which a pesticide may enter an organism.

(5) "Environment" means water, air, land and plants, humans, or other animals living therein or thereon, and the interrelationships existing among them.

(6) For the purpose of pesticide registration as specified in ORS 634.016, "pesticide product" means a pesticide readily distinguishable from any other pesticide by its content, registration number assigned by the United States Environmental Protection Agency, brand name, trade name, manufacturer, registrant, use as specified in labeling, or other distinction, but not including size or quantity of package.

(7) "Non-Target Organism" means plant or animal life other than to which the pesticide is applied or is intended to be applied.

(8) "Regulated Pest" means a specific organism determined by the Department to be a pest requiring control, or eradication in order to protect the environment.

(9) For the purposes of ORS 634.006(9)(c), 634.106(7), 634.126(1)(c), 603-057-0001(11), and 603-057-0127, the terms "direct charge of," "supervises," "direct supervision," or "supervision" means that:

(a) The supervisor of the person applying a pesticide has determined that the person applying a pesticide has sufficient knowledge and ability to safely apply the particular pesticide according to its label directions and any other additional directions;

(b) The person applying a pesticide is applying the particular pesticide under the instructions of their supervisor; and

(c) The person applying a pesticide is applying the pesticide in such proximity to their supervisor that such supervisor is reasonably available for any needed consultation or further direction, even though such supervisor is not physically present at the time or place of the pesticide application.

(10) "Immediate Supervision" means supervision by an appropriately licensed applicator who is:

(a) Located on the pesticide application site at all times during the application; and

(b) Available at the specific point of pesticide use within a time period of no more than five minutes.

(11) "Pesticide Apprentice" is a type of pesticide trainee or a type of public trainee, as those terms are defined in ORS 634.006(14) and (18), that engages in pesticide application activities under the supervision of a licensed pesticide applicator or a licensed public applicator as described in OAR 603-057-0127. A pesticide apprentice is limited to the categories of pesticide application authorized on the applicator license of the supervisor.

(12) For the purposes of subsection (9) of this rule, "supervisor" means a person that is responsible for the actions of a person applying a pesticide.

Stat. Auth.: ORS 561.190 & 634

Stats. Implemented: ORS 634.306

Hist.: AD 7-1977, f. & ef. 4-5-77; AD 7-1980, f. & ef. 9-25-80; AD 17, f. & cert. ef. 11-15-89; AD 12-1992, f. 10-13-92, cert. ef. 1-1-93; DOA 2-2012, f. 1-13-12, cert. ef. 1-1-13; DOA 16-2012, f. & cert. ef. 6-1-12

603-057-0006

Pesticide Registration Fees

(1) The annual registration fee for each pesticide product for calendar year 2015 shall be \$160.

(2) Beginning for 2016 pesticide product registration, the annual registration fee for each pesticide product shall be \$320.

Stat. Auth.: ORS 634; HB 3549 (2015); HB 5002 (2015); and SB 5507 (2015)
Stats. Implemented: ORS 634; HB 3549 (2015); HB 5002 (2015); and SB 5507 (2015)

Hist.: AD 855(27-67), f. 10-9-67, ef. 1-1-68; AD 1008(22-73)(Temp), f. & ef. 12-5-73; AD 1014(4-74), f. 1-18-74, ef. 2-11-74; AD 7-1977, f. & ef. 4-5-77; AD 24-1981, f. & ef. 12-1-81; AD 17, f. & cert. ef. 11-15-89; DOA 21-1999, f. 9-30-99, cert. ef. 11-1-99; DOA 26-2001, f. & cert. ef. 11-6-01; DOA 38-2003(Temp), f. 10-15-03 cert. ef. 11-23-03 thru 5-19-04; DOA 40-2003, f. & cert. ef. 10-17-03; DOA 41-2003(Temp), f. 11-14-03, cert. ef. 11-23-03 thru 5-20-04; DOA 42-2003, f. & cert. ef. 12-23-04; DOA 17-2005(Temp), f. 10-14-05, cert. ef. 1-1-06 thru 6-29-06; DOA 3-2006, f. & cert. ef. 3-8-06; DOA 21-2012, f. & cert. ef. 7-10-12; DOA 10-2015, f. & cert. ef. 10-7-15

Operators, Applicators, Dealers, and Consultants

603-057-0100

License Fees

The following designated annual fees shall be applicable to each described license:

(1) Pesticide Operator: \$90 including one category; \$15 for each additional category; and \$20 for each additional category after license issued.

(2) Pesticide Applicator: \$50 including one category; \$7.50 for each additional category; and \$12.50 for each additional category after license issued.

(3) Pesticide Trainee or Apprentice: Same as pesticide applicators.

(4) Public Applicator, Trainee or Apprentice: Same as pesticide applicators.

(5) Pesticide Dealer: \$75, with a separate license required for each sales outlet or location.

(6) Pesticide Consultant: \$40.

Stat. Auth.: ORS 561 & 634

Stats. Implemented: ORS 634.116, 634.122, 634.126, 634.132 & 634.136

Hist.: AD 1001(15-73), f. 11-20-73, ef. 12-11-73; AD 7-1977, f. & ef. 4-5-77; AD 24-1981, f. & ef. 12-1-81; DOA 39-2003, f. 10-17-03, cert. ef. 11-15-03; DOA 2-2012, f. 1-13-12, cert. ef. 1-1-13; DOA 16-2012, f. & cert. ef. 6-1-12

603-057-0102

Pesticide Operator Financial Responsibility

As provided in subsections (5) and (6) of ORS 634.116, the following shall apply:

(1) Evidence of the issuance of a public liability policy of insurance may be documented to the Department by a pesticide operator either by furnishing a copy of said policy or furnishing a certificate of insurance issued by the insurer. Should said policy be subsequently endorsed or in any manner modified as to the protection offered thereby, the Department shall be furnished a copy of the policy endorsement or be furnished an additional certificate of insurance evidencing the modifications.

(2) The public liability policy of insurance may be limited to only injuries or damages caused by the specific activities for which the pesticide operator is licensed. Should the pesticide operator subsequently become licensed in additional categories of activities, the pesticide operator shall furnish the Department the documentation described in section (1) of this rule evidencing additional protection for such additional categories.

(3) As provided in subsection (10) of ORS 634.116, a pesticide operator engaged in the business of applying pesticides by aircraft may have his public liability policy of insurance limited to the time period within which such pesticide operator is actually engaged in the application of pesticides by aircraft, subject to the following:

(a) The Department is furnished the documentation required by section (1) of this rule; and

(b) The public liability policy of insurance identifies the specific aircraft to which it applies.

Stat. Auth.: ORS 561 & 634

Stats. Implemented: ORS 634.116

Hist.: AD 7-1977, f. & ef. 4-5-77

603-057-0106

Immediately Supervised Pesticide Trainee

(1) There is herewith established a type of pesticide trainee license and a type of public trainee license which shall bear the designation "Immediately Supervised Trainee."

(2) An immediately supervised pesticide trainee license may only be issued upon receipt by the department of:

(a) An appropriately completed license application form; and

(b) Payment of the appropriate fee.

(3) The fee for an immediately supervised pesticide trainee license shall be the same as the fee for a pesticide trainee license.

(4) An immediately supervised pesticide trainee license shall expire on December 31 of the year of issuance, or of the following year if issued a license for two consecutive years.

(5) An immediately supervised trainee license authorizes the holder to conduct pesticide application activities under the immedi-

ate supervision of an appropriately licensed supervisor as detailed in OAR 603-057-0001. The immediately supervised pesticide trainee may apply pesticides only in the categories listed under the supervisor's license. If the supervisor is a licensed public applicator, the immediately supervised pesticide trainee or immediately supervised public trainee may only apply pesticides as described in ORS 634.116(12).

(6) An immediately supervised pesticide trainee license may be renewed.

(7) For each pesticide application made by an immediately supervised pesticide trainee, a pesticide application record, as required by ORS 634.146 and OAR 603-057-0130, must be made that also contains the names and pesticide license numbers of the trainee(s) and their supervisor(s). The employer of the trainee shall retain the record for a period of three years and release them to the department for inspection as required or authorized by ORS chapters 561 or 634 or rules adopted thereunder.

(8) An immediately supervised pesticide trainee license does not authorize the holder to conduct pesticide applications by helicopter or fixed wing aircraft.

(9) For purposes of this section, "an appropriately licensed supervisor" is:

(a) A licensed pesticide applicator, or licensed public applicator;

(b) Licensed in the category, or categories, in which the immediately supervised pesticide trainee is currently engaged.

(10) Any immediately supervised pesticide trainee conducting pesticide application activities without an appropriately licensed supervisor, without an appropriately licensed supervisor on the site where the application is being made, or who is unable to identify their supervisor, will be considered unlicensed and subject to enforcement actions in accordance to ORS 634.900.

Stat. Auth.: ORS 561.190 & 634

Stats. Implemented: ORS 634.306

Hist.: AD 12-1992, f. 10-13-92, cert. ef. 1-1-93; DOA 11-2012, f. 5-15-12, cert. ef. 1-1-13

603-057-0110

Pesticide Operator, Applicator, and Trainee Categories

In accordance with subsection (2) of ORS 634.306, the following categories of pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees are established with licenses (or certificates) to be issued for such categories, or any specific subcategories established by OAR 603-057-0115:

(1) Agricultural Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in the production of agricultural crops and livestock (including Christmas tree plantations and commercial nurseries), or on agricultural lands, grasslands, or non-crop agricultural lands.

(2) Aquatic Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in treating standing or running water.

(3) Demonstration and Research: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators and public trainees who use or supervise the use of pesticides, or of any substance or mixture of substances that is being evaluated for use as a pesticide, for experiments or research such as for gathering data to satisfy registration requirements of the United States Environmental Protection Agency or of the department. The exemption provided manufacturers under subsection (1) of ORS 634.106 only applies to laboratory research. The uses included in this category must be:

(a) Authorized by an experimental use permit issued by the United States Environmental Protection Agency;

(b) Authorized by an experimental use permit issued by the department as provided in OAR 603-057-0160; or

(c) By a federal or state agency that is exempt from obtaining an experimental use permit as provided in OAR 603-057-0160(2)(b).

(4) Forest Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and pub-

lic trainees who use or supervise the use of pesticides in the production of forest crops, or on forestry lands (not including Christmas tree plantations or commercial nurseries).

(5) Industrial, Institutional, Health, and Structural Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in, on, or around food handling establishments, human dwellings, institutions (i.e., schools, hospitals, etc.), industrial establishments (including warehouses and grain elevators), and any other structures or areas utilized for the storing, processing, or manufacturing of products.

(6) Marine Fouling Organism Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of marine antifouling paint or coating on boat or ship hulls or other parts of boats or ships.

(7) Ornamental and Turf Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in the establishment and maintenance of ornamental plantings and turf (not including Christmas tree plantations, commercial nurseries or forest crops). The exemption provided persons under subsection (5) of ORS 634.106 only applies to persons principally engaged in home lawn and garden care.

(8) Public Health Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides for the control of any pest which may be deleterious to the public health, including mosquito and other vector control.

(9) Regulatory Pest Control: This shall include public applicators and public trainees who use or supervise the use of pesticides upon regulated pests not otherwise specified in this section.

(10) Right-of-Way Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in right-of-way areas.

(11) Seed Treatment: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides on seed, as it is defined in subsection (1) of ORS 633.511. Treatment of a person's own seed on his own premises is exempt under subsections (9) and (13) of ORS 634.006.

Stat. Auth.: ORS 561 & 634

Stats. Implemented: ORS 634.306

Hist.: AD 1066(12-75), f. 8-11-75, ef. 10-15-75; AD 7-1977, f. & ef. 4-5-77; AD 12-1985, f. & ef. 11-27-85; AD 1-1990(Temp), f. & cert. ef. 3-1-90; AD 17-1990, f. & cert. ef. 10-2-90; DOA 8-2009, f. & cert. ef. 7-15-09

603-057-0115

Pesticide Operator, Applicator, and Trainee Subcategories

The following subcategories of pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees are hereby established within the categories set forth in OAR 603-057-0110:

(1) Under "Agricultural Pest Control":

(a) Insecticide and Fungicide: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of insecticides, fungicides, and/or nematicides in the production of agricultural crops, or on agricultural lands, grasslands, and non-crop agricultural lands;

(b) Herbicides: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of herbicides in the production of agricultural crops or on agricultural lands, grasslands, and non-crop agricultural lands;

(c) Soil Fumigation: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of soil applied fumigants in the production of agricultural crops or on agricultural lands, grasslands, or non-crop agricultural lands;

(d) Livestock Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and

public trainees who use or supervise the use of pesticides in agricultural areas for control or eradication of such livestock pests as insects, mites and ticks;

(e) Vertebrate Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in agricultural areas for control of vertebrate pests other than livestock predators.

(2) Under "Industrial, Institutional, Health, and Structural Pest Control":

(a) Pest Control, General: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides, other than fumigants, in or around structures, institutions and establishments for the protection of stored, processed, and manufactured products or for the protection of human health;

(b) Structural Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides, other than fumigants, in, on, or around structures for the control of wood-destroying pests (i.e., termites, carpenter ants, powder post beetles, etc.);

(c) Space Fumigation: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of fumigants in enclosed or confined areas or structures for the control of pests in structures, in stored food or feed, and in other agricultural products. Field treatment of utility poles, pilings, bridge supports, and similar elements of construction are excluded from this category;

(d) Moss Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides for the control of moss and algae on structures;

(e) Wood Treatment: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides to treat wood products (i.e., lumber, poles, ties, etc.) before the use of those products in construction, and to field treat utility poles, pilings, bridge supports, and similar elements of construction with fumigants or other pesticides.

(3) Under "Ornamental and Turf Pest Control":

(a) Insecticide and Fungicide: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of insecticides and fungicides in the establishment and maintenance of ornamental plantings and turf;

(b) Herbicide: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in the establishment and maintenance of ornamental plantings and turf.

(4) Under "Regulatory Pest Control":

(a) M-44 Device: This shall include only employees of the United States Department of Agriculture, Animal and Plant Health Inspection Service, Animal Damage Control, who are licensed as public applicators and who use the M-44 device containing sodium cyanide for the control of coyotes and certain other wild canids, which shall be in the manner as specified by the administrative rules of the Department;

(b) Livestock Protection Collar: This shall include only employees of the United States Department of Agriculture, Animal and Plant Health Inspection Service, Animal Damage Control, who are licensed as public applicators and who use the livestock protection collar containing sodium fluoroacetate (Compound 1080) for the control of coyotes, which shall be in the manner as specified by the administrative rules of the Department;

(c) Weed Control: This shall include public applicators and public trainees who use or supervise the use of pesticides for the control of plants designated by local weed control districts or the Department as noxious weeds as set forth in ORS 570.510.

Stat. Auth.: ORS 561 & 634

Stats. Implemented: ORS 634.306(2)

Hist.: AD 1066(12-75), f. 8-11-75, ef. 10-15-75; AD 7-1977, f. & ef. 4-5-77; AD 12-1985, f. & ef. 11-27-85; AD 10-1987, f. & ef. 7-1-87; AD 6-1997, f. & cert. ef. 6-11-97

603-057-0120

General Standards of Pesticide Applicator Competence

(1) Competence in the use or handling of pesticides shall be determined on the basis of written examinations which, in addition to the requirements of OAR 603-057-0125, shall include the following general standards:

(a) Comprehension of labeling format, labeling terminology, and the labeled warnings and instructions;

(b) Knowledge of safety factors to be considered, including need and use of protective clothing, first aid procedures in the event of accidents, symptoms of various pesticide poisonings, and proper storage, transportation, handling, and disposal methods;

(c) Knowledge of potential consequences to the environment from the use or misuse of pesticides, as influenced by climate, topography, vegetative buffers or other pesticide practices directly relating to protection of water, and existence of plant and/or animal life.;

(d) Methods to minimize pesticide drift and off-target deposition of pesticides, including nozzle selection, calibration, product formulation, product volatility, buffers and barriers, adjuvants, precision application technology, and environmental conditions (wind, inversion, temperature, etc.);

(e) Knowledge of methods of use or application, including the various formulations (dust, wettable powder, etc.) of pesticides, the compatibility of various pesticides, the types of application equipment or devices, and the times when various pesticide formulations or equipment would be appropriately used; and

(f) Knowledge and comprehension of existing laws and rules governing pesticide use or application, including classifications of various pesticides (highly toxic, restricted use, or general).

(2) The applicant shall be notified within 30 days of taking a written examination, as to the grade received in such examination and whether such grade is passing or failing. Such notification shall be deemed an "order" for the purposes of judicial review provided in ORS 183.480.

(3) An applicant for a pesticide applicator's license renewal shall be required to take a reexamination each fifth year after taking the original examination, and be subject to the provisions of this section and OAR 603-057-0125 in regard thereto. However, if the Department's records indicate the applicant for license renewal has complied with the provisions of 603-057-0150, the written examination shall be waived, except in the category "Regulatory Pest Control," subcategory "Livestock Protection Collar."

(4) If an applicant for a pesticide applicator's license has passed a current written examination accredited by another state with which the Department has a reciprocal agreement on certification or licensing, and submits evidence of the same to the Department at the time of submitting an initial license application with applicable fee, the license examination may be waived.

(5) In the event an applicant for a pesticide applicator's license fails the written examination or re-examination, the applicant shall be qualified to take the examination again subject to the fee provided in subsection (7) of ORS 634.122.

Stat. Auth.: ORS 561 & 634

Stats. Implemented: ORS 634.306(5)

Hist.: AD 1066(12-75), f. 8-11-75, ef. 10-15-75; AD 7-1977, f. & ef. 4-5-77; AD 15-1978, f. & ef. 9-15-78; AD 6-1997, f. & cert. ef. 6-11-97; DOA 21-2012, f. & cert. ef. 7-10-12

603-057-0125

Special Standards of Pesticide Applicator Competence

In addition to the requirements of OAR 603-057-0120, the written examination shall include the following applicable special standards for the category or subcategory indicated:

(1) "Regulatory Pest Control — M-44 Device":

(a) Knowledge of the characteristics and habits of predatory animals, and particularly coyotes;

(b) Knowledge of the toxicity levels of sodium cyanide, the hazards in the use or application thereof, and the common exposure routes thereof;

(c) Knowledge of the common types of accidents associated with the use or application of sodium cyanide in the quantities and forms utilized;

(d) Knowledge of precautions to be undertaken to protect the applicator and the immediate environment and nontarget organisms in the vicinity;

(e) Knowledge of the effects of weather, terrain, soil, drainage, and other topographical or climatic conditions that are associated with the use or application of sodium cyanide in the prescribed manner for predator control;

(f) Knowledge of the operation, repair, and maintenance procedures for the device known as the "M-44 spring loaded sodium cyanide coyote control device," including placement and retrieval thereof;

(g) Knowledge of the departmental rules relating to the use of sodium cyanide and the above described device, including the placement of adequate warning signs, the keeping of records relating to pesticide device locations and numbers, and the inventorying of numbers and species of animals eradicated.

(2) "Regulatory Pest Control-Livestock Protection Collar":

(a) Ability to read and understand pesticide labels and labeling information, including all labeling and use restrictions for sodium fluoroacetate (Compound 1080) livestock protection collars;

(b) Ability to recognize the technical name, sodium fluoroacetate, and understand the basic properties of Compound 1080;

(c) Ability to recognize potential hazards posed to humans, domestic animals, and non-target wildlife by the use of the livestock protection collar;

(d) Ability to recognize general symptoms of poisoning by Compound 1080 in humans and domestic animals and take appropriate action;

(e) Knowledge that only an employee of the United States Department of Agriculture, Animal and Plant Health Inspection Service, Animal Damage Control, certified and licensed as a public pesticide applicator in the category "Regulatory Pest Control," subcategory "Livestock Protection Collar," by the Oregon Department of Agriculture can handle or use Compound 1080 and the livestock protection collar;

(f) Ability to recognize situations where use of the livestock protection collar can be expected to be safe and effective, as well as those situations where alternative methods of control would be more suitable. These methods may include but would not be limited to use of the M-44 device, guard animals, fences, repellents, fright devices, snares, and traps;

(g) Knowledge of the use restrictions set forth in OAR 603-057-0360 and the record-keeping requirements set forth in 603-057-0375, which include a record of each animal (target or non-target) found poisoned or suspected of having been poisoned as a result of the use of Compound 1080;

(h) Knowledge of the requirement for immediate (within three days) reporting of suspected poisonings of non-target species and suspected poisonings of humans or domestic animals by Compound 1080 to the U.S. Environmental Protection Agency and the Department, as set forth in OAR 603-057-0375(3);

(i) Ability to distinguish between damaged livestock protection collars that can be repaired and those that must be disposed of properly;

(j) Knowledge of how to make appropriate repairs to damaged livestock protection collars prior to reuse and how to dispose of them properly if they cannot be repaired;

(k) Knowledge of how to properly dispose of dead animal remains, vegetation, or soil contaminated by a punctured livestock protection collar;

(l) Knowledge of safe handling and storage procedures for the livestock protection collar;

(m) Knowledge of the requirement to post and maintain bilingual (English/Spanish) warning signs at logical points of access to areas where livestock protection collars are in use; and

(n) Knowledge of the requirement to perform inspections of livestock protection collars in use twice weekly.

Stat. Auth.: ORS 561 & 634

Stats. Implemented: ORS 634.306(5)

Hist.: AD 1066(12-75), f. 8-11-75, ef. 10-15-75; AD 7-1977, f. & ef. 4-5-77; AD 6-1997, f. & cert. ef. 6-11-97

Hist.: AD 12-1992, f. 10-13-92, cert. ef. 1-1-93; DOA 2-2012, f. 1-13-12, cert. ef. 1-1-13; DOA 16-2012, f. & cert. ef. 6-1-12

603-057-0127

Pesticide Apprentice Standards of Competence

(1) The department may issue a pesticide apprentice license for one licensing period, or portion thereof. The department may issue the license to an applicant that is at least 18 years of age upon receipt of:

- (a) A license application form that contains all of the information requested by the department;
- (b) Payment of the appropriate fee; and
- (c) Documentation that the applicant successfully completed, within two years of the date of initial application, a written examination developed and administered by the department for the purpose of assuring that the applicant is competent in the use of pesticides as a pesticide apprentice. The content of this examination shall include the topics listed in OAR 603-057-0129(1)(a) through (e). Successful completion of the examination shall require answering at least 70 percent of the examination questions correctly.

(d) A pesticide apprentice license shall expire on December 31 of the year of issuance, or the following year if issued a license for two consecutive years.

(2) The department may renew a pesticide apprentice license for consecutive licensing periods upon receipt of:

- (a) A license renewal application form containing all of the information requested by the department;
- (b) Payment of the appropriate fee; and
- (c) Documentation that the applicant successfully completed the required credit hours of pesticide instructional sessions during the previous licensing period. The department must accredit the instructional sessions. Eight (8) credit hours are required for each year of a licensing period. Four (4) of the eight (8) credit hours must be core credits as described in OAR 603-057-0135. All training requirements may be waived for the first year of the initial licensing period only.

(3) If a person licensed as a pesticide apprentice does not deliver the form, fee, and documentation described in subsection (2) of this rule to consecutively renew their license, the person will not be eligible to renew their pesticide apprentice license. The person must retake the qualifying examination as described in (1)(c) of this section.

(4) A pesticide apprentice license authorizes the holder to conduct pesticide application activities under the supervision of an appropriately licensed supervisor. The licensed apprentice may apply pesticides only in the categories listed on the supervisor's license. If the supervisor is a licensed public applicator, the licensed apprentice may only apply pesticides as described in ORS 634.116(12).

(5) For each pesticide application made by a pesticide apprentice, a pesticide application record, as required by ORS 634.146 and OAR 603-057-0130, must be made that also contains the names and pesticide license numbers of the appropriately licensed pesticide apprentice(s) and the supervisor(s). The employer of the licensed pesticide apprentice shall retain the record for a period of three years and release them to the department for inspection as required or authorized by ORS chapters 561 or 634 or rules adopted thereunder.

(6) A pesticide apprentice license does not authorize the holder to conduct pesticide applications by helicopter or fixed wing aircraft.

(7) For purposes of this section "an appropriately licensed supervisor" is:

- (a) A licensed pesticide applicator, or licensed public applicator;
- (b) Licensed in the category, or categories, in which the pesticide apprentice is currently engaged.

(8) Any pesticide apprentice conducting pesticide application activities without a valid appropriately licensed supervisor, or who is unable to identify their supervisor, will be considered unlicensed and subject to enforcement actions in accordance to ORS 634.900

Stat. Auth.: ORS 561.190 & 634
Stats. Implemented: ORS 634.306

603-057-0130

Applicator's Records and Reports

(1) Pursuant to subsection (13) of ORS 634.116, a public applicator shall prepare and maintain the records, and submit the reports, required of pesticide operators by 634.146.

(2) A pesticide applicator shall prepare and maintain the records, and submit the reports, required of pesticide operators by ORS 634.146 if the employer of such applicator is not a pesticide operator (greenskeepers, etc.).

(3) A pesticide applicator and public applicator shall include their full name and pesticide applicator license number legibly on the records required by ORS 634.116 and 634.146.

(4) If a pesticide application is conducted by a Pesticide Apprentice or an Immediately Supervised Pesticide Trainee, then the names and pesticide license numbers of both the Pesticide Apprentice or Immediately Supervised Pesticide Trainee and their supervising applicator must be included legibly on the record.

Stat. Auth.: ORS 561 & 634
Stats. Implemented: ORS 634.146

Hist.: AD 7-1977, f. & ef. 4-5-77; DOA 26-2012, f. & cert. ef. 10-30-12

603-057-0135

Private Applicator Standards of Competence

(1) As provided in ORS 634.142, competence of a private applicator in the use or handling of pesticides shall be determined on the basis of a written examination and evidenced by the issuance of a certificate.

(2) A private applicator certificate shall be valid for a period of up to five calendar years from its issuance and expire on December 31 of the fifth year.

(3) An applicant for a private applicator's initial certificate or for a private applicator's renewal shall be required to successfully complete the written examination then in use for certification of private applicators. Successful completion of the written examination shall consist of correctly responding to at least 70 percent of the questions contained in the examination.

(4) In lieu of the written re-examination requirement of section (3) of this rule, an applicant for renewal of a private applicator certificate may attend pesticide training sessions approved by the Department, totaling 16 hours of Department approved pesticide use related instruction, during the period preceding the expiration of his/her certificate as follows:

(a) An individual shall be required to attend the core pesticide training session and accumulate twelve additional units of Department approved pesticide training;

(b) Not more than eight units of Department approved pesticide training may be accumulated for recertification during a single 12-month period (January–December);

(c) Credit for attending core pesticide training can only be obtained twice during the five year certification period. The second core pesticide training session attended will be credited toward the twelve additional units of Department approved pesticide training required for recertification; and

(5) The core pesticide training required by section (4) of this rule shall consist of a total of at least 4 units of instruction (50–60 minutes of instruction per unit) on any one or more of the following topics:

(a) Principles of Integrated Pest Management as defined in ORS 634.650;

(b) Label Comprehension;

(c) Calibration (math and equipment);

(d) Methods to minimize pesticide drift and off-target deposition of pesticides, including nozzle selection, product formulation, product volatility, buffers and barriers, adjuvants, precision application technology, and environmental conditions (wind, inversion, temperature, etc.);

(e) Pest resistance prevention;

(f) Laws (environmental, endangered species, ground and surface water protection, worker protection standards (WPS), pesticide and pesticide container disposal); and

(g) Personal Safety (including personal protective equipment (PPE)).

(6) The submission of pesticide training sessions to the Department for approval, assignment of approved units of instruction and conditions relating thereto shall be done in accord with OAR 603-057-0150(2).

(7) The Department shall make available to each holder of a private applicator certificate of the expiration date of his/her certificate, of his/her attendance of core training, and of the number of units of additional Department approved pesticide training accumulated toward renewal of the certificate.

(8) The requirement for re-examination as specified in section (3) of this rule and the alternate procedure of attending Department approved pesticide training as specified in section (4) of this rule shall be waived if the applicant for a private applicators certificate renewal is a pesticide applicator or consultant. Said waiver shall be in effect only for the period the applicant is a pesticide applicator or consultant. Such waiver shall not affect the requirement for re-examination or the alternate procedure of OAR 603-057-0150 for pesticide applicators or consultants specified elsewhere in these administrative rules.

(9) The fee for a private applicator certificate shall be \$25.

Stat. Auth.: ORS 561.190 & 634

Stats. Implemented: ORS 634.124

Hist.: AD 7-1977, f. & ef. 4-5-77; AD 8-1988, f. 8-30-88, cert. ef. 10-1-88; AD 8-1993, f. 6-8-93, cert. ef. 8-1-93; AD 8-1996, f. 7-12-96, cert. ef. 8-9-96; DOA 21-2012, f. & cert. ef. 7-10-12

603-057-0140

Pesticide Dealer Records

(1) As provided in subsections (6) and (7) of ORS 634.322, a pesticide dealer shall prepare and maintain records of his sales of restricted-use and highly toxic pesticides for a period of three years. Such records shall include:

(a) The names and addresses of the purchasers of such pesticides, and the license or certificate numbers of the purchasers;

(b) The date of sale;

(c) The trade name (and the formulation if applicable) of such pesticides;

(d) The quantity of each sale of such pesticides.

(2) In addition to the requirements of a pesticide dealer otherwise specified in (1) of this section, a pesticide dealer shall prepare and maintain records of sales of products containing the active ingredient carbofuran as follows:

(a) The name and address of the person who received the product when the product was not delivered directly to the purchaser;

(b) The crop(s) to which the product will be applied;

(c) The acreage of each crop to which the product will be applied;

(d) The amount of product that will be applied to each acre of each crop;

(e) The intended date of application to each crop.

(3) The information required by (2) above shall be obtained by the pesticide dealer from the person receiving the product at the time of distribution or sale.

(4) All information prepared for every distribution or sale of a pesticide product containing the active ingredient carbofuran shall be submitted by the pesticide dealer to the Oregon Department of Agriculture within five business days of the distribution or sale.

(5) Failure to comply with the conditions set forth in OAR 603-057-0140 may be considered as violations of ORS 634.372, and may be subject to any enforcement action available to the department under ORS 634.

Stat. Auth.: ORS 561 & 634

Stats. Implemented: ORS 634.322

Hist.: AD 7-1977, f. & ef. 4-5-77; DOA 4-2007(Temp), f. 2-26-07, cert. ef. 3-1-07 thru 8-27-07; DOA 8-2007, f. & cert. ef. 5-9-07

603-057-0145

Pesticide Consultant Standards of Competence

(1) As provided in ORS 634.132, competence of a pesticide consultant to advise or make recommendations concerning the use, handling, or selection of restricted-use pesticides shall be determined on the basis of a written examination. As a supplement to the subject matters set forth in subsection (2) of ORS 634.132, the examination shall also include the subject matters set forth in OAR 603-057-0120(1) relating to the General Standards of Pesticide Applicator Competence.

(2) A pesticide consultant licensed pursuant to this section may not advise or make recommendations in subcategories (a) or (b) of 603-057-0115(4), Regulatory Pest Control, regarding the use, handling, or selection of the M-44 Device containing sodium cyanide or the livestock protection collar containing sodium fluoroacetate (Compound 1080).

(3) A pesticide consultant licensed pursuant to this section may add the category Demonstration and Research, as defined in OAR 603-057-0110 (3), to his/her license following successful completion of the written examination for the Demonstration and Research category.

(4) A pesticide consultant licensed pursuant to this section in the category Demonstration and Research is eligible to be licensed as a pesticide applicator in the category of Demonstration and Research without further examination. An application for such applicator's license, or for the addition of the category to an existing license, and the appropriate fee payment must be made separately from the application for, or the addition to, a pesticide consultant's license.

(5) If an applicant for a pesticide consultant's license has passed a current written examination accredited by another state with which the Department has a reciprocal agreement on certification or licensing, and submits evidence of the same to the department at the time of submitting his license application with applicable fee, the license examination may be waived.

(6) An applicant for a pesticide consultant's license renewal shall be required to take and successfully complete a reexamination each fifth year after taking the original examination, and be subject to the provisions of this section in regard thereto. However, if the Department's records indicate the applicant for license renewal has complied with the provisions of OAR 603-057-0150, the written reexamination shall be waived.

(7) In the event an applicant for a pesticide consultant's license fails the written examination or reexamination, the applicant shall be qualified to take the examination again upon submitting a new application for the same.

(8) A pesticide consultant licensed pursuant to this section shall also be eligible to be licensed as a private applicator for the purpose of purchasing, using or supervising the use of any restricted use or highly toxic pesticides for the purpose of producing agricultural commodities or forest crops on land owned or leased by the person. An application and fee payment for a private applicator's license must be made separately from the application and fee payment for the pesticide consultant license. The certification date of the Private Applicator license will be consistent with that of the consultant license.

Stat. Auth.: ORS 561 & 634

Stats. Implemented: ORS 634.306(5)

Hist.: AD 7-1977, f. & ef. 4-5-77; AD 15-1978, f. & ef. 9-15-78; AD 6-1997, f. & cert. ef. 6-11-97; DOA 8-2009, f. & cert. ef. 7-15-09

603-057-0150

Alternative Requirements for Competence of Pesticide Applicator or Consultant License Renewal

In lieu of the written re-examination requirements of OAR 603-057-0120(3) or of 603-057-0145(4), an applicant for renewal of either a pesticide applicator's license or a pesticide consultant's license may accumulate at least 40 credits by attending pesticide-instructional sessions, accredited by the Department, during the five-year period preceding the year in which the written re-examination would be required, in accordance with the following:

(1) Not more than 15 credits may be accumulated for recertification purposes by an applicant during any one calendar year.

(2) In the event a pesticide instructional session is desired to be considered for accreditation by an applicant, such applicant shall submit to the Department, or person authorized by the Department, a written request for accreditation not less than 30 days prior to the scheduled session, which written request shall include the agenda and summary of each topic/presentation of the session, the session sponsor, the name and address of the session sponsor, and the time and place of such session. Upon receipt of such written request, the Department, in consultation with Oregon State University, shall evaluate the instructional value of the session and either deny accreditation or assign credits to the entire session or any portion thereof in a range from 1 to 15, assigning no more than one credit for each 50 to 60 minute period of instruction. No such instructional sessions shall be considered for accreditation that is less than two credit hours in length except for computer based trainings as approved by the Department. In the event an instructional session is accredited, the Department shall provide the session instructor or sponsor with attendance certificates to be completed by such instructor or sponsor and returned by the applicants to the Department within 15 days after the session is completed. Under exceptional circumstances, as described in writing by an applicant, a written request for accreditation submitted later than 30 days prior to the scheduled session may be assigned credits in accordance with the provisions of this rule. Falsification of any part of such attendance certificate shall be considered grounds for license revocation proceedings by the Department.

(3) This section shall not apply to persons licensed to use the livestock protection collar in Oregon, in accordance with OAR-603-057-0120(3).

Stat. Auth.: ORS 561 & 634

Stats. Implemented: ORS 634.306(5)

Hist.: AD 15-1978, f. & ef. 9-15-78; AD 10-1987, f. & ef. 7-1-87; AD 8-1996, f. 7-12-96, cert. ef. 8-9-96; AD 6-1997, f. & cert. ef. 6-11-97; DOA 21-2012, f. & cert. ef. 7-10-12

603-057-0160

Pesticide Use for Experimental or Research Purposes

(1) Use of any substance or combination of substances as a pesticide with the intent of gathering data needed to satisfy pesticide registration requirements of the United States Environmental Protection Agency (EPA) or of the department shall be considered pesticide use for experimental or research purposes.

(a) An experimental use permit that is issued by the department constitutes the approval required by ORS 634.022(2).

(b) The permit requirement in this section is in addition to pesticide licensing requirements.

(2) The requirement to obtain an experimental use permit is not applicable to:

(a) Experiments or research conducted by federal or state agencies; or

(b) Experiments or research conducted entirely in one or more greenhouses; or

(c) Experiments or research that only:

(A) Use pesticides that are registered by EPA and the department; and

(B) Use pesticides in the manner consistent with the product label.

(3) To obtain an experimental use permit, a person must submit a complete application to the department and be in compliance with subsection (14) of this section. The pesticide use described in the application may not begin until the department issues the experimental use permit.

(a) The applicant must use a form approved by the department; and

(b) The application must be submitted to the department at least 30 days prior to intended use.

(4) There are two types of experimental use permits: site-specific and collective.

(5) A site-specific experimental use permit authorizes pesticide use for experimental or research purposes that are at sites specified in the permit and are not covered by a collective experimental use permit.

(a) Approvable sites include, but are not limited to, aquatic, residential, recreational and structural sites, areas with public access, commodity storage facilities, and areas exceeding a total of one acre.

(b) Each application for a site-specific experimental use permit will include the following:

(A) The name, address, and telephone numbers of the applicant and of the person responsible for carrying out the provisions of the experimental use permit;

(B) Identification of each pesticide to be used, including;

(i) The name of the pesticide active ingredient;

(ii) The name of the pesticide product, if any; and

(iii) The EPA registration number of the pesticide product, if any.

(C) The name, address, and telephone numbers of the person responsible for carrying out the provisions of the experimental use permit at each specific site, and the number of the pesticide-related license issued to the person by the department, and the means of locating the person in case of an emergency;

(D) The purpose of the experiment or research, including a list of the intended target pest(s), if any;

(E) The approximate date(s) of pesticide use;

(F) The intended crop or site of pesticide use;

(G) Specific description and location of each site where pesticide use may occur, including the size (for example, acres, or square feet) of each site;

(H) Disposition of any food or feed item from the crop or site on which the pesticide will be used;

(I) Application rate(s) of the pesticide, and number of applications;

(J) Method of application;

(K) Timing and duration of the proposed experiment or research;

(L) Total amount of pesticide to be used, diluent, and dilution rate;

(M) Copy of any experimental use permit issued by EPA, if applicable;

(N) A copy of the labeling that will accompany the pesticide in the field; and

(O) Any other information pertinent to the experiment or research specifically requested by the department.

(6) A site-specific experimental use permit may be issued for up to twelve months from the date of approval by the department.

(7) A collective experimental use permit authorizes pesticide use for experiments or research without identifying any specific site. Approvable sites include agricultural and forestry sites.

(a) The applicant may use one or more sites in any location in Oregon provided that the total size of all of the sites used for a particular pesticide does not exceed one acre.

(b) Each application for a collective experimental use permit will include the following:

(A) The name, address, and telephone numbers of the applicant and of the person responsible for carrying out the provisions of the experimental use permit, the number of the pesticide-related license issued to the person by the department, and the means of locating the person in case of an emergency;

(B) A signed statement that all pesticide use will comply with all of the provisions of the collective experimental use permit and of this section; and

(C) Any other information pertinent to the application specifically requested by the department.

(8) A collective experimental use permit will be issued for as long as one calendar year, ending December 31st.

(9) Any person conducting pesticide use for experimental or research purposes must be appropriately licensed by the department and include the category Demonstration and Research, as specified in OAR 603-057-0110(3), on that license. This licensing requirement applies to all persons making pesticide applications for experimental or research purposes and is not limited to persons conducting pesticide research authorized by an experimental use permit.

(10) Any crop or site on which a pesticide is used for experimental or research purposes shall be under the control of the person authorized to conduct that pesticide use. Said control may include:

(a) Ownership, rental or lease of the land on which the crop or site is located by the person;

(b) Ownership, rental or lease of the land on which the crop or site is located by the immediate employer of the person;

(c) Documented permission for the pesticide use from the owner, renter or leaseholder of the land on which the crop or site is located;

(d) Documented permission for the pesticide use from the public entity in possession or control of the land on which the crop or site is located.

(11) Any person using pesticides for experimental or research purposes shall prepare, maintain, and provide records in the same manner as in ORS 634.146.

(12) As provided by ORS 634.322(6), the department may deny an application for an experimental use permit or, amend, suspend or revoke any experimental use permit issued by the department.

(13) The department may establish conditions in an experimental use permit approval that the department determines necessary to be consistent with ORS Chapter 634 and this section.

(14) The holder of an experimental use permit shall provide the department a summary report of the experiments and research conducted under the permit no later than 30 days after the expiration date of the permit.

(a) Each summary report must include, at a minimum, the identification number of the experimental use permit, the records required by subsection (11) of this section, any adverse environmental, human, or animal health effects resulting from the pesticides used, and, if any pesticide use occurred on a food or feed item, documentation of food or feed item destruction, crop/site isolation, or other measures taken to prevent the food or feed item from being used or consumed.

(b) If the required summary report is not provided to the department, the department will not issue any future experimental use permit to the applicant.

(15) If information is provided in an experimental use permit application, summary report, or other form that is identified by the applicant as confidential, the department will hold the information confidential to the extent allowed under ORS Chapter 192.

(16) Any food or feed item to which a pesticide used for experimental or research purposes has been applied must be rendered unusable for food or feed unless a tolerance greater than the residues resulting from the use has been established or, if allowed by law, conditions implemented to prevent any use of the treated crop/site for food or feed for a period no less than 365 days. Such food or feed item may include, but is not limited to crop, forage (including grazing rangeland or pasture), green chop, hay, seed screenings, silage, and straw. The department requires documentation of food or feed item destruction or crop/site isolation as a condition of the experimental use permit.

(17) The department may monitor any pesticide used for experimental or research purposes. Monitoring may include, but is not limited to:

(a) Observing, inspecting, and documenting mixing, loading, transportation, and application activities;

(b) Inspecting and documenting application equipment;

(c) Collecting and analyzing samples;

(d) Interviewing any person that may have knowledge regarding the pesticide use; and

(e) Reviewing any records.

(18) The permit holder or the person that conducted the pesticide use must immediately report to the department any adverse environmental, human, or animal health effects resulting from pesticides used for experimental or research purposes.

(19) In addition to any other liability or penalty provided by law, any failure by any person to comply with the provisions of this section, as determined by the department, may be used as a basis for one or more of the following actions, if applicable:

(a) To revoke, suspend or refuse to issue an experimental use permit, in accordance with ORS 634.022 or 634.322(6);

(b) To revoke, suspend or refuse to issue any license of a permit holder or of a person that conducted a pesticide use for experimental or research purposes, in accordance with ORS 634.322(4);

(c) To impose a civil penalty, in accordance with ORS 634.900.

Stat. Auth.: ORS 634

Stats. Implemented: ORS 634

Hist: DOA 8-2009, f. & cert. ef. 7-15-09; DOA 15-2009, f. & cert. ef. 12-7-09

603-057-0180

Pesticide License Equivalency Provision

A pesticide applicator or public pesticide applicator licensed pursuant to ORS 633.122 in the subcategory Agriculture-Herbicide, or in the subcategory Agriculture-Insecticide/Fungicide, or in the category Forest Pest Control, shall be eligible to be licensed as a Private applicator to purchase, use, and/or supervise the use of any pesticide, classified by the department as a restricted-use or highly toxic pesticide, for the purpose of producing agricultural commodities or forest crops on land owned or leased by the licensee or licensee's immediate employer. An application and fee payment for such Private applicator license must be made separately from the application and fee payment for the pesticide applicator or public pesticide applicator license. The certification date of the Private Applicator license will be consistent with that of the pesticide applicator or public pesticide applicator license.

Stat. Auth.: ORS 634

Stats. Implemented: ORS 634

Hist.: DOA 9-2009, f. & cert. ef. 7-15-09

General Restrictions on Pesticide Uses

603-057-0200

Limitations on Restricted Use Pesticides

As provided in ORS 634.322 and in addition to other provisions of ORS Chapter 634, the following limitations and procedures shall apply to the distribution and use of restricted use pesticides identified in OAR 603-057-0205:

(1) A restricted use pesticide shall only be:

(a) Distributed for use by and used by an appropriately licensed pesticide applicator, public applicator or private applicator;

(b) Distributed or sold to users by an appropriately licensed pesticide dealer.

(2) A private applicator, or his/her designated agent, a pesticide operator or its designated agent, a pesticide applicator or a public applicator shall display his/her appropriate certificate or license to the pesticide dealer at the time of purchase of a restricted use pesticide, so that the number thereof may be recorded by the pesticide dealer pursuant to OAR 603-057-0140.

Stat. Auth.: ORS 561.190 & 634

Stats. Implemented: ORS 634.306 & 634.322

Hist.: AD 1036(26-74), f. 8-20-74, ef. 9-11-74; AD 7-1977, f. & ef. 4-5-77; AD 10-1987, f. & ef. 7-1-87; AD 13-1992, f. & cert. ef. 10-13-92

603-057-0205

Listing of Restricted Use Pesticides

As provided in ORS 634.316, restricted use pesticides shall be:

(1) Any pesticide active ingredient, formulation, product or usage classified restricted use by the United States Environmental Protection Agency, through administration of the Federal Insecticide, Fungicide and Rodenticide Act, and identified in current Title 40, Chapter 1, Sub-Chapter E, Part 152 of the Code of Federal Regulations; or

(2) Any pesticide product having labeling which specifies the product as being restricted use and has been accepted by the department for the purpose of registration as provided in ORS 634.016.

Stat. Auth.: ORS 561.190 & 634

Stats. Implemented: ORS 634.306 & 634.316

Hist.: AD 1036(26-74), f. 8-20-74, ef. 9-11-74; AD 7-1977, f. & ef. 4-5-77; AD 28-1977, f. & ef. 12-5-77; AD 8-1978, f. & ef. 6-23-78; AD 7-1980, f. & ef. 9-25-80; AD 24-1981, f. & ef. 12-1-81; AD 12-1985, f. & ef. 11-27-85; AD 12-1985, f. & ef. 11-27-85; AD 10-1987, f. & ef. 7-1-87; AD 1-1990(Temp), f. & cert. ef. 3-1-90; AD 17-1990, f. & cert. ef. 10-2-90; AD 13-1992, f. & cert. ef. 10-13-92

603-057-0216

Pesticide Residue Tolerances in Foods

The rules governing residue tolerances of pesticides permitted on raw agricultural products and the exemptions from such tolerances, adopted by the United States Environmental Protection Agency and in effect as of the effective date of this rule, are hereby adopted by the Department as the rules governing residue tolerances of pesticides permitted on raw agricultural products and exemptions from such tolerances in the State of Oregon. Said federal rules are set forth in Title 40 Code of Federal Regulations (CFR), Chapter 1, Part 180.

Stat. Auth.: ORS 561 & 634
 Stats. Implemented: ORS 634.306 & 634.042
 Hist.: AD 7-1977, f. & ef. 4-5-77; DOA 9-2007(Temp), f. & cert. ef. 6-7-07 thru 12-1-07; DOA 16-2007, f. & cert. ef. 10-25-07

Restrictions on Use of the Pesticide 2,4-D

603-057-0301

2,4-D; High Volatile Esters

The high volatile esters of 2,4-D (2,4-Dichlorophenoxyacetic acid), including the methyl, ethyl, propyl, butyl, and amyl esters thereof, shall be subject to the restrictions and conditions on the use or application thereof as set forth in OAR 603-057-0305 to 603-057-0320.

Stat. Auth.: ORS 561.190, 634.306 & 634.322
 Stats. Implemented: ORS 634.306 & 634.322
 Hist.: AD 1072(18-75), f. & ef. 12-5-75

603-057-0305

Areas Affected

All lands situated north of Interstate Highway 80N within the Counties of Morrow and Umatilla, excluding therefrom land presently subject to the East Umatilla Chemical Control District Order, shall be subject to the restrictions and limitations set forth in OAR 603-057-0305 to 603-057-0320.

Stat. Auth.: ORS 561.190, 634.306 & 634.322
 Stats. Implemented: ORS 634.306 & 634.322
 Hist.: AD 1072(18-75), f. & ef. 12-5-75

603-057-0310

Time Period

The restrictions and conditions on the use or application of the high volatile esters of 2,4-D specified in OAR 603-057-0301 shall apply for the period of April 1 to September 1 of each year.

Stat. Auth.: ORS 561.190, 634.306 & 634.322
 Stats. Implemented: ORS 634.306 & 634.322
 Hist.: AD 1072(18-75), f. & ef. 12-5-75

603-057-0315

Prohibited Acts

(1) No landowner shall use, apply, or cause to be applied, either by ground or aerial equipment, 2,4-D in the formulations described in OAR 603-057-0301 within the area prescribed in 603-057-0305 or within the time period prescribed by 603-057-0310, without first having applied for and received a permit from the Department as provided in 603-057-0320.

(2) No pesticide applicator, pesticide trainee, public applicator, public trainee, or pesticide operator shall use, apply, or cause to be applied, either by ground or aerial equipment, 2,4-D as prescribed in section (1) of this rule without first having received a copy of a valid permit from the landowner as provided in OAR 603-057-0320.

(3) No person shall violate the restrictions or conditions of a permit issued under OAR 603-057-0320.

Stat. Auth.: ORS 561.190, 634.306 & 634.322
 Stats. Implemented: ORS 634.306 & 634.322
 Hist.: AD 1072(18-75), f. & ef. 12-5-75

603-057-0320

Permits and Applications

(1) Application for a permit to use or apply 2,4-D, otherwise prohibited by the provisions of OAR 603-057-0315, shall be made by a landowner to the Department on forms prescribed by the Department or, should there be insufficient time to utilize the United States

mail, be made by a landowner by means of telegram or telephone to the Department. The application shall contain the following:

- (a) The name and address of the landowner-applicant;
- (b) The names of any authorized agents of the landowner;
- (c) The crops to which the pesticide is to be applied;
- (d) The amount of acreage to which the pesticide will be applied and the location of such acreage;
- (e) The purpose for which the pesticide is to be applied or used;
- (f) The amount of the pesticide to be applied, the common or chemical name of the pesticide, and the rate of application per acre;
- (g) The name and address of any person other than the landowner intended to apply the pesticide.

(2) Permits shall be on forms prescribed by the Department and, in addition to the information described in section (1) of this rule, shall include a permit number, dates of issuance and expiration, and any special restrictions and conditions on the use or application being permitted.

(3) The person to whom a permit is issued shall retain a copy of the same until 60 days after the expiration date of such permit, and shall deliver a copy of such permit to any other person applying or causing application of the pesticide who shall also retain his copy of the permit until 60 days after the expiration date of such permit.

(4) Permits shall only be issued upon the determination by the Department that the use or application of the pesticide is for the eradication or control of sagebrush or rabbit brush, and upon the further determination of the Department that the geography, time periods, and climatic conditions would reasonably allow the use or application of the pesticide without substantial adverse effects upon grapes.

Stat. Auth.: ORS 561.190, 634.306 & 634.322
 Stats. Implemented: ORS 634.306 & 634.322
 Hist.: AD 1072(18-75), f. & ef. 12-5-75

Restrictions on Use or Application of Specific Pesticides

603-057-0325

Sodium Cyanide and M-44 Device

Sodium cyanide and the M-44 device shall be subject to the restrictions and conditions set forth in OAR 603-057-0335 to 603-057-0350.

Stat. Auth.: ORS 561 & 634
 Stats. Implemented: ORS 634.306(5)
 Hist.: AD 6-1997, f. & cert. ef. 6-11-97

603-057-0335

Sodium Cyanide and M-44 Device; Restrictions on Use

Only employees of the United States Department of Agriculture, Animal and Plant Health Inspection Service, Animal Damage Control, who are licensed as public applicators in the category specified in OAR 603-057-0115(4)(a), shall be entitled to use sodium cyanide and the M-44 device for the control of coyotes and certain other wild canids.

Stat. Auth.: ORS 561 & 634
 Stats. Implemented: ORS 634.306(13) & 634.322(6)
 Hist.: AD 1066(12-75), f. 8-11-75, ef. 10-15-75; AD 7-1977, f. & ef. 4-5-77; AD 1-1982, f. & ef. 3-5-82; AD 12-1985, f. & ef. 11-27-85; AD 6-1997, f. & cert. ef. 6-11-97

603-057-0350

Sodium Cyanide and the M-44 Device; Records and Reports

(1) Public pesticide applicators using sodium cyanide and the M-44 device shall not be required to keep records as specified in ORS 634.146 or OAR 603-057-0130, but instead shall make and maintain records which contain but are not limited to the following:

- (a) Species and numbers of animals eradicated, whether target or non-target, and the dates and locations thereof;
- (b) Numbers and locations of devices employed, with dates of installations and retrievals;
- (c) Numbers and locations of warning signs posted;
- (d) The name and address of the person on whose property sodium cyanide and the M-44 device was used; and
- (e) The name and address of the pesticide applicator.

(2) The records required by section (1) of this rule shall be made available to the Department for inspection and verification. Upon request of the Department, such record information shall be sub-

mitted to the Department in the form of periodic reports. Such records shall be maintained by the user for at least three years after the cessation of the user use activity.

Stat. Auth.: ORS 561 & 634
 Stats. Implemented: ORS 634.306(13) & 634.322(6)
 Hist.: AD 1066(12-75), f. 8-11-75, ef. 10-15-75; AD 1-1982, f. & ef. 3-5-82; AD 12-1985, f. & ef. 11-27-85; AD 6-1997, f. & cert. ef. 6-11-97

603-057-0355

Sodium Fluoroacetate (Compound 1080) and the Livestock Protection Collar

(1) Sodium fluoroacetate (Compound 1080) and the livestock protection collar shall be subject to the restrictions and conditions set forth in OAR 603-057-0360 to 603-057-0375.

(2) Failure to comply with the restrictions and conditions set forth in OAR 603-057-0360 to 603-057-0375, as determined by the Oregon Department of Agriculture, may be used as a basis for one or more of the following actions:

(a) To revoke, suspend or refuse to issue or renew the license or certification of an applicant, licensee or certificate holder in accordance with ORS 634.322(4);

(b) To amend, suspend or revoke the registration(s) pertaining to the livestock protection collar in accordance with ORS 634.322(5);

(c) To impose a civil penalty, in accordance with ORS 634.900;

(d) To initiate and pursue any other action of an enforcement nature available through ORS 634.

Stat. Auth.: ORS 561 & 634
 Stats. Implemented: ORS 634.306(13) & 634.322(6)
 Hist.: AD 7-1977, f. & ef. 4-5-77; AD 6-1997, f. & cert. ef. 6-11-97

603-057-0360

Sodium Fluoroacetate (Compound 1080) and the Livestock Protection Collar; Restrictions on Use

(1) Coyotes shall be the only species that may be considered to be a regulated pest, as defined in OAR 603-057-0001(8), and therefore considered to be a target organism, upon which sodium fluoroacetate (Compound 1080) and the livestock protection collar may be used.

(2) Only employees of the United States Department of Agriculture, Animal and Plant Health Inspection Service, Animal Damage Control, licensed as public pesticide applicators in the subcategory specified in OAR 603-057-0115(4)(b) shall use the livestock protection collar containing sodium fluoroacetate (Compound 1080).

(3) The following shall apply to use of the livestock protection collar containing sodium fluoroacetate (Compound 1080):

(a) Use of collars shall conform to all applicable federal, state and local regulations;

(b) Use of collars shall be limited to appropriate sites within the geographic boundaries of Curry County, Oregon;

(c) Collars shall only be in the possession of the registrant and its employees, except when in use;

(d) Collars shall only be filled with Compound 1080 solution by the manufacturer;

(e) Collars shall be used only to take coyotes that prey upon domestic livestock within fenced pastures no larger than 2,560 acres;

(f) Collars may be used only after a finding by United States Department of Agriculture, Animal and Plant Health Inspection Service, Animal Damage Control personnel that appropriate non-lethal methods of coyote control, by method, have failed to reduce losses to an acceptable level, and all other available lethal or non-lethal methods have been found to be ineffective or inappropriate;

(g) Prior to use of the livestock protection collar at a particular site, a preapplication inspection report will be completed by the applicator which identifies the following:

(A) Non-lethal techniques utilized at the site, and the reason each one was found to be impractical or unsatisfactory;

(B) Non-lethal techniques considered for the site, and the reason each one was considered impractical or unsatisfactory;

(C) Lethal techniques utilized at the site, and the reason each one was found to be impractical or unsatisfactory;

(D) Lethal techniques considered for the site, and the reason each one was considered impractical or unsatisfactory.

(h) Where collars are in use, each logical point of access shall be conspicuously posted with a bilingual (English/Spanish) warning sign not less than 8" x 10" in size. Such signs shall be inspected weekly to insure their continued presence and legibility, and will be removed when all collars are removed and accounted for;

(i) Each collar in use shall be inspected by the applicator at least twice a week to insure that it is properly positioned and unbroken;

(j) Damaged or broken collars shall be removed from the field and either returned to the manufacturer for repair or disposed of properly;

(k) If a collar is lost, an intensive search for the missing collar shall be conducted within twelve hours from the time the loss is noted. Use of all other collars at the particular site shall be terminated after twelve hours if a search is not conducted for the lost collar and a cause for the loss identified. If the collar is lost due to a deficiency which can be corrected, appropriate corrections will be enacted prior to the continued use of collars on that site;

(l) If a collar is found to have been punctured by a predator attacking a collared animal, an intensive search shall be conducted for the animal which punctured the collar;

(m) Disposal of punctured or unserviceable collars and contaminated animal remains, vegetation and soil shall be accomplished by deep burial or burning at a safe location, preferably on the property of the landowner;

(n) Storage of livestock protection collars containing Compound 1080 shall only be under lock and key in a dry place away from food, feed, domestic animals and corrosive chemicals. Collars shall not be stored in any structure occupied by humans.

Stat. Auth.: ORS 561 & 634
 Stats. Implemented: ORS 634.306(13) & 634.322(6)
 Hist.: AD 7-1977, f. & ef. 4-5-77; AD 10-1987, f. & ef. 7-1-87; AD 6-1997, f. & cert. ef. 6-11-97

603-057-0365

Sodium Fluoroacetate (Compound 1080) and the Livestock Protection Collar; Registrant of Livestock Protection Collars

Only the United States Department of Agriculture, Animal and Plant Health Inspection Service, Animal Damage Control may be the registrant of the livestock protection collar containing the active ingredient sodium fluoroacetate (Compound 1080).

Stat. Auth.: ORS 561 & 634
 Stats. Implemented: ORS 634.306(13) & 634.322(6)
 Hist.: AD 7-1977, f. & ef. 4-5-77; AD 6-1997, f. & cert. ef. 6-11-97

603-057-0375

Sodium Fluoroacetate (Compound 1080) and the Livestock Protection Collar; Records and Reports

(1) Public pesticide applicators using the livestock protection collar shall not be required to keep records as specified in ORS 634.146 or OAR-603-057-0130, but instead shall make and maintain records which contain but are not limited to the following:

(a) The name and address of the person on whose property the livestock protection collar was used and the name and address of the public pesticide applicator;

(b) The location and size of agricultural or rangeland areas (fields) in which the livestock protection collars containing sodium fluoroacetate (Compound 1080) were used;

(c) The date each individual collar was obtained by the applicator, placed on livestock, punctured or ruptured (along with apparent cause), lost or unrecovered, or removed and put in storage;

(d) The species, date, and location of each animal found poisoned or suspected of having been poisoned as a result of the use of Compound 1080 in livestock protection collars;

(e) A written description of any intensive search for missing collars or poisoned animals conducted as specified in OAR 603-057-0360(3)(j) and (k).

(2) The registrant shall keep records of all collars distributed. Records shall include the name and address of each recipient along with dates and numbers of collars received.

(3) The records required by sections (1) and (2) of this rule shall be maintained by the applicator for a period of three years and shall be made available to the Department for inspection and verification upon request of the Department. This record information shall be

submitted to the Department and the U.S. Environmental Protection Agency in the form of periodic reports. Any poisoning of non-target species shall be reported immediately (within three days) to the U. S. Environmental Protection Agency and the Department. Each accident or injury to humans or domestic animals shall likewise be reported.

Stat. Auth.: ORS 561 & 634
Stats. Implemented: ORS 634.306(13) & 634.322(6)
Hist.: AD 7-1977, f. & ef. 4-5-77; AD 6-1997, f. & cert. ef. 6-11-97; AD 6-1997, f. & cert. ef. 6-11-97

Restrictions on Microencapsulated Methyl Parathion

603-057-0376

Microencapsulated Methyl Parathion

(1) Microencapsulated methyl parathion shall be subject to the restrictions and conditions on the use thereof as set forth in this rule.

(2) In recognition of the possible injurious or adverse effects to bees from their exposure to microencapsulated methyl parathion, such insecticide:

(a) Shall not be applied on any field crop having an average of five or more blooms per square yard for the area to be sprayed;

(b) Shall not be applied to any corn crop having ten percent or more of its plants with spike anthers;

(c) Shall not be applied on any orchard or vineyard having an average of one or more open blooms per tree or vine (except second bloom of pears); and

(d) Shall not be applied on any field crop, orchard, vineyard, fence line, ditch bank or edge of agricultural land, having an average of five or more weed blooms per square yard.

(3) The following applications of microencapsulated methyl parathion shall be exempt from the restrictions of section (2) of this rule; if such applications are made in accordance with the label directions for such insecticide, and if such label is a part of the federal and state registrations of such pesticide:

(a) Applications on tree fruit in the "Hood River-The Dalles" growing areas made at least 30 days after full bloom of the Red Delicious apples and made not less than 14 days prior to harvest of such tree fruit (the date of Red Delicious apple "full bloom" for any particular area shall be established by the Department, in consultation with the Oregon State University Extension Service Agent for such particular area);

(b) Applications on wheat in growing areas east of the Cascade Mountain Range, during the fall and winter seasons of each year;

(c) Applications on dry onions when such applications are made by ground equipment; and

(d) Applications on white-blooming peas.

(4) Microencapsulated methyl parathion is a highly toxic pesticide and therefore is also subject to the restrictions set forth in OAR 603-057-0200.

Stat. Auth.: ORS 561 & 634
Stats. Implemented: ORS 634.306 & 634.322
Hist.: AD 19-1978, f. & ef. 12-11-78

603-057-0378

Limitations on Pesticide Products Containing Clopyralid

(1) Any application or use of a pesticide product known to contain the active ingredient clopyralid to a location other than an agricultural, forest, right-of way, golf course or cemetery site is prohibited.

(2) For the application or use of a pesticide product containing clopyralid on a site allowed under (1) above, all applicable label instructions must be followed. Providing grass clippings or other materials from a treated site for use in compost is prohibited.

(3) Pesticide products known to contain the active ingredient clopyralid and having product labeling which authorizes application or use on an agricultural, forest, right-of way, golf course or cemetery site, or on any other site, may be registered and distributed during 2003. For 2004 and subsequent years, a pesticide product known to contain the active ingredient clopyralid must satisfy one of the following requirements in order to be registered:

(a) The label must specify that the product may only be used on sites allowed by (1) above; or

(b) The label must clearly and prominently display the following statement: "Use of this product in Oregon is limited to the sites stated on this label which are agricultural, forest, right-of-way, golf course or cemetery sites."

(4) Failure to comply with sections (1), (2), or (3) above may result in one or more of the following actions:

(a) Revocation, suspension or refusal to issue or renew the license or certification of an applicant, licensee or certificate holder in accordance with ORS 634.322(4);

(b) Imposition of a civil penalty, in accordance with ORS 634.900;

(c) Any other enforcement action authorized under ORS 634.
Stat. Auth.: ORS 634.322(6) & 634.026(1e)
Stats. Implemented: ORS 634
Hist.: DOA 14-2003(Temp), f. & cert. ef. 3-28-03 thru 9-24-03; DOA 26-2003, f. & cert. ef. 7-15-03

603-057-0384

Persistent, Bioaccumulative, and Toxic (PBT) Pollutants

(1) The following pesticide active ingredients, previously canceled by the United States Environmental Protection Agency, have been designated as "high priority" persistent, bioaccumulative and toxic pollutants (PBTs) by the Oregon Department of Environmental Quality:

- (a) Aldrin;
- (b) Chlordane;
- (c) Dichlorodiphenyl trichloroethane (DDT), DDD, DDE;
- (d) Dieldrin;
- (e) Hexachlorobenzene;
- (f) Mercury based pesticides including, but not limited to, mercurous; chloride and mercuric chloride;
- (g) Mirex;
- (h) Toxaphene.

(2) In addition to the "high priority" active ingredients listed in (1), the following pesticide active ingredients, having been previously canceled by the United States Environmental Protection Agency have been identified as persistent, bioaccumulative and toxic pollutants (PBTs).

- (a) Heptachlor;
- (b) 2,4,5-Trichlorophenol.

(3) Any application or use of a pesticide product known to contain one or more of the active ingredients identified in (1) or (2) above is herewith prohibited.

(4) Failure to comply with the prohibition specified in (3) above, as determined by the Oregon Department of Agriculture, may be used as a basis for one or more of the following actions:

(a) To revoke, suspend or refuse to issue or renew the license or certification of an applicant, licensee or certificate holder in accordance with ORS 634.322(4);

(b) To impose a civil penalty, in accordance with ORS 634.900;

(c) To initiate and pursue any other action of an enforcement nature available through ORS 634.

Stat. Auth.: ORS 634
Stats. Implemented: ORS 634
Hist.: DOA 23-2000(Temp), f. & cert. ef. 8-28-00 thru 2-10-01; DOA 31-2000, f. & cert. ef. 11-7-00

603-057-0388

Prohibits the Application of Four Neonicotinoid Insecticides

(1) It is prohibited to apply any product containing dinotefuran, imidacloprid, thiamethoxam, or clothianidin, regardless of application method, to linden trees, basswood trees or other Tilia species.

(2) Failure to comply with section (1) above may result in one or more of the following actions:

(a) Revocation, suspension or refusal to issue or renew the license or certification of an applicant, licensee or certificate holder;

(b) Imposition of a civil penalty;

(c) Any other enforcement action authorized under any law.

Stat. Auth: ORS 561.020, 634.322(6) & 634.900
Stats. Implemented: ORS 634
Hist.: DOA 6-2015, f. & cert. ef. 2-27-15

Reporting Pesticide Use

603-057-0405

General Requirements

As specified by Oregon Laws 1999, Chapter 1059, Sections 2 to 11, 15, 20, 21 and 22, each pesticide user must report to the Oregon Department of Agriculture the use of any pesticide product, as defined by ORS 634.006(8) except antimicrobial pesticide products.

(1) "Pesticide user" means any person who uses or applies a pesticide in the course of business or any other for-profit enterprise, or for a governmental entity, or in a location that is intended for public use or access (Chapter 1059, Oregon Laws 1999, Section 2).

(2) The Oregon Department of Agriculture shall determine which pesticide products are antimicrobial, according to the Federal Insecticide, Fungicide and Rodenticide Act, 7 U. S. C. 136(1) (P.L. 92-516, as amended). Antimicrobial products are substances or mixtures of substances used to destroy or suppress the growth of harmful microorganisms, whether bacteria, viruses, or fungi, on inanimate objects and surfaces. Types of antimicrobial pesticides include disinfectants and sanitizers. These products are exempt from reporting.

(3) Pesticide use reporting shall be subject to the conditions set forth in OAR 603-057-0410. Failure to comply with these conditions may be used as a basis for one or more of the following actions:

(a) Revoke, suspend, or refuse to renew the license or certificate of an applicant, licensee or certificate holder in accordance with ORS 634.322(4);

(b) Initiate and pursue any other action of an enforcement nature available through ORS 634.

(4) "Accredited University" as used in Oregon Laws 1999, Chapter 1059 and these rules means a privately or publicly operated institution of higher education accredited by a nationally recognized accrediting agency or association as determined by the U.S. Commissioner of Education.

(5) "Accepted Research Institute" means an institution of higher learning and applied science accepted by the Department.

(6) "Principal Investigator" means a person who leads the activities of a particular research project. In a university setting, this person is a member of the university faculty, and holds, at a minimum, the title or rank of assistant professor or equivalent.

(7) "Ready to Use" pesticide product means a pesticide product used directly from its original container, consistent with labeling, and without dilution or mixing prior to application.

(8) "Researcher" has the same meaning as "Principal Investigator". In a university setting, researcher refers to faculty scientists concentrating on certain areas of applied science or basic research.

(9) "Urban area" means a site that is 'urban, general indoor' as specified in OAR 603-057-0413(7), or a site that is "urban, general outdoor" as specified in OAR 603-057-0413(8).

Stat. Auth.: ORS 634, 561.190 & Ch. 1059 OL 1999

Stats. Implemented: Ch. 1059 OL 1999

Hist.: DOA 27-2001, f. & cert. ef. 12-4-01; DOA 11-2006, f. & cert. ef. 4-12-06

603-057-0410

Pesticide Users Required to Report

(1) All pesticide products used by each pesticide user shall be reported at least once yearly to the Department. All pesticide use in a given calendar year shall be reported no later than January 31 of the following calendar year. A pesticide user may report the use of pesticide products on a more frequent basis if so selected by the pesticide user. Each report will include the required pesticide use information for the preceding specified period, or since the most recent filing of a pesticide use report, whichever time period is shorter.

(2) No action specified in OAR 603-057-0405(3) shall be taken for failure to report pesticide use for calendar year 2002, 2003, 2004, 2005, or 2006, or for any calendar year in which the Department does not provide a fully effective means for pesticide users to report pesticide use. Any pesticide use information obtained from pesticide users by the Department, by any means, for calendar year 2002, 2003, 2004, 2005 or 2006 will not be maintained by the Department and will not be made available to any person.

(3) Commercial pesticide operators are required to file the pesticide use report when a commercial pesticide operator uses a pesticide product in the course of business.

(4) All agencies, instrumentalities, subdivisions, counties, cities, towns, municipal corporations, districts, governmental bodies, schools and utilities are required to file the pesticide use report when a pesticide product is used by their employees.

(5) Employers are required to file the pesticide use report when an employee uses a pesticide product as an employee in the scope of his or her employment.

(6) All other pesticide users, other than as described in subsection (3), (4) or (5) of this section, using a pesticide product, are required to file the pesticide use report.

(7) Reports of pesticide use shall be made to the Department using forms or methods specified by the Department.

(8) A pesticide user may authorize another person, or persons, to serve as his/her agent(s) or proxy(ies) in filing pesticide use information with the Department.

Stat. Auth.: ORS 634, 561.190 & Ch. 1059 OL 1999

Stats. Implemented: Ch. 1059 OL 1999

Hist.: DOA 27-2001, f. & cert. ef. 12-4-01; DOA 23-2002(Temp), f. 12-2-02., cert. ef. 12-4-02 thru 6-1-03; DOA 16-2003(Temp), f. & cert. ef. 4-22-03 thru 10-18-03; DOA 37-2003, f. & cert. ef. 10-15-03; DOA 11-2006, f. & cert. ef. 4-12-06

603-057-0411

Pesticide User Information

(1) Before filing pesticides use reports with the Department, each pesticide user shall register with the Department. The Department will record the pesticide user identification information identified below in a database separate from the database used to record reported pesticides use information. The Department will assign to each registered pesticide user a unique identification number. The pesticide user shall use the assigned identification number when filing pesticides use reports with the department.

(2) The following information regarding identification of a pesticide user shall be provided to the Department for the purpose of registering each pesticide user and assigning a unique identification number to each pesticide user.

(a) Identification of the pesticide user required to file the report, which shall be either:

(A) The name of the pesticide user; or

(B) The name of the agency, instrumentality, subdivision, county, city, town, municipal corporation, district, governmental body, school or utility; or

(C) The name of the employer; or

(D) The name of the person using the pesticide.

(b) The mailing address of the pesticide user named, including street or postal address, city, state and five-digit ZIP code.

(c) The telephone number of the pesticide user named.

(d) The facsimile (fax) number of the pesticide user named, if available.

(e) The electronic mail (e-mail) address of the pesticide user named, if available.

(f) The name of the responsible person filing the report for the pesticide user named, if different from the pesticide user named.

(g) The telephone number of the responsible person filing the report for the pesticide user named, if different from the telephone number already provided.

Stat. Auth.: ORS 634, 561.190 & Ch. 1059 OL 1999

Stats. Implemented: Ch. 1059 OL 1999

Hist.: DOA 27-2001, f. & cert. ef. 12-4-01; DOA 11-2006, f. & cert. ef. 4-12-06

603-057-0412

Pesticide Product Identification; Date of Use; Amount

Each report of pesticide use shall include the following information regarding the identification and amount of pesticide product used:

(1) The name of the specific pesticide product used.

(2) The United States Environmental Protection Agency (EPA) registration number of the specific pesticide product used, or, if the product does not have an EPA registration number, the identification number assigned to the product by the Department.

(3) The date the pesticide product was used. If the product was used at a single site or type of site having the same five digit zip code or third-level hydrologic unit location on multiple days in a calendar month, only the date for the last day of the use is to be reported.

(4) The amount of the undiluted pesticide product used, including the appropriate units of measure.

(5) If the product is a "Ready to Use" product then the date of use is the day when the product container is emptied or disposed, and the amount used is the total amount stated on the label.

Stat. Auth.: ORS 634, 561.190 & Ch. 1059 OL 1999

Stats. Implemented: Ch. 1059 OL 1999

Hist.: DOA 27-2001, f. & cert. ef. 12-4-01; DOA 11-2006, f. & cert. ef. 4-12-06

603-057-0413

Description of the Type of Site Where the Pesticide Was Used

Each report of pesticide use shall include a general description of the type of site where the pesticide was used. Site descriptions must be chosen from the list of options developed by the Department. Site descriptions, at a minimum, will identify the major site at which the pesticide was applied. Major categories shall include, but not be limited to, the following:

(1) Agriculture. This shall include the use of pesticides in the production of agricultural crops and livestock (including Christmas tree plantations and commercial nurseries), or on agricultural commodities before movement into channels of commerce, or on agricultural lands, grasslands, or non-crop agricultural lands

(2) Aquatic. This shall include the use of pesticides in treating standing or running water. Examples of sites include irrigation ditch, lake, or river.

(3) Forestry. This shall include the use of pesticides in the production of forest crops, or on forestry lands (not including Christmas tree plantations or commercial nurseries).

(4) Public health and regulatory pest control. This shall include the use of pesticides for the control of any pest that may be deleterious to the public health, including mosquito and other vector and regulatory pest control.

(5) Right-of-Way. This shall include the use of pesticides in right-of-way areas. Examples of sites include irrigation ditch banks, railroads, road shoulders, or utility lines.

(6) Research. This shall include the use of one or more specific pesticides with the intent of gathering data needed to satisfy registration requirements of the United States Environmental Protection Agency. If the research is not conducted by a government agency, the pesticide use shall be under the authority of an "experimental use permit" issued by the United States Environmental Protection Agency or issued by the Department.

(7) Urban, general indoor sites. This shall include the use of pesticides inside dwellings, non-agricultural buildings, establishments, institutions, schools and commercial transportation vehicles. This shall also include the use of pesticides on commodities, including agricultural commodities stored indoors that have entered into channels of commerce, including commercial warehouses and commercial grain elevators.

(8) Urban, general outdoor sites. This shall include the use of pesticides outside dwellings, non-agricultural buildings, establishments, institutions, or schools for ornamental and turf pest control, including parks, rest areas, and golf courses. This shall also include the use of pesticides on commodities, including agricultural commodities stored outdoors that have entered into channels of commerce.

Stat. Auth.: ORS 634, 561.190 & Ch. 1059 OL 1999

Stats. Implemented: Ch. 1059 OL 1999

Hist.: DOA 27-2001, f. & cert. ef. 12-4-01; DOA 11-2006, f. & cert. ef. 4-12-06

603-057-0414

Description of the Purpose of Pesticide Use

Each report of pesticide use shall include a general description of the purpose for the pesticide use. The purpose for the use must be chosen from the list of options developed by the Department. The purpose description, at a minimum, will identify the most applicable major category description for the pesticide use. Major categories include, but are not limited to, the following:

(1) Weed control;

(2) Insect control;

(3) Disease control;

(4) Rodent control;

(5) Big game repellent;

(6) Predator control;

(7) Plant growth regulation;

(8) Marine-fouling organism control;

(9) Wood preservation;

(10) Bird control;

(11) Desiccation and defoliation;

(12) Fish control;

(13) Research; and

(14) Slug Control.

Stat. Auth.: ORS 634, 561.190 & Ch. 1059 OL 1999

Stats. Implemented: Ch. 1059 OL 1999

Hist.: DOA 27-2001, f. & cert. ef. 12-4-01

603-057-0415

Location of Pesticide Use; Aggregation of Information

Each report of pesticide use shall include the following information regarding the location of a pesticide use made by the pesticide user:

(1) For uses made to a site in an urban area as defined in OAR 603-057-0405(9), the location shall be reported by identifying the five-digit zip code for the site.

(2) For uses made to any site not in an urban area as defined in OAR 603-057-0405(9), the location shall be reported by identifying the third-level hydrologic unit for the site.

Stat. Auth.: ORS 634, 561.190 & Ch. 1059 OL 1999

Stats. Implemented: Ch. 1059 OL 1999

Hist.: DOA 27-2001, f. & cert. ef. 12-4-01; DOA 11-2006, f. & cert. ef. 4-12-06

603-057-0416

Reports of Pesticide Use for Research

If the description of pesticide use is "Research" as specified in OAR 603-057-0413(6), then each report of pesticide use shall include the following information:

(1) Identification of the pesticide user filing the report, including the information required in OAR 603-057-0411.

(2) The name of the specific pesticide product used.

(3) The United States Environmental Protection Agency (EPA) registration number of the specific pesticide product used, or, if the product does not have an EPA registration number, the identification number assigned to the product by the Department or the identification number of the product recognized by the Department.

(4) The identification of the purpose of the pesticide use shall be reported as research.

(5) The description of the site at which the pesticide product was used shall be reported as research.

(6) The location at which the pesticide product was used shall be reported by identifying the third-level hydrologic unit for the site.

(7) The date the pesticide product was used shall be reported as the last day of the calendar month of the use.

(8) The amount of the undiluted pesticide product used in the calendar month, including the appropriate units of measure.

Stat. Auth.: ORS 634, 561.190 & Ch. 1059 OL 1999

Stats. Implemented: Ch. 1059 OL 1999

Hist.: DOA 27-2001, f. & cert. ef. 12-4-01; DOA 11-2006, f. & cert. ef. 4-12-06

603-057-0417

Access to Reported Information

(1) Some information reported to the Department by pesticide users is prohibited from release to the public according to Oregon Laws 1999, Chapter 1059. Information that would reveal the identity of the owner or lessee or the specific location of property where a person has applied a pesticide is prohibited from public release.

(2) Pesticide use information reported under Oregon Laws 1999, Chapter 1059 may be released to certain persons, provided those persons maintain the confidentiality of any information that is required to be treated as confidential. Persons who may receive this information are limited to the following;

(a) Staff of the Department or other federal or state agency which require the information as part of an investigation conducted under provision of law; or

(b) A federal, state or local agency; or

(c) A health or environmental researcher, acting in an official capacity from an accredited university or accepted research institute.

(3) A federal, state or local agency must agree to maintain the confidentiality of the information identified in subsection (1) of this section, unless the public interest, by clear and convincing evidence, requires disclosure in the particular instance.

(4) Any person that releases, or causes to be released, to the public information made confidential by Oregon Laws 1999, Chapter 1059 may be subject to civil penalty as described in OAR 603-057-0420. The agency, university, or research institute employing or retaining such person or for which such person is acting in an official capacity, may also be subject to civil penalty as described in 603-057-0420.

(5) In addition, if a person causes information identified as confidential to be released or who fails to preserve the confidentiality shall be denied all future access to confidential data collected under 603-057-0410 through 603-057-0416.

Stat. Auth.: ORS 634, 561.190 & Ch. 1059 OL 1999

Stats. Implemented: Ch. 1059 OL 1999

Hist.: DOA 27-2001, f. & cert. ef. 12-4-01; DOA 11-2006, f. & cert. ef. 4-12-06

603-057-0418

Requests for Pesticide Use Information

(1) An agency seeking confidential information shall make a formal written request to the Department that shall:

(a) Identify the requesting agency.

(b) Identify the Principal Investigator for the agency.

(c) Describe the information sought.

(d) Explain the reason for requesting the information, including the use that will be made of the requested information.

(e) Include a completed and signed confidentiality agreement prepared by the Department.

(f) Identify each person having access to the information, and the position of each person within the agency.

(g) Identify the person responsible for maintaining the security of the information.

(h) Explain the procedures by which the requesting agency will assure the confidentiality of the information.

(2) A health or environmental researcher acting in an official capacity from an accredited university seeking confidential information shall make a formal written request to the Department that shall:

(a) Describe the information sought.

(b) Describe the research being conducted, including identity of the Principal Investigator, purpose of the research and the use that will be made of the requested information.

(c) Include a copy of the university's formal review and signed acceptance of the research project.

(d) Include a completed and signed confidentiality agreement prepared by the Department.

(e) Identify each person having access to the information, and the position of each person within the university.

(f) Describe the procedures by which the requesting researcher and university will assure the confidentiality of the information.

(3) A health or environmental researcher acting in an official capacity from an accepted research institute seeking access to confidential information shall make a formal written request to the Department which shall be equivalent in content to (2) above.

(4) The Department will consider each request for pesticide use information, as described in (1), (2) and (3) above, as follows:

(a) The Department will respond to the request within 30 days of receipt of the request.

(b) The Department, in its discretion, may request more detailed explanations in the request for information before considering it.

(c) If the request is approved, the requested information may be released to the requestor. The Department will release only the information that is directly pertinent to the research project or agency

need. Information will be released in a manner that achieves the highest level of confidentiality but still provides pertinent data.

(d) If the request is denied, the requester will be informed of the basis for denial.

(5) Any breach of the confidentiality agreement as determined by the Department, may result in a civil penalty as set forth in 603-057-0420.

Stat. Auth.: ORS 634, 561.190 & Ch. 1059 OL 1999

Stats. Implemented: Ch. 1059 OL 1999

Hist.: DOA 27-2001, f. & cert. ef. 12-4-01

603-057-0420

Civil Penalty Determination for Failure to Comply with Confidentiality Agreement

When the Department has determined that a violation of 603-057-0417 has occurred the Director shall calculate the amount of the civil penalty to be assessed utilizing the formula: BN+(0.1xBN)(T+D) = Penalty Amount where:

(1) B = Base fine, the primary fine for violating the confidentiality agreement. This base amount is set at \$2,000.

(2) N = Number of times, including the current violative act, that the person has been determined by the Department to have committed this violative act.

(3) T = Preventability of violation and whether negligence or misconduct was involved. T will be weighted from 0 to 7 in the following way:

(a) 0 = information is insufficient to make any finding;

(b) 3 = the person's actions determined to be violative were reasonably avoidable;

(c) 7 = the person's actions determined to be violative were flagrant.

(4) D = Direct release of confidential information. D will be weighted from 0 to 5 in the following way:

(a) 0 = information is insufficient to make any finding;

(b) 1 = information protected under 603-057-0417 was not directly released, but the information released was sufficient to allow a reasonable determination of the protected information;

(c) 3 = either the identity of the owner or lessee of a specific property, or the address of the property itself where a pesticide had been applied was directly released;

(d) 5 = both the identity of the owner or lessee of a specific property and the address of the property itself where a pesticide had been applied was directly released.

Stat. Auth.: ORS 634, 561.190 & Ch. 1059 OL 1999

Stats. Implemented: Ch. 1059 OL 1999

Hist.: DOA 27-2001, f. & cert. ef. 12-4-01

603-057-0425

Household Pesticide Use Information

According to Chapter 1059, Oregon Laws 1999, Section 4 (5), the Department is to develop a mechanism(s) to identify the use of pesticides by households. The following rules shall apply:

(1) The Department shall utilize a survey. Such a survey shall have the following characteristics:

(a) Be statistically valid such that information obtained from participating households can be used to accurately estimate pesticide use by all households;

(b) Gathers information similar in content to information reported by pesticide users; and

(c) Includes the entire state.

(2) The Department may utilize the assistance of other agencies, including federal, state and local, and of private entities in developing, implementing and maintaining a mechanism to identify pesticide use by households.

Stat. Auth.: ORS 634, 561.190 & Ch. 1059 OL 1999

Stats. Implemented: Ch. 1059 OL 1999

Hist.: DOA 27-2001, f. & cert. ef. 12-4-01; DOA 11-2006, f. & cert. ef. 4-12-06

Civil Penalties for Violations of ORS Chapter 634

603-057-0500

Definitions

In addition to the definitions set forth in ORS 634.006 and OAR 603-057-0001, the following shall apply:

- (1) "Director" means the Director of the Department of Agriculture or the Director's authorized deputies or officers.
- (2) "Enforcement" means any documented action taken by the Department to address a violation.
- (3) "Flagrant" means any violation where the Department has documented evidence that the respondent had actual knowledge of the law and knowingly committed the violation.
- (4) "Gravity of Effect" is the ranking of a violation with respect to its effect, or potential effect, on the public interests reflected in ORS 634. A violation is ranked as high, medium, or low.
- (5) "Gross negligence" means an act or omission that does not reflect an exercise of reasonable care under the circumstances and that is characterized by conscious indifference to or reckless disregard of any purpose of the State Pesticide Control Act.
- (6) "Injury" includes, but is not limited to, adulteration.
- (7) "Intentionally" means the person acts, or fails to act, with a deliberate or an express purpose. For instance, a person acts intentionally when the person either consciously chooses not to determine whether a pesticide label authorizes use of a pesticide on a particular crop, or when the person knows that a pesticide label does not authorize use of the pesticide on a particular crop but still chooses to apply the pesticide to the crop.
- (8) "Knowingly" means the person acts, or fails to act, with a practical understanding of, or a distinct skill in, the general activity that was obtained through such means as instruction, study, practice, or experience.
- (9) "Magnitude of Violation" is the categorization of a violation in relation to other types of violations after considering its potential to affect the public interests reflected in ORS 634. A violation is categorized as major, moderate, or minor.

(10) "Person" includes individuals, corporations, associations, firms, joint stock companies, public and municipal corporations, political subdivisions of the state and any agencies thereof, and the Federal Government and any agency thereof.

(11) "Violation" is an act or omission that does not comply with a provision of ORS 634 that relates to pesticide application, sale, or labeling.

(12) "Willfully" means the person acted, or failed to act, after calculating and considering the potential effects and consequences.

(13) "Willful misconduct" means an act or omission that is characterized by or resulting from calculation and consideration of effects and consequences, and with awareness that the act or omission will be incompatible with any purpose of the State Pesticide Control Act.

(14) "School" means

- (a) A facility operating an Oregon prekindergarten or a federal Head Start program;
- (b) A public or private educational institution offering education in all or part of kindergarten through grade 12;
- (c) The Oregon School for the Deaf; and
- (d) A regional academy operated by the Oregon Youth Authority.

Stat. Auth.: ORS 561, 634 & 183.335(5)
 Stats. Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372 & 634.900 - 634.915
 Hist.: AD 4-1990, f. & cert. ef. 3-16-90; DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09; DOA 6-2009, f. & cert. ef. 5-7-09; DOA 21-2012, f. & cert. ef. 7-10-12

603-057-0502

Civil Penalties Generally

(1) In addition to any other penalty provided by law, the Director may assess a civil penalty for violation of any provision of ORS 634 relating to pesticide application, sale or labeling.

(2) Where the Director determines that a violation did not result from gross negligence or willful misconduct, or if the violation occurred before June 25, 2007, the Director will determine the amount of any civil penalty for that violation using OAR 603-057-

0525 and 603-057-0530. The amount of such civil penalty for a first violation shall not exceed \$1,000, and the amount of such civil penalty for any subsequent violation of the same provision shall not exceed \$2,000.

(3) Where the Director determines that a violation resulted from gross negligence or willful misconduct and occurred on or after June 25, 2007, the Director will determine the amount of any civil penalty for that violation using OAR 603-057-0525 and 603-057-0532. The amount of such civil penalty for a first or a subsequent violation shall not exceed \$10,000.

(4) Where the Director determines that a violation involves a failure to comply with a confidentiality agreement related to the pesticide use reporting program, the Director will determine the amount of any civil penalty for that violation using OAR 603-057-0420. The amount of such civil penalty for a first or subsequent violation of such confidentiality agreement shall not exceed \$10,000.

(5) If a person requests a hearing, nothing in this division of administrative rules prevents the Department from amending the notice to impose civil penalties for the violation under OAR 603-057-0525 and 603-057-0530 and, in the alternative, under OAR 603-057-0525 and 603-057-0532. The amended notice will specify which civil penalty will be assessed if the hearing does not occur for any reason.

(6) A civil penalty imposed under the applicable statutes and these rules may be remitted or reduced upon such terms and conditions as the Director considers proper and consistent with public health and safety.

(7) Civil penalties shall be due and payable ten (10) business days after the order becomes final by operation of law or on appeal. A person may pay a civil penalty before an order becomes final. Payment of a civil penalty before an order becomes final is an admission by the person of all of the allegations in the Notice of Imposition of Civil Penalty.

Stat. Auth.: ORS 561, 634 & 183.335(5)
 Stats. Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372, & 634.900 - 634.915
 Hist.: DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09; DOA 6-2009, f. & cert. ef. 5-7-09

603-057-0505

Consolidation of Proceedings

Notwithstanding that each and every violation is a separate and distinct act and in cases of continuing violations, each day's continuance is a separate and distinct violation, proceedings for the assessment of multiple civil penalties for multiple violations against a person may be consolidated into a single proceeding.

Stat. Auth.: ORS 561 & 634
 Stats. Implemented: ORS 634.306
 Hist.: AD 4-1990, f. & cert. ef. 3-16-90

603-057-0510

Notice of Violation, Notice of Assessment of Civil Penalties, and Notice of Contested Case Rights and Procedures

(1) The Director may determine that a person violated a provision of ORS 634 and decide to not impose a civil penalty. In such circumstances, the Director will issue a written Notice of Violation. The Notice of Violation shall inform a person of the existence of a violation and the consequences of non-compliance.

(2) The Director may determine that a person violated a provision of ORS 634 relating to pesticide application, sale or labeling, and decide to impose a civil penalty. In such circumstances, the Director will issue a written Notice of Imposition of Civil Penalty. The Notice of Imposition of Civil Penalty will inform the person of the existence of a violation, state the amount of the penalty imposed for the violation, and summarize how the penalty was calculated.

(3) Notices of Violation and Notices of Imposition of Civil Penalties shall be served by registered or certified mail.

(4) Notices of Violation and Notices of Imposition of Civil Penalties shall include, but not be limited to:

- (a) A caption with the name of the Department and with the name of the person to whom the notice is issued;
- (b) A reference to the particular sections of the statutes and administrative rules involved;

(c) A short and plain statement of the matters asserted or charged;

(d) A statement of the person's right to be represented by counsel and that legal aid organizations may be able to assist a person with limited financial resources;

(e) A statement of the person's right to request a hearing;

(f) A statement of the procedure to request a hearing, including but not limited to the following;

(A) Any request for hearing must be in writing;

(B) Any request for hearing must be received by the Department within ten (10) business days of the date the Department mailed the notice; and

(C) The address to which a request for hearing must be sent;

(g) A statement that if a request for hearing is not received by the Department within the time stated in the notice the person will have waived the right to a contested case hearing;

(h) A statement of the authority and jurisdiction under which a hearing will be held on the matters asserted or charged;

(i) A statement that if the person requests a hearing a Notice of Contested Case Rights and Procedures will be provided before any hearing;

(j) A statement indicating whether and under what circumstances an order by default may be entered, including but not limited to, that the notice becomes a final order unless the person makes a timely written request for a hearing; and

(k) Other information required by law.

(5) Notices of Violation and Notices of Imposition of Civil Penalties may also include additional information deemed appropriate by the Director, including but not limited to the following:

(a) A statement that the record of the proceeding to date, including information in the Department's file or files on the subject of the contested case and all materials submitted by a person, automatically become part of the contested case record upon default for the purpose of proving a prima facie case; and

(b) A statement that a collaborative dispute resolution process is available if the person requests a hearing as stated in the notice.

(6) If a person timely requests a hearing for either a Notice of Violation or a Notice of Imposition of Civil Penalty, the Department will mail a written Notice of Contested Case Rights and Procedures to the person before the commencement of the hearing, or request that an administrative law judge inform the person of the rights and procedures.

Stat. Auth.: ORS 561, 634 & 183.335(5)

Stats. Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372, 634.900 - 634.915

Hist.: AD 4-1990, f. & cert. ef. 3-16-90; DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09; DOA 6-2009, f. & cert. ef. 5-7-09

603-057-0520

Entry of Order and Appeal Rights

(1) If a person, having been served a Notice of Violation or a Notice of Imposition of Civil Penalty, fails to request a hearing as specified in OAR 603-057-0510(4)(f), or if a hearing is not held for any reason, or if after the hearing the person is found to be in violation, an order may be issued by the Director. If a Notice of Imposition of Civil Penalty was served, the order may assess a civil penalty.

(2) The order shall be signed by the Director.

(3) The order, if not appealed as provided in ORS 183.480 to 183.497 or if sustained on appeal, shall constitute a judgment. If any civil penalty has not been paid when due and payable, the order may be recorded with the county clerk in any county of this state. The clerk shall record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record. Recording the order has the effects provided for in ORS 205.125 and 205.126, including but not limited to the effect of becoming a lien upon the title of any interest in real property located in that county and owned by the person. The Department may enforce the order as provided in ORS 205.125 and 205.126, bring an action in a court of this state to recover the civil penalty, or take any other action authorized by law to enforce the order.

Stat. Auth.: ORS 561, 634 & 183.335(5)

Stats. Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372, 634.900 - 634.915
Hist.: AD 4-1990, f. & cert. ef. 3-16-90; DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09; DOA 6-2009, f. & cert. ef. 5-7-09

603-057-0525

Civil Penalties; Magnitude of Violation and Gravity of Effect

(1) The Director will consider the magnitude of the violation and its gravity of effect when calculating a civil penalty for a violation.

(a) Determine the magnitude of the violation as specified in subsection (2) of this section.

(b) Determine the gravity of effect pertinent to the violation as specified in subsection (3) of this section.

(2) Magnitude of Violation: Violations are categorized as to their magnitude of violation as follows:

(a) Category I (Major):

(A) Make false or misleading claims through any media, relating to the effect of pesticides or application methods to be utilized (ORS 634.372(1));

(B) As a pesticide applicator or operator intentionally or willfully apply or use a worthless pesticide or any pesticide inconsistent with its labeling (ORS 634.372(2));

(C) As a pesticide consultant recommend the application or use of any pesticide inconsistent with its labeling (ORS 634.372(2));

(D) As a pesticide dealer knowingly distribute any pesticide for application or use inconsistent with its labeling (ORS 634.372(2));

(E) Perform pesticide application activities in a faulty, careless or negligent manner (ORS 634.372(4));

(F) As a pesticide dealer refuse or neglect to prepare required records of restricted use and highly toxic pesticide product sales and to maintain those records for at least three years prior to the date of inspection, which include, but are not limited to, the purchaser's name, address and certification number, sale date, and identification and quantity of product sold (ORS 634.372(5), OAR 603-057-0140). Four or more items of required information missing and/or incorrectly recorded;

(G) As a pesticide operator, public applicator or pesticide applicator not employed by a pesticide operator, refuse or neglect to prepare required pesticide application records, and to maintain those records for at least three years prior to the date of inspection, which include the name of the employer or customer, location, date, approximate time application was made, supplier and identity of product applied, amount of product applied, the specific property or the crop to which application was made, type of application equipment used, and the full name of the applicator or trainee who made the application (ORS 634.372(5); 634.146(1); OAR 603-057-0130). Four or more items of required information missing and/or incorrectly recorded;

(H) Prepare required records, reports or application forms which are false, misleading or fraudulent (ORS 634.372(6));

(I) Operate pesticide applicators' apparatus, machinery or equipment without a licensed pesticide applicator or certified private applicator performing the actual application, or supervising such application if performed by a pesticide trainee (ORS 634.372(7));

(J) As a pesticide applicator, work or engage in the application of any classes of pesticides without first obtaining and maintaining a pesticide applicator's license, or apply pesticides which are not specifically authorized by such license (ORS 634.372(8)). No license;

(K) As a pesticide operator, engage in the business of, or represent or advertise as being in the business of, applying pesticides on the property of another, without first obtaining and maintaining a pesticide operator's license, nor shall such person engage in a class of pesticide application business which is not specifically authorized by the license issued by the Department. Further, no such person shall employ or use any person to apply or spray pesticides who is not a licensed pesticide applicator or pesticide trainee (ORS 634.372(9));

(i) Firm licensing — No license;

(ii) Employee licensing — No license.

(L) As a pesticide trainee, work or engage in the application of any class of pesticides without first obtaining and maintaining a pes-

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ticide trainees license and is otherwise in compliance with the provisions of this chapter (ORS 634.372(10)). No license;

(M) Act as or purport to be, a pesticide dealer or advertise as such without first obtaining and maintaining a pesticide dealer's license (ORS 634.372(11));

(N) Act as or purport to be a pesticide consultant without first obtaining and maintaining a pesticide consultant's license (ORS 634.372(12));

(O) Apply any pesticide classified as a restricted-use or highly toxic pesticide to agricultural, horticultural or forest crops on land owned or leased by the person without first obtaining and maintaining a private applicator certificate (ORS 634.372(13));

(P) As a person described in ORS 634.106(5), use power-driven pesticide application equipment or devices (use hand or backpack types only), or use or apply any pesticide other than those prescribed by the Department (ORS 634.372(14));

(Q) Deliver, distribute, sell or offer for sale any pesticide which has been misbranded (ORS 634.372(15));

(R) Formulate, deliver, distribute, sell or offer for sale any pesticide which is adulterated (ORS 634.372(16));

(S) Make application of pesticides, by aircraft or otherwise, within a protected or restricted area without first obtaining a permit for such application from the committee of the protected or restricted area in which the application is to be made, nor shall such person make such an application contrary to the conditions or terms of the permit so issued (ORS 634.372(20));

(T) Use isopropyl ester of 2,4-D, or any other ester of equal or higher volatility with regard to plant damage as determined by the Department, without first obtaining a permit for such use as provided in ORS 634.322(10); 634.372(21));

(U) Sell, use or remove any pesticide or device subjected to a "stop sale, use or removal" order until the pesticide or device has been released there-from as provided in ORS 634.322(3) (634.372(22));

(V) Other violations with a substantially similar potential to affect the public interests reflected in ORS 634.

(b) Category II (Moderate):

(A) Operate a faulty or unsafe spray apparatus, aircraft or other application device or equipment (ORS 634.372(3));

(B) As a pesticide dealer refuse or neglect to prepare required records of restricted use and highly toxic pesticide product sales and to maintain those records for at least three years prior to the date of inspection, which include, but are not limited to, the purchaser's name, address and certification number, sale date, and identification and quantity of product sold (ORS 634.372(5); OAR 603-057-0140). Two or three items of required information missing and/or incorrect;

(C) As a pesticide operator, public applicator or pesticide applicator not employed by a pesticide operator, refuse or neglect to prepare required pesticide application records, and to maintain those records for at least three years prior to the date of inspection, which include the name of the employer or customer, the location, date, approximate time application was made, supplier and identity of product applied, amount of product applied, the specific property or the crop to which application was made, type of application equipment used, and the full name of the applicator or trainee who made the application (ORS 634.372(5); 634.146(1); OAR 603-057-0130). Two or three items of required information missing and/or incorrectly recorded;

(D) As a pesticide applicator, work or engage in the application of any classes of pesticides without applicator's license, or apply pesticides which are not specifically authorized by such license (ORS 634.372(8)). Inappropriate license;

(E) As a pesticide operator, engage in the business of, or represent or advertise as being in the business of, applying pesticides on the property of another, without first obtaining and maintaining a pesticide operator's license, nor shall such person engage in a class of pesticide application business which is not specifically authorized by the license issued by the Department. Further, no such person shall employ or use any person to apply or spray pesticides who is not a licensed pesticide applicator or pesticide trainee (ORS 634.372(9));

(i) Firm licensing — Inappropriate license;

(ii) Employee licensing — Inappropriate license.

(F) As a pesticide trainee, work or engage in the application of any class of pesticides without first obtaining and maintaining a pesticide trainee's certificate and is otherwise in compliance with the provisions of this chapter (ORS 634.372(10)). Inappropriate license;

(G) Formulate, deliver, distribute, sell or offer for sale any pesticide which has not been registered as required by ORS 634.016 (634.372(17));

(H) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing arsenic or any highly toxic fluoride which is not distinctly colored (ORS 634.372(18));

(I) Distribute sell or offer for sale any pesticide except in the manufacturers original unbroken package (ORS 634.372(19));

(J) Other violations with a substantially similar potential to affect the public interests reflected in ORS 634.

(c) Category III (Minor):

(A) As a pesticide dealer refuse or neglect to prepare required records of restricted use and highly toxic pesticide product sales and to maintain those records for at least three years prior to the date of inspection, which include, but are not limited to, the purchaser's name, address and certification number, sale date, and identification and quantity of product sold (ORS 634.372(5); OAR 603-057-0140). One item of required information missing and/or incorrectly recorded;

(B) As a pesticide operator, public applicator or pesticide applicator not employed by a pesticide operator, refuse or neglect to prepare required pesticides application records, and to maintain those records for at least three years prior to the date of inspection, which include the name of the employer or customer, the location, date, approximate time application was made, supplier and identity of product applied, amount of product applied, the specific property or the crop to which application was made, type of application equipment used, and the full name of the applicator or trainee who made the application (ORS 634.372(5); 634.146(1); OAR 603-057-0130). One item of required information missing and/or incorrectly recorded;

(C) Other violations with a substantially similar potential to affect the public interests reflected in ORS 634.

(3) Gravity of Effect: The Director shall rank the violation as to its gravity of effect. Following are the factors that may be considered in assigning a gravity ranking to a specific violation. The existence of one or more factors determined to be of high level shall result in the gravity being ranked high level. Lacking any factor determined to be high level, the existence of one or more factors determined to be of medium level shall result in the gravity being ranked medium level. Lacking any factor determined to be of high or medium level shall result in the gravity being ranked low level:

(a) Rank — High Level:

(A) Human Threat: Injury or illness occurred which was confirmed by medical evaluation conducted through the Oregon Pesticide Analytical And Response Center to have been caused by the pesticide exposure;

(B) Environmental Threat:

(i) Evidence of injury to crops, wildlife, and/or livestock documented by the Department or other appropriate federal or state agency; or

(ii) Evidence of surface or groundwater contamination documented by the Department or other appropriate federal or state agency.

(C) Pesticide:

(i) Designated as restricted use or highly toxic; or

(ii) Use or distribution halted due to emergency suspension.

(D) Conditions of Usage:

(i) Wide area of application;

(ii) Use in area of high population density (e.g., urban, suburban); or

(iii) Usage resulted in a pesticide residue or metabolite on a food or feed crop, on a raw agricultural commodity, or on a crop having food or feed by-products, and for which there is no tolerance or exemption from tolerance established, or for which the established tolerance was exceeded.

(iv) Usage resulting in a pesticide residue or a metabolite of a pesticide being deposited onto a school as defined in OAR 603-057-0500(14) by a person other than that authorized by the school's governing body as defined in ORS 634.700(2).

(b) Rank — Medium Level:

(A) Human Threat: Physical irritation occurred which was confirmed by medical evaluation conducted through the Oregon Pesticide Analytical And Response Center to have been caused by pesticide exposure.

(B) Environmental Threat: Symptoms of exposure visible in crops, wildlife, and/or livestock documented by the Department or other appropriate federal or state agency.

(C) Conditions of Usage:

(i) Moderate area of application; or

(ii) Use in area of medium population density.

Stat. Auth.: ORS 561, 634 & 183.335(5)

Stats. Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372 & 634.900 - 634.915

Hist.: AD 4-1990, f. & cert. ef. 3-16-90; DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09; DOA 6-2009, f. & cert. ef. 5-7-09; DOA 21-2012, f. & cert. ef. 7-10-12

603-057-0530

Civil Penalty For A Violation Not Resulting From Gross Negligence or Willful Misconduct; Formula for Amount

(1) When the Director determines that the violation did not result from gross negligence or willful misconduct, or if the violation occurred before June 25, 2007, the Director will determine the amount of the civil penalty using this section. To determine the amount of the civil penalty, calculate it utilizing the formula: $NB + [(.1 \times NB) \times (P + H + R + C)] = \text{Penalty Amount}$ where

(a) N = the number of times, within a period of three years prior to and including the date of the current violative act, that the person has been determined by the Director to have committed that violative act;

(b) B = the base penalty determined using the following matrix: [Matrix not included. See ED. NOTE.]

(A) The Magnitude of Violation is determined according to OAR 603-057-0525(2).

(B) The Gravity of Effect is determined according to OAR 603-057-0525(3).

(c) P = past occurrence of unrelated violations under ORS Chapter 634 for a period of three years prior to the date of the current violative act. P will be weighted from 0 to 6 in the following manner:

(A) O = no prior violation or insufficient evidence on which to base a finding;

(B) 1 = past occurrence of an unrelated Category III violation;

(C) 2 = past occurrence of an unrelated Category II violation or two unrelated Category III violations;

(D) 3 = past occurrence of an unrelated Category I violation, two unrelated Category II violations or three unrelated Category III violations;

(E) 4 = past occurrence of two unrelated Category I violations, three unrelated Category II violations or four unrelated Category III violations;

(F) 5 = past occurrence of three unrelated Category I violations, four unrelated Category II violations, or five or more unrelated Category III violations;

(G) 6 = past occurrence of three or more unrelated Category I violations or five or more unrelated Category II violations.

(d) H = History of the person in taking all feasible steps or procedures necessary or appropriate to correct a violative action. H will be weighted from -2 to 2 in the following way:

(A) -2 = the person took all feasible steps or procedures to correct any prior violations;

(B) O = there is no prior history or insufficient information on which to base a finding;

(C) 1 = the person took some, but not all feasible steps or procedures to correct prior violations;

(D) 2 = the person took no action to correct prior violations.

(e) R = preventability of violation. R will be weighted from -2 to 7 in the following way:

(A) -2 = the person's actions determined to be violative were unavoidable;

(B) O = information is insufficient to make any finding;

(C) 3 = the person's actions determined to be violative were reasonably avoidable;

(D) 7 = the person's actions were flagrant.

(f) C = cooperativeness on the part of the person to assist the department in its investigation and to the extent possible, rectify the violation. C will be weighted from -2 to 2 in the following way:

(A) -2 = the person is cooperative;

(B) -1 = the person provides limited cooperation;

(C) O = the person is neither cooperative nor uncooperative;

(D) 1 = the person is generally uncooperative;

(E) 2 = the person is uncooperative.

(2) If the calculation utilizing the formula in this section results in an amount more than \$1,000 for a first violation of any provision of ORS 634, the Director shall assess a civil penalty of \$1,000. If the calculation utilizing the formula in this section results in an amount more than \$2,000 for any subsequent violation of the same provision of ORS 634, the Director shall assess a penalty of \$2,000. In addition, the Director may consider this adjustment if the Director remits or reduces the amount as provided in ORS 634.910 or OAR 603-057-0502(6).

[ED. NOTE: Matrix referenced is available from the agency.]

Stat. Auth.: ORS 561, 634 & 183.335(5)

Stats. Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372, 634.900 - 634.915

Hist.: AD 4-1990, f. & cert. ef. 3-16-90; AD 16-1990(Temp), f. & cert. ef. 8-10-90; AD 22-1990, f. & cert. ef. 12-17-90; DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09; DOA 6-2009, f. & cert. ef. 5-7-09

603-057-0532

Civil Penalty For A Violation Resulting From Gross Negligence or Willful Misconduct; Formula for Amount

(1) When the Director determines that the violation resulted from gross negligence or willful misconduct and that the violation occurred on or after June 25, 2007, the Director will determine the amount of the civil penalty using this section. To determine the amount of the civil penalty, calculate it utilizing the formula: $NB + [(.1 \times NB) \times (P + H + C)] = \text{Penalty Amount}$ where

(a) N = the number of times, within a period of three years prior to and including the date of the current violative act, that the person has been determined by the Director to have committed that violative act;

(b) B = the base penalty determined using the following matrix: [Matrix not included. See ED. NOTE.]

(A) The Magnitude of Violation is determined according to OAR 603-057-0525(2).

(B) The Gravity of Effect is determined according to OAR 603-057-0525(3).

(c) P = Past occurrence of unrelated violations under ORS Chapter 634 for a period of three years prior to the date of the current violative act. P will be weighted from 0 to 6 in the same manner as described in OAR 603-057-0530(1)(c).

(d) H = History of the person in taking all feasible steps or procedures necessary or appropriate to correct a violative action. H will be weighted from -2 to 2 in the same manner as described in OAR 603-057-0530(1)(d).

(e) C = Cooperativeness on the part of the person to assist the department in its investigation and to the extent possible, rectify the violation. C will be weighted from -2 to 2 in the same manner as described in OAR 603-057-0530(1)(f).

(2) If the calculation utilizing the formula in this section results in an amount more than \$10,000, the Director will assess a penalty of \$10,000. In addition, the Director may consider this adjustment if the Director remits or reduces the amount as provided in ORS 634.910 or OAR 603-057-0502(6).

[ED. NOTE: Matrix referenced is available from the agency.]

Stat. Auth.: ORS 561, 634 & 183.335(5)

Stats. Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372, & 634.900 - 634.915

603-057-0535

Pesticide Use on Crops Grown for Seed Production

(1) For purposes of pesticide product registration, labeling, distribution and use, certain crops when grown exclusively for seed production with the sole intent of the seed being planted, or with the sole intent of the seed being processed to produce nonedible industrial or nonedible cosmetic oil, shall be considered nonfood/nonfeed sites. If certain conditions are met as specified in this rule, a pesticide residue tolerance is not required to obtain a pesticide registration on the crop. These crops include, but are not limited to: [Table not included. See ED. NOTE.]

(2) Certain crops which may be grown for seed production, shall be considered food/feed sites, and not eligible to obtain a non-food/nonfeed status. These crops include, but are not limited to: Cereal Grains: including barley, buckwheat, corn, millet, oats, rye, sorghum, triticale, and wheat; Legume Vegetables (succulent and dried): including all peas, beans, chickpeas, and lentils; canola (as defined in OAR 603-052-0860(a)); garlic; potatoes; pumpkins; sunflower.

(3) If the Department receives an application for a FIFRA Section 24(c) registration or a FIFRA Section 18 authorization, and the pesticide product is intended to be used on a seed crop not listed in (1) or (2) above, additional information must be provided to the Department to support a nonfood/nonfeed designation. The Department shall make or deny the nonfood/nonfeed designation based upon evaluation of available information.

(4) In order for a pesticide product to be registered, labeled, distributed and used on a crop grown exclusively for seed production, as identified in (1) above, the following conditions must be met:

(a) The seed conditioner shall maintain a record of each pesticide applied to the seed crop for which there is no established pesticide residue tolerance. This record shall include the date of each application.

(b) No seed produced in Oregon utilizing a pesticide product for which there is no established pesticide residue tolerance on the seed crop may be distributed for human or animal consumption.

(c) All screenings resulting from a seed crop identified in (1) above shall be disposed of in such a manner that the screenings cannot be distributed or used for food or feed purposes.

(d) No portion of the seed crop to which a pesticide product having no established pesticide residue tolerance for the seed crop has been applied shall be used or distributed for food or feed. This restriction pertains to, but is not limited to, green chop, hay, pellets, meal, whole seed, cracked seed, straw, roots, bulbs, foliage or seed screenings, and to the grazing of the crop field, stubble or regrowth.

(e) The seed conditioner shall keep records of all seed screening disposals for at least three years from the date of disposal and shall furnish these records to the department upon request.

(f) The disposal records required in section (e) above shall consist of documentation verifying shipment to the controlled site where disposal occurred, and shall identify each of the following:

- (A) The name, if applicable, and location of the disposal site;
- (B) Method of disposal (i.e., burial, composting, or incineration);
- (C) Amount and type of material disposed of; and
- (D) The date of shipment to the disposal site.

(5) Administrative rules enacted and administered by the Oregon Department of Environmental Quality, contained in OAR 340-100-0010, specify that any portion of a seed crop grown in this state, its foliage, seed chaff, screenings or other crop by-products treated with a pesticide according to label instructions shall not be considered a hazardous waste. Therefore, the requirements for disposal of hazardous waste shall not apply to the disposal of a pesticide treated seed crop or its by-products.

(6) Refusing or neglecting to prepare and maintain the records required to be kept by (4)(a) and (4)(e) of this section shall be considered a prohibited act according to ORS 634.372(5).

(7) Making false, misleading or fraudulent records required by (4)(a) and (4)(e) of this section shall be considered a prohibited act according to ORS 634.372(6).

(8) Any seed from a field treated with a pesticide product having no pesticide residue tolerance shall bear specific and conspicuous container labeling, or if shipped in bulk, on the shipment invoice or bill of lading. Said labeling shall contain the following statement: "This seed was produced using one or more products for which the United States Environmental Protection Agency has not established pesticide residue tolerances. This seed, in whole, as sprouts, or in any form, may not be used for human consumption or animal feed. Failure to comply with this condition may violate requirements of the Federal Food and Drug Administration, the Oregon Department of Agriculture and other regulatory agencies."

(9) All possessors of seed labeled as specified in (8) above, including brokers and dealers, shall prepare and maintain records which include a copy of the seed labeling.

(10) The conditions contained in (1) through (9) of this rule shall not apply to a seed crop, or its by-products, grown in Oregon under the following conditions:

- (a) Having no pesticide(s) applied to it; or
- (b) Utilizing only pesticides registered and labeled for application to the crop, and having established residue tolerances for the specific crop and its by-products.

(11) The requirements specified in (8) and (9) of this rule shall not apply if the seed is sold or distributed in consumer packets weighing less than 5.0 oz., and is intended for retail sale and noncommercial use.

(12) The restrictions contained in (4)(d) of this rule may be modified by the Department if residue data are provided, and the data and modification are considered acceptable by both the Department and the U.S. Environmental Protection Agency.

(13) If the conditioner has not been provided information as to what pesticides were applied to a field producing a seed crop specified in (1) above, the field will be considered to have been treated with a pesticide not having a tolerance. In such situations, the seed conditioner will be exempt from the requirements of (4)(a) above. All other requirements of (4)(b) through (9) shall apply.

(14) Any seed grown in Oregon, and conditioned in another state which has a labeling requirement for seed conditioned in that state similar to (8) above, shall be exempt from the labeling requirements contained in (8) above. Seed exported from Oregon under conditions specified in this subsection must be labeled as required in (8) above by the grower, broker or other responsible party.

(15) Any "treated seed" as defined in OAR 603-056-0431(1)(a), and meeting the labeling requirements of OAR 603-056-0431(1), shall be exempt from the labeling requirements contained in (8) above. Prior to treatment, the seed must be labeled as required in (8) above.

[ED. NOTE: Tables referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 & 634
 Stats. Implemented: ORS 634.306 & 634.322
 Hist.: AD 4-1993, f. & cert. ef. 2-12-93; DOA 17-2001, f. 8-16-01, cert. ef. 1-1-02

DIVISION 58

FEEDS

603-058-0110

Definitions

In addition to the definitions set forth in ORS 633.006, and unless the context requires otherwise, the following shall apply to ORS 633.015 to 633.089 and OAR 603-058-0110 to 603-058-0290:

(1) "Medicated Feed" means a commercial feed in combination with a drug, as defined in subsection (10) of ORS 633.006.

(2) "Director" means the Director of the Oregon Department of Agriculture.

(3) "Consultant-Formulated" feed means commercial feed manufactured for a final purchaser based upon formula and/or specifications developed for the feed purchaser by an independent consultant or feed manufacturer.

(4) "Independent consultant" means any person who provides animal nutritional formulation to a feed purchaser as a service rather than the sale of feed.

(5) Principal Display Panel means the out-facing side of the feed tag, or if no tag, the part of the label that is most likely to be displayed, presented, shown or examined under normal or customary conditions of sale.

(6) "Lot identifier" means a unique identifier for each lot, batch or production run that enables the manufacturer to accurately trace the complete manufacturing and distribution history of the product. A lot identifier is an individual lot, batch or production run number, code, date, or other suitable identification applied to the label, container, or package. In the case of bulk feed the lot identifier is on a label, invoice, or shipping document accompanying the feed.

Stat. Auth.: ORS 633.006-089, 633.992, 561.605 & 561.620

Stats. Implemented:

Hist.: DOA 13-2011, f. & cert. ef. 8-12-11

603-058-0120

Label Format for Commercial Feeds

(1) Commercial feed, other than custom mixed feed, shall bear the information prescribed in this regulation on the label of the product and in the following format:

(a) Product name and brand name, if any, as stipulated in OAR 603-058-0130(1);

(b) If a drug is used, label as stipulated in OAR 603-058-0130(2);

(c) Purpose statement as stipulated in OAR 603-058-0130(3);

(d) Guaranteed analysis as stipulated in OAR 603-058-0130(4);

(e) Feed ingredients as stipulated in OAR 603-058-0130(5);

(f) Directions for use and precautionary statements as stipulated in OAR 603-058-0130(6);

(g) Name and principal mailing address and phone number of manufacturer or persons responsible for distributing the feed as stipulated in OAR 603-058-0130(7);

(h) Quantity statement as stipulated in OAR 603-058-0130(8);

(i) Lot Number as stipulated in OAR 603-058-0130(9).

(2) Principal Display Panel:

(a) The information as required in OAR 603-058-0120(1)(a), (b), (c) and (h) must appear in its entirety on the principal display panel;

(b) The information as required in OAR 603-058-0120(1)(d), (e), (f), (g) and (i) shall be displayed in a prominent place on the feed tag or label, but not necessarily on the principal display panel;

(c) None of the information required by OAR 603-058-0120 shall be subordinated or obscured by other statements of designs.

Stat. Auth.: ORS 633.006-089, 633.992, 561.605 & 561.620

Stats. Implemented:

Hist.: DOA 13-2011, f. & cert. ef. 8-12-11

603-058-0125

Label Format for Custom Feeds

Custom mixed feed shall be accompanied with the information prescribed in this regulation using labels, invoice, delivery ticket, or other shipping document bearing the following information:

(1) The name and address of the manufacturer;

(2) The name and address of the purchaser;

(3) The date of sale or delivery;

(4) The custom mixed feed name and brand name if any;

(5) If intended for Dairy or swine it shall also bear the guaranteed analysis as stipulated in OAR 603-058-0130(4);

(6) The product name and net quantity of each registered commercial feed and each other ingredient used in the mixture;

(7) The directions for use and precautionary statements as required by OAR 603-058-0130(6);

(8) If a drug containing product is used:

(a) The Purpose of the medication (claim Statement);

(b) The established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with OAR 603-058-0130(2). The statement: "This feed is formulated for (insert name of final consumer). No resale to other users is allowed."

Stat. Auth.: ORS 633.006-089, 633.992, 561.605 & 561.620

Stats. Implemented:

Hist.: DOA 13-2011, f. & cert. ef. 8-12-11; DOA 16-2011, f. & cert. ef. 9-19-11

603-058-0130

Label Information

In addition to the requirements set forth in ORS 633.026, commercial feeds, other than custom mixed feed shall be labeled with the information prescribed in this regulation.

(1) Product name and brand name if any:

(a) The brand or product name must be appropriate for the intended use of the feed and must not be misleading. If the name indicates the feed is made for a specific use, the character of the feed must conform therewith. A commercial feed for a particular animal class, must be suitable for that purpose;

(b) Commercial, registered brand or trade names are not permitted in guarantees or ingredient listings and only in the product name of feeds produced by or for the firm holding the rights to such name;

(c) The name of a commercial feed shall not be derived from one or more ingredients of a mixture to the exclusion of other ingredients and shall not be one representing any components of a mixture unless all components are included in the name: Provided, that if any ingredient or combination of ingredients is intended to impart a distinctive characteristic to the product which is of significance to the purchaser, the name of that ingredient or combination of ingredients is quantitatively guaranteed in the guaranteed analysis, and the brand or product name is not otherwise false or misleading;

(d) The word "protein" shall not be permitted in the product name of a feed that contains added non-protein nitrogen;

(e) When the name carries a percentage value, it shall be understood to signify protein and /or equivalent protein content only, even though it may not explicitly modify the percentage with the word "protein". Provided other percentage values may be permitted if they are followed by the proper description and conform to good labeling practice. Digital numbers shall not be used in such a manner as to be misleading or confusing to the customer. E.G.: "Dairy 16%" containing only 14% Crude Protein is misleading;

(f) Single ingredient feeds shall have a product name in accordance with the designated definition of feed ingredients as recognized by the Association of American Feed Control Officials unless the Department designates otherwise;

(g) The word "vitamin", or a contraction thereof, or any word suggesting vitamin can be used only in the name of a feed which is represented to be a vitamin supplement, and which is labeled with the minimum content of each vitamin declared, as specified in OAR 603-058-0130(4);

(h) The term "mineralized" salt shall not be used in the name of a feed except for "Trace Mineralized Salt". When so used, the product must contain significant amounts of trace minerals, which are recognized as essential for animal nutrition;

(i) The term "meat" and "meat by-products" shall be qualified to designate the animal from which the meat and meat by-products is derived unless the meat and meat-byproducts are made from cattle, swine, sheep and goats.

(2) If a drug is used:

(a) The word "medicated" shall appear directly following and below the product name in a type size, no smaller than one-half the type size of the product name;

(b) Purpose statement as required in OAR 603-058-0130(3);

(c) The purpose of medication (claim statement);

(d) An Active ingredient statement listing the active drug ingredients by their established name and the amounts in accordance with OAR 603-058-0130(5).

(3) Purpose Statement:

(a) The statement of purpose shall contain the specific species and animal class(s) for which the feed is intended as defined in OAR 603-058-0130(4);

(b) The manufacturer shall have flexibility in describing in more specific and common language the defined animal class, species and purpose while being consistent with the category of animal class defined in OAR 603-058-0130(4) which may include, but is not limited to:

ited to weight range(s), sex, or ages of the animal(s) for which the feed is manufactured;

(c) The purpose statement may be excluded from the label if the product name includes a description of the species and animal class(s) for which the product is intended;

(d) The purpose statement of a premix for the manufacture of feed may exclude the animal class and species and state "For Further Manufacture of Feed" if the nutrients contained in the premix are guaranteed and sufficient for formulation into various animal species feeds and premix specifications are provided by the end user;

(e) The purpose statement of a single purpose ingredient blend, such as a blend of animal protein products, milk products, fat products, roughage products or molasses products may exclude the animal class and species and state "For Further Manufacture of Feed" if the label guarantees of the nutrients contained in the single purpose nutrient blend are sufficient to provide for formulation into various animal species feeds.

(4) Guarantees of nutrients: Crude Protein, Equivalent Crude Protein from Non Protein Nitrogen, Lysine, Methionine, Crude Fat, Crude Fiber, Acid Detergent Fiber, Neutral Detergent Fiber, Dietary Starch, Sugars, Fructans, Calcium, Phosphorus, Salt, Sodium, Magnesium, Potassium, Copper, Selenium, Zinc and Vitamin A shall be the sequence of nutritional guarantees when such guarantee is stated. Other required and voluntary guarantees should follow Vitamin A in a general format such that the units of measure used to express guarantees (percentage, parts per million, International Units, etc.) are listed in a sequence that provides a consistent grouping of the units of measure.

(a) Required guarantees for swine formula feeds:

(A) Animal Classes:

- (i) Pre-Starter — 2 to 11 pounds;
- (ii) Starter — 11 to 44 pounds;
- (iii) Grower — 44 to 110 pounds;
- (iv) Finisher — 110 to 242 pounds (market);
- (v) Gilts, Sows and Adult Boars;
- (vi) Lactating Gilts and Sows.

(B) Guaranteed Analysis for Swine Complete Feeds and Supplements (all animal classes):

- (i) Minimum percentage of Crude Protein;
- (ii) Minimum percentage of Lysine;
- (iii) Minimum percentage of Crude Fat;
- (iv) Maximum percentage of Crude Fiber;
- (v) Minimum and maximum percentage of Calcium;
- (vi) Minimum percentage of Phosphorus;
- (vii) Minimum and maximum percentage of Salt (if added);
- (viii) Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum salt guarantee terms of percentage;

(ix) Minimum Selenium in parts per million (ppm);

(x) Minimum Zinc in parts per million (ppm).

(b) Required guarantees for Formula Poultry Feeds (Broilers, Layers and Turkeys):

(A) Animal Classes:

(i) Layer — Chickens that are grown to Produce eggs for food, e.g., table eggs:

(I) Starting/Growing — From day of hatch to approximately 10 weeks of age;

(II) Finisher — From approximately 10 weeks of age to time first egg is produced. (Approximately 20 weeks of age at time of egg production);

(III) Laying — From time of first egg is laid throughout the time of egg production;

(IV) Breeders — Chickens that produce fertile eggs for hatch replacement layers to produce eggs for food, table eggs, from time first egg is laid throughout their productive cycle.

(ii) Broilers — Chickens that are grown for human food:

(I) Starting/Growing — From day of hatch to approximately 5 weeks of age;

(II) Finisher — From approximately 5 weeks of age to market, (42 to 52 days);

(III) Breeders — Hybrid strains of chickens whose offspring are grown for human food, (broilers), any age and either sex.

(iii) Broilers, Breeders — Chickens whose offspring are grown for human food (broilers):

(I) Starting/Growing — From day of hatch until approximately 10 weeks of age;

(II) Finishing — From approximately 10 weeks of age to time first egg is produced, approximately 20 weeks of age;

(III) Laying — Fertile egg producing chickens (broilers/roasters) from day of first egg throughout the time fertile eggs are produced.

(iv) Turkeys:

(I) Starting/Growing — Turkeys that are grown for human food from day of hatch to approximately 13 weeks of age (females) and 16 weeks of age (males);

(II) Finisher — Turkeys that are grown for human food, females from approximately 13 weeks of age to approximately 17 weeks of age; males from 16 weeks of age to 20 weeks of age, (or desired market weight);

(III) Laying — Female turkeys that are producing eggs; from time first egg is produced, throughout the time they are producing eggs;

(IV) Breeder-Turkeys that are grown to produce fertile eggs, from day of hatch to time first egg is produced (approximately 30 weeks of age), both sexes.

(B) Guaranteed Analysis for Poultry Complete feeds and Supplements (all animal classes):

- (i) Minimum percentage of Crude Protein;
- (ii) Minimum percentage of Lysine;
- (iii) Minimum percentage of Methionine;
- (iv) Minimum percentage of Crude Fat;
- (v) Maximum percentage of Crude Fiber;
- (vi) Minimum and maximum percentage of Calcium;
- (vii) Minimum percentage of Phosphorus;
- (viii) Minimum and maximum percentage of Salt (if added);
- (ix) Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum salt guarantee.

(c) Required Guarantees for Beef Cattle Formula Feeds:

(A) Animal Classes:

(i) Calves (birth to weaning);

(ii) Cattle on Pasture (may be specific as to production stage; e.g. stocker, feeder, replacement heifers, brood cows, bulls, etc.);

(iii) Feedlot Cattle.

(B) Guaranteed analysis for Beef Complete Feeds and Supplements (all animal classes):

(i) Minimum percentage of Crude Protein;

(ii) Maximum percentage of equivalent crude protein from Non-Protein Nitrogen (NPN) when added;

(iii) Minimum percentage of Crude Fat;

(iv) Maximum percentage of Crude Fiber;

(v) Minimum and maximum percentage of Calcium (if added);

(vi) Minimum percentage of Phosphorus (if added);

(vii) Minimum and maximum percentage of Salt (if added);

(viii) Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds than furnished by the maximum salt guarantee;

(ix) Minimum percentage of Potassium (if added);

(x) Minimum Vitamin A, other than precursors of Vitamin A, in International Units per pound (if added).

(C) Guaranteed analysis for Beef Mineral Feeds (if added):

(i) Minimum and maximum percentage Calcium;

(ii) Minimum percentage of Phosphorus;

(iii) Minimum and maximum percentage of Salt;

(iv) Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum salt guarantee;

(v) Minimum percentage of Magnesium;

(vi) Minimum percentage of Potassium;

(vii) Minimum Copper in parts per million (ppm);

(viii) Minimum Selenium in parts per million (ppm);

- (ix) Minimum Zinc in parts per million (ppm);
- (x) Minimum Vitamin A, other than precursors of Vitamin A, international Units per pound.
- (d) Required Guarantees for Dairy Formula Feeds:
 - (A) Animal Classes:
 - (i) Veal Milk Replacer — Milk Replacer to be fed for veal production;
 - (ii) Herd Milk Replacer — Milk Replacer to be fed for herd replacement calves;
 - (iii) Starter — Approximately 3 days to 3 months;
 - (iv) Growing Heifers, Bulls and Dairy Beef;
 - (I) Grower 1 — 3 months to 12 months of age;
 - (II) Grower 2 — More than 12 months of age.
 - (v) Lactating Dairy Cattle;
 - (vi) Non-Lactating Dairy Cattle.
 - (B) Guaranteed Analysis for Veal and Herd Replacement Milk Replacer:
 - (i) Minimum percentage Crude Protein;
 - (ii) Minimum percentage Crude Fat;
 - (iii) Maximum percentage of Crude Fiber;
 - (iv) Minimum and maximum percentage Calcium;
 - (v) Minimum percentage of Phosphorus;
 - (vi) Minimum Vitamin A, other than precursors of Vitamin A, in international Units per pound (if added).
 - (C) Guaranteed Analysis for Dairy Cattle Complete Feeds and Supplements:
 - (i) Minimum percentage of Crude Protein;
 - (ii) Maximum percentage of Equivalent Crude Protein from Non-Protein Nitrogen (NPN) when added;
 - (iii) Minimum percentage of Crude Fat;
 - (iv) Maximum percentage of Crude Fiber;
 - (v) Maximum percentage of Acid Detergent Fiber (ADF);
 - (vi) Minimum and maximum percentage of Calcium (if added);
 - (vii) Minimum percentage of Phosphorus (if added);
 - (viii) Minimum Selenium in parts per million (ppm) (if added);
 - (ix) Minimum Vitamin A, other than precursors of Vitamin A, in International Units per pound (if added).
 - (D) Required Guaranteed Analysis for Dairy Mixing and Pasture Mineral (if added):
 - (i) Minimum and maximum percentage of Calcium;
 - (ii) Minimum percentage of Phosphorus;
 - (iii) Minimum percentage of Magnesium;
 - (iv) Minimum percentage of Potassium;
 - (v) Minimum Selenium in parts per million (ppm);
 - (vi) Minimum Vitamin A, other than the precursors of Vitamin A, in International Units per pound.
 - (e) Required Guarantees for Equine Formula Feeds:
 - (A) Animal Classes:
 - (i) Foal;
 - (ii) Mare;
 - (iii) Breeding;
 - (iv) Maintenance.
 - (B) Guaranteed Analysis for Equine Complete Feeds and Supplements (all animal classes):
 - (i) Minimum percentage of Crude Protein;
 - (ii) Minimum percentage of Crude Fat;
 - (iii) Maximum percentage of Crude Fiber;
 - (iv) Minimum and maximum percentage of Calcium (if added);
 - (v) Minimum percentage of Phosphorus (if added);
 - (vi) Minimum Copper in parts per million (ppm) (if added);
 - (vii) Minimum Selenium in parts per million (ppm) (if added);
 - (viii) Minimum Zinc in parts per million (ppm) (if added);
 - (ix) Minimum Vitamin A, other than the precursors of A, in International Units per pound (if added).
 - (C) Guaranteed Analysis for Equine Mineral Feeds (all animal classes):
 - (i) Minimum and maximum percentage of Calcium;
 - (ii) Minimum percentage of Phosphorus;
 - (iii) Minimum and maximum percentage of Salt (if added);
- (iv) Minimum and maximum percentage of Sodium shall be guaranteed only when the total sodium exceeds that furnished by the maximum salt guarantee;
- (v) Minimum Copper in parts per million (ppm) (if added);
- (vi) Minimum Selenium in parts per million (ppm) (if added);
- (vii) Minimum Zinc in parts per million (ppm) (if added);
- (viii) Minimum Vitamin A, other than precursors of Vitamin A, in International Units per pound (if added).
- (f) Required Guarantees for Sheep Formula Feeds:
 - (A) Animal Classes:
 - (i) Starter;
 - (ii) Grower;
 - (iii) Finisher;
 - (iv) Breeder;
 - (v) Lactating.
 - (B) Guaranteed Analysis for Sheep Complete Feeds and Supplements (all animal classes):
 - (i) Minimum percentage of Crude Protein;
 - (ii) Maximum percentage of equivalent crude protein from Non-Protein Nitrogen (NPN) when added;
 - (iii) Minimum percentage of Crude Fat;
 - (iv) Maximum percentage of Crude Fiber;
 - (v) Minimum and maximum percentage of Calcium;
 - (vi) Minimum percentage of Phosphorus;
 - (vii) Minimum and maximum percentage of Salt (if added);
 - (viii) Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum salt guarantee;
 - (ix) Minimum and maximum Copper in parts per million (ppm) (if added, or if total copper exceeds 20 ppm);
 - (x) Minimum Selenium in parts per million (ppm) (if added);
 - (xi) Minimum Vitamin A, other than precursors of Vitamin A, in International Units per pound (if added).
 - (g) Required Guarantees for Goat Formula Feeds:
 - (A) Animal Classes:
 - (i) Starter;
 - (ii) Grower;
 - (iii) Finisher;
 - (iv) Breeder;
 - (v) Lactating.
 - (B) Guaranteed Analysis for Goat Complete Feeds and Supplements (all animal classes):
 - (i) Minimum percentage of Crude Protein;
 - (ii) Maximum percentage of equivalent crude protein from Non-Protein Nitrogen(NPN) when added;
 - (iii) Minimum percentage of Crude Fat;
 - (iv) Maximum percentage of crude fiber
 - (v) Maximum percentage of Acid Detergent Fiber (ADF)
 - (vi) Minimum and maximum percentage of Calcium (if added);
 - (vii) Minimum percentage of Phosphorus (if added);
 - (viii) Minimum and maximum percentage of sodium (if added);
 - (ix) Minimum and maximum Copper in parts per million (ppm) (if added). An additional statement of “no copper source added” is allowed if accurate.
 - (x) Minimum Selenium in parts per million (ppm) (if added);
 - (xi) Minimum Vitamin A, other than precursors of Vitamin A, in International Units per pound (if added).
 - (h) Required Guarantees for Duck and Geese Formula Feeds:
 - (A) Animal Classes:
 - (i) Ducks:
 - (I) Starter — 0 to 3 weeks of age;
 - (II) Grower — 3 to 6 weeks of age;
 - (III) Finisher — 6 weeks to market;
 - (IV) Breeder Developer — 8 to 19 weeks of age;
 - (V) Breeder — 22 weeks to end of lay.
 - (ii) Geese:
 - (I) Starter — 0 to 4 weeks of age;
 - (II) Grower — 4 to 8 weeks of age;
 - (III) Finisher — 8 weeks to market;
 - (IV) Breeder Developer — 10 to 22 weeks of age;
 - (V) Breeder — 22 weeks to end of lay.

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(B) Guaranteed Analysis for Duck and Geese Complete Feeds and Supplements (for all animal classes):

- (i) Minimum percentage of Crude Protein;
- (ii) Minimum percentage of Crude Fat;
- (iii) Maximum percentage of Crude Fiber;
- (iv) Minimum and maximum percentage of Calcium (if added);
- (v) Minimum percentage of Phosphorus (if added);
- (vi) Minimum and maximum percentage of Salt (if added);
- (vii) Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum salt guarantee.

(i) Required Guarantees for Fish Complete Feeds and Supplement.

(A) Animal Species shall be declared in lieu of animal class:

- (i) Trout;
- (ii) Catfish;
- (iii) Fish Species other than trout or catfish.

(B) Guaranteed analysis for all Fish Complete Feeds and Supplements:

- (i) Minimum percentage of Crude Protein;
- (ii) Minimum percentage of Crude Fat;
- (iii) Maximum percentage of Crude Fiber;
- (iv) Minimum percentage of Phosphorus.

(j) Required Guarantees for Rabbit Complete Feeds and Supplements.

(A) Animal Classes:

- (i) Grower — 4 to 12 weeks of age;
- (ii) Breeder — 12 weeks of age and over.

(B) Guaranteed analysis for Rabbit Complete Feeds and Supplements (all animal classes):

- (i) Minimum percentage of Crude Protein;
- (ii) Minimum percentage of Crude Fat;
- (iii) Minimum and maximum percentage of Crude Fiber (the maximum crude fiber shall not exceed the minimum by more than 5.0 units);
- (iv) Minimum and maximum percentage of Calcium (if added);
- (v) Minimum percentage of Phosphorus (if added);
- (vi) Minimum and maximum percentage of Salt (if added);
- (vii) Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum salt guarantee;

(viii) Minimum Vitamin A, other than precursors of Vitamin A, in International Units per pound (if added).

(k) The required guarantees of grain mixtures with or without molasses and feeds other than those described in regulation OAR 603-058-0130(4)(a) through (j) shall include the following items, unless exempted in section (l), in the order listed:

(A) Animal class(s) and species for which the product is intended.

(B) Guaranteed analysis:

- (i) Minimum percentage Crude Protein;
- (ii) Maximum or minimum percentage of equivalent Crude Protein from Non-Protein Nitrogen as required in OAR 603-058-0180;
- (iii) Minimum percentage of Crude Fat;
- (iv) Maximum percentage of Crude Fiber;
- (v) Minerals in formula feeds, to include in the following order:
 - (I) Minimum and maximum percentages of Calcium (if added);
 - (II) Minimum percentage of Phosphorus (if added);
 - (III) Minimum and maximum percentage of Salt (if added);
 - (IV) Minimum and maximum percentage of total Sodium shall be guaranteed only when total Sodium exceeds that furnished by the maximum salt guarantee;
- (V) Other Minerals.
- (vi) Minerals in feed ingredients — as specified by the official definitions of the 2011 edition of the Official Publication of the Association of American Feed Control Officials;
- (vii) Vitamins in such terms as specified in OAR 603-058-0140;
- (viii) Total sugars as invert on dried molasses products or products being sold primarily for their sugar content;
- (ix) Viable lactic acid producing microorganisms for use in silages in terms specified in OAR 603-058-0140;

(x) A commercial feed (e.g. vitamin/mineral premix, base mix, etc.) intended to provide a specialized nutritional source for use in the manufacture of other feeds, must state its intended purpose and guarantee those nutrients relevant to such stated purpose.

(l) Exemptions. Some feeds covered in section (k) have nutrient levels that are so low the guarantees required under ORS 633.026 (b) would be irrelevant.

(A) A mineral guarantee for feed is not required when:

- (i) The feed or feed ingredient is not intended or represented or does not serve as a principal source of that mineral to the animal; or
- (ii) The feed or feed ingredient is intended for non-food producing animals and contains less than 6.5% total mineral.

(B) Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin source.

(C) Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, or molasses.

(D) Guarantees for microorganisms are not required when the commercial feed is intended for a purpose other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, and no specific label claims are made.

(E) The indication for animal class(s) and species is not required on single ingredient feeds if the ingredient is not intended, represented, or defined for a specific animal class(s) or species. It should be replaced with “For Further Manufacture of Feed.”

(5) Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements as provided under the provisions of ORS 633.026(1)(c):

(a) The name of each ingredient as defined in the 2011 edition of the Official Publication of the Association of American Feed Control Officials, common or usual name, or one approved by the Department;

(b) Collective terms for the grouping of feed ingredients as defined in the Official Definitions of Feed Ingredients published in the 2011 edition of the Official Publication of the Association of American Feed Control Officials in lieu of the individual ingredients; Provided that:

(A) When a collective term for a group of ingredients is used on the label individual ingredients within that group shall not be listed on the label;

(B) The manufacturer shall provide the feed control official, upon request, with a list of individual ingredients, within a defined group, that are or have been used at manufacturing facilities distributing in or into the state.

(c) The registrant may affix the statement, “Ingredients as registered with the State” in lieu of an ingredient list on the label as permitted in ORS 633.026(1)(c). The list of ingredients must be on file with the department. This list shall be made available to the feed purchaser upon request.

(6) Directions for use and precautionary statements or reference to their location if the detailed feeding directions and precautionary statements required by OAR 603-058-0170 and 603-058-0180 appear elsewhere on the label.

(7) Name and principal mailing address and phone number of the manufacturer or person responsible for distributing the feed as required by ORS 633.026(1)(f). The principal mailing address shall include the street address, city, state, and zip code. However, the street address may be omitted if it is shown in the current city directory or telephone directory.

(8) Quantity Statement:

(a) Net quantity shall be declared in terms of weight, liquid measure or count, based on applicable requirements under the Fair Packaging and Labeling Act (Title 15 U.S.C. 1453) effective as of the date these rules are promulgated;

(b) Net quantity labeled in terms of weight shall be expressed both in pounds, with any remainder in terms of ounces or common or decimal fractions of the pound and in appropriate SI metric system units; or in the case of liquid measure, both in the largest whole

unit (quarts, quarts and pints or pints, as appropriate) with any remainder in terms of fluid ounces or common or decimal fractions of the pint or quart and in appropriate SI metric system units;

(c) When the declaration of quantity of contents by count does not give adequate information as to the quantity of feed in the container, it shall be combined with such statement of weight, liquid measure, or size of the individual units as will provide such information;

(9) Lot Identifier:

(a) For the withdraw from distribution purposes in ORS 633.088 a lot identifier that is sufficient to allow the manufacturer to accurately trace the complete manufacturing and distribution history of the product;

(b) Records relating the lot identifier to the manufacture, processing, packing, distribution, receipt, or holding of the product must be kept for one year after the last date of distribution.

Stat. Auth.: ORS 633.006-089, 633.992, 561.605 & 561.620

Stats. Implemented:

Hist.: DOA 13-2011, f. & cert. ef. 8-12-11

603-058-0140

Expression of Guarantees

(1) The guarantees for crude protein, equivalent crude protein from non-protein nitrogen, lysine, methionine, other amino acids, crude fat, crude fiber, neutral detergent fiber, dietary starch, sugars, fructans and acid detergent fiber shall be in terms of percentage.

(2) Mineral Guarantees:

(a) When the calcium, salt, and sodium guarantees are given in the guaranteed analysis such shall be stated and conform to the following:

(A) When the minimum is below 2.5%, the maximum shall not exceed the minimum by more than 0.5 percentage points;

(B) When the minimum is 2.5% but less than 5.0%, the maximum shall not exceed the minimum by more than one percentage point;

(C) When the minimum is above 5.0% or greater the maximum shall not exceed the minimum by more than 20% of the minimum and in no case shall the maximum exceed the minimum by more than five percentage points.

(b) When stated, guarantees for minimum and maximum total sodium, and salt: minimum potassium, magnesium, sulfur, phosphorus and maximum fluoride shall be in terms of percentage. Other minimum mineral guarantees shall be stated in parts per million (ppm) when the concentration is less than 10,000 ppm and in percentage when the concentration is 10,000 ppm (1%) or greater;

(c) Products labeled with a quantity statement (e.g., tablets, capsules, granules or liquid) may state mineral guarantees in milligrams (mg) per unit (e.g., tablets, capsules, granules, or liquids) consistent with the quantity statement and directions for use.

(3) Guarantees for minimum vitamin content of commercial feeds shall be listed in the order specified and are stated in mg/lb. or in units consistent with those employed for the quantity statement unless otherwise specified:

(a) Vitamin A, other than precursors of vitamin A, in International Units per pound;

(b) Vitamin D-3 in products offered for poultry feeding, in International Chick Units per pound;

(c) Vitamin D for other uses, International Units per pound;

(d) Vitamin E, in International Units per pound;

(e) Concentrated oils and feed additive premixes containing vitamins A, D and/or E may, at the option of the distributor be stated in units per gram instead of units per pound;

(f) Vitamin B-12, in milligrams or micrograms per pound;

(g) All other vitamin guarantees shall express the vitamin activity in milligrams per pound in terms of the following: menadione, riboflavin, d-pantothenic acid, thiamine, niacin, vitamin B-6, folic acid, choline, biotin, inositol, p-amino benzoic acid, ascorbic acid, and carotene.

(4) Guarantees for drugs shall be stated in terms of percent by weight, except:

(a) Antibiotics, present at less than 2,000 grams per ton (total) of commercial feed shall be stated in grams per ton of commercial feed;

(b) Antibiotics present at 2,000 or more grams per ton (total) of commercial feed shall be stated in grams per pound of commercial feed;

(c) The term "milligrams per pound" may be used for drugs or antibiotics in those cases where a dosage is given in "milligrams" in the feeding directions.

(5) Commercial feeds containing any added non-protein nitrogen shall be labeled as follows:

(a) For ruminants:

(A) Complete feeds, supplements, and concentrates containing added non-protein nitrogen and containing more than 5% protein from natural sources shall be guaranteed as follows: Crude Protein, minimum, % (This includes not more than % equivalent crude protein from non-protein nitrogen);

(B) Mixed feed concentrates and supplements containing less than 5% protein from natural sources may be guaranteed as follows: Equivalent Crude Protein from Non-Protein Nitrogen, minimum, %;

(C) Ingredient sources of non-protein nitrogen such as Urea, Diammonium Phosphate, Ammonium Polyphosphate Solution, Ammoniated Rice Hulls, or other basic non-protein nitrogen ingredients defined by the 2011 edition of the Official Publication of the Association of American Feed Control Officials shall be guaranteed as follows: Nitrogen, minimum %; Equivalent Crude Protein from Non-Protein Nitrogen, minimum %.

(b) For non-ruminants:

(A) Complete feeds, supplements and concentrates containing crude protein from all forms of non-protein nitrogen, added as such, shall be labeled as follows: Crude protein, minimum % (This includes not more than % equivalent crude protein which is not nutritionally available to (species of animal for which feed is intended);

(B) Premixes, concentrates or supplements intended for non-ruminants containing more than 1.25% equivalent crude protein from all forms of non-protein nitrogen, added as such, must contain adequate directions for use and a prominent statement: "WARNING: This feed must be used only in accordance with directions furnished on the label."

(6) Mineral phosphoric materials for feeding purposes shall be labeled with the guarantee for minimum and maximum percentage of calcium (when present), the minimum percentage of phosphorus, and the maximum percentage of fluorine.

(7) Guarantees for microorganisms shall be stated in colony forming units per gram (CFU/g) when directions are for using the product in grams, or in colony forming units per pound (CFU/lb.) when directions are for using the product in pounds. A parenthetical statement following the guarantee shall list each species in order of predominance. Such as: Direct fed Microorganisms (min) 54,000 CFU/lb. (*Bacillus lentus*, *Lactobacillus acidophilus*).

(8) Guarantees for enzymes shall be stated in units of enzyme activity per unit of weight, volume, consistent with label directions. The source organism for each type of enzymatic activity shall be specified, such as: Protease (*Bacillus subtilis*) 5.5 mg amino acids liberated/min./milligram. If two sources have the same type of activity, they shall be listed in order of predominance based on the amount of enzymatic activity provided.

(9) The sliding-scale method of expressing guarantees (e.g., protein 15-18%) is prohibited, unless specifically provided for by applicable law or rule.

(10) In addition to the requirements set forth in ORS 633.026, liquid feeds shall be quantitatively guaranteed for:

(a) Minimum percent of total sugars expressed as invert sugar;

(b) Maximum percent of ash; and

(c) Maximum percent moisture.

(11) All feeds containing greater than 0.5 ppm and less than 25 ppm Selenium shall be guaranteed for minimum and maximum selenium ppm, regardless of selenium source. Spread between minimum and maximum shall not exceed 20% of the minimum.

(12) All feeds containing greater than 0.5% Sulfur shall be guaranteed for sulfur maximum %.

(13) Guarantees for dietary starch, sugars, and fructans:

(a) A commercial feed which bears on its labeling a claim in any manner for levels of “dietary starch”, “sugars,” “fructans,” or words of similar designation, shall include on the label:

(i) Guarantees for maximum percentage of dietary starch and maximum percentage sugars, in the Guaranteed Analysis section immediately following the Crude Fiber guarantee;

(ii) A maximum percentage guarantee for fructans immediately following sugars, if the feed contains forage products;

(iii) Feeding directions shall indicate the proper use of the feed product and a recommendation to consult with a veterinarian or nutritionist for a recommended diet.

Stat. Auth.: ORS 633.006-089, 633.992, 561.605 & 561.620

Stats. Implemented:

Hist.: DOA 13-2011, f. & cert. ef. 8-12-11

603-058-0150

Substantiation of Nutritional Suitability

(1) A commercial feed, other than custom mixed feed, pursuant to ORS 633.055(1) shall be nutritionally suitable for its intended purpose as represented by its labeling.

(2) If the Department has reasonable cause to believe a commercial feed is not nutritionally suitable the Department may request the feed manufacturer to either submit an “Affidavit of Suitability” or an alternative procedure acceptable to the Department, certifying the nutritional adequacy of the feed. The Affidavit of Suitability or alternate procedure of suitability shall serve as substantiation of the suitability of the feed.

(3) If the feed manufacturer does not submit an Affidavit of Suitability, or alternate procedure acceptable to the Department within 30 days of written notification the Department may deem the feed adulterated under ORS 633.045 and order the feed to be withdrawn from the market.

(4) The Affidavit of Suitability shall contain the following information:

(a) The feed company’s name;

(b) The feed’s product name;

(c) The name and title of the affiant submitting the document;

(d) A statement that the affiant has knowledge of the nutritional content of the feed and based on valid scientific evidence the feed is nutritionally adequate for its intended purpose;

(e) The date of submission; and

(f) The notarized signature of the affiant.

Stat. Auth.: ORS 633.006-089, 633.992, 561.605 & 561.620

Stats. Implemented:

Hist.: DOA 13-2011, f. & cert. ef. 8-12-11

603-058-0160

Labeling as to Ingredients

(1) The name of each ingredient or collective term for the grouping of ingredients, when required to be listed, shall be the name as defined in the 2011 edition of the Official Definitions of feed ingredients as published in the Official Publication of the Association of American Feed Control Officials, the common or usual name, or one approved by the Department.

(2) The name of each ingredient must be shown in letters or type of the same size.

(3) No reference to quality or grade of an ingredient shall appear in the ingredient statement of a feed.

(4) The term “dehydrated” may precede the name of any product that has been artificially dried.

(5) A single ingredient product defined by the 2011 edition of the Official Publication of the Association of American Feed Control Officials is not required to have an ingredient statement.

(6) Tentative definitions for ingredients shall not be used until adopted as official, unless no official definition exists or the ingredient has a common accepted name that requires no definition, (i.e. sugar).

(7) When the word “iodized” is used in connection with a feed ingredient, the feed ingredient shall contain not less than 0.007% iodine, uniformly distributed.

Stat. Auth.: ORS 633.006-089, 633.992, 561.605 & 561.620

Stats. Implemented:

Hist.: DOA 13-2011, f. & cert. ef. 8-12-11

603-058-0170

Labeling as to Directions for Use and Precautionary Statements

(1) Directions for use and precautionary statements on the labeling of all commercial feeds and custom mixed feeds containing additives (including drugs, special purpose additives, or non-nutritive additives) shall:

(a) Be adequate to enable safe and effective use for the intended purposes by users with no special knowledge of the purpose and use of such articles; and

(b) Include, but not be limited to, all information described by all applicable regulations under the Federal Food, Drug and Cosmetic Act effective as of the date these rules are promulgated.

(2) Adequate directions for use and precautionary statements are required for feeds containing non-protein nitrogen as specified in OAR 603-058-0180.

(3) Adequate directions for use and precautionary statements necessary for safe and effective use are required on commercial feeds distributed to supply particular dietary needs or for supplementing or fortifying the usual diet or ration with any vitamin, mineral, or other dietary nutrient or compound.

(4) Commercial and custom mixed feeds containing 50% or more grass seed screenings shall be labeled with the following precautionary statement: “Caution: This feed contains screenings that may contain endophytes. Do not feed in excess of 30% of the total diet. Do not feed free-choice.”

Stat. Auth.: ORS 633.006-089, 633.992, 561.605 & 561.620

Stats. Implemented:

Hist.: DOA 13-2011, f. & cert. ef. 8-12-11

603-058-0180

Non-Protein Nitrogen

(1) Urea and other non-protein nitrogen products defined in the 2011 edition of the official publication of the Association of American Feed Control Officials are acceptable ingredients only in commercial feeds for ruminant animals as a source of equivalent crude protein. If the commercial feed contains more than 8.75% of equivalent crude protein from all forms of non-protein nitrogen, added as such, exceeds one-third of the total crude protein, the label shall bear adequate directions for the safe use of feeds and a precautionary statement: “CAUTION: USE AS DIRECTED.” The directions for use and the caution statement shall be in a type of such size so placed on the label that they will be read and understood by ordinary persons under customary conditions of purchase and use.

(2) Non-protein nitrogen defined in the 2011 edition of Official Publication of the Association of American Feed Control Officials, when so indicated, are acceptable ingredients in commercial feeds distributed to non-ruminant animals as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from non-protein nitrogen sources when used in non-ruminant rations shall not exceed 1.25% of the total daily ration.

(3) On labels such as those for medicated feeds which bear adequate feeding directions and /or warning statements, the presence of added non-protein nitrogen shall not require a duplication of the feeding directions or the precautionary statements as long as those statements include sufficient information to ensure the safe and effective use of this product due to the presence of non-protein nitrogen.

Stat. Auth.: ORS 633.006-089, 633.992, 561.605 & 561.620

Stats. Implemented:

Hist.: DOA 13-2011, f. & cert. ef. 8-12-11

603-058-0190

Drugs and Feed Additives

(1) Prior to approval of a registration application and /or approval of a label for commercial feed which contains additives (including drugs, other special purpose additives, or non-nutritive additives) the distributor may be required to submit evidence to prove safety and efficacy of the commercial feed when used according to the directions furnished on the label. Satisfactory evidence to prove safety and efficacy of a commercial feed may include:

(a) When the commercial feed contains such additives, the use of the additive conforms to the requirements of the applicable regulation in the Code of Federal Regulations, Title 21 effective as of the date these rules are promulgated, or which are “prior sanctioned”

or “informal review sanctioned” or “generally recognized as safe” for such intended use, or

(b) When the commercial feed is itself a new animal drug as defined in Code of Federal Regulations, Title 21, Part 510.3 (g) effective as of the date these rules are promulgated and is generally recognized as safe and effective for the labeled use or is marketed subject to an application conditionally approved by the Food and Drug Administration under Sec. 512 [21 U.S.C. 360 b] of the Federal Food, Drug, and Cosmetic Act, or

(c) When one of the purposes for feeding a commercial feed is to impart immunity (that is to act through some immunological process) the constituents imparting immunity have been approved for the purpose through the Federal Virus, Serum and Toxins Act of 1913, or

(d) When the commercial feed is a direct fed microbial product and:

(i) The product meets the particular fermentation product definition, and

(ii) The microbial content statement, as expressed in the labeling, is limited to the following: “Contains a source of live (viable) naturally occurring microorganisms.” This statement shall appear on the label, and

(iii) The source is stated with a corresponding guarantee expressed in accordance with OAR 603-508-0140(7).

(e) When the commercial feed is an enzyme product and:

(i) The product meets the particular enzyme definition defined by the 2011 edition of the official publication of the Association of American Feed Control Officials, and

(ii) The enzyme activity is stated with a corresponding guarantee expressed in accordance with OAR 603-058-0140(8).

Stat. Auth.: ORS 633.006-089, 633.992, 561.605 & 561.620

Stats. Implemented:

Hist.: DOA 13-2011, f. & cert. ef. 8-12-11

603-058-0200

Adulterants

(1) Wild Bird Feed. Pursuant to ORS 633.045(7), a person may not sell or otherwise distribute wild bird feed containing viable noxious weed seeds that exceed the amounts stated in this rule.

(2) Wild bird feed is defined in ORS 633.006(20).

(3) Wild bird feed sold or distributed to the final consumer shall contain:

(a) No viable prohibited noxious weed seed listed in OAR 603-056-0205(1) Prohibited noxious weed seeds.

(b) No more viable restricted noxious weed seed than the maximum allowable number of seeds per pound specified by species in OAR 603-056-0205(2) Restricted noxious weed seeds.

(4) For the purpose of ORS 633.045, the terms “poisonous or deleterious substances” include but are not limited to the following:

(a) Fluorine and any mineral or mineral mixture which is to be used directly for the feeding of domestic animals and in which the fluorine exceeds 0.20% for the breeding and dairy cattle; 0.30% for slaughter cattle; 0.30% for sheep; 0.35% for lambs; 0.45% for swine; and 0.60% for poultry;

(b) Fluorine bearing ingredients when used in such amounts that they raise the fluorine content of the total ration (exclusive of roughage) above the following amounts: 0.004% for breeding and dairy cattle; 0.009% for slaughter cattle; 0.006% for sheep; 0.01% for lambs; 0.015% for swine and 0.03% for poultry;

(c) Fluorine bearing ingredients incorporated in any feed that is fed directly to cattle, sheep or goats consuming roughage (with or without) limited amounts of grain, that results in a daily fluorine intake in excess of 50 milligrams of Fluorine per 100 pounds of body weight;

(d) Soybean meal flakes or pellets or other vegetable meals, flakes or pellets, which have been extracted with trichloroethylene or other, chlorinated solvents;

(e) Sulfur Dioxide, Sulfurous acid, and salts of Sulfurous acid when used in or on feeds or feed ingredients which are considered or reported to be a significant source of vitamin B1 (Thiamine);

(f) Selenium in swine gestation or lactation complete diets that exceeds 1.00ppm;

(g) Lolitrem b in excess of 1800 ppb in the total diet;

(h) Ergovaline in excess of: 300 ppb in equine total diets; 400 ppb in cattle total diets and 500 ppb in the total diets of sheep and goats.

(5) All screenings or by-products of grains and seeds containing weed seeds, when used in commercial feed or sold as such to the ultimate consumer, shall be ground fine enough or otherwise treated to destroy the viability of such weed seeds so that the finished product contains:

(a) No viable prohibited noxious weed seed listed in OAR 603-056-0205(1) Prohibited noxious weed seeds, and

(b) No more viable restricted noxious weed seed than the maximum allowable number of seeds per pound specified by species in OAR 603-056-0205(2) Restricted noxious weed seeds.

Stat. Auth.: ORS 633.006-089, 633.992, 561.605 & 561.620

Stats. Implemented:

Hist.: DOA 13-2011, f. & cert. ef. 8-12-11

603-058-0210

Good Manufacturing Practices (GMP’s)

For the purpose of enforcing ORS 633.045 (6) the department adopts the following good manufacturing practices:

(1) The regulations prescribing good manufacturing practices for type B and Type C medicated feeds as published in the Code of Federal Regulations, Title 21, Part 225, Section 225.1-225.202 effective as of the date these rules are promulgated.

(2) The regulations prescribing good manufacturing practices for Type A Medicated Articles as published in the Code of Federal Regulations, Title 21, Part 226, Sections 226.1-226.115 effective as of the date these rules are promulgated.

Stat. Auth.: ORS 633.006-089, 633.992, 561.605 & 561.620

Stats. Implemented:

Hist.: DOA 13-2011, f. & cert. ef. 8-12-11

603-058-0220

Certain Mammalian Proteins are Prohibited in Ruminant Feed

Pursuant to ORS 633.045(1) deleterious substances, the Department adopts the requirements of title 21, Code of Federal Regulations parts 589.2000 and 589.2001 effective as of the date these rules are promulgated.

Stat. Auth.: ORS 633.006-089, 633.992, 561.605 & 561.620

Stats. Implemented:

Hist.: DOA 13-2011, f. & cert. ef. 8-12-11

603-058-0230

Labeling of Processed Animal Waste

(1) Animal waste products sold, held for sale, or offered for sale shall be identified in accordance with the definitions, and shall conform to the requirements of this section. Such products, which are utilized for animal feeding on the premises, where produced, by the person whose animals produced the same, shall conform generally to the provisions of this rule:

(a) “Processed animal waste” is a processed product composed of total excreta, with or without litter, from poultry or ruminant animals. It shall not contain levels of drug residue, pesticide residue, or other toxic or deleterious substances that could be harmful to animals or result in harmful or unlawful residue levels in their tissue or by-products. The final moisture of the product shall not exceed 12 percent, except as provided in section (2) of this rule. It shall not be used in feed for lactating dairy animals. If used in a mixed feed, the maximum percentage of processed animal waste shall be stated on the label of such mixed feed. It shall not be fed to animals within 15 days of slaughter. Processed animal waste includes the following:

(b) “Dried Poultry Waste” is processed undiluted poultry excreta collected from cage layer flocks. The product shall be uniform and contain not less than 25 percent crude protein, not more than 15 percent crude fiber, and not more than 30 percent ash. It shall be labeled to show minimum protein, maximum equivalent crude protein from nonprotein nitrogen, minimum fat, maximum fiber, maximum ash, maximum and minimum salt (NaCl), maximum and minimum calcium (Ca), and minimum phosphorus (P). The product shall not contain more than 1 percent feathers;

(c) “Dried Poultry Litter” is the processed combination of total poultry excreta and litter that occurs in the floor production of poul-

try. The product shall be uniform and contain not less than 18 percent protein. The type of litter shall be a part of the product name. It shall be labeled to show minimum protein, maximum equivalent crude protein from nonprotein nitrogen, minimum fat, maximum fiber, maximum ash, maximum and minimum calcium (Ca), minimum phosphorus (P), and maximum and minimum salt (NaCl);

(d) "Dried Ruminant Waste" is processed bovine excreta free of extraneous material such as straws, wood shavings, dirt, and similar materials. The product shall be uniform and contain not less than 12 percent crude protein and not more than 30 percent crude fiber and 20 percent ash. It shall be labeled to show minimum protein, maximum equivalent crude protein from nonprotein nitrogen, minimum fat, maximum fiber, maximum ash, and maximum and minimum salt (NaCl).

(2) Processed Animal Waste in excess of 12 percent moisture including slurries, silages, and other semidry products shall conform to the requirements of section (1) of this rule except for the moisture limitation stated therein. If sold for feeding purposes, it shall be labeled to show type of process, maximum moisture, minimum protein, maximum equivalent crude protein from nonprotein nitrogen, minimum fat, maximum fiber, maximum ash, and maximum and minimum salt (NaCl).

Stat. Auth.: ORS 633.006-089, 633.992, 561.605 & 561.620

Stats. Implemented:

Hist.: DOA 13-2011, f. & cert. ef. 8-12-11

603-058-0240

License Fees for Feed Manufacturers, Wholesale Distributors, Feed Registrants, and Certain Feeders

The license fees for any person operating a feed manufacturing plant (per location), or acting as a wholesale distributor of feeds, or registering feeds for distribution in Oregon, or acting as a contract feeder wherein drugs in any form are utilized in the manufacturing of such feed, shall be in accordance with the following:

(1) Non-Manufacturing Licenses: A license fee of \$100 for wholesale distributors, retailers who register feeds, re-labelers or contract feeders who are not feed manufacturers.

(2) Manufacturing Licenses:

(a) A license fee for each Oregon manufacturing location based upon annual distribution of commercial feeds in Oregon, in accordance with the schedule set forth in section (3) of this rule;

(b) A license fee for each company with manufacturing located outside of Oregon based on their annual distribution of commercial feeds into Oregon. Companies with multiple locations outside of Oregon only need to obtain one license and combine the tons distributed in Oregon;

(c) Firms with mills both in Oregon and outside Oregon must obtain licenses under OAR 603-058-0240(2)(a) and 603-058-0240(2)(b).

(3) The annual fee schedule based upon annual Oregon distribution of commercial feed is as follows: Annual Tonnage — Annual Fee:

- (a) Less than one (1) ton of wildbird seed — \$10;
- (b) Less than 5,000 tons — \$100;
- (c) 5,000 to 9,999 tons — \$200;
- (d) 10,000 to 19,999 tons — \$300;
- (e) 20,000 to 29,999 tons — \$400;
- (f) Greater than 30,000 tons — \$500.

Stat. Auth.: ORS 633.006-089, 633.992, 561.605 & 561.620

Stats. Implemented:

Hist.: DOA 13-2011, f. & cert. ef. 8-12-11

603-058-0250

Feed Product Registration Fee

The annual registration fee for each formula, product or formulation of commercial feed under each brand shall be \$20, which fee is payable at the time an application for registration is made to the Department. A firm must hold a manufacturing license or non-manufacturing license to register feed products.

Stat. Auth.: ORS 633.006-089, 633.992, 561.605 & 561.620

Stats. Implemented:

Hist.: DOA 13-2011, f. & cert. ef. 8-12-11

603-058-0260

Certificates of Free Sale

(1) To enhance trade with foreign countries the department will provide certificates of free sale when requested by firms. Certificates are provided at no cost. Multiple feed products may be put on each certificate.

(2) Certificates will be provided within 30 calendar days of initial request. Product must be registered to sell in Oregon when the certificate request is made.

Stat. Auth.: ORS 633.006-089, 633.992, 561.605 & 561.620

Stats. Implemented:

Hist.: DOA 13-2011, f. & cert. ef. 8-12-11

603-058-0270

Referee Samples May Be Taken

(1) The Department may be called upon to collect samples of commercial or custom feeds to resolve issues between animal feeders and feed suppliers. Either party may contact the Department and request a referee sample to be taken.

(2) A department representative will take the sample and provide a representative split of it to each party. The sample will be submitted to the lab designated by the department for tests designated by the animal feeder. The department will pay the testing costs.

(3) Unofficial samples submitted by the animal feeder may be accepted as a referee sample at the department's discretion. This should only be done when time is of the essence or travel time is cost prohibitive.

(4) Lab results of referee samples will be provided to both parties. Results are not to be released as public records.

Stat. Auth.: ORS 633.006-089, 633.992, 561.605 & 561.620

Stats. Implemented:

Hist.: DOA 13-2011, f. & cert. ef. 8-12-11

603-058-0280

Reserved

Stat. Auth.: ORS 633.006-089, 633.992, 561.605 & 561.620

Stats. Implemented:

Hist.: DOA 13-2011, f. & cert. ef. 8-12-11

603-058-0290

Reserved

Stat. Auth.: ORS 633.006-089, 633.992, 561.605 & 561.620

Stats. Implemented:

Hist.: DOA 13-2011, f. & cert. ef. 8-12-11

DIVISION 59

FERTILIZERS, AGRICULTURAL MINERALS, AND LIMES

603-059-0020

Inspection Fees

(1) The inspection fees authorized to be established by ORS 633 and payable under ORS 633 are as follows:

- (a) Forty five cents (\$0.45) for each ton of fertilizer;
- (b) Forty five cents (\$0.45) for each ton of agricultural mineral;

(c) Forty five cents (\$0.45) for each ton of agricultural amendment;

(d) Five cents (\$0.05) for each ton of fertilizer, agricultural mineral, or agricultural amendment containing 100% "compost" as defined in ORS 633.311.

(e) Five cents (\$0.05) for each ton of gypsum.

(2) A portion of the inspection fees paid to the department for fertilizer, agricultural minerals and agricultural amendments shall be continuously appropriated for the purpose of funding grants for research and development related to the interaction of fertilizer, agricultural mineral or agricultural amendment products and ground water or surface water as described in ORS 633. The portion of fees so appropriated shall be determined by the Department based on the recommendation of the Fertilizer Research Committee (ORS 633.479).

(3) The inspection fees specified in section (1) of this rule shall be in effect commencing January 1, 2013.

Stat. Auth.: ORS 561.190 & 633 as amended by Ch. 914 OL 2001
 Stats. Implemented: ORS 561.190 & 633
 Hist.: AD 1071(17-75), f. & ef. 11-20-75; AD 10-1978, f. & ef. 7-10-78; AD 15-1983, f. 11-23-83, ef. 12-31-83; AD 14-1989, f. 10-12-89, cert. ef. 10-9-89; AD 1-1996, f. & cert. ef. 2-12-96; DOA 24-2001, f. & cert. ef. 10-15-01; DOA 12-2004, f. 4-15-04 cert. ef. 7-1-04; DOA 12-2012, f. 5-17-12, cert. ef. 1-1-13

**603-059-0025
 Declaration of Lime Score**

(1) In addition to the labeling requirements of ORS 633.330, the lime invoice or label shall also state the guarantee for “Lime Score (Oregon)” which is defined as a numerical expression of the quality of lime.

(2) The “Lime Score (Oregon)” shall be determined in accordance with the equations and calculations set forth in the **Oregon State University Fertilizer Guide for Fertilizer and Lime Materials, FG52**, as revised June 1990.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 & 633
 Stats. Implemented: ORS 633.330
 Hist.: AD 10-1978, f. & ef. 7-10-78; AD 4-1982, f. & ef. 5-20-82; AD 8-1992, f. & cert. ef. 7-13-92

**603-059-0030
 Registration Fees**

(1) The registration fee authorized to be established by ORS 633 for each fertilizer, agricultural mineral, agricultural amendment or lime product is as follows: Twenty Five dollars (\$25.00) per year for each product registered;

(2) The registration fee specified in section (1) of this rule shall be in effect commencing January 1, 2002.

Stat. Auth.: ORS 561.190 & 633 as amended by Ch. 914 OL 2001
 Stats. Implemented:
 Hist.: DOA 24-2001, f. & cert. ef. 10-15-01

**603-059-0040
 Manufacturer/Bulk Distributor License Fee**

(1) The license fee authorized to be established by ORS 633 for each manufacturer/bulk distributor license is as follows: Fifty dollars (\$50.00) per year for each business licensed;

(2) The license fee specified in section (1) of this rule shall be issued to a primary qualifying business entity. A separate and distinct license is not required for each facility location, however, all locations will be required to be identified on the license application.

(3) The license fee specified in section (1) of this rule shall be in effect commencing January 1, 2002.

Stat. Auth.: ORS 561.190 & 633 as amended by Ch. 914 OL 2001
 Stats. Implemented:
 Hist.: DOA 24-2001, f. & cert. ef. 10-15-01

**603-059-0050
 Evaluation Fee**

(1) The product evaluation fee authorized to be established by ORS 633 is as follows:

- (a) Fifty dollars (\$50.00) upon initial product registration;
- (b) Fifty dollars (\$50.00) upon product reregistration or reevaluation of product registration if regulations, label claims or supporting documentation has changed.

(2) The fee specified in section (1) of this rule shall be in effect commencing January 1, 2002.

Stat. Auth.: ORS 561.190 & 633 as amended by Ch. 914 OL 2001
 Stats. Implemented:
 Hist.: DOA 24-2001, f. & cert. ef. 10-15-01

**603-059-0055
 Labeling Requirements**

(1) Any fertilizer, agricultural mineral, agricultural amendment or lime product distributed in this state must have the following information included as part of the product label required by ORS 633.321 to 633.341. At a minimum, one of the following labeling statements:

(a) “Information regarding the contents and levels of metals in this product is available on the internet at <http://www.regulatory-info-xx.com>”. Each registrant must substitute a unique alpha numeric

identifier for “xx”. This statement may be used only if the registrant establishes and maintains the internet site and the internet site meets the following criteria:

(A) There is no advertising or company-specific information on the site;

(B) There is a clearly visible, direct hyperlink to the department’s internet site specified in (b) of this subsection (1); and

(C) Any other criteria adopted by the director by rule.

(b) “Information regarding the contents and levels of metals in this product is available at the Oregon Dept of Agriculture internet site: <http://oda.state.or.us/fertilizer>”.

(c) “Information regarding the contents and levels of metals in this product is available on the internet at...” The Association of American Plant Food Control Officials’ hosted website developed to provide a uniform label internet address to access product content information is to be inserted to complete the above sentence. This specific address is the only AAPFCO web address that will be allowed for this product labeling purpose.

(2) At a minimum, the following product information will be maintained by the Department on the internet:

- (a) Product name including brand name;
- (b) Registrant name;
- (c) Guaranteed primary, secondary and micronutrients;
- (d) Lime Score for lime products;
- (e) Levels of arsenic, cadmium, lead, mercury, and nickel; and
- (f) State registration status.

(3) Any fertilizer, agricultural mineral, agricultural amendment, or lime product sold, offered for sale, or distributed in this state must be labeled in accordance to 603-059-0055(1) by January 1, 2004.

(4) Failure to label a fertilizer, agricultural mineral, agricultural amendment, or lime product pursuant to 603-059-0055(1) which is sold, offered for sale, or distributed in this state on or after January 1, 2004 shall be considered mislabeled. Mislabeled of any fertilizer, agricultural mineral, agricultural amendment or lime product in this manner is a violation of ORS 633.366(1)(a) as a Category III violation.

Stat. Auth.: ORS 561.190 & 633 as amended by Ch. 914 OL 2001
 Stats. Implemented: ORS 633 as amended by Ch. 914 OL 2001
 Hist.: DOA 24-2002, f. 12-2-02, cert. ef. 1-1-03

**603-059-0070
 Investigational Allowances, Minimum Detection Limits**

(1) Investigational allowance means an allowance for variations inherent in the taking, preparation and analysis of an official sample. The following investigational allowances provide enforcement consistency in determining deficiencies in products addressed in the administration of ORS 633.311 to 633.479 and 633.994. Products will be deemed deficient if the analysis of any nutrient, or Lime Score calculation, is below the guarantee by an amount exceeding the following values:

(a) Investigational allowances for primary nutrients are as follows:

% Guarantee — N — P2O5 — K2O
4% or Less — 0.49 — 0.67 — 0.41
5% — 0.51 — 0.67 — 0.43
6% — 0.52 — 0.67 — 0.47
7% — 0.54 — 0.68 — 0.53
8% — 0.55 — 0.68 — 0.60
9% — 0.57 — 0.68 — 0.65
10% — 0.58 — 0.69 — 0.70
12% — 0.61 — 0.69 — 0.79
14% — 0.63 — 0.70 — 0.87
16% — 0.67 — 0.70 — 0.94
18% — 0.70 — 0.71 — 1.01
20% — 0.73 — 0.72 — 1.08
22% — 0.75 — 0.72 — 1.15
24% — 0.78 — 0.73 — 1.21
26% — 0.81 — 0.73 — 1.27
28% — 0.83 — 0.74 — 1.33
30% — 0.86 — 0.75 — 1.39
32% or More — 0.88 — 0.76 — 1.44

For Diamonium Phosphate and Monamonium Phosphate, the investigational allowance for P2O5 shall be 0.70.

For guarantees not listed, calculate the appropriate value by interpolation.

(b) Investigational allowances for secondary nutrients and micronutrients are as follows:

Element — Investigational Allowance

- Ca — 0.2 Unit + 5% of Guarantee
- Mg — 0.2 Unit + 5% of Guarantee
- S — 0.2 Unit + 5% of Guarantee
- B — 0.003 Unit + 15% of Guarantee
- Co — 0.0001 Unit + 30% of Guarantee
- Cl — 0.005 Unit + 10% of Guarantee
- Cu — 0.005 Unit + 10% of Guarantee
- Fe — 0.005 Unit + 10% of Guarantee
- Mn — 0.005 Unit + 10% of Guarantee
- Mo — 0.0001 Unit + 30% of Guarantee
- Na — 0.005 Unit + 10% of Guarantee
- Zn — 0.005 Unit + 10% of Guarantee

“UNIT” is twenty (20) pounds of plant food or one percent (1%) of a ton
The maximum allowance when calculated in accordance to the above shall be 1 unit (1%).

(c) Investigational allowances for lime products are as follows:

(A) When the Lime Score is found to be more than 5% deficient from the stated Lime Score.

(B) When the amount of calcium carbonate, calcium oxide, magnesium carbonate or magnesium oxide content is found to be more than 10% below the guarantee.

(2) Minimum detection limits for laboratory analysis reports of metal levels required by the department in accordance with ORS 633.362 must be declared at, or below, the following:

- Arsenic — 10.0 ppm
- Cadmium — 05.0 ppm
- Lead — 05.0 ppm
- Mercury — 0.20 ppm
- Nickel — 05.0 ppm

Stat. Auth.: ORS 561.190 & 633 as amended by Ch. 914 OL 2001

Stats. Implemented: ORS 633 as amended by Ch. 914 OL 2001

Hist.: DOA 24-2002, f. 12-2-02, cert. ef. 1-1-03

603-059-0080

Enforcement Guidelines

(1) In addition to any other penalty provided by law, the Director may assess civil penalties for prohibited acts identified in ORS 633.366. Civil penalties will be issued in accordance to the magnitude of the violation. The department is not precluded from utilizing other enforcement alternatives. Enforcement alternatives may include, but are not limited to, letter of advisement, notice of violation, stop sale, use or removal order, and license/registration revocation, suspension or denial. Commission of each prohibited act is a violation of ORS Chapter 633 and subject to a civil penalty. Prohibited acts are categorized as to the magnitude of violation as follows:

(a) **Category I (Major):** The Department will issue a civil penalty for initial Category I violations in addition to any alternative enforcement action deemed necessary to protect the public interests. Category I violations include:

(A) ORS 633.366(1)(b) Register or attempt to register any product using fraudulent or deceptive practices to evade or attempt to evade the requirements of ORS 633.311 to 633.479 and 633.994 or rules adopted thereunder;

(B) ORS 633.366(1)(g) Make false or fraudulent applications, records, invoices or reports;

(C) ORS 633.366(1)(j) Sell, use or remove any product subjected to a stop sale, use or removal order until the product has been released in accordance with ORS 633.445;

(D) ORS 633.366(1)(k) Impede, obstruct, hinder or otherwise prevent or attempt to prevent the department from the performance of department duties under ORS 633.311 to 633.479 and 633.994.

(b) **Category II (Moderate):** The Department will take initial alternative enforcement action and may allow a specified amount of time to take corrective action prior to issuance of a civil penalty for a Category II violation. Failure to complete the required corrective action within the specified time period, or repeat violations, will result in the immediate issuance of a civil penalty. Category II violations include:

(A) Sell, offer for sale, or distribute adulterated products (ORS 633.366(1)(c));

(B) Fail, refuse, or neglect to keep or maintain records as required under ORS 633.461, 633.471 and 633.476 or refuse to make available such records pursuant to ORS 633.385 upon request by the department (ORS 633.366(1)(f));

(C) Knowingly or intentionally make any false or misleading representations in connection with the sale, offer for sale, or distribution of fertilizer, agricultural amendment, agricultural mineral, or lime products (ORS 633.366(1)(L)).

(c) **Category III (Minor):** The Department will take initial alternative enforcement action in writing and will allow a specified amount of time to take corrective action prior to the issuance of a civil penalty for a Category III violation. Failure to complete the corrective action within the specified time period, or repeat violations, may result in the immediate issuance of a civil penalty. Category III violations include:

(A) Sell, offer for sale, or distribute mislabeled products (ORS 633.366(1)(a)), including, but not limited to, when the product is:

(i) Deemed deficient as defined in 603-059-0070(1)(a)-(c);

(ii) Not labeled pursuant to 603-059-0055(1).

(B) Fail, refuse, or neglect to deliver to a purchaser of a bulk fertilizer, agricultural amendment, agricultural mineral or lime product a printed label that complies with ORS 633.321 to 633.341 (633.366(1)(d));

(C) Sell, offer for sale, or distribute a fertilizer, agricultural amendment, agricultural mineral or lime product that is not registered with the State Department of Agriculture under ORS 633.362 (633.366(1)(e));

(D) Fail, refuse, or neglect to provide notification to the department as required by ORS 633.318(5) or 633.362(8) (633.366(1)(h));

(E) Fail, refuse, or neglect to obtain a manufacturer-bulk distributor license required under ORS 633.318 (633.366(1)(i));

(F) Fail, refuse, or neglect to file a semiannual statement with the department as required under ORS 633.461 or 633.471 (633.366(1)(m));

(G) Fail, refuse, or neglect to pay inspection fees required under ORS 633.461 (633.366(1)(n)).

(d) To “refuse,” in the context of these prohibited acts, constitutes a willful misconduct violation and is subject to a civil penalty of not more than \$10,000 for the initial violation or any subsequent violation.

(2) Maximum civil penalties are not to exceed the following:

Category — 1st Violation — 2nd Violation — 3rd+ Violation

Category I (Major) — \$500 — \$1500 — \$10,000

Category II (Moderate) — \$250 — \$750 — \$5000

Category III (Minor) — \$125 — \$375 — \$2500

(3) As authorized by ORS 633.994(5) A civil penalty imposed under ORS 633.311 to 633.479 and 633.994 may be remitted or reduced upon such terms and conditions as the Director of Agriculture considers proper and consistent with the public health and safety.

(4) As authorized by ORS 633.994(3), any violation that arises from gross negligence or willful misconduct and results in substantial harm to human health or the environment may be subject to a civil penalty of not more than \$10,000 for the initial violation or any subsequent violation.

Stat. Auth.: ORS 561.190 & 633 as amended by Ch. 914 OL 2001

Stats. Implemented: ORS 633 as amended by Ch. 914 OL 2001

Hist.: DOA 24-2002, f. 12-2-02, cert. ef. 1-1-03

603-059-0100

Limits of Non Nutritive Constituents

(1) Fertilizer, agricultural amendment, agricultural mineral and lime products sold or distributed in the state and required to be registered with the Department shall be limited in the level of the metals arsenic (As), cadmium (Cd), mercury (Hg), lead (Pb), and nickel (Ni), contained therein, specifically:

(a) When the product has a guaranteed analysis of available phosphate (P2O5), for each percent of P2O5 guaranteed, the maximum allowed level of a metal, expressed in parts per million (ppm), must not exceed: 9 ppm arsenic, 7.5 ppm cadmium, 43 ppm lead, 0.7 ppm mercury, 175 ppm nickel.

(A) To determine the maximum allowed concentration of each metal in a product, multiply the percent guaranteed P2O5 for the product by the maximum allowed level of the metal.

(B) For the purpose of calculating the maximum allowed concentration of a metal in a product with a guaranteed analysis of less than six percent P2O5, the minimum percent of P2O5 utilized as a multiplier shall be 6.0.

(b) When the product has no guaranteed analysis of available phosphate (P2O5) but does have a guaranteed analysis of one micronutrient, for each percent of the micronutrient guaranteed, the maximum allowed level of a metal, expressed in parts per million (ppm), must not exceed: 76 ppm arsenic, 61 ppm cadmium, 340 ppm lead, 4.5 ppm mercury, 1330 ppm nickel.

(A) To determine the maximum allowed concentration of each metal in a product, multiply the percent of the micronutrient guaranteed for the product by the maximum allowed level of the metal.

(B) For the purpose of calculating the maximum allowed concentration of a metal in a product with less than one percent micronutrient guaranteed, the minimum percent of micronutrient utilized as a multiplier shall be 1.0.

(c) When the product has no guaranteed analysis of available phosphate (P2O5) but does have a guaranteed analysis of two or more micronutrients, for each percent of the micronutrient in the greatest concentration, the product shall not contain more than 76 parts per million (ppm) arsenic, 61 ppm cadmium, 340 ppm lead, 4.5 ppm mercury, 1330 ppm nickel.

(A) To determine the maximum allowed concentration of each metal in a product, multiply the percent of the micronutrient guaranteed for the product in the greatest concentration by the maximum allowed level of each metal.

(B) For the purpose of calculating the maximum allowed concentration of a metal in a product with less than one percent micronutrient guaranteed, the minimum percent of micronutrient utilized as a multiplier shall be 1.0.

(d) When the product has a guaranteed analysis of available phosphate (P2O5) and has a guaranteed analysis of one micronutrient, the product shall not contain more of any metal than the higher of the two resulting values as calculated in (a) or (b) above, specifically: To determine the maximum allowed concentration of a metal in a product, multiply the percent guaranteed P2O5 for the product by the maximum allowed level of the metal as stated in (a) above. Then multiply the percent of the micronutrient guaranteed for the product by the maximum allowed level of the metal as stated in (b) above. Utilize the higher of the two resulting values as the maximum allowable metal concentration.

(e) When the product has a guaranteed analysis of available phosphate (P2O5) and has a guaranteed analysis of two or more micronutrients, the product shall not contain more of any metal than the higher of the resulting values as calculated in (a) or (c) above. To determine the maximum allowed concentration of each metal in a product, multiply the percent guaranteed P2O5 for the product by the maximum allowed level of the metal as stated in (a) above. Then multiply the highest percent of a micronutrient guaranteed for the product by the maximum allowed level of the metal as stated in (c) above. Utilize the higher of the resulting values as the maximum allowable metal concentration.

(f) When the product has no guaranteed analysis of available phosphate (P2O5) and no guaranteed analysis of a micronutrient, the product shall not contain more than: 54 parts per million (ppm) arsenic, 45 ppm cadmium, 258 ppm lead, 4.2 ppm mercury, 1050 ppm nickel.

(2) Any fertilizer, agricultural amendment, agricultural mineral or lime product which is made from zinc recycled hazardous wastes as regulated under the Resource Conservation and Recovery Act (RCRA) must comply with the existing, applicable land disposal restriction (LDR) treatment standards for the hazardous wastes the products contain or comply with the conditions for excluding hazardous secondary materials as established in the Federal Register/Vol.67, No. 142/Wednesday, July 24, 2002/Pages 48393-48415.

(3) The department will review the permitted levels of metals or other substances in fertilizer, agricultural amendment, agricultural

mineral and lime products every three years as authorized by ORS 633.362(11).

(4) Registration of a fertilizer, agricultural amendment, agricultural mineral or lime product with the department does not entitle the user of such product to violate regulations administered by any other authority with jurisdiction, including Water Quality Standards administered by the Department of Environmental Quality.

Stat. Auth.: ORS 633 as amended by Ch. 914 OL 2001

Stats. Implemented: ORS 633 as amended by Ch. 914 OL 2001

Hist.: DOA 25-2002, f. 12-2-02, cert. ef. 1-1-03

DIVISION 60

GINSENG MANAGEMENT PROGRAM

603-060-0010

Purpose and Scope

This division establishes procedures for a ginseng management program administered by the Oregon Department of Agriculture as authorized by Oregon Laws 1997 Chapter 9.

Stat. Auth.: ORS 561.190 & OL 1997, Ch. 9

Stats. Implemented: OL 1997, Ch. 9

Hist.: AD 5-1997, f. & cert. ef. 6-4-97

603-060-0020

Definitions

As used in this division, the following definitions apply:

(1) "Certificate of Origin" means a legal document required for out-of-state or foreign trade attesting to the fact that a specific lot of ginseng was legally cultivated and harvested in Oregon.

(2) "Cultivated Ginseng" means ginseng which is growing or has been grown in tilled beds under shade of artificial structures or under natural shade and is cultivated by a person.

(3) "Dealer" means a person who buys cultivated ginseng for the purpose of resale, except that it does not include a person who buys dry root of cultivated ginseng solely for the purpose of final retail sale to consumers in the United States.

(4) "Department" means the department of agriculture of the state of Oregon.

(5) "Director" means the director of the department of agriculture or his duly appointed representative (Inspector).

(6) "Ginseng" means any part of the plant known as American Ginseng (*Panax quinquefolius* L.) including plants, whole roots, essentially intact roots, and root chunks and slices, but excluding root hairs, extracts, derivatives, leaves, stems, flowers and seeds.

(7) "Grower" means a person who grows cultivated ginseng except persons growing solely for personal use, direct retail sales, or direct sales to retail outlets within the state of Oregon.

(8) "Out-of-state ginseng" means ginseng originating from a state other than Oregon.

(9) "Person" means any individual, firm, partnership, corporation, company, association, governmental entity or any combination of individuals, or any employee, agent, or officer thereof.

(10) "Wild ginseng" means ginseng originating from within its natural range and which was grown in an uncultivated state and was collected from its native habitat.

Stat. Auth.: ORS 561.190 & OL 1997, Ch. 9

Stats. Implemented: OL 1997, Ch. 9

Hist.: AD 5-1997, f. & cert. ef. 6-4-97

603-060-0030

Growers and Dealers: Licensing

(1) No person may act as a grower or a dealer unless he or she is licensed with the department. Persons selling cultivated ginseng to dealers and/or out-of-state or foreign buyers must license as growers. Persons growing ginseng solely for personal use, direct retail sales within Oregon, direct sales to retail outlets within the State, or direct sales to in-state processors making derivatives or extracts do not need to obtain a growers license. Any person who acts as both a grower and a dealer shall be licensed as both a grower and a dealer.

(2) Licenses shall be renewed annually on a form provided by the department. Licenses expire on April 30th of each year. A grower shall pay to the department an annual license fee of \$25. A deal-

er shall pay an annual license fee of \$25. The department shall assign a license number to each person licensed under this subsection.

(3) Paragraph (1) of this section does not apply to a grower who sells or ships only live immature cultivated ginseng plants for propagation (not consumption). A nursery license is required for this activity if sales exceed the limit prescribed in the nursery law, ORS 571.057 and associated rule, OAR 603-054-0016. Growing and/or selling ginseng seed does not require a nursery license or a ginseng grower's license.

Stat. Auth.: ORS 561.190 & OL 1997, Ch. 9
Stats. Implemented: OL 1997, Ch. 9
Hist.: AD 5-1997, f. & cert. ef. 6-4-97; DOA 2-1999, f. & cert. ef. 1-5-99

**603-060-0040
Sale or Shipment of Cultivated Ginseng**

(1) The department shall, upon request, provide each licensed grower or dealer with certificates of origin. The department shall stamp each certificate of origin with the license number of the grower or dealer. A certificate of origin is valid only if used during the period for which the stamp license number of the grower was issued. Licensed growers or dealers may certify their own cultivated ginseng by filling out and signing a valid certificate of origin.

(2) No person may sell or ship cultivated ginseng to a dealer, out-of-state buyer or foreign buyer unless the cultivated ginseng is accompanied by a valid, completed certificate of origin which specifies the year of harvest, growers license number, location of harvest, and actual weight of ginseng sold. The person selling or shipping the cultivated ginseng shall send to the department a copy of the certificate of origin within 30 days. Each person who completes a certificate of origin shall retain a duplicate copy.

(3) No dealer may purchase or receive Oregon-grown cultivated ginseng unless it is accompanied by a completed certificate of origin from the grower. A dealer shall retain the original copy of each certificate of origin he or she receives.

(4) No dealer may purchase or receive out-of-state cultivated ginseng unless it is accompanied by a valid written certificate, issued by the state of origin, certifying that the shipment consists solely of out-of-state cultivated ginseng. The certificate shall include the location of harvest, year of harvest, and dry weight of the out-of-state cultivated ginseng included in the shipment. A dealer shall retain a copy of each written certificate he or she receives.

(5) Ginseng harvested or grown in Oregon must be kept separate from out-of-state ginseng. Out-of-state sources may not be declared on an Oregon certificate of origin.

(6) Growers and dealers shall keep records of transactions covered by paragraphs (2), (3), and (4) of this section. A licensed dealer shall keep a continuous log of purchases and sales of both cultivated and wild ginseng. A dealer or grower shall make all records that are required to be kept under this section available upon request to the department for inspection and copying. As a condition of relicensing, records required by this section shall be sent to the department by the end of each licensing year (April 30th). Listed weights of roots sold and roots in inventory shall equal root purchased/harvested within reasonable amounts, and may be verified by the department from time to time if deemed necessary.

Stat. Auth.: ORS 561.190 & OL 1997, Ch. 9
Stats. Implemented: OL 1997, Ch. 9
Hist.: AD 5-1997, f. & cert. ef. 6-4-97

**603-060-0050
Possession of Certified Wild Ginseng**

Oregon certificates of origin can not be used to certify wild ginseng. Wild ginseng roots legally certified in other states may be purchased, sold, transported, or exported within and out of state only by dealers licensed by the department in accordance with section 603-060-0030. Persons engaged in the retail marketing of wild ginseng to consumers within the state may purchase and retail out-of-state wild ginseng root in the normal course of their business provided the ginseng root is purchased from a registered dealer of any state having a Ginseng Management Program approved by the U.S. Fish and Wildlife Service and is accompanied by a certificate of origin issued by the state of origin of the ginseng.

Stat. Auth.: ORS 561.190 & OL 1997, Ch. 9

Stats. Implemented: OL 1997, Ch. 9
Hist.: AD 5-1997, f. & cert. ef. 6-4-97

**603-060-0060
Ginseng Advisory Committee**

(1) The Ginseng Advisory Committee shall consist of five members, representing both growers and dealers, appointed by the Director. The term of each member shall be three years from the date of appointment, except initially terms of one, two and three years will be used to stagger the terms of the committee members. Vacancies in office shall be filled by appointment for the unexpired term. An individual is not eligible to serve more than two consecutive terms as a member.

(2) At the first meeting in each year the committee shall select a chairperson. The Director of the State Department of Agriculture, or their representatives, shall be ex officio members without the right to vote.

(3) The committee shall meet at the call of the chairperson or the Director of the State Department of Agriculture. A majority of the members present at any meeting shall constitute a quorum, and majority vote of the quorum at any meeting shall constitute an official act of the committee.

Stat. Auth.: ORS 561.190 & OL 1997, Ch. 9
Stats. Implemented: OL 1997, Ch. 9
Hist.: AD 5-1997, f. & cert. ef. 6-4-97

**603-060-0070
Enforcement Actions**

(1) No person may knowingly include false information on any document or record required under this division, or submit false information to the department in connection with licensing in accordance with section 603-060-0030. No person may knowingly accept or retain a document or record required under this division that contains false information to facilitate the sale or shipment of ginseng in violation of this section.

(2) No person shall convey or otherwise provide any dealer, exporter, or other person an Oregon state shipment certificate for which the weight in ginseng roots stated to be legally certified exceeds the weight of ginseng actually being sold or otherwise exchanged.

(3) The department may by an order suspend or revoke the license of a dealer or a grower and may invalidate certificates of origin completed by the dealer or grower, if the department finds that the dealer or grower has violated any of the provisions of this division. An order issued is subject to a right of hearing before the department, if requested. Hearings will be conducted pursuant to the APA and the Attorney General's Model Rules of Procedure.

Stat. Auth.: ORS 561.190 & OL 1997, Ch. 9
Stats. Implemented: OL 1997, Ch. 9
Hist.: AD 5-1997, f. & cert. ef. 6-4-97

**603-060-0080
Civil Penalty**

(1) In addition to any other liability or penalty provided by law, the Director of Agriculture may impose a civil penalty on a person for violation of any of the provisions of 603-060. The civil penalty for a first violation shall be a fine of not more than \$1,000. Upon a second violation, the department may impose a fine of not more than \$2,000.

(2) All penalties recovered under this chapter shall be deposited by the State Treasurer in the Department of Agriculture Service Fund. Such moneys are continuously appropriated to the department for the purpose of carrying out the ginseng management program.

Stat. Auth.: ORS 561.190 & OL 1997, Ch. 9
Stats. Implemented: OL 1997, Ch. 9
Hist.: AD 5-1997, f. & cert. ef. 6-4-97

**603-060-0090
Criminal Penalty**

Violation of any of the provisions of 603-060 is a misdemeanor.

Stat. Auth.: ORS 561.190 & OL 1997, Ch. 9
Stats. Implemented: OL 1997, Ch. 9
Hist.: AD 5-1997, f. & cert. ef. 6-4-97

SOIL AND WATER CONSERVATION

DIVISION 70

HEARING PROCEDURES

603-070-0005

Hearing Upon a Petition for the Formation of a District

The administrative procedures applicable to a hearing upon a petition for the formation of a district, as provided for in ORS 568.310, and the department's determination resulting therefrom, as provided for in ORS 568.330 and 568.340, shall be those specified in OAR 603-001-0005.

Stat. Auth.: ORS 561
 Stats. Implemented: ORS 561 & 568
 Hist.: SC 7, f. 7-26-74, ef. 8-25-74; AD 3-1982, f. & ef. 5-20-82, Renumbered from 667-011-0010

603-070-0010

Hearing Upon a Petition or Resolution to Consolidate Districts

The administrative procedures applicable to a hearing upon a petition to consolidate districts, as provided for in ORS 568.450, shall be those specified in OAR 603-001-0005.

Stat. Auth.: ORS 561
 Stats. Implemented: ORS 561 & 568
 Hist.: SC 7, f. 7-26-74, ef. 8-25-74; AD 3-1982, f. & ef. 5-20-82, Renumbered from 667-011-0015

603-070-0015

Hearing Upon a Petition to Discontinue a District

The administrative procedures applicable to a hearing upon a petition to discontinue a district, as provided for in ORS 568.480, shall be those specified in OAR 603-001-0005. These provisions shall also apply to consideration of discontinuance due to a district being inactive, as provided for in ORS 568.515.

Stat. Auth.: ORS 561
 Stats. Implemented: ORS 561 & 568
 Hist.: SC 7, f. 7-26-74, ef. 8-25-74; AD 3-1982, f. & ef. 5-20-82; Renumbered from 667-011-0020

603-070-0020

Hearing by a District Upon Land-Use Rules

The administrative procedures applicable to promulgation of land-use rules by a district, as provided for in ORS 568.630, shall be those specified in OAR 603-001-0005.

Stat. Auth.: ORS 561
 Stats. Implemented: ORS 561 & 568
 Hist.: SC 7, f. 7-26-74, ef. 8-25-74; AD 3-1982, f. & ef. 5-20-82, Renumbered from 667-011-0025

DIVISION 71

REFERENDUM AND ELECTION PROCEDURES

603-071-0005

Referendum on the Creation of a District

As authorized by subsection (1) of ORS 568.380, the administrative procedures applicable to a referendum on the creation of a district, as provided for in ORS 568.350 and 568.360, shall be as follows:

- (1) The department shall establish one or more voting places within, or if deemed more appropriate without, the proposed district. The department shall also establish the dates and hours for voting.
- (2) The department shall cause due notice, as defined in subsection (5) of ORS 568.210, to be published or posted at least 15 days prior to the referendum and shall include in such notice the time and place of voting and the proposition to be submitted to vote.
- (3) The department shall request of and obtain from the county clerk a list of registered voters residing within the proposed district, such list to be requested at least ten days prior to the time of the referendum. Such list shall constitute the registration of eligible voters for the referendum.
- (4) The department shall prepare and make available at the voting places at the time of the referendum, ballots in the form pre-

scribed in ORS 568.360. Procedures for absentee voting shall be in accordance with the provisions of ORS 253.010 to 253.120, and the department shall confer with the county clerk so as to comply therewith in lieu of the county clerk.

(5) The department shall tabulate and determine the results of the referendum, and shall cause such results to be published at least once in a newspaper of general circulation in the area.

(6) Proofs of publication and ballots, tally sheets and other referenda data shall be maintained by the department for at least six months after the referendum.

Stat. Auth.: ORS 561
 Stats. Implemented: ORS 568.380
 Hist.: SC 7, f. 7-26-74, ef. 8-25-74; AD 3-1982, f. & ef. 5-20-82; Renumbered from 667-012-0005

603-071-0010

Referendum on the Consolidation of Districts

The administrative procedures applicable to a referendum on the consolidation of districts, as provided for in ORS 568.450 and 568.460, shall be those specified in OAR 603-071-0005, except the ballots shall provide for approval or disapproval of consolidation.

Stat. Auth.: ORS 561
 Stats. Implemented: ORS 568.380
 Hist.: SCm7, f. 7-26-74, ef. 8-25-74; AD 3-1982, f. & ef. 5-20-82, Renumbered from 667-012-0010

603-071-0015

Referendum on the Discontinuance of a District

The administrative procedures applicable to a referendum on the discontinuance of a district, as provided for in ORS 568.480, shall be those specified in OAR 603-071-0005, except the ballots shall conform with the provisions of subsection (2) of ORS 568.480. These provisions shall also apply to referendums on discontinuance due to a district being inactive, as provided for in ORS 568.515.

Stat. Auth.: ORS 561
 Stats. Implemented: ORS 568.380
 Hist.: SC 7, f. 7-26-74, ef. 8-25-74; AD 3-1982, f. & ef. 5-20-82, Renumbered from 667-012-0015

603-071-0020

Referendum on District Adoption of Land-Use Rules

Subject to the requirements of ORS 568.640 and 568.650, the administrative procedures applicable to a referendum on promulgation of land-use rules, as provided for in ORS 568.640, shall be those specified in OAR 603-071-0005. These provisions shall also apply to referendums on amendments, supplements, or repeals of such land-use rules, as provided for in ORS 568.670. However, the eligible voters shall only be the owners of lands to which the proposed land-use rule, amendment, supplement, or repeal applies. The district shall survey and determine, with the assistance of county officials and records, the eligible voters and such determination shall constitute the registration of eligible voters.

Stat. Auth.: ORS 561
 Stats. Implemented: ORS 568.380
 Hist.: SC 7, f. 7-26-74, ef. 8-25-74; AD 3-1982, f. & ef. 5-20-82, Renumbered from 667-012-0020

603-071-0025

Procedure for District Zoning and Elections Affected Thereby

In accordance with the provisions of subsection (1) of ORS 568.560, whereby the department is directed to provide for the zoning of each Soil and Water Conservation District in order to assure proper representation of all people in the district and to facilitate district functions, the following procedure shall be followed:

- (1) Each Soil and Water Conservation District Board of Directors shall prepare a map of the district indicating the Board's proposed zones for the election of directors. In those districts where the Board of Directors consists of five members, the zones shall be three in number, and in those districts where the Board of Directors consists of seven members the zones shall be five in number.
- (2) After preparation of said zoning map, the same shall be submitted to the department which shall review the proposed zones for compliance with the provisions of ORS 568.560, and thereafter either

adopt the zones as proposed or modify the zones so as to cause the same to be in compliance with above cited statute.

(3) The department shall notify each Soil and Water Conservation District Board of Directors of the approved zoning of the district. Each director elected from one of the established zones shall meet the "land manager" requirements of subsection (1) of ORS 568.560, and the statutory provision for election of two "land occupiers" to a board (who need not be land managers), may be complied with by the election of two members at-large. Any registered voter residing within the district is qualified to be elected to an at-large position on the board.

Stat. Auth.: ORS 561
Stats. Implemented: ORS 568.380
Hist.: SC 8, f. & ef. 3-1-76; AD 3-1982, f. & ef. 5-20-82, Renumbered from 667-012-0025

**603-071-0030
Nominating Petitions for Directors**

(1) Except as provided in section (4) of this rule, nominating petitions of candidates for director to be voted for at a general election shall be filed with the department no later than the 70th day before the date of the election. The department shall file the nominating petition with the appropriate election officer no later than the 61st day before the date of the election, so that the appropriate election officer may perform the necessary election procedures.

(2) In the event of a vacancy in the office of a director, so that the provisions of either section (3) or (4) of this rule would apply, the district shall immediately prepare, and file with the department not later than 30 days after the vacancy occurs, a written confirmation of vacancy setting forth the date of vacancy, cause of vacancy, and identity of the office (term of office, position or zone, etc.).

(3) If a vacancy occurs in the office of a director, in addition to any other procedural requirements, the provisions of section (1) of this rule shall apply.

(4) If a vacancy occurs in the office of a director within a time period that would preclude compliance with section (1) of this rule, the appropriate election officer shall be immediately notified of this circumstance. Under this circumstance, nominating petitions of candidates for director shall be filed with the appropriate election officer for verification of signatures on the petitions no later than 20 days before the date of the election. The petitions shall thereafter be submitted by the election officer to the department for confirmation of the validity of the contents of the petitions and the need therefore. If the election is determined to be necessary, and the contents of the petitions appropriate, the department shall request the appropriate election officer to publish an amended Notice of Election, prepare supplemental election ballots and absentee ballots, and to perform other procedures prescribed in ORS Chapter 255 for district elections.

Stat. Auth.: ORS 561 & 568
Stats. Implemented: ORS 568.380
Hist.: AD 17-1986, f. & ef. 12-18-86

SOIL AND WATER CONSERVATION

DIVISION 72

**STREAMBANK CONTROL AND STREAM CORRIDOR
MANAGEMENT PROJECTS**

603-072-0005

Purpose

ORS 568.801 directs the department to adopt procedures to be utilized by soil and water conservation districts desiring to implement streambank erosion control or stream corridor management projects, which are to be funded in whole or in part with state funds. OAR 603-072-0010 to 603-072-0025 set forth such procedures.

Stat. Auth.: ORS 561 & 568
Stats. Implemented: ORS 568.912
Hist.: AD 14-1982, f. & ef. 11-1-82

603-072-0010

Definitions

As used in OAR 603-072-0005 to 603-072-0025:

(1) "Stream Corridor" means a perennial stream and its associated natural fringe and trees, which includes the area occupied by normal high water, the area in which the stream meanders, or in recent decades has meandered, and the immediately adjacent areas which support a belt of higher-growing vegetation needed to shade the water and protect the banks from excessive erosion, but does not include the whole of a valley floodplain.

(2) "Streambank Erosion" means the wearing away of the whole side of a streambank from the stream surface down to the foot of the streambank in the stream bottom, which wearing away is the result of the scouring action of moving water, which is a rate greater than a rate resulting in imperceptible change, and which is a threat to life, property or water quality.

Stat. Auth.: ORS 561 & 568
Stats. Implemented: ORS 568.912
Hist.: AD 14-1982, f. & ef. 11-1-82

603-072-0015

Eligibility

Any soil and water conservation district may apply to the department for implementation of a streambank erosion control or stream corridor management project so as to be eligible for partial state or federal funding of such activity. Another soil and water conservation district, or other local governmental agencies, may be co-participants with the applicant without jeopardizing the applicant's eligibility.

Stat. Auth.: ORS 561 & 568
Stats. Implemented: ORS 568.912
Hist.: AD 14-1982, f. & ef. 11-1-82

603-072-0020

Application Procedures

Applications for implementation of streambank erosion control or stream corridor management projects shall be on forms prescribed by the department, and shall contain all information requested therein. The application forms may be obtained from the department at its Salem office, and upon completion should be submitted to the department at such office at least 60 days before implementation of the activity is desired or expected.

Stat. Auth.: ORS 561 & 568
Stats. Implemented: ORS 568.912
Hist.: AD 14-1982, f. & ef. 11-1-82

603-072-0025

Departmental Determination on Application

Upon receipt of an application pursuant to OAR 603-072-0020, the department shall:

- (1) Review the application for completeness of information;
- (2) Consider the feasibility, public benefits and environmental effects of the proposed activity, and make such investigations as necessary to undertake such considerations;
- (3) Investigate the practicality of utilizing the resources of other state or federal agencies in carrying out the proposed activity;
- (4) Prepare a preliminary report and determination, and submit the same to the Soil and Water Conservation Commission for its review and comment; and
- (5) Prepare a final determination and forward a copy thereof to the applicant, within 90 days of receipt of the application.

Stat. Auth.: ORS 561 & 568
Stats. Implemented: ORS 568.912
Hist.: AD 14-1982, f. & ef. 11-1-82

DIVISION 73

PLANTS: WILDFLOWERS AND ENDANGERED, THREATENED, AND CANDIDATE SPECIES

603-073-0001

Purpose and Scope

These rules, authorized by ORS 564.040 and 564.105(6), are intended to provide for: protection of certain plants, wildflowers, and shrubs; guidelines on the listing, reclassification, and delisting of plant species as threatened or endangered; development of conservation programs intended to assist state agencies in the protection of threatened or endangered species; development of a permit system for commercial transactions and scientific taking of threatened and endangered species; and development of transplant and reintroduction protocols for endangered and threatened species.

Stat. Auth.: ORS 561 & 564

Stats. Implemented: ORS 561.190, 564.040 & 564.105(2), 564.105(4) & 564.105(6)

Hist.: AD 13-1995, f. & cert. ef. 7-12-95

603-073-0002

Definitions of Terms

As used in these rules:

(1) "Action" or "Land Action" means any activity resulting, or potentially resulting, in the taking of a threatened or endangered species, including all ground disturbing, vegetation disturbing, plant growth suppressing, or reproduction inhibiting activities within the known or suspected habitats of such species, or release of biocontrol agents directed at noxious weeds or other pest plant species, as well as any exchange, transfer, or sale of state-owned land that would result in any population of a listed species being removed from state jurisdiction (i.e., the land is no longer state-managed, as defined in these rules).

(2) "Candidate Species" means any plant species designated for study by the director whose numbers are believed low or declining, or whose habitat is sufficiently threatened and declining in quantity and quality, so as to potentially qualify for listing as a threatened or endangered species in the foreseeable future.

(3) "Department" means the Oregon State Department of Agriculture.

(4) "Director" means the Director of the Oregon State Department of Agriculture, or his or her designated representative.

(5) "Endangered Species" means:

(a) Any native plant species determined by the director to be in danger of extinction throughout all or any significant portion of its range; or

(b) Any plant species listed as an endangered species pursuant to the federal **Endangered Species Act of 1973** (PL 93-205, 16 USC § 1531), as amended.

(6) "Federal List" means the list of native plant species designated as endangered or threatened under the federal Endangered Species Act of 1973 (PL 93-205, 16 USC § 1531), as amended.

(7) "Land Action" — See "Action."

(8) "Listed Species" means any or all species listed as endangered or threatened under the procedures set forth in ORS 564.040–564.135 and these rules.

(9) "Native" means any indigenous or resident species currently or historically found in this state.

(10) "Ongoing Action" means any current continuous or intermittent action initiated prior to the enactment of these rules.

(11) "Person" means any person, individual, corporation, institution, company, society, association, firm, partnership, cooperative, or governmental or political subdivision or agency thereof.

(12) "Plant" means any member of the Bryophyta or any vascular plant, including the spores, seeds, fruits, roots, or any other parts thereof.

(13) "Population" means a specific set of individuals of a species within a defined geographical area.

(14) "Reproductive Potential" means the capability of a species or population to successfully reproduce and recruit individuals at a rate necessary to perpetuate the species or population.

(15) "Species" means any species, subspecies, or variety of plant.

(16) "State Agency" means any publicly funded governmental subdivision of the State of Oregon including, but not limited to, state, county, and municipal agencies, public utility districts, state institutions of higher learning, public school districts, port authorities, public irrigation districts, and publicly owned airports.

(17) "State-Leased" land(s) mean any state-owned land(s) leased by a state agency to another agency or person, or any land(s) not owned by the state but leased by the state from another person.

(18) "State-Managed" land(s) mean any state-owned or -leased land(s), or land(s) for which the state holds a recorded easement.

(19) "State List" means the official list of plant species designated by the director as endangered or threatened under the procedures set forth in ORS 564.040–564.135 and these rules.

(20) "Take" means to collect, cut, damage, destroy, dig, kill, pick, remove, transplant, transport, or otherwise disturb, including the collection or disruption of pollinators, or other organisms shown by research to be required by the listed species to effectively grow or reproduce.

(21) "Threatened Species" means:

(a) Any native plant species the director determines is likely to become endangered within the foreseeable future throughout all or any significant portion of its range; or

(b) Any plant species listed as a threatened species pursuant to the federal Endangered Species Act of 1973 (PL 93-205, 16 USC § 1531), as amended.

Stat. Auth.: ORS 561 & 564

Stats. Implemented: ORS 561.190, 564.020 & 564.105

Hist.: AD 16-1989, f. & cert. ef. 10-27-89; AD 13-1995, f. & cert. ef. 7-12-95, Renumbered from 603-073-0020

603-073-0003

Prohibitions

(1) Willful or negligent cutting, digging, trimming, picking, removing, mutilating, or in any manner injuring, or subsequently selling, transporting, or offering for sale any plant, flower, shrub, bush, fruit, or other vegetation growing on the right of way of any public highway within this state, within 500 feet of the center of any public highway, upon any public lands, or upon any privately owned lands is prohibited without the written permission of the owner or authorized agent of the owner.

(2) The provisions of section (1) of this rule do not apply to any federal or state government employee or contractor in Oregon engaged in work upon any public road or highway while performing such work under the supervision of any federal agency, or any agency that represents a political subdivision of the State of Oregon. This section likewise does not apply to private landowners while working on their own property.

(3) This rule does not apply to any person affecting a plant species which is declared by law to be a noxious weed.

Stat. Auth.: ORS 561 & 564

Stats. Implemented: ORS 561.190, 564.020 & 564.105

Hist.: AD 13-1995, f. & cert. ef. 7-12-95

603-073-0005

List of Protected Wildflowers

In addition to the genera listed in ORS 564.020(3), it is unlawful for any person to export from this state, or to sell or offer for sale, or to transport plants of any of the following genera or species, subject to the exceptions described above under OAR 603-073-0003(2) and (3):

(1) *Kalmiopsis*.

(2) *Pediocactus*.

(3) *Coryphantha*.

(4) *Darlingtonia*.

(5) *Talinum*.

Stat. Auth.: ORS 561 & 564

Stats. Implemented: ORS 561.190, 564.020 & 564.105

Hist.: AD 16-1989, f. & cert. ef. 10-27-89; AD 13-1995, f. & cert. ef. 7-12-95

603-073-0010

Application

(1) With the exception of the department's authority to regulate the import, export, and commercial trafficking of threatened and endangered species, per ORS 564.120(1), nothing in OAR 603-073-0030 through 603-073-0110 shall be interpreted to require the protection of any population of any listed species occurring on private lands, or to require an owner of any private lands to take action to protect such a population or its habitat. Administrators of federal lands may cooperate and consult with the department, regarding these rules, and private landowners may request assistance in protecting threatened or endangered plant species on their property, at their discretion.

(2) The provisions herein do not apply to lands acquired through foreclosures of loans and contracts made pursuant to programs of the Oregon Department of Veterans' Affairs, per ORS 564.115(7), and to any other transitional lands acquired in a similar manner by other state agencies.

Stat. Auth.: ORS 561 & 564

Stats. Implemented: ORS 561.190, 564.020 & 564.105

Hist.: AD 16-1989, f. & cert. ef. 10-27-89; AD 13-1995, f. & cert. ef. 7-12-95

603-073-0030

Criteria for the Listing, Reclassification, and Removal of Plant Species from the State List

(1) The director, by rule, shall list a plant species as endangered or threatened, reclassify a listed plant species, or remove a listed plant species from the state list, in accordance with ORS 564.105–564.110 and these rules, upon a review of the best scientific and other data that meet the criteria described in sections (3), (4) and (6) of this rule. The scientific information shall consist of documented and verifiable information on the biological status of the species, and shall include relevant abiotic data.

(2) Native plant species appearing on the federal list of endangered or threatened species shall not be removed from the state list.

(3) To list a species as an endangered species, the director shall determine that:

(a) The name and description of the species have been validly published or accepted for publication;

(b) The species is native; and

(c) The species is in danger of extinction throughout all or any significant portion of its geographic range.

(4) To list a species as a threatened species, the director shall determine that:

(a) The name and description of the species have been validly published or accepted for publication;

(b) The species is native; and

(c) The species is likely to become an endangered species within the foreseeable future throughout all or any significant portion of its geographic range.

(5) In making a determination under subsection (3)(b) or (4)(b) and section (7) or (8) of this rule, involving the geographic range of the species, the director shall consider:

(a) The total geographic area known to be inhabited by the species, and the portion therein in which the species is in danger of becoming extinct within the foreseeable future; and

(b) The nature of the species' habitat, including any unique or distinctive characteristics that might promote, maintain, or reduce the probability of threats or endangerment.

(6) In addition to the criteria set forth in section (3) or (4) of this rule, in listing a plant species as endangered or threatened, the director shall determine, through appropriate and verifiable experimental or observational study, that the natural reproductive potential of the species is in danger of imminent or continual failure due to limited population numbers, disease, predation, or other natural or human-induced factors affecting its existence. In addition, the director shall determine that one or more of the following factors exists:

(a) That most populations of the species are undergoing imminent or active deterioration of geographic range or habitat;

(b) That over-utilization of the species or its habitat for commercial, recreational, scientific, educational, or other purposes is occurring or is likely to occur; or

(c) That existing state or federal programs or regulations are inadequate to protect the species or its habitat.

(7) Before removing a plant species from the state list as an endangered or threatened species, the director shall determine through appropriate verifiable research that none of the factors set forth in section (6) of this rule are true of the species for which removal is considered, and that the species is not in danger of becoming extinct throughout all or any significant portion of its geographic range.

(8) In reclassifying a plant species from a threatened species to an endangered species, the director shall determine through appropriate verifiable research, in addition to the factors set forth in section (6) of this rule, that the likelihood of survival of the species has diminished such that the species is in danger of extinction throughout all or any significant portion of its range. In reclassifying a plant species from an endangered species to a threatened species, the director shall determine through appropriate verifiable research that the likelihood of survival of the species has increased, such that the species is no longer in danger of extinction throughout all or any significant portion of its geographic range.

(9) In making the determinations required under sections (3), (4), (6), (7), and (8) of this rule, the director shall consult with:

(a) A Technical Advisory Committee selected by the director, comprised of at least one department botanist and no fewer than four additional scientists;

(b) The Natural Heritage Advisory Council to the State Land Board;

(c) Representatives of other states having a common interest in the species;

(d) Affected federally-recognized Indian tribes;

(e) Affected federal, state, or local government agencies and may consult with:

(f) Other interested agencies; and

(g) Interested persons with pertinent knowledge whose names are included on the director's mailing list for such purposes.

Stat. Auth.: ORS 561 & 564

Stats. Implemented: ORS 561.190, 564.020 & 564.105

Hist.: AD 16-1989, f. & cert. ef. 10-27-89; AD 13-1995, f. & cert. ef. 7-12-95

603-073-0040

Procedures for Petitioning the Listing, Reclassification, or Removal of Plant Species from the State List

(1) Any person may petition the director to list, reclassify, or delist plant species on the state list, as provided in ORS 564.110(5). The department shall provide a format that will allow petitioners to request that a species be added or removed from the state list, or be reclassified from threatened to endangered, or vice versa. All petitions shall be in writing and shall include the following information:

(a) Scientific name and authority of the species, and common name, if any;

(b) The procedure requested (i.e., removal, addition, or reclassification); and

(c) Documented scientific evidence to support the requested procedure, as required by ORS 564.110(3).

(2) Petitions requesting the listing, delisting, or reclassification of plant species as threatened or endangered shall include the following documented scientific evidence, per subsection (1)(c) of this rule:

(a) An opinion pertaining to outstanding taxonomic problems or questions, if applicable, rendered by a professional plant taxonomist;

(b) A detailed discussion of the existence, or lack thereof, of current or anticipated destruction, modification, or curtailment of the species' habitat or geographical distribution, describing and documenting;

(A) The species' historical and presently known distributions;

(B) Threats, or lack thereof, to the species' habitat and distribution;

(C) Any changes in habitat or distribution and reasons for such changes, such as overutilization for commercial, recreational, scientific, educational, or other purposes, if known;

(D) Any land conservation practices or actions adversely or positively affecting the species' habitat; and

(E) Measures that have been or could be taken to alleviate a reduction in the distribution or habitat of the species.

(c) An analysis of the existence, or lack thereof, of present or threatened failure of the natural reproductive potential of the species, including:

(A) The estimated number of populations, and the estimated number of individuals present in each known population, with documentation of all field inventories completed in support of the petition;

(B) Any land actions adversely or positively affecting the species;

(C) Any documented or suspected changes in population size, and the reasons for such changes, such as disease, predation, seasonal fluctuation or overutilization of the species, if any, for commercial, recreational, scientific, educational, or other purposes, if known;

(D) A discussion of any additional natural or human-induced factors (with supportive data) affecting the continued existence of the species, including:

(i) Climatic, successional, distributional, reproductive, genetic, and other factors such as competition or predation, or lack thereof, with or by any other plant or animal that affects the existence of the species; and

(ii) The effects of environmental pollution, fire suppression, and other human-related factors on the continued existence of the species.

(E) Measures that have been or could be taken to alleviate a reduction in populations of the species.

(3) Any petition submitted under section (1) above shall be acknowledged by the director, in writing, within 30 days of receipt.

(4) In determining whether the petition presents sufficient scientific evidence to justify proceeding with the request, the director may consult with any or all of the following:

(a) The Technical Advisory Committee defined in OAR 603-073-0030(9)(a);

(b) Affected federal, state, or local government agencies;

(c) Other interested agencies;

(d) The Natural Heritage Advisory Council to the State Land Board;

(e) Affected federally-recognized Indian tribes;

(f) Representatives of other states having a common interest in the species; or

(g) Any other interested persons with expertise on the plant species named in the petition.

(5) Within 90 days of receipt of the petition, the director shall advise the petitioner, in writing, whether the petition presents sufficient scientific evidence to justify proceeding. If the petition is found to present insufficient scientific evidence to justify the request, the director may postpone or cancel the proceedings and require the petitioner to gather additional supporting data.

(6) If the petition is found to present sufficient scientific evidence to justify the request, the director shall commence the process of listing, reclassification, or delisting using the criteria set forth in ORS 564.110 and OAR 603-073-0030.

(7) If, during the course of rulemaking to list, reclassify or delist a species, the director subsequently determines that the data provided are inadequate, or would invalidate the petition, the director may disqualify the petition without further hearing or consideration.

(8) If the director denies a petition during the course of rulemaking, the petitioner may seek judicial review of the director's written decision as provided in ORS 183.484.

(9) A final determination on the request in the petition shall be made by the director within a period not to exceed two years from the date of receipt of the petition. Such determinations shall include the reasons for the director's decision.

Stat. Auth.: ORS 561 & 564

Stats. Implemented: ORS 561.190, 564.020 & 564.105

Hist.: AD 16-1989, f. & cert. ef. 10-27-89; AD 13-1995, f. & cert. ef. 7-12-95

603-073-0050

Temporary Listing

(1) Notwithstanding any other provisions of ORS 564.100–564.135 and these rules, the director shall adopt a temporary rule to add a plant species to the state list if there is a significant and immediate threat to the continued existence of the species, as determined by a review of existing evidence by the department. Such a ruling shall be considered an emergency provision, where evidence available to the department indicates that listing of the species is necessary to prevent imminent loss of populations or habitat.

(2) Upon the determination required under section (1) of this rule, the director shall publish notice of the addition to the state list in the Oregon Administrative Rules Bulletin, and shall mail notice to affected or interested agencies or persons whose names are included on the director's mailing list for such purposes.

(3) The temporary rule shall take effect immediately upon publication in the Oregon Administrative Rules Bulletin and shall remain in effect for not more than one 180 days, during which time the director shall undertake the rulemaking procedures provided for under ORS 564.110 and these rules.

Stat. Auth.: ORS 561 & 564

Stats. Implemented: ORS 561.190, 564.020 & 564.105

Hist.: AD 16-1989, f. & cert. ef. 10-27-89; AD 13-1995, f. & cert. ef. 7-12-95

603-073-0060

Periodic Review of State List

(1) The director shall review each listed species at least once every five years to determine if documented evidence exists to justify reclassification from threatened to endangered or vice versa, removal from the state list, or a recommendation to the federal government for reclassification or removal if the species is also on the federal list. Such evidence may include, but is not limited to, increase in population size or numbers, reduction or removal of threats or taxonomic re-evaluation of a listed species.

(2) The review under section (1) of this rule shall be conducted according to the criteria set forth in ORS 564.110 and these rules.

(3) In the course of reviewing listed species, the director shall consult with any agencies or persons known to have direct knowledge of the species under consideration. Specifically, in the case of taxonomic questions involving a listed species, the director shall request that the Technical Advisory Committee (see OAR 603-073-0030) submit a written statement defining its opinion of the taxonomy of the species and indicating, if necessary, an appropriate expert for additional consultation.

(4) If the director determines that sufficient documented evidence exists to justify reclassification or removal from the state list, the director shall, within 90 days of the determination, commence rulemaking to change the status of the species. The director shall mail notice of any resulting status change to affected or interested agencies or persons whose names are included on the director's mailing list for such purposes.

Stat. Auth.: ORS 561 & 564

Stats. Implemented: ORS 561.190, 564.020 & 564.105

Hist.: AD 16-1989, f. & cert. ef. 10-27-89; AD 13-1995, f. & cert. ef. 7-12-95

603-073-0070

State List of Endangered and Threatened Species

The state list of endangered and threatened species is as follows:

(1) Plant Species Listed as Endangered:

(A) *Abronia umbellata* Lam. var. *breviflora* (Standl.) L. A. Galloway — Pink sand-verbena;

(B) *Artemisia campestris* L. var. *wormskioldii* (Besser ex Hook) Cronquist — Northern wormwood;

(C) *Astragalus applegatei* Peck — Applegate's milk-vetch;

(D) *Astragalus mulfordiae* M.E. Jones — Mulford's milk-vetch;

(E) *Calochortus coxii* Godfrey & Callahan — Crinite mariposa-lily;

(F) *Calochortus indecorus* Ownbey & Peck — Sexton Mountain mariposa-lily;

(G) *Calochortus umpquaensis* Fredricks — Umpqua mariposa-lily;

(H) *Castilleja levisecta* Greenm. — Golden paintbrush;

- (I) *Cordylanthus maritimus* Nutt. ex Benth. subsp. *palustris* (Behr.) Chuang & Heckard — Saltmarsh bird's-beak;
- (J) *Delphinium leucophaeum* Greene — White rock larkspur;
- (K) *Delphinium pavonaceum* Ewan — Peacock larkspur;
- (L) *Erigeron decumbens* Nutt. — Willamette daisy;
- (M) *Fritillaria gentneri* Gilkey — Gentner's fritillary;
- (N) *Ivesia rhypara* Erter & Reveal var. *rhypara* — Grimy ivesia;
- (O) *Lilium occidentale* Purdy — Western lily;
- (P) *Limnanthes floccosa* How. subsp. *grandiflora* Arroyo — Big-flowered wooly meadowfoam;
- (Q) *Lomatium bradshawii* (Rose) Math. & Const. — Bradshaw's desert parsley;
- (R) *Lomatium cookii* Kagan — Cook's desert parsley;
- (S) *Lomatium erythrocarpum* Meinke & Const. — Red-fruited lomatium;
- (T) *Lupinus cusickii* Wats. — Cusick's lupine;
- (U) *Lupinus lepidus* Douglas ex Lindl. var. *cusickii* (S. Watson) C.L. Hitchc. — Cusick's lupine;
- (V) *Mentzelia mollis* Peck — Smooth mentzelia;
- (W) *Mirabilis macfarlanei* Const. & Roll. — MacFarlane's four-o'clock;
- (X) *Plagiobothrys hirtus* (Greene) Johnst. — Rough popcorn-flower;
- (Y) *Plagiobothrys lamprocarpus* (Piper) Johnst. — Shiny-fruited allocarya;
- (Z) *Pyrrocoma radiata* Nutt. — Snake River goldenweed;
- (AA) *Silene spaldingii* Wats. — Spalding's campion;
- (BB) *Stephanomeria malheurensis* Gottl. — Malheur wire-lettuce;
- (CC) *Thelypodium howellii* Wats. subsp. *spectabilis* (Peck) Al-Shehbaz — Howell's thelypodium;
- (DD) *Trifolium owyheense* Gilkey — Owyhee clover.
- (2) Plant Species Listed as Threatened:
 - (A) *Amsinckia carinata* Nels. & Macbr. — Malheur Valley fiddleneck;
 - (B) *Astragalus collinus* Dougl. ex Hook. var. *laurentii* (Rydb.) Barn. — Lawrence milk-vetch;
 - (C) *Astragalus cusickii* A. Gray var. *sterilis* (Barneby) Barneby — Barren milk-vetch;
 - (D) *Astragalus diaphanus* Dougl. var. *diurnus* (Wats.) Barn. — South Fork John Day milk-vetch;
 - (E) *Astragalus peckii* Piper — Peck's milk-vetch;
 - (F) *Astragalus tyghensis* Peck — Tygh Valley milk-vetch;
 - (G) *Botrychium pumicola* Cov. in Underw. — Pumice grape-fern;
 - (H) *Calochortus howellii* Wats. — Howell's mariposa-lily;
 - (I) *Eriogonum chrysops* Rydb. — Golden buckwheat;
 - (J) *Eriogonum crosbyae* Reveal — Crosby's buckwheat;
 - (K) *Erythronium elegans* Hammond & Chamb. — Coast Range fawn lily;
 - (L) *Eucephalus vialis* Bradshaw — Wayside aster [synonym: *Aster vialis* (Brads.) Blake];
 - (M) *Gratiola heterosepala* Mason & Bacig. — Boggs Lake hedge-hyssop;
 - (N) *Hackelia cronquistii* J.L. Gentry — Cronquist's stickseed;
 - (O) *Hastingsia bracteosa* Watson var. *bracteosa* — Large-flowered rush lily;
 - (P) *Lepidium davisii* Roll. — Davis' peppergrass;
 - (Q) *Limnanthes floccosa* How. subsp. *pumila* (How.) Arroyo — Dwarf meadowfoam;
 - (R) *Lomatium greenmanii* Mathias — Greenman's desert parsley;
 - (S) *Lupinus oregonus* A. Heller — Oregon -or- Kincaid's lupine [synonym: *Lupinus sulphureus* Douglas ex Hook. subsp. *kincaidii* (Smith) Phillips];
 - (T) *Mentzelia packardiae* Glad — Packard's mentzelia;
 - (U) *Microseris howellii* Gray — Howell's microseris;
 - (V) *Oenothera wolfii* (Munz) Raven, Dietrich & Stubbe — Wolf's evening-primrose;
 - (W) *Phacelia argentea* Nels. & Macbr. — Silvery phacelia;

- (X) *Pleuropogon oregonus* Chase — Oregon semaphore grass;
 - (Y) *Sericocarpus rigidus* Lindl. — White-topped aster (synonym: *Aster curtus* Cronquist);
 - (Z) *Sidalcea nelsoniana* Piper — Nelson's checker-mallow;
 - (AA) *Silene douglasii* Hook var. *oraria* (Peck) C.L. Hitchc. & Maguire — Cascade Head catchfly;
 - (BB) *Thelypodium eucosmum* Robins. — Arrow-leaf thelypodium.
- Stat. Auth.: ORS 561.190
 Stats. Implemented: ORS 564.110
 Hist.: AD 16-1989, f. & cert. ef. 10-27-89; AD 13-1995, f. & cert. ef. 7-12-95; DOA 18-2001, f. & cert. ef. 9-6-01; DOA 19-2003, f. & cert. ef. 6-11-03; DOA 20-2011, f. & cert. ef. 10-13-11

603-073-0080

Candidate Species

(1) The director shall maintain a list of candidate species that includes those native species that have potential of qualifying as threatened or endangered after additional study and evaluation, and based on the opinions of the department, the Technical Advisory Committee (see OAR 603-073-0030), and other consulted persons with relevant knowledge. The candidate species list may be acquired by writing the director.

(2) The purpose of the candidate species list is to provide state agencies, and other interested persons, a means of assessing those species most likely to be listed by the director as threatened or endangered in the future. The presence of a species on the candidate list is not necessarily an indication that the species will be listed as threatened or endangered, nor does it require any protection for the species under ORS 564.105–564.135, these rules, or any other regulations.

Stat. Auth.: ORS 561 & 564
 Stats. Implemented: ORS 561.190, 564.020 & 564.105
 Hist.: AD 16-1989, f. & cert. ef. 10-27-89; AD 13-1995, f. & cert. ef. 7-12-95

603-073-0090

Protection and Conservation Programs

(1) The department shall develop guidelines for the establishment, by rule, of conservation and protection programs for listed species on state-managed lands. These programs may stipulate or recommend activities associated with research, census, law enforcement, habitat acquisition and maintenance, propagation, and any other method deemed appropriate. While developing these guidelines the department shall consult with affected state and federal agencies. The department may also consult with other interested persons, as necessary.

(2) Priority in the development and implementation of conservation guidelines will be given to species listed as threatened or endangered under these rules, per ORS 564.105(7). By written agreement, such programs may also be developed, in consultation with affected agencies, for candidate species and other species recognized by state or federal agencies in Oregon as deserving of protection, depending on the availability and applicability of funds and the immediacy and seriousness of the threats involved. The design and scope of conservation programs may vary, according to species, and need not follow pre-determined formats. Conservation programs for listed species may be entered into by private landowners without permission or involvement of the department, as long as all activities occur solely on the owner's property.

(3) To administer the provisions of these rules, the department may enter into agreements with federal agencies, other states, agencies or political subdivisions of this state, or any other persons for the development and management of any program established for the protection of listed, candidate, or other plant species.

(4) The department is authorized to receive properties, and receive and expend funds, donations, grants, or other monies to accomplish the purposes of these rules.

(5) All state agencies, in consultation with the department, shall further the purposes of these rules by carrying out any existing departmentally established conservation programs, per ORS 564.105(3) and these rules, for the protection of endangered or threatened plant species, and by taking steps necessary to ensure that any action authorized, funded, or carried out by said agencies on state-managed land will not jeopardize the continued existence of listed species. When existing data indicate the presence of a listed species

on properties adjoining state-managed lands, whether federal or private, state agencies will make a reasonable effort to ensure that their actions will not result in population loss or decline of the listed species on these sites. However, under the provisions of these rules, state agencies are not responsible for inventories, protection, study, or any other conservation management activities pertaining to populations of listed species on such adjacent lands. In furtherance of this section, state agencies shall:

(a) Ascertain by their own field survey, consultation with the department, or from the Oregon Natural Heritage Program (see ORS 273.566 and 273.576) if listed species occur or are likely to occur on lands targeted for state action, and, if so;

(b) Determine, prior to the initiation of the land action, if the proposed action on state-managed lands is consistent with a conservation program for the listed species established by the department, pursuant to section (1) of this rule and ORS 564.105(3); or

(c) If there is no program developed by the department for the listed species in question, determine, prior to the action, whether the proposed action has the potential to appreciably reduce the likelihood of the survival or recovery of any population of the listed species. If the agency determines that the proposed action will not reduce the likelihood of survival or recovery, it shall notify the department in writing within 30 days of its findings. Within 45 days of receipt of such notification, the department will inform the state agency if it accepts the findings or if additional information is required. If the department accepts the state agency findings then the action proposed by the state agency may proceed. Otherwise, a written evaluation in the format specified in subsection (5)(d) of this rule shall be required;

(d) If a state agency ascertains, pursuant to subsections (5)(a), (b), and (c) of this rule, that a proposed action on state-managed land has the potential to appreciably reduce the likelihood of survival or recovery of any population of any plant species that is listed as threatened or endangered, it shall notify the department in writing within 30 days of its findings. Within 45 days of such notification the department will inform the state agency if a written evaluation of the land action in relation to the population(s) of threatened or endangered species is required. Such written evaluations presented to the department by the state agency shall include:

(A) Scientific name, authority, and common name (if any) of the listed species involved;

(B) The historical and presently known distributions of the listed species, with an estimation of how much of the known range of the species is likely to be affected by the current or proposed land action;

(C) A description of the habitat of the listed species as it occurs at the site(s) of the proposed land action, including, but not limited to, general information on relative abundances of other plant species occurring at the site, soil characteristics, elevation, a history of land actions at the site, a summary of current land uses and practices, and ownership patterns of adjoining properties;

(D) A qualitative and quantitative assessment of the population(s) of the listed species occurring at the site of the proposed land action, including, but not limited to, information on numbers of individuals comprising the population(s), the estimated age or stage structure (if applicable) of the population(s), any obvious signs of disease or predation, pollinators, seed production or any other readily observable life history traits, and suspected negative or positive impacts of past or present land actions; and

(E) An evaluation of the predicted effects of the proposed land action on the population(s) of any listed species present, including initial recommendations by the state agency outlining reasonable measures to be taken to minimize any potential adverse impacts of the action on the affected listed species.

(e) The department shall review and comment on state agency evaluations, per subsection (5)(d) of this rule, within 90 days of receipt and shall recommend alternatives to the proposed action, if necessary, which are consistent with conserving and protecting the affected listed species;

(f) State agencies shall further comply with these rules by documenting the occurrence and evaluating population trends (including threats) of listed species on state-managed lands where ongoing

actions (including, but not limited to, domestic grazing, mining, herbicide application, release of biocontrol agents, and forestry practices) may be in conflict with the provisions set forth in ORS 564.105–564.120 and these rules. All distributional and demographic information acquired by state agencies will be provided to the department to be considered in the development of the conservation programs specified in sections (1) and (2) of this rule. If necessary, the department shall recommend modifications or alternatives to the ongoing actions which are consistent with conserving and protecting the affected listed species, and may require a written evaluation of the action by the state agency, in the manner specified under subsection (5)(d) of this rule;

(g) State agencies shall identify those listed species occurring, or suspected to occur, on lands owned or managed by them that are subject to ongoing actions and, in consultation with the department, develop a reasonable timetable for the provision of the information specified in subsection (5)(f) of this rule. State agencies shall reassess the number and locations of listed species on their lands in an annual written report to the department, including all species listed after the initial enactment of these rules. State agency annual reports will be due on or before December 31 of each year;

(h) If a state agency elects not to adopt the alternatives presented pursuant to subsection (5)(e) or (f) of this rule, it shall consult with and submit written findings to the department at least 60 days prior to the initiation of any proposed action demonstrating that:

(A) The potential public benefits of the proposed or ongoing action outweigh the potential harm from failure to adopt the alternatives; and

(B) Mitigation and enhancement measures shall be taken to minimize the adverse effect of the proposed or ongoing action on the listed species, either on or adjacent to the site of the action, or at a suitable alternative location, in consultation with the department.

(i) In complying with subsections (5)(a) through (h) of this rule, state agencies and the department shall utilize employees with expertise in field botany, plant taxonomy, and biological conservation, recognizing the high level of technical competence required to correctly identify and assess the habitat and biological status of listed species. If such expertise is not available within a state agency the agency shall contract, as funds allow, with the department, the Oregon Natural Heritage Program (see ORS 273.566 and 273.576), or other persons having the appropriate qualifications to accomplish the necessary work;

(j) The department is under no obligation to provide field expertise or any other assistance outside the normal consultation procedures described under subsections (5)(a)–(5)(h) of this rule. State agencies may reimburse the department for technical services through cooperative agreements or other means, per section (4) of this rule, providing the department has staffing available for assistance.

(6) When a state agency determines that an emergency circumstance makes it necessary to initiate an action without observing the provisions of these rules, the state agency taking the action shall consult with the department about alternative arrangements. The state agency and the department will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Such emergencies may include, but are not limited to, landslides, wildfires, floods, and other natural disasters.

(7) Where any persons other than state agencies, including federal, agencies, engage in actions (including ongoing actions) on state-managed land, it shall be the responsibility of the state agency owning or managing the affected land to ensure compliance with ORS 564.100–564.135 and these rules, following the appropriate steps in section (5) of this rule.

(8) To further the protection and conservation of listed species the department may provide data from its files to other agencies or persons, providing that unlawful taking of listed species is not likely to occur as a result.

Stat. Auth.: ORS 561 & 564

Stats. Implemented: ORS 561.190, 564.020 & 564.105

Hist.: AD 16-1989, f. & cert. ef. 10-27-89; AD 13-1995, f. & cert. ef. 7-12-95

603-073-0100

Permits and Transactions in Threatened or Endangered Species

(1) No person shall take, or attempt to take, or knowingly transport for the purpose of introduction, any listed plant species without first having obtained permission from the person who owns or leases the land from which the species is to be taken or is to be introduced, per ORS 564.120(1) and (2). When land is state-managed, permission to introduce, take, or attempt to take a listed species is only allowed if the person is eligible for and obtains a written permit, or qualifies for a permit exception as described under sections (4)–(14) of this rule.

(2) It shall be unlawful for any person to import, export, transport for commercial purpose, purchase, or sell, or attempt to import, export, transport for commercial purpose, purchase, or sell any threatened or endangered plant species, or part thereof, from any location in Oregon unless a written permit is obtained, or the person qualifies for a permit exception as described under sections (4)–(14) of this rule.

(3) It shall be unlawful for any person to collect, store, preserve, possess, cultivate, clone, micropropagate, or in any other way propagate, or attempt to collect, store preserve, possess, cultivate, clone, or in any way propagate, any threatened or endangered species or any parts thereof for any commercial, scientific, or other purpose without obtaining a written permit from the director.

(4) Commercial Permits: Only departmentally licensed nurseries and dealers of native plants may possess, propagate, or transfer ownership of a listed species for commercial purposes, provided that a commercial permit for trade in the species has been obtained from the director, and the plants originated from propagules or vegetative stock collected in the wild prior to the date the species was listed as threatened or endangered:

(a) In order to obtain a commercial permit, wholesale or retail dealers must provide the department, in writing, the scientific names of any listed species they currently possess, affirming that the plants (or original stock) were obtained prior to the species being listed, indicating how many whole plants, seeds, or other parts are currently in possession, and describing, to the best of their knowledge, when and where the plants or original nursery stock for the species (seed or vegetative) was collected. Forms may be requested from the department for this purpose. Commercial permits shall extend for a maximum of two years and may be applied for at any time, with renewal applications due on or before January 15. Renewal applications must include the number of specimens of the listed species sold during the period of time covered by the previous permit;

(b) Both wholesale and retail dealers must have a commercial permit to engage in propagation and sale of listed plant species. Retail dealers must have a permit prior to purchasing listed species from a wholesale outlet. Wholesale dealers are no longer responsible for any listed plants sold to retail firms once the transaction is complete and recorded in a log (including the name of the retail dealer, the species and amount of material purchased, and the date of purchase). This information should be retained for as long as the seller is in the business of commercially dealing in listed species. These records shall be made available to the department if it becomes necessary to establish legal ownership or place of origin of a particular plant;

(c) A seller's permit to possess a listed species extends to the retail buyer if sales records of listed species are maintained in a log by commercial nurseries and dealers, as described in subsection (4)(b) of this rule;

(d) Plants of any listed species sold commercially (wholesale or retail) must be accompanied by a preprinted plastic pot tag indicating that the buyer is in possession of a listed species, and, in the case of retail sales, cautioning against the propagation or other distribution of the species outside the buyer's private property without permission of the department;

(e) Possession of any listed species collected or gathered for commercial purposes after the date the species was listed is a violation of these rules, unless a special exception permit is first obtained from the department. Licensed dealers obtaining a special exception

permit shall adhere to all requirements described in subsections (4)(a)–(g) of this rule;

(f) A licensed, commercial plant grower shall be provided with a permit to collect and propagate a listed species if the grower is contracted by the department to provide cultivated materials for use in department sponsored conservation programs;

(g) Any permit holder deciding to no longer engage in commercial transactions involving listed species shall inform the department in writing prior to the permit renewal date.

(5) Research Permits: Research permits for the study, propagation, import, export, transport, scientific specimen exchange (including seeds), or other non-commercial possession or taking of listed species may be issued by the director only for the purpose of conducting investigations that enhance the biological understanding, known distribution, or conditions required for the survival or recovery of listed species, or, for non-commercial propagation or transplantation activities that enhance the survival or recovery of such species. Botanical gardens, universities and colleges, and other persons engaging in scientific research are eligible to receive, possess, propagate, transplant, or take a listed species, provided that a research permit has been obtained from the director. Botanical gardens, herbaria, or other comparable, non-commercial repositories of native plant materials must include a list of all accessions of listed plant materials in their possession when applying for initial permits, and subsequently indicate any accessions of listed species added to or removed from their collections during the year preceding each renewal application. All persons applying for a permit shall provide the following information to the director, in writing, at the time of application:

(a) A resume of the principal investigator with a description of any external funding sources, participating agency or institution (including a list of current staff members or other affiliated individuals to be covered by the permit);

(b) The scientific name and authority of the listed species, along with a detailed project summary (or description of facilities, in the case of botanical gardens, herbaria or other repositories) and a clear statement of objectives;

(c) Justification of the project, including a statement indicating what benefit it will provide in the conservation of the listed species;

(d) Location(s) where the work will be conducted, and the number and specific parts of plants, or plant pollinators or other organism beneficial to the listed species, proposed to be taken (if any) from each site;

(e) Anticipated duration of the proposed work;

(f) Assurance that at least one voucher collection from each site where collecting is permitted will be deposited in an herbarium located at a state-supported college or university in Oregon that holds a valid permit for possessing collected specimens of listed species;

(g) In the case of specific field projects, written evidence that the state agency or other landowner or manager administering the land upon which the activity involving listed species is proposed has been contacted, and that the agency, landowner, or manager has provided permission for the proposed research;

(h) In the case of botanical gardens, herbaria, or other repositories of native plant materials, assurance that collectors contributing listed species to their holdings without a research permit will be informed of the need to contact the department regarding the requirements of these rules; and

(i) Assurance that a final report (if project duration is less than one year) or annual written research summary will be provided to the director, and any other affected public agency specified in the permit, no later than the first day of May of each year following the calendar year during which the study or program commenced.

(6) At the discretion of the director, either a research or commercial permit application (including special exception permits) may be denied, granted, or conditionally granted contingent on modification of the original application, based on the nature of the request and qualifications of the applicant. A final decision on the granting or denial of a permit shall be made within 120 days of receipt of the final application. Notification of denial shall be in writing, and shall include the reason(s) for not granting the permit.

(7) Any permit granted for the purposes listed in this rule will be issued free of charge.

(8) Commercial and research permits must be provided for inspection upon request by any law enforcement officer, affected public land manager, or staff member of the department when the permittee is engaged in activities authorized by the permit.

(9) No commercial or research permit granted by the director shall allow or promote any activity prohibited by the federal **Endangered Species Act of 1973** (PL 93-205, 16 USC § 1531) as amended, nor prohibit any activity that is authorized pursuant to exemptions or permits provided for under the federal Endangered Species Act, or any regulation issued thereunder.

(10) Commercial and research permits issued by the director do not extend to the bearer the authority to study, collect, propagate, transport, import, export, purchase, sell, or otherwise take, or transplant or introduce species also listed as threatened or endangered by the federal government without written approval of the U.S. Fish and Wildlife Service and other appropriate federal agencies.

(11) A permit issued by the director does not extend to the bearer the right to trespass or study, collect, propagate, transport, import, export, purchase, sell, possess, or otherwise take, or transplant or introduce listed species on lands not under state management without concurrent permission of the appropriate land owner or manager.

(12) State agencies are exempt from the permit requirements described in section (5) of this rule, for management actions that are addressed under the consultation process described in OAR 603-073-0090(5). Furthermore federal agencies or their agents are not required to obtain state permits for activities described in this rule when such activities occur exclusively on federally-owned properties, or when such activities require the transport of listed plants to federal or state facilities via state or private roadways.

(13) Any commercial permit issued for the purposes listed in this rule shall be valid for a period not to exceed two years, and may be renewed upon reapplication, or revoked at the discretion of the director.

(14) Upon receipt of the annual research summary (see subsection (5)(i) of this rule), research permits may automatically be renewed without additional departmental paperwork when requested by the permittee, at the discretion of the director. Research permits may be cancelled if there is evidence that the original research is no longer in progress or is violating provisions of the permit.

(15) Any person engaged in the study, propagation, or scientific taking of a listed species under a personal services contract with the department shall not be required to obtain a department permit for the activities specified in the contract. This exception is applicable only when provided in writing in the contract, and will not extend beyond the contract termination date.

(16) For the purposes of this rule, a commercial or research permit authorized by the director may be signed by the director or assistant director of the department, or by the program leader of the subdivision of the department that administers these rules.

Stat. Auth.: ORS 561 & 564

Stats. Implemented: ORS 561.190, 564.020 & 564.105

Hist.: AD 16-1989, f. & cert. ef. 10-27-89; AD 13-1995, f. & cert. ef. 7-12-95

603-073-0110

Reintroduction and Transplantation Protocols

(1) The department may artificially augment populations of listed species in appropriate habitat on state-managed lands, or on other lands with permission of the owner. Such activities may include adding new plants to an existing population of the species (enhancement); creating an entirely new population of the species at an historic site where the species is now considered extinct (reestablishment); or developing a new population at a site deemed environmentally appropriate, but where there is no evidence of previous occurrence (introduction).

(2) Other persons may also enhance, reestablish, or introduce populations of listed species, contingent upon acquisition of a research permit, per OAR 603-073-0100(5). This activity may take place only after the person provides evidence to the department, in a written proposal (as part of the research permit application), that

the project will be consistent with the conservation and recovery of the species, and not inconsistent with agency land management goals. If the work is proposed for other than state-managed lands, written permission of the land owner is required. Moreover, the development of new populations may proceed only when the proposal also demonstrates that the activity does not constitute an interference with the practices and actions of local public and private landowners on their own property. Specifically, reestablishment or introduction of new populations of listed plant species may not take place if it is determined by the managing state agency that such action, even if solely on state-managed lands, would hinder the lawful use of pesticides on adjacent agricultural, forest, or other properties.

(3) The department reserves the right to approve or deny any proposal for enhancing, reestablishing, or introducing populations of listed species on state-managed lands. Such a proposal shall be submitted to the department at least 180 days prior to the anticipated start of field work. The department shall respond to the proposal within 60 days of receipt. Failure to provide a written proposal to the department within the above time frame, or to evaluate potential effects on adjacent landowners when selecting sites for new populations of listed species, may result in the population(s) not being protected under these rules.

(4) Enhancing, reestablishing, or introducing populations of listed species may be accomplished by the distribution of seeds or other propagules, the transplantation of plants cultivated from seeds or vegetative organs, or the transplantation of wild plants from one site to another. Any proposal to enhance, reestablish, or introduce populations of a listed species will be reviewed by the department to ensure that appropriate considerations are given to genetic factors, and that the activity is in the conservation interest of the species. In making any determination on the soundness of a proposal, the department may consult with the U.S. Fish and Wildlife Service or other appropriate federal agency, affected state agencies, any affected private parties, the department's Technical Advisory Committee (as described in these rules), or any recognized experts in horticulture, plant genetics, plant conservation biology, or related fields. Finally, any proposal involving the take of any listed species (as defined in these rules) must follow the permit requirements outlined in OAR 603-073-0100.

(5) Reestablished and introduced populations are considered experimental and, with respect to recovery evaluations, shall not initially be tallied among the total number of natural populations known for a species. To be recognized as formally established, there must be verifiable biological evidence that a population is self-perpetuating and likely to persist and remain viable, defined as follows:

(a) For annual or biennial species, reproducing individuals must reappear at the site for five or more successive years, with the population size during the fifth or any later year not less than 80% that of the original number of plants that survived to reproduce in the first year after population establishment (with these originating from vegetative transplants or sown seed);

(b) For herbaceous and woody perennial species, reproducing individuals must reappear at the reintroduction site for eight or more successive years, with the population size during the eighth or any later year not less than 80% that of the original number of plants that survived to reproduce in the second year (in the case of populations originating from vegetative plantings) or third year (for perennial species started from seed);

(c) To be considered formally established, the size of artificially created populations must equal, or exceed, 90% of the estimated mean size of extant natural populations for the species existing at the time of initial planting (to be determined in consultation with the department). Alternately, created populations may also be considered established if they attain 90% of the estimated mean size of existing natural populations by their fifth year (for annuals and biennials) or eighth year (for perennials), or during any subsequent year.

(6) Regardless of date of initial planting, all artificially created or reestablished populations of listed species are afforded protection under these rules equal to that of naturally existing pop-

ulations, providing the requirements in sections (2) and (3) of this rule are followed.

(7) The department recognizes the importance of *in situ* conservation of listed plant species. Accordingly, enhancement, reestablishment, or introduction of populations of listed species may be used as modes of recovery in only the most critical cases, and shall not be employed as routine mitigation tools to offset species' takes.

(8) To assist the department in establishing conservation priorities, including the need for plant species to be reclassified from endangered to threatened, or vice versa, or removed from state listing, federal agencies and private landowners shall, to the best of their ability, inform the department of any projects on their properties pertaining to the enhancement, reestablishment, or introduction of state-listed plant populations.

Stat. Auth.: ORS 561 & 564

Stats. Implemented: ORS 561.190, 564.040, 564.105(2), 564.105(4) & 564.105(6)

Hist.: AD 13-1995, f. & cert. ef. 7-12-95

DIVISION 74

CONFINED ANIMAL FEEDING OPERATION PROGRAM

603-074-0005

Purpose

These rules guide the Oregon State Department of Agriculture, Natural Resources Division in administering its Confined Animal Feeding Operation Program. In interpreting and applying these rules the Department may consider variations in soils and climate, and the potential for a particular confined animal feeding operation to cause a discharge of animal wastes into the waters of the state.

Stat. Auth.: ORS 468

Stats. Implemented: ORS 561.175

Hist.: AD 12-1990, f. & cert. ef. 6-4-90; DOA 30-2003, f. 9-11-03, cert. ef. 10-1-03

603-074-0010

Definitions

Unless the context or OAR chapter 340, division 051 or 052 require otherwise, as used in these rules:

(1) "Annual fee" means that fee required each year of each animal feeding operation with a national pollutant discharge elimination system permit or a water pollution control facilities waste disposal permit including, but not limited to, that fee required under ORS 561.175.

(2) "Compliance" means meeting the requirements of ORS Chapter 468 or 468B or any rule, order, or permit adopted thereunder and relating to the control and prevention of water pollution from an animal feeding operation, a concentrated animal feeding operation, or a confined animal feeding operation.

(3) "Confined animal feeding operation" means:

(a) The concentrated confined feeding or holding of animals or poultry, including but not limited to horse, cattle, sheep, or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities and fur farms;

(A) In buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material to support animals in wet weather; or

(B) That have wastewater treatment works; or

(C) That discharge any wastes into waters of the state.

(b) An animal feeding operation that is subject to regulation as a concentrated animal feeding operation pursuant to 40 CFR § 122.23.

(4) "Department" means the Oregon Department of Agriculture or the Oregon Department of Environmental Quality.

(5) "Director" means the director of the Oregon Department of Agriculture or the director of the Oregon Department of Environmental Quality.

(6) "Flagrant violation" means any violation where the respondent had actual knowledge of the law and knowingly committed the violation.

(7) "Formal enforcement action" means any order of the director or the director's designee that is issued to a respondent in connection with a violation and requires the respondent to cease the violation, refrain from further violations, pay a civil penalty, or take other actions with respect to the violation. Formal enforcement actions include, but are not limited to, notices of noncompliance, civil penalty assessment, compliance schedules and stipulated or consent orders.

(8) "Intentional" means conduct by a person with a conscious objective to cause the result of the conduct.

(9) "Manure" means manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

(10) "Negligence" or "negligent" means failure to take reasonable care to avoid a foreseeable risk of committing a violation.

(11) "New source" as defined in 40 CFR § 122.2 means any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced after February 12, 2003.

(12) "Order" has the meaning given in ORS 183.310(5).

(13) "Person" means the United States and agencies thereof, any state, any individual, public or private corporation, political subdivision, governmental agency, municipality, copartnership, association, firm, trust, estate or any other legal entity whatever.

(14) "Past occurrence of violations," as used in OAR 603-074-0080(4), means any violation for which a notice of noncompliance or assessment of civil penalty was issued within the preceding ten years. It does not include a violation if the notice is the subject of a pending appeal or if the notice has been withdrawn or successfully appealed.

(15) "Pollution" or "water pollution" has the meaning given in ORS 468B.005(3).

(16) "Previous notice of the same or similar violation," as used in OAR 603-074-0070(2), means a notice of noncompliance or assessment of civil penalties for the same or a similar type of violation that was issued within the preceding five years. It includes a notice for the same or a similar type of violation that is the subject of a pending appeal. It does not include a notice that has been withdrawn or successfully appealed.

(17) "Process wastewater" or "process wastes" means water directly or indirectly used in the operation of the CAFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning or flushing pens, barns, manure pits, or other CAFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater or process wastes also includes any water that comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

(18) "Production area" means that part of a CAFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment areas include but are not limited to settling basins, and areas within berms and diversions that separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of animal mortalities.

(19) "Reckless" means conduct by a person who is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstances exist. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of care a reasonable person would observe in that situation.

(20) "Repeat violation" as used in OAR 603-074-0080(3), means the recurrence of the same type of violation for which a notice of noncompliance or assessment of civil penalty was issued within the preceding ten years. It does not include a violation if the previous notice is the subject of a pending appeal or if the notice has been withdrawn or successfully appealed.

(21) "Respondent" means a person to whom a formal enforcement action is directed.

(22) "Rule" has the meaning given in ORS 183.310(8).

(23) "Violation" means the failure to comply with any requirement of ORS Chapter 468 or 468B, or any rule, order or permit adopted thereunder and relating to the control and prevention of pollution of the waters of the state from a confined animal feeding operation. Each day a violation continues after the time established for compliance shall be considered a separate violation unless the department finds that a different period of time is more appropriate to describe a specific violation event.

(24) "Wastewater disposal system," "wastewater treatment works," or "waste water control facility" means a "disposal system" or "treatment works" as defined in ORS 468B.005 that may cause pollution of surface water or groundwater and is used for collecting, conveying, treating, stabilizing or storing manure, litter, process wastewater, or contaminated production area drainage (e.g., silage leachate, contaminated storm water runoff, etc.) at confined animal feeding operations.

(25) "Wastes" has the meaning given in ORS 468B.005(7).

(26) "Water" or "the waters of the state" has the meaning given in ORS 468B.005(8).

Stat. Auth.: ORS 561.190 & 561.191
 Stats. Implemented: OL Ch. 248, HB 2156
 Hist.: AD 12-1990, f. & cert. ef. 6-4-90; AD 8-1994, f. & cert. ef. 7-26-94; DOA 15-2001(Temp), f. & cert. ef. 7-2-01 thru 12-28-01; DOA 28-2001, f. & cert. ef. 12-31-01; DOA 30-2003, f. 9-11-03, cert. ef. 10-1-03

603-074-0012

Permit Procedures

(1) Except as provided in OAR 603-074-0020 below, permits for Confined Animal Feeding Operations will be issued under the applicable provisions of OAR chapter 340, division 45.

(2) The director may designate an animal feeding operation as a significant contributor of pollutants pursuant to the provisions of 40 CFR § 122.23(c). An operator may seek review of the director's determination by requesting a contested case hearing pursuant to ORS 183.413 to 183.470.

Stat. Auth.: ORS 561.468B
 Stats. Implemented: ORS 561.468B
 Hist.: DOA 30-2003, f. 9-11-03, cert. ef. 10-1-03

603-074-0014

Adoption of General Permit

(1) The following general permit is adopted by reference in this rule and available for review at the department:

(a) NPDES number 01 (Confined Animal Feeding Operations) (issued on October 1, 2003).

(b) A complete copy of the general permit is available for inspection at the Oregon Department of Agriculture, Natural Resources Division, 635 Capitol St. NE, Salem, Oregon.

(2) Any person owning or operating a confined animal feeding operation has a duty to seek coverage under the Oregon CAFO General permit (NPDES number 01).

(3) Any person owning or operating a CAFO must submit an ODA Application to Register (ATR) according to the following schedule:

(a) All newly constructed CAFOs: Newly constructed CAFOs, including "new sources," must submit an ATR at least 180 days prior to the time that the CAFO commences operation.

(b) Existing CAFOs that met the previous definition of concentrated AFOs: CAFOs that were defined as concentrated under federal regulations in effect prior to April 14, 2003, must submit an ATR immediately.

(c) Existing CAFOs newly defined as concentrated AFOs as of April 14, 2003: CAFOs that met the federal definition of concentrated as of April 14, 2003, that were not defined as concentrated in

federal regulations prior to that date must submit an ATR by a date specified by the director, but no later than February 13, 2006.

(d) Existing CAFOs that become defined as concentrated AFOs after April 14, 2003: CAFOs that become defined as concentrated after April 14, 2003, must submit an ATR within 90 days after becoming defined as a CAFO unless the change in operation that causes the AFO to be defined as a concentrated AFO would not have caused it to be defined as a concentrated AFO prior to April 14, 2003.

(e) All other existing CAFOs that are not concentrated AFOs: Other existing CAFOs that are not concentrated AFOs covered by this permit must submit an ATR within 90 days of notification by the director that permit coverage is required.

(f) AFOs designated by the director: AFOs designated by the director as a concentrated AFO must submit an ATR no later than 90 days after receiving notice of designation.

Stat. Auth.: ORS 468B.050, 468B.217, 561.190, 561.191 & OL 2001, Ch. 248, Sec. 1(2)
 Stats. Implemented: ORS 468B.050, 468B.200 - 468B.230, 561.191 & OL 2001, Ch. 248
 Hist.: DOA 30-2003, f. 9-11-03, cert. ef. 10-1-03

603-074-0016

Complaint Evaluation

(1) "Complaint" means information provided by a person concerning possible violations of ORS Chapter 468 or 468B or any rule, order, or permit adopted thereunder and relating to the control and prevention of water pollution from a confined animal feeding operation as defined in OAR 603-074-0010.

(2) If the department finds, upon investigation of the complaint, that the complaint was groundless and made for the purposes of harassing the operator, the department may refuse to consider future complaints made by the complainant. Such a determination may include an evaluation of:

- (a) Relationship between the operator and complainant;
- (b) Number and validity of previous complaints filed by complainant against the operator;
- (c) Frequency of complaints filed by complainant against the operator.

Stat. Auth.: ORS 561.190 & 561.191
 Stats. Implemented: OL Ch. 248, HB 2156
 Hist.: DOA 28-2001, f. & cert. ef. 12-31-01

603-074-0018

Certification of Plans and Specifications

(1) In lieu of department approval of plans and specifications as required by OAR 340-051-0015, the department will accept certification by a licensed engineer that waste water control facilities specified in subsection (2)(a) of this rule were designed and constructed in compliance with 340-051-0055 through 340-051-0070.

(a) Certifications may only be made for:

- (A) Earthen impoundments, conveyances, and animal holding areas;
- (B) Earthen-floored buildings and animal travel lanes between buildings in the production area; and
- (C) Primary storage structures for liquid and solid manure. For purpose of this paragraph, a primary storage structure is any storage structure intended to hold an operation's waste for a period of five or more days.

(2) Certifications must be submitted on forms approved by the department.

(c) Certification in lieu of department approval is not allowed for waste water control facilities using experimental or unproven treatment methods or technology and may be disallowed for any other facility if the department determines that the nature of the facility or operation is such that department review is needed to ensure protection of waters of the state.

(2) **Exclusion from Department Approval:** Construction or modification of waste water control facilities, other than impoundments, conveyances, holding areas, buildings and animal travel lanes within the production area, and primary storage structures, are not subject to design or post-construction review and approval requirements unless the department determines that the nature of the facil-

ity is such that review is needed to ensure protection of waters of the state.

Stat. Auth.: ORS 468.020 & 468B.200 - 468B.230
 Stats. Implemented: ORS 468.005, 468B.005 & 468B.205
 Hist.: DOA 30-2003, f. 9-11-03, cert. ef. 10-1-03

603-074-0020

Permit Fees

Any person owning or operating a Confined Animal Feeding Operation (CAFO) under a National Pollutant Discharge Elimination System (NPDES) or Water Pollution Control Facility (WPCF) permit must pay the following fees:

- (1) Initial filing fee: \$50.00
- (2) Annual fee:

(a) The annual fee shall be paid to the department and be effective with the state's fiscal year July 1–June 30 and shall be paid no later than July 31.

(b) Annual fees are described in the table below: [Table not included. See ED. NOTE.]

- (3) Any additional fees required by OAR 340-045-0075.

[ED. NOTE: Tables referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 & 561.191
 Stats. Implemented: OL Ch. 248, HB 2156
 Hist.: AD 12-1990, f. & cert. ef. 6-4-90; AD 8-1994, f. & cert. ef. 7-26-94; DOA 15-2001(Temp), f. & cert. ef. 7-2-01 thru 12-28-01; DOA 28-2001, f. & cert. ef. 12-31-01; DOA 30-2003, f. 9-11-03, cert. ef. 10-1-03; DOA 12-2011(Temp), f. & cert. ef. 7-22-11 thru 1-18-12; DOA 22-2011, f. & cert. ef. 10-18-11

Enforcement Procedures

603-074-0030

Consolidation of Enforcement Proceedings

Notwithstanding that each and every violation is a separate and distinct offense, and in cases of continuing violations, that each day's continuance is a separate and distinct violation unless otherwise determined by the department, proceedings for the assessment of multiple civil penalties for multiple violations against an owner or operator may be consolidated into a single proceeding.

Stat. Auth.: ORS 468B.217, 468B.230 & 561
 Stats. Implemented: ORS 561.175
 Hist.: AD 8-1994, f. & cert. ef. 7-26-94

603-074-0040

Enforcement Actions

- (1) A Notice of Noncompliance:

(a) Informs the owner or operator of the violation, including a reference to a particular statute, administrative rules or order involved, the location of the violation when appropriate, and the consequences of the violation or future violations;

(b) Directs the subject owner or operator to perform those actions necessary to comply with the particular statute, administrative rules or orders involved.

(c) Specifies a reasonable period of time by which compliance is to be achieved not to exceed 30 business days after the respondent receives the notice, or if the violation requires more than 30 days to correct, a period of time contained in a plan of correction acceptable to the department;

- (d) Is issued by the director or the director's designee;

(e) Is in writing and must be served personally or by registered or certified mail;

(f) In all cases must be mailed or delivered to the legal owner of the property;

(g) Is an order in other than a contested case for purposes of judicial review.

- (2) A plan of correction:

(a) Includes a statement of the actions that must be taken by the owner or operator to eliminate the violation and shall include a schedule stating the time by which each of the actions is required to be accomplished to achieve compliance;

(b) May include requirements for the owner or operator to report the completion of specific actions;

(c) Is in writing and must be sent to the owner or operator by registered or certified mail or served personally;

(d) In all cases must be mailed or delivered to the legal owner of the property.

(e) Is an order in other than a contested case for the purposes of judicial review.

(3) The department shall make a reasonable attempt to consult with the subject owner or operator in the development of a plan of correction.

(4) Failure to perform any of the requirements of a plan of correction may be considered by the department to be a failure to correct the violation within the period of time set for correction by the department.

- (5) A Notice of Civil Penalty Assessment:

(a) Is issued by the director or the director's designee;

(b) Is issued in a manner consistent with the provisions of ORS 183.415, 468B.230 and OAR chapter 137;

(c) Is in writing and must be served personally or by registered or certified mail to the owner and operator.

Stat. Auth.: ORS 468B.217, 468B.230 & 561

Stats. Implemented: ORS 561.175

Hist.: AD 8-1994, f. & cert. ef. 7-26-94; DOA 30-2003, f. 9-11-03, cert. ef. 10-1-03

603-074-0050

Hearing Procedures

All formal hearings requested by the respondent concerning a civil penalty assessment shall be conducted in accordance with applicable contested case procedures as outlined in ORS 183.310 to 183.550, and OAR chapter 137.

Stat. Auth.: ORS 468B.217, 468B.230 & 561

Stats. Implemented: ORS 561.175

Hist.: AD 8-1994, f. & cert. ef. 7-26-94

603-074-0060

Entry of Order and Appeal Rights

(1) If a person having received a notice of civil penalty assessment fails to request a hearing as specified in OAR 603-074-0050, or if after the hearing the person is found to be in violation of the provisions of these rules, an order may be entered by the department assessing a civil penalty.

(2) The order must be signed by the director or the director's designee.

(3) The order may be appealed pursuant to ORS 183.480 to 183.497.

(4) An order assessing a civil penalty becomes due and payable and may be enforced as provided by ORS 183.090.

Stat. Auth.: ORS 468B.217, 468B.230 & 561

Stats. Implemented: ORS 561.175

Hist.: AD 8-1994, f. & cert. ef. 7-26-94; DOA 30-2003, f. 9-11-03, cert. ef. 10-1-03

603-074-0070

Civil Penalty Assessment

(1) In addition to any other penalty provided by law, the department may assess a civil penalty against the owner or operator of a confined animal feeding operation for failure to comply with a provision of ORS Chapter 468 or 468B or any rule adopted under or a permit issued under Chapter 468 or 468B, relating to the control and prevention of water pollution from a confined animal feeding operation. The amount of the civil penalty shall be determined using the two matrices contained in OAR 603-074-0080 in conjunction with the formula contained in 603-074-0080(4).

(a) Except for those animal feeding operations defined in OAR 603-074-0010(3)(b), the amount of the initial civil penalty may not exceed \$2,500 and any subsequent civil penalties for a repeat occurrence may not exceed \$10,000 per violation.

(b) For those animal feeding operations defined in OAR 603-074-0010(3)(b), civil penalties may not exceed \$5,000 per violation and any subsequent civil penalties for a repeat occurrence may not exceed \$10,000 per violation.

(2) Prior to assessment of a civil penalty for a violation, the department must provide a notice of noncompliance to the owner or operator. No advance notice or period to achieve compliance prior to assessment of a civil penalty is required under section (1) of this

rule and the department may issue a notice of civil penalty assessment if:

- (a) The violation is intentional; or
- (b) The owner or operator has received a previous notice of the same or similar violation; or
- (c) The facility meets the definition of an animal feeding operation as defined in OAR 603-074-0010(3)(b).

(3) The amount of any civil penalty imposed shall be reduced by the amount of any civil penalty imposed by the Environmental Quality Commission or the Department of Environmental Quality or the United States Environmental Protection Agency, if the latter penalties are imposed on the same person and are based on the same violation.

(4) Magnitude of Violation: The magnitude of a violation shall be categorized as follows:

- (a) Category I (Major):
 - (A) A violation of a department order issued as part of or in connection with a formal enforcement action;
 - (B) Failure to provide access to premises or records when required by statute, rule or order;
 - (C) Any direct discharge of wastes that enters the waters of the state, either without a waste discharge permit, or from a point not authorized by a waste discharge permit;
 - (D) Submitting records, reports or application forms that are false, misleading, or fraudulent;
 - (E) Failure to provide notification of a spill or upset condition that results in a nonpermitted discharge of waste to waters of the state;
 - (F) Violation of a permit compliance schedule;
 - (G) Any violation of any pretreatment standard or requirement by a user of a municipal treatment works that either impairs or damages the treatment works, or causes major harm or poses a major risk of harm to public health or the environment.

- (b) Category II (Moderate):
 - (A) Failure to submit a plan or report as required by rule, permit or order;
 - (B) Placing wastes such that the wastes are likely to enter the waters of the state by any means;
 - (C) Any violation related to water quality that is not classified elsewhere in these rules as major or minor.

- (c) Category III (Minor):
 - (A) Failure to operate in accordance with an animal waste management plan when one has been approved by the department;
 - (B) Failure to submit a discharge monitoring report on time or failure to submit a completed discharge monitoring report.

(5) The gravity of effect of the violation shall be determined by consideration of the individual or cumulative possibility of harm to public health or the environment caused by a violation or violations. Gravity of effect shall be classified as high, medium or low. The existence of one or more factors determined to be high level shall result in the gravity of effect considered to be of high level. Lacking any factor determined to be of high level, the existence of one or more factors of medium level shall result in the gravity of effect to be considered to be of medium level. Lacking any factor of high or medium level shall result in the gravity being of low level:

- (a) Gravity of Effect — High Level:
 - (A) Evidence of significant injury to crops, wildlife or livestock;
 - (B) Surface or groundwater contamination of a level that poses a significant risk of harm to public health or the environment.
- (b) Gravity of Effect — Medium Level: Surface or groundwater contamination that causes a loss of beneficial uses or a violation of applicable water quality standards, but does not pose a significant threat to human health or the environment.

(c) Gravity of Effect — Low Level: Water contamination not found or not found at a level in excess of applicable water quality standards.

(6) Pursuant to ORS 468B.220, any owner or operator of a confined animal feeding operation who has not applied for or does not have a permit required by ORS 468B.050 may be assessed a civil penalty of \$500 in addition to other penalties that the director may assess.

(7) Notwithstanding section (1) above, the department may assess a penalty larger than that specified by the matrices in OAR 603-074-0070 and 603-074-0080 if the violation is committed by an operation defined in OAR 603-074-0010(3)(b) and the department determines that a larger penalty is appropriate given the extraordinary nature of the violation or its environmental consequences. In no event, however, may the penalty be increased above the maximum amount specified in subsection (1)(b) of this rule.

Stat. Auth.: ORS 561.190 & 561.191
 Stats. Implemented: OL Ch. 248, HB 2156
 Hist.: AD 8-1994, f. & cert. ef. 7-26-94; DOA 15-2001(Temp), f. & cert. ef. 7-2-01 thru 12-28-01; DOA 28-2001, f. & cert. ef. 12-31-01; DOA 30-2003, f. 9-11-03, cert. ef. 10-1-03

603-074-0080

Civil Penalty Determination Procedure

In determining the amount of a civil penalty to be assessed for any violation, the department shall apply the following procedure:

(1) Determine the magnitude of the violation as specified in OAR 603-074-0070(4).

(2) Determine the gravity of effect pertinent to the violation as specified in OAR 603-074-0070(5).

(3) Using the magnitude of the violation and the gravity of effect identified, and depending on whether it is the first or a repeat violation, determine the base penalty (B) by reference to the appropriate matrix contained in OAR 603-074-0080.

Civil Penalty Matrix for First Violation

Gravity of Effect	Magnitude of Violation		
	High	Medium	Low
Category I (Major)	\$1,200	\$800	\$400
Category II (Moderate)	\$600	\$400	\$200
Category III (Minor)	\$240	\$120	\$50

Civil Penalty Matrix for Repeat Violations

Gravity of Effect	Magnitude of Violation		
	High	Medium	Low
Category I (Major)	\$5,000	\$2,400	\$800
Category II (Moderate)	\$1,600	\$800	\$400
Category III (Minor)	\$400	\$200	\$100

(4) Calculate the amount of the civil penalty to be assessed utilizing the formula: $B + [(.1 \times B) (P + H + R)] = \text{Penalty Amount where:}$

(a) B = Base penalty is the primary penalty for a given violation derived from the appropriate matrix contained in OAR 603-074-0080;

(b) P = Past occurrence of violations. P will be weighted from 0 to 6 in the following manner:

(A) 0 = no prior violation or insufficient evidence on which to base a finding;

(B) 1 = past occurrence of a category III violation;

(C) 2 = past occurrence of a Category II violation or two category III violations;

(D) 3 = past occurrence of a Category I violation, two Category II violations, or three Category III violations;

(E) 4 = past occurrence of two Category I violations, three Category II violations or four Category III violations;

(F) 5 = past occurrence of three Category I violations, four Category II violations, or five or more Category III violations;

(G) 6 = past occurrence of more than three Category I violations or five or more Category II violations.

(c) H = History of the person in taking all feasible steps or procedures necessary and appropriate to prevent or correct a violation. H will be weighted from -2 to 2 in the following way:

(A) -2 = the person took all feasible steps to correct any prior violations;

(B) 0 = there is no prior history or insufficient information on which to base a finding;

(C) 1 = the person took some, but not all feasible steps to correct prior violations;

(D) 2 = the person took no action to correct prior violations.

(d) R = Preventability of the violation and whether negligence or misconduct was involved. R will be weighted from -2 to 7 in the following way:

(A) -2 = the person's actions determined to be in violation were unavoidable and the person notified the department of the violation in accordance with the terms of the person's permit;

(B) -1 = the person's actions determined to be in violation were unavoidable;

(C) 0 = information is insufficient to make any finding;

(D) 2 = the person's actions determined to be in violation were reasonably avoidable and the person notified the department of the violation in accordance with the terms of the person's permit;

(E) 4 = the person's actions determined to be in violation were reasonably avoidable;

(F) 7 = the person's actions were flagrant or reckless.

(5) A civil penalty imposed under the applicable statutes and these rules may be remitted or reduced at the director's discretion upon such terms and conditions that are proper and consistent with public health and safety.

(6) At the discretion of the director, a respondent who is unable to pay the full amount of a civil penalty may be allowed to pay the civil penalty by means of a schedule of payments that may include payment of interest on the unpaid balance for any delayed payments.

Stat. Auth.: ORS 468B.217, 468B.230 & 561

Stats. Implemented: ORS 561.175

Hist.: AD 8-1994, f. & cert. ef. 7-26-94; DOA 30-2003, f. 9-11-03, cert. ef. 10-1-03; DOA 2-2009, f. & cert. ef. 1-30-09

DIVISION 75

FARM MEDIATION

603-075-0005

Definitions

As used in these regulations, unless the context requires otherwise:

(1) "Agricultural producer" means a person who owns or is purchasing agricultural property for use in agriculture, whose gross sales in agriculture averaged \$20,000 or more for the preceding three years.

(2) "Agricultural property" means real property that is principally used for agriculture.

(3) "Agriculture" means the production of livestock, poultry, field crops, fruit, dairy, fur bearing animals, Christmas trees, food fish or other animal and vegetable matter.

(4) "Coordinator" means the Director of Agriculture or a designee of the Director of Agriculture.

(5) "Creditor" means the holder of the mortgage or trust deed on agricultural property, a vendor of a real estate contract for agricultural property, a person with a perfected security interest in agricultural property or a judgment creditor with a judgment against an agricultural producer.

(6) "Financial analyst" means a person knowledgeable in agriculture and financial matters that can provide financial analysis to aid the agricultural producer in preparing the financial information required under Chapter 967 of Oregon Laws, 1989 (printed following ORS 36.210). Financial analysts may include Oregon State University extension agents or other persons approved by the Coordinator.

(7) "Mediation" means the process by which a mediator assists and facilitates an agricultural producer and a creditor in a controversy relating to the mortgage, trust deed, real estate contract, security interest, or judgment that the creditor has in the agricultural property of the agricultural producer in reaching a mutually acceptable resolution of the controversy, and includes all contacts between the mediator and the agricultural producer or the creditor until such a time as a resolution is agreed to by the agricultural producer and the creditor, or until the agricultural producer or the creditor discharges the mediator.

(8) "Mediation service" means a person selected by the Coordinator to provide mediation under Oregon Laws, 1989, Chapter 967 (printed following ORS 36.210).

(9) "Mediator" means an impartial third party who performs mediation.

(10) "Person" means the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

Stat. Auth.: ORS 561

Stats. Implemented: ORS 36.210

Hist.: AD 14-1990, f. & cert. ef. 7-3-90

603-075-0015

Qualifications for Financial Analyst

(1) Persons approved by the Coordinator to serve as financial analysts must be able to demonstrate by experience and/or training:

(a) Working knowledge of Oregon's agricultural industry;

(b) Working knowledge of principles of agricultural finance;

(c) Working knowledge of general accounting practices;

(d) The ability to conduct detailed financial analysis of farming operations;

(e) Other qualifications as determined by the Coordinator.

(2) Persons serving as financial analysts may include but are not limited to Oregon State University extension agents, approved by the Extension Service Director, other government employees, and private consultants, as approved by the coordinator.

Stat. Auth.: ORS 561

Stats. Implemented: ORS 36.210

Hist.: AD 14-1990, f. & cert. ef. 7-3-90

603-075-0025

Mediator Training Guidelines

The training of impartial mediators shall include the following topic areas:

(1) Procedures to follow in conducting a mediation session;

(2) Skills important to successful mediation;

(3) Current agricultural, legal and financial issues;

(4) Other, as determined by the Coordinator.

Stat. Auth.: ORS 561

Stats. Implemented: ORS 36.210

Hist.: AD 14-1990, f. & cert. ef. 7-3-90

603-075-0050

Process for Selection of Mediation Service

(1) The Coordinator shall select such mediation service(s) for the agricultural mediation program based upon the criteria as established by these rules. The Coordinator shall make this selection based upon the following criteria:

(a) Demonstrated knowledge of agricultural financial aid sources, practice and procedures;

(b) Demonstrated knowledge of creditor's and borrower's rights law in the state of Oregon;

(c) Demonstrated ability to conduct actual mediation(s) with analysis of the results;

(d) Evidence of at least eight hours of training in farmer/creditor mediation dynamics;

(e) Demonstrated ability to provide adequate personnel to perform a minimum of two mediations per month in the geographical area which the mediation service proposes to provide its services.

(2) The Coordinator may revoke or withdraw the selection of a mediation service if it is later determined that the above criteria have not been or are not being adequately met.

(3) The requirements established above are those requirements for the initial period of mediation service ending December 31, 1990. Prior to the expiration of that period, the Coordinator may adopt, if necessary, further detailed requirements for agricultural debtor/creditor mediation. The Coordinator may, in establishing mediator qualifications, consider those guidelines for mediator standards and training as adopted by the Dispute Resolution Commission.

(4) The agriculture mediation service(s) shall be selected by the Request for Proposals (RFP) method.

Stat. Auth.: ORS 561

Stats. Implemented: ORS 36.210

Hist.: AD 14-1990, f. & cert. ef. 7-3-90

603-075-0100

Fees for Agricultural Mediation Services

(1) Fees per participant shall be established at between \$20 and \$30 per hour, at the discretion of the Coordinator. In no event shall fees exceed \$30 per hour per participant.

(2) The fees to be charged per participant shall be reviewed annually by the Coordinator to determine the appropriateness of such fees and whether the fees should be increased or decreased based upon the overall financial status of the program.

Stat. Auth.: ORS 561
 Stats. Implemented: ORS 36.210
 Hist.: AD 14-1990, f. & cert. ef. 7-3-90

603-075-0110

Method of Advertising Mediation Services

(1) The Coordinator shall prepare and publish information sheets describing the mediation program, including but not limited to description of the mediation service(s), costs to participants, manner of application and other information as the Coordinator shall deem necessary to ensure adequate knowledge of mediation services.

(2) Information sheets shall be available and distributed to Oregon State University extension offices, financial institutions, commodity organizations and any other entities who make a request for such materials.

(3) The Coordinator may use other appropriate means of advertising of the mediation program, including but not limited to, print and electronic media, posters and other means of public information.

Stat. Auth.: ORS 561
 Stats. Implemented: ORS 36.210
 Hist.: AD 14-1990, f. & cert. ef. 7-3-90

603-075-0120

Application for Mediation

(1) An eligible agricultural producer or creditor shall initiate mediation by an application to the mediation service on forms provided by the service. The mediation request shall include all statutorily required information as described in Oregon Laws, 1989, Chapter 967, Subsections 5(2) and (3) (printed following ORS 36.210) and any additional information the mediation service shall require.

(2) The mediation service shall, within ten days of the receipt of a request for mediation, give written notice of the request to any person who is identified in the request as parties to the dispute or controversy. The notice shall include that information required in Oregon Laws, 1989, Chapter 967, Subsection 5(5). The recipient shall have ten days from receipt of the notice to advise whether the recipient wishes to engage in the mediation. A response in favor of mediation shall include the same information as that required by those parties who initiate mediation.

(3) If the recipient of the notice described above does not wish to engage in mediation, the recipient may, but is not required to, inform the mediation service. Failure to advise the mediation service in writing shall constitute a denial of mediation as to that recipient.

Stat. Auth.: ORS 561
 Stats. Implemented: ORS 36.210
 Hist.: AD 14-1990, f. & cert. ef. 7-3-90

603-075-0130

Confidentiality of Mediation

(1) All mediations conducted are subject to the confidentiality requirements set forth in Oregon Laws, 1989, Chapter 967, Section 8 (printed following ORS 36.210).

(2) Breach of confidentiality by a mediator or mediation service shall be cause for revocation of a mediator's approval or cancellation of a mediation services' contract.

Stat. Auth.: ORS 561
 Stats. Implemented: ORS 36.210
 Hist.: AD 14-1990, f. & cert. ef. 7-3-90

603-075-0140

Reporting Procedures

(1) The coordinator shall prepare for the Director of Agriculture and other interested parties an annual evaluation report which addresses, but is not limited to, the following subjects:

(a) The effectiveness of the mediation program subject to this Administrative Rule;

(b) Recommendations, if any, for improving the delivery of mediation to agricultural resources;

(c) A comparison of the actual costs of operating and administering the mediation program in relation to the estimated costs;

(d) The estimated savings generated as a result of using mediation to resolve a controversy related to agricultural property rather than using remedies available under ORS 86.010 to 86.990, 87.001 to 87.920, or 88.710 to 88.740;

(e) Other subjects that may be required of any federal agency providing financial assistance for the operation and administration of the mediation program.

(2) Should any federal agency provide financial assistance for the operation and administration of the mediation program subject to this Administrative Rule, the coordinator will:

(a) Comply with the standards for financial management and reporting, and for program performance reporting found at **7 CFR Parts 3015 and 3016**;

(b) Provide an audit report to the applicable Federal Agency(s) annually or biennially as applicable under **OMB Circular A-128**;

(c) Comply with the provision of **7 CFR 1901 Subpart E**, "Civil Rights Compliance Requirements," **7 CFR Part 15**, "Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture — Effectuation of Title VI of the Civil Rights Act of 1964," **7 CFR Part 15b**, "Nondiscrimination on the Basis of Handicap on Programs and Activities Receiving or Benefiting from Federal Financial Assistance," and **45 CFR Part 90**, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance."

Stat. Auth.: ORS 561
 Stats. Implemented: ORS 36.210
 Hist.: AD 14-1990, f. & cert. ef. 7-3-90

DIVISION 76

SUPERVISION OF PRICE NEGOTIATIONS

603-076-0005

Definitions

As used in these regulations, unless the context requires otherwise:

(1) "Dealer" and "grass seed dealer" has the same meaning provided by the definition of grass seed dealers under ORS 646.515(3).

(2) "Grower Bargaining Association" refers to any growers association legally organized in accordance with Federal Capper-Volstead Laws (7 U.S.C. 291-292) and state law (ORS 646.515 to 646.545) for incorporation as a grower cooperative or bargaining unit for perennial ryegrass, annual ryegrass, or tall fescue grass seed.

(3) "Mediate" or "mediation" has the same meaning as ORS 36.110(5).

(4) "Price negotiation," "negotiate," or "bargain" means to discuss the terms of a contract price and related issues, and attempt to come to terms.

(5) "Director" means the Director of Agriculture or a designee of the Director of Agriculture.

(6) "Department" means the Oregon Department of Agriculture.

(7) "Active supervision," "active state supervision," and "actively supervise" means the Department's regulatory oversight of the price discussions among dealers, and price negotiations between dealers and grower representatives of a grower bargaining association for the purpose of arriving at a negotiated price for the sale of seed under production contracts meeting quality standards developed by the association (such as Tournament[®] Quality for perennial ryegrass).

(8) "Negotiated price" means the proposed price agreed upon by representatives of a grower bargaining association and seed dealers for production contracted seed meeting standards developed by the association (such as Tournament[®] Quality for perennial ryegrass).

(9) “Established price” means the price set and approved by the Director as the minimum price at which production contracted seed meeting standards developed by the growers association shall be sold to seed dealers.

(10) “Tournament[®] Quality perennial ryegrass seed” means turf-type perennial ryegrass seed produced by a member of the PRBA meeting Tournament[®] Quality mechanical standards, each lot of which meets the Oregon certified mechanical standards (for purity and germination) and which lot is free, in a 5-gram sample, of contamination of certain grasses classified as “coarse grasses” or “undesirable grass seed (UGS)” which include the following species: bentgrass, bermudagrass and giant bermudagrass, *Poa trivialis*, meadow fescue, orchardgrass, reedtop, timothy, velvetgrass, and grass of the bromus and wheatgrass species; and which lot is free, in a 50-gram sample, of *Poa annua* and noxious weeds listed in the *Oregon Seed Certification Handbook*.

(11) “State action immunity” means immunity liability under the federal antitrust laws and the Oregon Antitrust Act for conduct that is carried out pursuant to a regulatory program in which competition in certain areas of the perennial ryegrass industry is displaced by regulations and active state supervision in accordance with ORS 62.015, 62.845, 62.848, 646.535 and 646.740.

(12) “Parties” or “party” means grass seed producers, grass seed grower associations, grass seed cooperatives, or seed dealers who are participants in the state regulatory program for establishing prices on grass seed produced in Oregon.

(13) “Bargaining Council” means the collective group of dealers and growers from the bargaining association, who voluntarily meet under the auspices of the department for the purposes of price negotiations.

(14) “Regulatory program” means the state regulatory program described in ORS 62.015, 62.845, 62.848, 646.535 and 646.740 that is actively supervised by the Director of Agriculture, and that authorizes parties to engage in bargaining and negotiations to establish the price and terms of grass seed products produced under contract and sold to seed dealers.

[Publications referenced are available from the agency.]
 Stat. Auth.: ORS 62.015, 62.848, 646.535 & 646.740
 Stats. Implemented: ORS 62.015, 62.845, 62.848, 646.535, 646.740
 Hist.: DOA 25-2001, f. & cert. ef. 11-6-01; DOA 13-2007, f. 7-2-07, cert. ef. 7-5-07

**603-076-0016
 Active State Supervision of Grass Seed Price Negotiations**

It is the intent of the department that the process of state supervised price negotiations for grass seed will assist in the efficiency of price discovery, the generation of credible data on which to make pricing decisions, and good faith negotiations by all parties. To ensure that the Director is actively supervising the conduct of the grower representatives and the seed dealers under the regulatory program in accordance with the requirements of the federal antitrust laws and the Oregon Antitrust Act:

(1) All parties involved in supervised negotiations shall sign a pre-negotiation agreement, developed by the department, which provides that each party will:

- (a) Negotiated in good faith, considering all relevant data presented;
- (b) Develop, share, or document all information requested by the department for consideration and deliberation by the Bargaining Council, to include, but not limited to: acres under contract, inventory, yields, import/export information, and market issues;
- (c) Pay the \$100 participation fee as outlined in Section 9(b); and,

(d) Agree to have a preliminary negotiated price established by a date certain prior to fall planting; exceptions to the date by which a price is established may be modified by the department in order to accommodate special circumstances at the director’s discretion.

(2) The Director or the director’s designee shall attend all meetings between the grower association and seed dealer representatives pursuant to the regulatory program and shall monitor and, if necessary, mediate the price negotiations between the representatives at these meetings.

(3) Minutes of all meetings between representatives of the growers association and the seed dealers will be created and maintained by the Department. Bargaining Council sessions supervised by the department are not subject to public meeting laws; however, the minutes of the Bargaining Council are a public document.

(4) Within two (2) days after the final meeting of the Bargaining Council between the representatives of the growers association and seed dealers, the Bargaining Council shall either:

(a) Submit to the Director, prior to October 1 of each year, for review and approval, a preliminary negotiated price effective for the upcoming crop year; or

(b) Notify the Director that the bargaining representatives cannot arrive at a negotiated price, and either: (1) ask for a suggested price from the Director which the representatives may further consider, or (2) suggest to the Director a specified price range for consideration, from which the Director shall determine the price that represents the interests of the state and the industry based on the information and facts available.

(5) Within two (2) days after the parties’ submission under section (4), the Director shall approve an established price, or reject the parties’ negotiated price and direct the parties to continue their negotiations. The Director may request any information deemed necessary from the parties to understand, review and approve the established price. The Director shall immediately notify the parties of the decision under this section in writing.

(6) In approving the established price, the Director shall consider the negotiated price reached by the representatives of the growers association and the seed dealers. The Director may also consider grass seed inventories for the respective type of seed under consideration, acres contracted, production factors, competitive factors, local, national and world market prices, the influence of imported product on prices, and any other factors the Director deems necessary to approve the established price.

(7) The Director must approve the established price and any adjustments to established prices previously approved by the Director before the established prices shall be implemented by the parties.

(8) Pricing adjustments after October 1 of any year, as approved under Section 4(A), will be based on objective data, and may include a pricing formula agreed to by the Bargaining Council. The final price will be established by October 1 of the harvest year. The final price of year(x) may become the preliminary price of the following year(x+1).

(9) The authorizing legislation establishes that the parties to the negotiations shall reimburse the Department for costs associated with supervising and administering the regulatory program. The Department will provide the parties with an itemized list of costs associated with program supervision, and cost recovery shall be as follows:

(a) Department consultative fees for Attorney General counsel directly related to supervising the regulatory program shall be divided evenly between the parties and reimbursed to the Department;

(b) All parties to the negotiations will be assessed a fee of \$100 towards the cost of state supervision of the negotiations at the onset of the supervised pricing provided by the department. Costs above the total collected from the parties for this \$100 flat fee will be evenly divided between all parties for payment to the department;

(c) Total costs for the department’s supervisory role will include: \$45.00 per hour for time devoted to administration and supervision of the regulatory program, plus associated travel costs (mileage at state rates, and travel time) and expenses (copies, etc.).

Stat. Auth.: ORS 62.846(2)(3)(4)
 Stats. Implemented: ORS 62.015, 62.845, 646.535 & 646.740
 Hist.: DOA 25-2001, f. & cert. ef. 11-6-01; DOA 13-2007, f. 7-2-07, cert. ef. 7-5-07

**603-076-0051
 Definitions**

As used in these regulations, unless the context requires otherwise:

(1) “Dealer” has the same meaning provided under ORS 646.515(3), and who has bought product in the prior year respective to the specific seafood species under price negotiations.

(2) “Parties” or “party” to the supervised negotiations means an Oregon seafood harvester association or cooperative that represents Oregon seafood harvesters as defined in ORS 646.515, and dealers who purchase Oregon seafood who voluntarily participate in the regulatory program to negotiate a season starting price.

(3) “Mediate” or “mediation” has the same meaning as ORS 36.110(6).

(4) “Price negotiation,” “negotiate,” or “bargain” means to discuss the terms of a season starting price and the associated time for which the price is in effect, and related issues, with the objective of coming to terms on issues.

(5) “Director” means the Director of Agriculture or a designee of the Director of Agriculture.

(6) “Department” means the Oregon Department of Agriculture.

(7) “Active supervision,” “active state supervision,” and “actively supervise” means the Department’s regulatory oversight of the price discussions among dealers, and price negotiations between dealers and seafood harvester associations or cooperative representatives for the purpose of arriving at a negotiated season starting price and related terms for the sale of Oregon seafood from harvesters to dealers.

(8) “Negotiated price” means the proposed season starting price and related time period and other terms agreed upon by representatives of seafood harvesters and seafood dealers who participate in the price negotiations supervised by the Oregon Department of Agriculture.

(9) “Established price” means the price set and approved by the Director as the season starting price for which the specific seafood identified in the negotiations shall be sold to dealers who have participated in the negotiations, and harvesters who will deliver the specific seafood, effective over the time period negotiated by the parties and approved by the department.

(10) “State action immunity” means immunity from liability under the federal antitrust laws and the Oregon Antitrust Act for conduct that is carried out pursuant to a regulatory program in which competition in certain areas of the seafood industry is displaced by regulations and active state supervision in accordance with ORS 62.015, 62.845, 646.515, 646.535, and 646.740.

(11) “Regulatory program” means the state regulatory program described in ORS 62.015, 62.845, 646.535 and 646.740 that is actively supervised by the Director of Agriculture, and that authorizes parties to engage in bargaining and negotiations to negotiate a proposed season opening price and associated terms of seafood commodities harvested and sold to dealers who participate in the negotiations.

Stat. Auth.: ORS 576.620 - 576.650, Ch. 487 OL 2003 & SB 673

Stats. Implemented: ORS 62.845, 646.515, 646.535 & 646.740

Hist.: DOA 13-2004, f. & cert. ef. 5-5-04

603-076-0052

Active State Supervision of Season Starting Price Negotiations for Seafood Commodities

To ensure that the Director is actively supervising the conduct of the seafood harvester association representatives and the seafood dealers under the regulatory program in accordance with the requirements of the federal antitrust laws and the Oregon Antitrust Act:

(1)(a) The Director — at the request of a minimum of fifty-one percent (51%) of harvesters with active permits for the specific seafood subject to negotiations, and fifty-one percent (51%) of dealers by volume of pounds landed in the previous year of the specific seafood species subject to negotiations — shall convene duly elected or appointed representatives of the seafood harvesters and seafood dealers, at a predetermined location, date and time to enter into price negotiations with the objective of reaching agreement on a negotiated season starting price for review and approval by the Department.

(b) The Director may schedule a series of meetings between the representatives of the harvesters and dealers.

(c) The names and affiliations of the representatives of the seafood harvester and the dealers shall be provided to the Department at least two working days prior to the meeting.

(2) The Director or the Director’s designee shall be present at and actively supervise all meetings between the seafood harvesters and dealer representatives pursuant to the regulatory program and,

if necessary, mediate the price negotiations between the representatives at these meetings.

(3) The department shall designate someone to keep minutes of all state-supervised meetings between representatives of the seafood harvesters associations or cooperatives and dealer representatives; minutes of negotiations shall be distributed to all interested parties upon request.

(4) At the conclusion of the negotiations between the representatives of the seafood harvesters and dealers, the representatives shall by consensus take one of the following actions:

(a) Submit to the Director for review and approval a negotiated season starting price effective for the time period agreed to in the negotiations; or

(b) Notify the Director that the bargaining representatives cannot arrive at a negotiated price, and request that the Director establish the price based on all information presented in the negotiations; or

(c) Terminate the negotiations.

(5) Within two (2) days after the parties’ submission under section (4), the Director shall review the negotiated price and approve it as the established price, or reject the parties’ negotiated price and direct the parties to continue their negotiations if it is determined that the price does not reflect the interests of the State. The Director may request any information deemed necessary from the parties to review and approve the established price. The Director shall immediately notify the parties of the decision under this section in writing.

(6) In approving the established season opening price, the Director shall consider the negotiated price reached by representatives of the seafood harvesters and dealers. The Director may also consider information available from the parties, including inventories; previous price-harvest relationships; production and supply factors; competitive factors; local, national and world market production and supply, and prices; the influence of imported product on prices, and any other factors the Director deems necessary to approve the established price.”

(7)(a) The Director must approve the established season opening price before the parties shall implement the season opening prices effective for the parties which participated in and agreed to be bound by such through negotiations.

(b) The Director shall not be involved in adjustments to seafood prices once the time period effective for the season opening price has expired.

(c) However, if during the applicable time period effective for the season opening price, a majority of seafood harvesters and a majority of dealers who were parties to the negotiations request the Director to be involved in any adjustments to the established season starting price, a continuation of the supervised price negotiations may occur. Any proposed adjustments to an established season opening price or applicable time period require approval by the Director before they may become effective.

(8) The established season opening price shall be binding for all parties to the negotiations who have agreed to the prices and time frames and other terms and conditions as specified and approved by the Director.

(9) Parties to the negotiations shall reimburse the Department for costs associated with supervising and administering the regulatory program. The Department will provide the parties with an itemized list of costs associated with program supervision, and cost recovery shall be as follows:

(a) Department consultative fees for Attorney General counsel directly related to supervising the regulatory program shall be divided evenly between the parties and reimbursed to the Department.

(b) All parties to the negotiations will be assessed a fee of \$100 towards the cost of state supervision of the negotiations. Costs above the total collected from the parties for this \$100 flat fee will be evenly divided between all parties.

(c) Total costs for the department’s supervisory role will include: \$45.00 per hour for time devoted to administration and supervision of the regulatory program, plus associated travel costs (mileage at state rates, and travel time) and expenses (copies, etc.).

Stat. Auth.: ORS 576.620 - 576.650, Ch. 487 OL 2003 & SB 673

Stats. Implemented: ORS 62.845, 646.515, 646.535 & 646.740

Hist.: DOA 13-2004, f. & cert. ef. 5-5-04; DOA 23-2011(Temp), f. & cert. ef. 12-8-11 thru 1-15-12; Administrative correction, 2-24-12; DOA 27-2012, f. & cert. ef. 11-2-12

603-076-0101

Definitions

As used in these regulations, unless the context requires otherwise:

(1) “Blackberry dealer” and “blackberry packer” means dealer as defined in ORS 646.515(3)(a), or a licensed food processor that is a cooperative.

(2) “Grower Bargaining Association” refers to any growers association legally organized in accordance with Federal Capper-Volstead Laws (7 U.S.C. 291-292) and state law (ORS 646.515 to 646.545) for incorporation as a grower cooperative or bargaining unit for blackberries.

(3) “Mediate” or “mediation” has the same meaning as ORS 36.110(5).

(4) “Price negotiation,” “negotiate,” or “bargain” means to discuss the terms of a contract price and related issues, and attempt to come to agreement.

(5) “Director” means the Director of Agriculture or a designee of the Director of Agriculture.

(6) “Department” means the Oregon Department of Agriculture.

(7) “Active supervision,” “active state supervision,” and “actively supervise” means the Department’s regulatory oversight of the price discussions among dealers, and price negotiations between dealers and grower representatives of a grower bargaining association for the purpose of arriving at a negotiated price for the sale of blackberries under production contracts or other arrangements that meet standards established by the Blackberry Bargaining Council.

(8) “Negotiated price” means the proposed price for blackberries agreed upon by representatives of a grower bargaining association and blackberry dealers.

(9) “Established price” means the price set and approved by the Director as the price at which blackberries produced by grower members of the bargaining association shall be sold to dealers.

(10) “State action immunity” means immunity liability under the federal antitrust laws and the Oregon Antitrust Act for conduct that is carried out pursuant to a regulatory program in which competition in certain areas of the blackberry industry in Oregon is displaced by regulations and active state supervision in accordance with ORS 62.845, 62.848, 646.535 and 646.740.

(11) “Parties” or “party” means blackberry producers, blackberry grower associations, blackberry processing or marketing cooperatives, or blackberry dealers who are participants in the state regulatory program for establishing prices on blackberries produced in Oregon.

(12) “Blackberry Bargaining Council” means the collective group of blackberry dealers and blackberry growers from the bargaining association, who voluntarily meet under the auspices of the department for the purposes of price negotiations.

(13) “Regulatory program” means the state regulatory program described in ORS 62.015, 62.845, 62.848, 646.535 and 646.740 that is actively supervised by the Director of Agriculture, and that authorizes parties to engage in bargaining and negotiations to establish the price and terms of blackberry products produced under contract or other terms and sold to blackberry dealers.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: SB 409 (2009); ORS 62.015, 62.848, 646.535 & 646.740
Stats. Implemented: ORS 62.015, 62.845, 62.848, 62.848, 646.535, 646.740
Hist.: DOA 2-2010, f. 1-13-10, cert. ef. 1-15-10

603-076-0106

Active State Supervision of Blackberry Price Negotiations

(1) Where more than one blackberry dealer is agreeable to meet with a grower bargaining association, it is the intent of the department that the process of state supervised price negotiations for blackberries will assist in good faith negotiations by all parties, the generation of credible data on which to make pricing decisions, and the efficiency and efficacy of price discovery.

(2) To ensure that the Director is actively supervising the conduct of the grower representatives and the blackberry dealers under

the regulatory program in accordance with the requirements of the federal antitrust laws and the Oregon Antitrust Act (ORS 646.740):

(a) The Director or the director’s designee shall attend all meetings between the grower association and blackberry dealer representatives pursuant to the regulatory program and shall monitor, and if necessary, mediate the price negotiations between the representatives at these meetings.

(b) The Director or the director’s designee will ask each party who participates in the negotiations to sign a pre-mediation agreement with the following commitments:

(A) Negotiate in good faith, arm’s length transactions, considering all relevant data presented;

(B) Develop, share, document, and evaluate all information requested by the department for consideration and deliberation by the Blackberry Bargaining Council, to include, but not limited to: by variety or other appropriate categories — acres under production, inventory, yields, import/export data, and market information (the department shall aggregate all data sources and not reveal any proprietary data to any other party);

(C) Actively participate and contribute toward common interests and reasonable pricing agreements; and,

(D) Comply with applicable state laws pertaining to non-discrimination in pricing based on membership in a grower bargaining association (ORS 646.535), payment term requirements (ORS 585.213, unless otherwise negotiated), and other considerations of Oregon’s contract laws (ORS 72.3050).

(E) Pay the fees described in these rules.

(c) The parties to the supervised blackberry pricing negotiations shall, to the extent practical, aggregate blackberry varieties into three categories: early varieties, late varieties, and Boysenberries.

(d) The Blackberry Bargaining Council may, under the direct supervision of the Department, conduct individual negotiations each year for categories of blackberries as described in section (c), and how berries are packed (i.e., IQF, straight pack, puree, juice, etc.)

(e) Meetings of the Bargaining Council are not subject to Oregon’s public meeting laws. However, minutes of all meetings between representatives of the growers association and the blackberry dealers will be created and maintained by the Department and are subject to the provisions of ORS 192.

(f) Within two (2) days after the final meeting of the Blackberry Bargaining Council, the Council shall either:

(A) Submit to the Director, for review and approval, a negotiated price or price range effective for the upcoming crop year; or,

(B) Notify the Director that the bargaining representatives cannot arrive at a negotiated price or price range, and suggest to the Director a specified price range for consideration, from which the Director shall approve a price that represents the interests of the state and the industry based on the information and facts available; or,

(C) Terminate the negotiations.

(g) Within two (2) days after the Blackberry Bargaining Council’s submission under section (f), the Director shall approve an established price, or reject the parties’ negotiated price and direct the parties to continue their negotiations. The Director may request any information deemed necessary from the parties to understand, review and approve the established price. The Director may notify the parties of the decision under this section in writing.

(h) In approving the established price, the Director shall consider the negotiated price reached by the representatives of the growers’ association and the blackberry dealers. The Director shall ensure the parties have considered, to the extent practical, blackberry inventories for the respective type of berry under consideration; acres in production; production factors; competitive factors; local, national and world market prices; the influence of imported product on prices; and any other factors the Director deems necessary to approve the established price.

(i) The Director must approve the established price and any adjustments to established prices previously approved by the Director before the established prices shall be implemented by the parties.

(j) The Director shall collect fees from the parties who are participants in the blackberry regulatory program as follows:

(A) Fees may include reimbursement of costs for Department consultation with the Attorney General as this consultation directly relates to the Department’s supervision of the regulatory program. Such fees shall be divided evenly between the parties and reimbursed to the Department

(B) The Department shall assess a flat rate fee of \$1,000 for each yearly negotiation meeting supervised by the Department. This fee shall be assessed evenly across all parties or otherwise fairly divided between the parties, such that the dealers pay half of the fee and the growers association pays half of the fee. Other equitable arrangements may be allowed as approved by the Director. The Department may assess additional fees to reimburse the Department any cost or expense that exceeds the flat rate fee. The costs will be documented by the Department, evenly divided between the parties, and collected from the parties. Payment of all fees is to the Department of Agriculture.

Stat. Auth.: SB 409 (2009); ORS 62.846(2)(3)(4)
Stats. Implemented: ORS 62.015, 62.845, 646.535 & 646.740
Hist.: DOA 2-2010, f. 1-13-10, cert. ef. 1-15-10

DIVISION 77

FIELD BURNING RULES

603-077-0101

Introduction

(1) This Division applies to the open field burning, propane flaming, and stack burning of all perennial and annual grass seed and cereal grain crops, and associated residue within Multnomah, Washington, Clackamas, Marion, Polk, Yamhill, Linn, Benton and Lane Counties, herein referred to as the Willamette Valley. It also includes rules pertaining only to fees for open field burning of perennial and annual grass seed crops in the counties outside the Willamette Valley. The open burning of all other agricultural waste material is governed by OAR chapter 340, division 264, Rules for Open Burning.

(2) Organization of rules:

(a) OAR 603-077-0103 is the policy statement of the Oregon Department of Agriculture setting forth the goals of this Division;

(b) OAR 603-077-0105 contains definitions of terms which have specialized meanings within the context of this Division;

(c) OAR 603-077-0110 lists general provisions and requirements pertaining to all open field burning, propane flaming, and stack burning with particular emphasis on the duties and responsibilities of the grower registrant;

(d) OAR 603-077-0112 lists procedures and requirements for registration of acreage, issuance of permits, collection of fees, and keeping of records, with particular emphasis on the duties and responsibilities of the local permit issuing agencies;

(e) OAR 603-077-0113 establishes acreage limits and methods of determining acreage allocations;

(f) OAR 603-077-0115 establishes criteria for authorization of open field burning, propane flaming, and stack burning pursuant to the administration of a daily smoke management control program;

(g) OAR 603-077-0119 establishes special provisions pertaining to areas where field burning is either prohibited or restricted.

(h) OAR 603-077-0131 establishes special provisions pertaining to field burning by public agencies for official purposes, such as “training fires”;

(i) OAR 603-077-0133 establishes special provisions pertaining to “preparatory burning”;

(j) OAR 603-077-0135 establishes special provisions pertaining to open field burning for experimental purposes;

(k) OAR 603-077-0137 establishes special provisions pertaining to burning fees outside the Willamette Valley;

(l) OAR 603-077-0139 establishes special provisions pertaining to emergency open burning;

(m) OAR 603-077-0140 establishes special provisions and procedures pertaining to emergency cessation of burning;

(n) OAR 603-077-0145 establishes provisions pertaining to propane flaming;

(o) OAR 603-077-0155 establishes provisions pertaining to “stack burning.”

(p) OAR 603-077-0165 thru 603-077-0195 establish provisions pertaining to enforcement procedures and civil penalties.

Stat. Auth.: ORS 561.190
Stats. Implemented: ORS 468A.585
Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 18-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 10-2009(Temp), f. & cert. ef. 7-15-09 thru 12-1-09; Administrative correction 12-23-09; DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0103

Policy

In the interest of public health and welfare, it is the declared public policy of the State of Oregon to reduce the practice of open field burning while developing and providing alternative methods of field sanitation and alternative methods of utilizing and marketing grass seed and cereal grain straw residues and to control, reduce, and prevent air pollution from open field burning, propane flaming, and stack burning by smoke management. In developing and carrying out a smoke management control program it is the policy of the Department:

(1) To allow for field burning based on the limits specified in state law while protecting health and welfare, recognizing:

(a) The importance of flexibility and judgment in the daily decision-making process, within established and necessary limits;

(b) The need for operational efficiency within and between each organizational level;

(c) The need for effective compliance with all regulations and restrictions.

(2) To study, develop and encourage the use of reasonable and economically feasible alternatives to the practice of open field burning.

(3) To increase the degree of public safety by preventing unwanted wild fires and smoke from open field burning, propane flaming, and stack burning near highways and freeways within the State of Oregon. The Department hereby adopts by reference, as rules of the Department OAR 837-110-0005 through 837-110-0155, the rules of the State Fire Marshal filed with the Secretary of State on November 13, 2009. These rules shall apply to that area west of the Cascade Range and south to the Douglas/Lane County lines.

Stat. Auth.: ORS 561.190
Stats. Implemented: ORS 468A.585
Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0105

Definitions

As used in this Division:

(1) “Actively Extinguish” means the direct application of water or other fire retardant to an open field fire.

(2) “Permit or “Burn Permit” or “Burning Permit” means a permit issued by the Department pursuant to ORS 468A.575.

(3) “Candidate Fields” means all grass seed or cereal grain fields being considered for open field burning or propane flaming.

(4) “Commission” means the Environmental Quality Commission.

(5) “Critical Nonburn Area” means the area of a grass seed or cereal grain field where burning is prohibited, such as underneath power transmission lines, or near a school, airport, or hospital pursuant to OAR 603-077-0119. This prohibition may be permanent or for a limited period of time, as provided in these rules.

(6) “Crop” means cultivated agricultural plants such as grain.

(7) “Cumulative Hours of Smoke Intrusion in the Willamette Valley means the average of the totals of cumulative hours of smoke intrusion recorded, and has been determined by the Department that open field burning, propane flaming, or stack burning was a significant contributor to the smoke intrusion:

(a) The Department shall record one hour of intrusion for each hour the nephelometer hourly reading exceeds a background level by 1.8 x 10⁻⁴ b-scat units or more but less than the applicable value in subsection (b) of this section;

(b) The Department shall record two hours of intrusion for each hour the nephelometer hourly reading exceeds a background level by 5.0×10^{-4} b-scat units:

(c) The background level shall be the average of the three hourly readings immediately prior to the start of burning on the day in which the intrusion occurred.

(8) "Department" means the Oregon Department of Agriculture.

(9) "Director" means the Director of the Department or delegated employee representative.

(10) "Director of Agriculture" means the Director of the Oregon Department of Agriculture.

(11) "Drying Day" means a 24-hour period during which the relative humidity reached a minimum less than 50 percent and no rainfall was recorded at the nearest reliable measuring site.

(12) "Effective Mixing Height" means either the actual height of plume rise as determined by ODA field staff or the calculated or estimated mixing height as determined by the Department.

(13) "Emergency Open Burning" is defined in Oregon Administrative Rule by the Oregon Department of Environmental Quality; OAR 340-266-0030.

(14) "Field-by-Field Burning" means burning on a limited or restricted basis in which the amount, rate, and area authorized for burning is closely controlled and monitored. Included under this definition are experimental open field burning emergency burning, and burning within priority areas.

(15) "Field Reference Code" means a unique four-part code which identifies a particular registered field for mapping purposes. The first part of the code shall indicate the grower registration (form) number, the second part the line number of the field as listed on the registration form, the third part the crop type, and the fourth part the size (acreage) of the field (e.g., a 35 acre perennial (Chewings Fescue) field registered on Line 2 of registration form number 1953 would be 1953-2-P-CF-35).

(16) "Field Specific Burn Plan" means an individual burn plan designed for a field or acreage that has been approved under OAR 340-266-0065 for emergency burning, which identifies specific criteria, conditions, precautions, and requirements that need to be followed when burning in order to ensure the smoke does not endanger public health and safety.

(17) "Fire District" or "District" or "Fire Protection District" means a fire permit issuing agency.

(18) "Fire Permit" means a permit issued by a local fire permit issuing agency pursuant to ORS 477.515, 476.380, or 478.960.

(19) "Fires-Out Time" means the time announced by the Department when all flames and major smoke sources associated with open field burning should be out and prohibition conditions are scheduled to be imposed.

(20) "Fluffing" means an approved mechanical method of stirring or tedding crop residues for enhanced aeration and drying of the full fuel load, thereby improving the field's combustion characteristics.

(21) "Grower" means a person that cultivates perennial or annual grass seed or cereal grain.

(22) "Grower Allocation" means the amount of acreage sub-allocated annually to the grower registrant, based on the grower registrant's pro rata share of the maximum annual acreage limitation, representing the maximum amount for which burning permits may be issued, subject to daily authorization. Grower allocation is defined by the following identity: $\text{Grower Allocation} = (\text{Maximum annual acreage limit}) \times ((\text{Total acreage registered by the grower registrant}) / (\text{Total acreage registered in the valley}))$.

(23) "Grower Registrant" means any person who registers acreage with the Department for the purposes of open field burning, propane flaming, or receives a permit to stack burn.

(24) "Identified Species" means a grass seed field consisting of Creeping Red Fescue, Chewings Fescue, or Highland Bentgrass, or as identified by the Director of Agriculture.

(25) "Marginal Conditions" means atmospheric conditions such that smoke and particulate matter escape into the upper atmosphere with some difficulty but not such that limited additional smoke and

particulate matter would constitute a danger to the public health and safety.

(26) "Marginal Day" means a day on which marginal conditions exist.

(27) "Nephelometer" means an instrument for measuring ambient smoke concentrations.

(28) "Northerly Winds" means winds coming from directions between 270° to 90° in the north part of the compass, averaged through the effective mixing height.

(29) "Open Field Burning" means burning of any grass seed or cereal grain crops, or associated residue, including steep terrain and species identified by the Director of Agriculture, or any "emergency" or "experimental" burning, as identified in these rules.

(30) "Open Field Burning Permit" means a permit issued by the Department pursuant to ORS 468A.575.

(31) "Permit Agent" means the person under contract or otherwise authorized by the Department to administer registration of acreage, issue burn permits, collect fees, and keep records for open field burning, propane flaming, or stack burning within their permit jurisdictions pursuant to ORS 468A.550 et seq.

(32) "Permit Issuing Agency" means the county court or board of county commissioners, or fire chief or a rural fire protection district or other person authorized to issue fire permits pursuant to ORS 477.515, 476.380, or 478.960.

(33) "Person" means, but is not limited to, individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, states and their agencies, and the Federal Government and its agencies.

(34) "Preparatory Burning" means controlled burning of portions of selected fields for the specific purpose of reducing the fire hazard potential or other conditions which would otherwise inhibit rapid ignition burning when the field is subsequently open burned.

(35) "Priority Acreage" means acreage located within a priority area.

(36) "Priority Areas" means certain areas in the Willamette Valley where burning is restricted, such as near population centers, airports, Interstate I-5, and other highways, as specified in 603-077-0119(1).

(37) "Problem Field" means a field where special precautions need to be taken by the grower because of potential fire hazard or proximity to a sensitive area, as specified in OAR 603-077-0119(4).

(38) "Prohibition Conditions" means conditions under which open field burning is not allowed except for individual burns specifically authorized by the Department pursuant to OAR 603-077-0115(2).

(39) "Propane Flaming" means the flame sanitization of a grass seed or cereal grain field using a mobile flamer device which meets the following design specifications and utilizes an auxiliary fuel such that combustion is nearly complete and emissions are significantly reduced:

(a) Flamer nozzles shall not be more than 15 inches apart;

(b) A heat deflecting hood is required and shall extend a minimum of three feet beyond the last row of nozzles.

(40) "Propane Flaming Permit" means a permit issued by the Department pursuant to ORS 468A.575 and consisting of a validation number and specifying the conditions and acreage specifically registered and allocated for propane flaming.

(41) "Quota" means an amount of acreage established by the Department for each fire district for use in authorizing daily burning limits in a manner to provide, as reasonably as practicable, an equitable opportunity for burning in each area.

(42) "Rapid Ignition Techniques" means a method of burning in which all sides of the field are ignited as rapidly as practicable to maximize plume rise. When using this method, little or no preparatory backfire burning shall be done.

(43) "Released Allocation" means that part of a grower's allocation, by registration form, that is unused and voluntarily released to the Department for first come-first serve dispersal to other grower registrants.

(44) “Residue” means straw, stubble, screenings and associated crop material generated in the production of grass seed and cereal grain crops.

(45) “Responsible Person” means each person who is in ownership, control, or custody of the real property on which open field burning occurs, including any tenant thereof, or who is in ownership, control or custody of the material which is burned, or the grower registrant. Each person who causes or allows open field burning, propane flaming, or stack burning to be maintained shall also be considered a responsible person.

(46) “Screenings” means organic waste materials resulting from the seed cleaning process of grass seed and cereal grain.

(47) “Small-Seeded Seed Crops Requiring Flame Sanitation” means small-seeded grass, legume, and vegetable crops, or other types approved by the Department, which are planted in early autumn, are grown specifically for seed production, and which require flame sanitation for proper cultivation. For purposes of this Division, clover and sugar beets are specifically included. Cereal grains, hairy vetch, or field peas are specifically not included.

(48) “Smoke Management” means a system for the daily or hourly control of open field burning, propane flaming, or stack burning through authorization of the times, locations, amounts and other restrictions on burning, so as to provide for suitable atmospheric dispersion of smoke particulate and to minimize impact on the public.

(49) “Southerly Winds” means winds coming from directions between 90° to 270° in the south part of the compass, averaged through the effective mixing height.

(50) “Stack Burning” means the open burning of bound, baled, collected, gathered, accumulated, piled or stacked straw residue from perennial or annual grass seed or cereal grain crops.

(51) “Stack Burning Permit” means a permit issued by the Department pursuant to ORS 468A.575 that identifies the responsible person, date of permit issuance, and specifies the acreage and location authorized for stack burning.

(52) “State Fire Marshal Fire Safety Buffer Zone” means an area within 1/4 mile of Interstate I-5, and 1/8 mile of major highways, that is required to have a noncombustible ground surface, as defined in the State Fire Marshal rules in OAR 837 Division 110.

(53) “Steep Terrain” means a grass seed or cereal grain field defined by Revised Universal Soil Loss Equation (RUSLE) and percent slope, as identified by the Director of Agriculture.

(54) “Test Fires” means individual field burns specifically authorized by the Department for the purpose of determining or monitoring atmospheric dispersion conditions.

(55) “Training Fires” means individual field burns set by or for a public agency for the official purpose of training personnel in fire-fighting techniques.

(56) “Unusually High Evaporative Weather Conditions” means a combination of meteorological conditions following periods of rain that result in sufficiently high rates of evaporation, as determined by the Department, where fuel (residue) moisture content would be expected to approach about 12 percent or less.

(57) “Validation Number” is used interchangeably with “Burn Permit” and means:

(a) For open field burning a unique five-part number issued by the Department or its delegate identifying a specific field and acreage allowed to be open field burned and the date and time the permit was issued (e.g., a validation number issued August 26 at 2:30 p.m. for a 70-acre burn for a field registered on Line 2 of registration form number 1953 would be 1953-2-0826-1430-070);

(b) For propane flaming and stack burning a unique five part alphanumeric, issued by the Department or its delegate, identifying a specific field and acreage allowed to be propane flamed or stack burned, the date and time the permit was issued, and the burn type (e.g., a validation number issued on July 15 for a 100 acre field to be propane flamed registered on Line 4 of registration form 9999 would be 9999-4-0715-P-100).

(58) “Ventilation Index (VI)” means a calculated value used as a criterion of atmospheric ventilation capabilities. The Ventilation Index as used in this Division is defined by the following identity:

$VI = (\text{Effective mixing height (feet)}) / 1,000 \times (\text{Average wind speed through the effective mixing height (knots)})$

(59) “Wildfire” means an uncontrollable fire started due to a breakdown of equipment, an accident, caused by human error or negligence or any other cause, including an intentional act.

(60) “Willamette Valley” means, for the purposes of these rules, Benton, Clackamas, Lane, Linn, Marion, Multnomah, Polk, Washington, and Yamhill counties.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 18-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 10-2009(Temp), f. & cert. ef. 7-15-09 thru 12-1-09; Administrative correction 12-23-09; DOA 12-2010, f. & cert. ef. 7-12-10; DOA 22-2012, f. & cert. ef. 8-1-12

603-077-0110

General Requirements

(1) No person shall cause or allow open field burning or propane flaming on any acreage unless said acreage has first been registered and mapped pursuant to OAR 603-077-0112(1), the registration fee has been paid, and the registration (permit application) has been approved by the Department.

(2) No person shall cause or allow open field burning, propane flaming, or stack burning without first obtaining and being able to readily demonstrate a valid burning permit and fire permit from the appropriate permit issuing agent pursuant to OAR 603-077-0112(2). On the specific day of and prior to open field burning, propane flaming, or stack burning of any grass seed or cereal grain crop or associated residue the grower registrant shall obtain, in person or by telephone, a valid burning permit and fire permit from the appropriate permit issuing agent pursuant to OAR 603-077-0112.

(3) The Department may prohibit any person from registering acreage for open field burning, stack burning, or propane flaming and may deny burn permits for open field burning, propane flaming, and stack burning until all delinquent registration fees, late fees, burn permit fees, and adjudicated penalties from previous seasons are paid. The Department may also institute appropriate legal action to collect the delinquent fees.

(4) No person shall open field burn cereal grain acreage unless that person first issues to the Department a signed statement, and then acts to ensure, that said acreage will be planted in the following growing season to a small-seeded seed crop requiring flame sanitation for proper cultivation, as defined in OAR 603-077-0105(2).

(5) No person shall cause or allow open field burning, propane flaming, or stack burning which is contrary to the Department’s announced burning schedule specifying the times, locations and amounts of burning permitted, or to any other provision announced or set forth by the Department or this Division.

(6) Each responsible person open field burning or propane flaming shall have an operating radio receiver, or other monitoring device approved by the Department, and shall directly monitor the Department’s burn schedule announcements at all times while open field burning or propane flaming.

(7) Each responsible person open field burning or propane flaming shall actively extinguish all flames and major smoke sources when prohibition conditions are imposed by the Department or when instructed to do so by an agent or employee of the Department.

(8) Each responsible person open field burning shall make every reasonable effort to expedite and promote efficient burning and prevent excessive emissions of smoke by:

(a) Meeting all of the State Fire Marshal requirements specified in OAR 837-110-0040 through 837-110-0080;

(b) Ensuring field residues are evenly distributed, dry, and in good burning condition;

(c) Employing rapid ignition techniques on all acreage where there are no imminent fire hazards or public safety concerns.

(9) In the event of a “wildfire” and a grower is unable to comply with all of the requirements of this Division, the grower shall:

(a) Immediately take action to stop, contain, and correct the problem.

(b) As soon as practicable notify the designated permit agent. If the permit agent is unavailable, the grower must contact the Department.

(A) Notification must be by phone, fax, email, in person, or other method as technology allows, and as approved by the Department.

(B) If a grower is unable to contact his/her designated permit agent or the Department, then a detailed message must be left with the Department and the permit agent explaining the problem, the solution, the field information, and grower information.

(10) Open field burning, propane flaming, or stack burning in compliance with this Division does not exempt any person from any civil or criminal liability for consequences or damages resulting from such burning, nor does it exempt any person from complying with any other applicable law, ordinance, regulation, rule, permit, order or decree of the Department, Commission or any other government entity having jurisdiction.

(11) Open field burning shall be regulated in a manner consistent with the requirements of the Oregon Visibility Protection Plan for Class I Areas (Section 5.2 of the State of Oregon Clean Air Act Implementation Plan adopted under OAR 340-200-0040).

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 18-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 10-2009(Temp), f. & cert. ef. 7-15-09 thru 12-1-09; Administrative correction 12-23-09; DOA 12-2010, f. & cert. ef. 7-12-10; DOA 22-2012, f. & cert. ef. 8-1-12

603-077-0112

Registration, Permits, Fees, Records

In administering a field burning smoke management program, the Department may contract with counties or fire districts or any other responsible individual to administer registration of acreage, issuance of permits, collection of fees, and keeping of records for open field burning, propane flaming, or stack burning within their permit jurisdictions. The Department shall pay said authority for these services in accordance with the payment schedule provided for in ORS 468A.615. Three-quarters of said payment shall be made prior to July 1 of each year and the remainder shall be paid within ten days after completion of the end of season reconciliation:

(1) Registration of acreage:

(a) On or before April 1 of each year, each grower intending to open burn or propane flame under this Division shall register the total acreage to be open burned or propane flamed. Said acreage shall be registered with the Department or its authorized permit agent on the registration forms provided. Candidate fields for open field burning or propane flaming shall be listed on the registration form and shall also be delineated on specially provided registration map materials and identified using a unique field reference code. Each candidate field listed state if the field is located in a priority area, contains a critical non-burn area, is a problem field or is being requested for emergency burning. Registration, listing of fields, and mapping shall be completed according to the established procedures of the Department. Fields to be registered for burning must be planted in crops that can be open burned or propane flamed in the same year that they are registered, and must be owned or under the control of the registrant. At the time of registration, a non-refundable registration fee of \$4 shall be paid for each acre registered for open field burning and \$2 shall be paid for each acre registered for propane flaming. A complete registration (permit application) shall consist of a fully executed registration form, map and fee. Acreage registered by April 1 may be issued a burn permit if:

(A) Allocation is available; and

(B) The initial registration fee account has a sufficient balance.

(b) Registration for stack burning will occur twice annually. Each grower intending to stack burn under this Division during the first stack burn period, February 5 through May 31, must register between January 2 and January 31.

(c) Each grower intending to stack burn under this Division during the second stack burn period, October 5 through December 31, must register between September 1 and September 30.

(d) Registration of open field burning and propane flaming acreage after April 1 of each year shall require the prior approval of the Department and an additional \$2 per acre late registration fee. The late registration fee shall not be charged if the late registration is not due to the fault of the registrant or one under the registrant's control;

(e) Copies of all registration forms and fees shall be forwarded to the Department promptly by the permit agent. Registration map materials shall be made available to the Department at all times for inspection and reproduction;

(f) The Department shall act on any registration application within 60 days of receipt of a completed application. The Department may deny or revoke any registration application which is incomplete, false or contrary to state law or this Division;

(g) The grower registrant shall insure the information presented on the registration form and map is complete and accurate.

(2) Permits:

(a) Permits for open field burning, propane flaming, or stack burning shall be issued by the Department, or its authorized permit agent, to the grower registrant in accordance with the established procedures of the Department, and the times, locations, amounts and other restrictions set forth by the Department or this Division;

(b) A fire permit from the designated fire permit issuing agency is also required for all open field burning pursuant to ORS 477.515, 476.380, 478.960;

(c) A valid open field burning permit shall consist of:

(A) An open field burning permit issued by the Department which specifies the permit conditions in effect at all times while burning and which identifies the acreage specifically registered and annually allocated for burning;

(B) A validation number issued by the designated permit agent on the day of the burn identifying the specific acreage allowed for burning and the date and time the permit was issued.

(d) A valid propane flaming permit shall consist of:

(A) A propane flaming registration form issued by the Department which specifies the permit conditions in effect at all times while flaming and which identifies the acreage specifically registered and annually allocated for propane flaming;

(B) A validation number issued by the designated permit agent identifying the specific acreage allowed for propane flaming and the date and time the permit was issued.

(e) A valid stack burning permit shall consist of the name of the responsible person and date the permit was issued, and shall specify the acreage and location authorized;

(f) Each responsible person open field burning, propane flaming, or stack burning shall pay a per acre burn fee within ten days of the date the invoice was issued. The fee shall be:

(A) \$20 per acre sanitized by open field burning;

(B) \$4 per acre sanitized by propane flaming;

(C) \$10 per acre burned in stacks.

(D) For grass seed and cereal grain residue from previous seasons, broken bales, or fields where a portion of straw was removed using usual or standard baling methods, the acreage actually burned shall be estimated and the same per acre fee as imposed in paragraph (C) of this subsection shall be charged. The estimated acreage shall be rounded to the nearest whole acre.

(g) Burning permits shall at all times be limited by and subject to the burn schedule and other requirements or conditions announced or set forth by the Department;

(h) No person shall issue burning permits for open field burning, propane flaming, or stack burning of:

(A) More acreage than the amount sub-allocated annually to the grower by the Department pursuant to OAR 603-077-0112(2);

(B)(i) Priority or fire safety buffer zone acreage located on the upwind side of any city, airport, Interstate freeway or highway within the same priority area or buffer zone.

(ii) It is the responsibility of each designated permit agent to establish and implement a system for distributing open field burning, propane flaming, or stack burning permits to individual grower registrants when burning is authorized, provided that such system

is fair, orderly and consistent with state law, this Division and any other provisions set forth by the Department.

(3) Fees:

(a) Permit agents shall collect, properly document, and promptly forward all required registration fees, late registration fees, and burn fees to the Department;

(b) All fees shall be deposited in the State Treasury to the credit of the Department of Agriculture Service Fund.

(4) Records:

(a) Permit agents shall at all times keep proper and accurate records of all transactions pertaining to registrations, permits, fees, allocations, and other matters specified by the Department. Such records shall be kept by the permit agent for a period of at least five years and made available for inspection by the appropriate authorities;

(b) Permit agents shall submit to the Department on specially provided forms weekly reports of all acreage burned in their permit jurisdictions. These reports shall cover the weekly period of Monday through Sunday, and shall be returned to the Department no later than the first working day of the following week.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 18-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 10-2009(Temp), f. & cert. ef. 7-15-09 thru 12-1-09; Administrative correction 12-23-09; DOA 12-2010, f. & cert. ef. 7-12-10; DOA 22-2012, f. & cert. ef. 8-1-12

603-077-0113

Acreage Limitations, Allocations

(1) Limitation of Acreage:

(a) Except for acreage and residue open field burned pursuant to OAR 603-077-0135, 603-077-0139, 603-077-0140, 603-077-0145, and 603-077-0155, the maximum acreage to be open field burned annually in the Willamette Valley under this Division shall not exceed 15,000 acres of steep terrain and “identified species” as defined in OAR 603-077-0105.

(b) Steep terrain and identified species burning is prohibited in Benton and Lane Counties, and in Linn County, except for portions of northeast Linn County that are east of the North Santiam River and North of Jefferson-Scio Drive and Robinson Drive to the west boundary of the city of Scio and north of Highway 226, and portions of northeast Linn County that are east of Richardson Gap Road and north of Fish Hatchery Drive.

(c) The Commission may by order permit emergency open field burning, propane flaming, or stack burning of up to 2,000 acres annually, in addition to the limitations on acreage specified in this section. Requirements for emergency burning are specified in OAR 603-077-0139.

(d) The maximum acreage to be propane flamed annually in the Willamette Valley under this Division shall not exceed 500 acres for the years 2009, 2010, 2011, and 2012. For the year 2013 and thereafter all propane flaming is prohibited.

(e) The maximum acreage to be stack burned annually in the Willamette Valley under this Division shall not exceed 1000 acres for the years 2009, 2010, 2011, 2012. For the year 2013 and thereafter all stack burning is prohibited.

(f) Other limitations on acreage allowed to be open field burned are specified in OAR 603-077-0115(7), 603-077-0119, 603-077-0133(1), and 603-077-0135(1), 603-007-0139.

(2) Allocation of Acreage:

(a) In the event that total open field burning and propane flaming registration as of April 1 is less than or equal to the maximum acreage allowed to be open field burned or propane flamed annually, pursuant to subsection (1)(a), and (c) of this rule, the Department shall sub-allocate to each grower registrant and each district (subject to daily burn authorization) 100 percent of their respective registered acreage;

(b) In the event that total open field burning and propane flaming registration as of April 1 exceeds the maximum acreage allowed to be open field burned or propane flamed annually, pursuant to subsection (1)(a), and (c), of this rule, the Department may sub-allocate

to growers on a pro rata share basis not more than 100 percent of the maximum acreage limit, referred to as “grower allocation.”

(c) Transfer of allocations for farm management purposes may be made within and between fire districts and between grower registrants on a one-in/one-out basis under the supervision of the Department. The Department may assist grower registrants by administering a reserve of released allocation.

(d) In the event that total stack burning registration at the close of the first registration period of January 2 through January 31 is less than or equal to the maximum of 250 acres out of the 1000 acre annual allocation pursuant to subsection (1)(e) of this rule, for the first stack burn period of February 5 through May 31, the Department shall sub-allocate to each grower registrant (subject to daily burn authorization) 100 percent of their respective registered acreage.

(e) In the event that total stack burning registration at the close of the first registration period of January 2 through January 31 exceeds the maximum of 250 acres out of the 1000 acre annual allocation pursuant to subsection (1)(e) of this rule, for the first stack burn period of February 5 through May 31, the Department may sub-allocate to each grower registrant on a pro rata basis not more than 100 percent of the maximum acreage limit, referred to as “grower allocation.” If any acreage remains unburned at the end of this first stack burn period, this acreage will be added to the maximum acreage allowed to be burned during the second burn period pursuant to subsections (2)(f)(g)

(f) In the event that total stack burning registration at the close of the second registration period of September 1 through September 30 is less than or equal to the maximum of 750 acres allowed to be burned for the second stack burn period of October 5 through December 31 pursuant to subsection (1)(e) of this rule, the Department shall sub-allocate to each grower registrant (subject to daily burn authorization) 100 percent of their respective registered acreage;

(g) In the event that total stack burning registration at the close of the second registration period of September 1 through September 30 exceeds the maximum of 750 acres out of the 1000 acre annual allocation pursuant to subsection (1)(e) of this rule, for the second stack burn period of October 5 through December 31, the Department may sub-allocate to each grower registrant on a pro rata basis not more than 100 percent of the maximum acreage limit, referred to as “grower allocation.”

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 10-2009(Temp), f. & cert. ef. 7-15-09 thru 12-1-09; Administrative correction 12-23-09; DOA 12-2010, f. & cert. ef. 7-12-10; DOA 22-2012, f. & cert. ef. 8-1-12

603-077-0115

Daily Burning Authorization Criteria

As part of the Smoke Management Program provided for in ORS 468A.590, the Department shall set forth the types and extent of open field burning, propane flaming, and stack burning to be allowed each day according to the provisions established in this section and this Division:

(1) During the active burning season and on an as needed basis, the Department shall announce the burning schedule over the burning radio network, or other communication technology method as approved by the Department, and operated specifically for this purpose or by other appropriate means. The schedule shall specify the times, locations, amounts and other restrictions in effect for open field burning, propane flaming, and stack burning. The Department shall notify Oregon Emergency Management of the burning schedule for dissemination to appropriate Willamette Valley agencies.

(2) Prohibition conditions:

(a) Prohibition conditions shall be in effect at all times unless specifically determined and announced otherwise by the Department;

(b) Under prohibition conditions, no permits shall be issued and no open field burning shall be conducted in any area except for individual burns specifically authorized by the Department on a limited extent basis. Such limited burning may include field-by-field burning, preparatory burning, or burning of test fires, except that:

(A) No open field burning shall be allowed;

(i) In any area subject to a ventilation index of less than 10.0;

(ii) In any area upwind, or in the immediate vicinity, of any area in which, based upon real-time monitoring, a violation of federal or state air quality standards is projected to occur.

(B) Only test-fire burning may be allowed:

(i) In any area subject to a ventilation index of between 10.0 and 15.0, inclusive, except for experimental burning specifically authorized by the Department pursuant to OAR 603-077-0135;

(ii) When relative humidity at the nearest reliable measuring station exceeds 50 percent under forecast northerly winds or 65 percent under forecast southerly winds.

(3) Marginal conditions:

(a) The Department shall announce that marginal conditions are in effect and open field burning is allowed when, in its best judgment and within the established limits of this Division, the prevailing atmospheric dispersion and burning conditions are suitable for satisfactory smoke dispersal with minimal impact on the public, provided that the minimum conditions set forth in paragraphs (2)(b)(A) and (B) of this rule are satisfied;

(b) Under marginal conditions, permits may be issued and open field burning may be conducted in accordance with the times, locations, amounts, and other restrictions set forth by the Department and this Division.

(4) Hours of burning:

(a) Burning hours shall be limited to those specifically authorized by the Department each day and may be changed at any time when necessary to attain and maintain air quality;

(b) Burning hours may be reduced by the fire chief or his deputy, and burning may be prohibited by the State Fire Marshal, when necessary to prevent danger to life or property from fire, pursuant to ORS 478.960.

(5) Locations of burning:

(a) Locations of burning shall at all times be limited to those areas specifically authorized by the Department; except for areas where burning is restricted or prohibited, as specified in OAR 603-077-0119.

(6) Amounts of burning:

(a) To provide for an efficient and equitable distribution of burning, daily authorizations of acreages shall be issued by the Department in terms of single or multiple fire district quotas. The Department shall establish quotas for each fire district and may adjust the quotas of any district when conditions in its judgment warrant such action;

(b) Unless otherwise specifically announced by the Department, a one quota limit shall be considered in effect for each district authorized for burning;

(c) The Department may issue more restrictive limitations on the amount, density or frequency of burning in any area or on the basis of crop type, when conditions in its judgment warrant such action.

(7) Limitations on burning based on air quality:

(a) Should smoke intrusions occur in the Eugene-Springfield area from the burning of identified species, steep terrain, propane flaming, or stack burning, pursuant to OAR 603-077-0113, that are in excess of the cumulative hours identified below, the minimum allowable effective mixing height for any additional open field burning for the remainder of the year shall be as follows:

Cumulative Hours in the — Minimum Effective	Eugene-Springfield Area — Mixing Height (feet)
0–14 hours — No minimum	
15–19 hours — 4,000	
20–14 hours — 4,500	
25 and greater — 5,500	

(b) The effective mixing height restrictions in paragraph (a) of this subsection shall not apply to emergency burning or experimental burning, pursuant to OAR 603-077-0135 or 603-077-0139.

(8) Limitations on burning based on rainfall:

(a) Open field burning and propane flaming shall be prohibited in any area for one drying day (up to a maximum of four consecutive drying days) for each 0.10 inch increment of rainfall received per day at the nearest reliable measuring station;

(b) The Department may waive the restrictions of subsection (a) of this section when dry fields are available as a result of special field

preparation or condition, irregular rainfall patterns, or unusually high evaporative weather condition.

(9) Other discretionary provisions and restrictions:

(a) The Department may require special field preparations before burning, such as, but not limited to, mechanical fluffing of residues, when conditions in its judgment warrant such action;

(b) The Department may designate specified periods following permit issuance within which time active field ignition must be initiated and/or all flames must be actively extinguished before said permit is automatically rendered invalid;

(c) The Department may designate additional areas as priority areas when conditions in its judgment warrant such action.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 17-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 10-2009(Temp), f. & cert. ef. 7-15-09 thru 12-1-09; Administrative correction 12-23-09; DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0119

Burning Restrictions and Prohibitions

The following identifies smoke management requirements for Priority Areas, Critical Non-Burn Areas, Fire Marshal Buffer Zones, and Problem Fields, where burning is either restricted or prohibited, in order to further protect public health and safety from smoke impacts and potential fire hazards:

(1) Priority Areas:

(a) The following are priority areas where open field burning, propane flaming, and stack burning are restricted by the Department. No priority area acreage shall be burned upwind of any city, airport, Interstate freeway within the same priority area. Any burning within a priority area is subject to field by field authorization of the Department.

(A) Within three miles of the city limits of incorporated cities having populations of 10,000 or greater;

(B) Within three miles of the city limits of the City of Lebanon;

(C) Within one mile of airports servicing regularly scheduled airline flights;

(D) Areas on the west and east side of and within 1/2 mile of Interstate I-5, from Portland to the Douglas/Lane County lines;

(E) Areas on the west and east side of and within 1/4 mile of these highways: 99, 99E, and 99W. Areas on the south and north side of and within 1/4 mile of U.S. Highway 20 between Albany and Lebanon, Oregon Highway 34 between Lebanon and Corvallis, Oregon Highway 228 from its junction south of Brownsville to its rail crossing at the community of Tulsa.

(b) Parts of the Interstate I-5 and highway priority areas identified above are subject to the State Fire Marshal rules for fire safety buffer zones, which require a noncombustible area be established. See subsection (3) of these rules.

(c) Each responsible person open field burning, propane flaming, or stack or pile burning within a priority area shall refrain from burning and promptly extinguish any burning if it is likely that the resulting smoke would noticeably affect the priority area.

(2) Critical Non-Burn Areas:

(a) Burning is prohibited in critical non-burn areas. No person shall cause or allow any open field burning, propane flaming, or stack burning in the following critical non-burn areas, except as provided in these rules:

(A) Any part of a field that is underneath a power transmission line of 230kV rating or greater, extending 75 feet on either side of the center line of the power transmission line.

(B) Any part of a field within 500 feet of a hospital

(C) Any part of a field within 500 feet of a school, when the school is in session. A school shall be considered not in session during the following time periods:

(i) During the regular summer closure period, ending 7 days prior to the first day of regular fall classes. The Department will determine the end of the regular summer closure period by reviewing each effected schools regularly published school-year calendar;

(ii) 2 hours after the time the school day is officially over. The official end of the school day will be determined by the Department as published in each effected schools regular school-day calendar;

(D) Any part of a field within 500 feet of any airport servicing regularly scheduled airline flights. In cases where an airport does not have regularly scheduled flights, field by field burning may be authorized by the Department, in accordance with the requirements in subsection (4) that apply to problem fields.

(b) It shall be the responsibility of the grower to ensure the critical non-burn area does not burn. It is recommended that the field stubble either be flail-chopped, mowed, or otherwise cut close to the ground, and the loose straw removed so that the field will not sustain an open fire. Application of water to the critical non-burn area to ensure there is no combustion is also recommended. Should any open fire occur, all flame and smoke sources shall be immediately and actively extinguished.

(c) Any person conducting open field burning, propane flaming, or stack burning adjacent to a critical non-burn area shall take appropriate steps to ensure that the critical non-burn area remains unburned.

(d) Field by field burning may be authorized by the Department within 500 feet of a school that is not in session, subject to the following restrictions:

(A) No burning is allowed upwind of the school;

(B) The responsible person burning the field makes a visual observation to first confirm that there are no children or other persons present on the school grounds .

(e) When burning near a school or hospital critical non-burn area, or beyond 500 feet of a school that is not in session, the Department shall take special precautions to ensure that the prevailing winds do not cause smoke to impact the school or hospital.

(f) Any field that is intersected by a power transmission line of 230kV rating or greater shall be registered and burned as two separate fields to minimize the potential of smoke coming into direct contact with the power transmission line.

(3) State Fire Marshal Safety Buffer Zones:

(a) State Fire Marshal Rules for fire safety buffer zones, as specified in OAR 837, Division 110, establish a 1/2 mile buffer zone for Interstate I-5 and the highways listed below in this subsection. No person shall cause or allow any open field burning, propane flaming, or stack burning in the following portions of the State Fire Marshal fire safety buffer zones:

(A) Within 1/4 mile of either side of Interstate I-5, from Portland to the Douglas/Lane County lines.

(B) Within 1/8 mile of either side of the designated roadways listed below, as specified in the State Fire Marshal Rules in OAR 837, Division 110:

(i) ORE 99 — The section from Junction City to Eugene;

(ii) ORE 99E — The sections from Oregon City to Salem and from Albany to Junction City;

(iii) ORE 99W — The entire section from Portland to Junction City;

(iv) US 20 — The section from Philomath to Lebanon;

(v) ORE 22 — The section from ORE 18 to Mehama;

(vi) US 26 — The section from ORE 47 interchange to Portland;

(vii) ORE 34 — The section from Corvallis to Lebanon.

(b) The 1/4 and 1/8 mile safety buffer zone distances identified above must be a noncombustible area, as defined in the State Fire Marshal Rules. For all requirements related to the State Fire Marshal Fire Safety Buffer Zones, see OAR 837, Division 110. Nothing in the Departments' rules regarding fire safety buffer zones replaces or substitutes for meeting all the requirements in the State Fire Marshal Rules.

(c) The area beyond the 1/4 and 1/8 mile noncombustible area in the fire safety buffer zone represents the area that is considered a priority area as described above in subsection (1)(a)(D) and (E). Burning in this part of the fire safety buffer zone is subject to the restrictions for priority areas in subsection (1) of these rules.

(4) Problem Fields:

(a) No problem fields shall be burned without first contacting the Department to determine what specific weather conditions and smoke management criteria need to be followed when burning the

field, in order protect any school, hospital, airport, or other sensitive area, in proximity to the field.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 12-2010, f. & cert. ef. 7-12-10; DOA 22-2012, f. & cert. ef. 8-1-12

603-077-0131

Burning by Public Agencies (Training Fires)

In order to promote public safety through the training of fire-fighting personnel, open field burning on grass seed or cereal grain acreage by a fire department or rural fire protection district is subject to the following conditions:

(1) Such burning shall be deemed necessary by the official local fire authority having jurisdiction, and shall be conducted in a manner consistent with the primary purpose of providing training to fire fighting personnel in accordance with ORS 468A.020(e)

(2) Such burning shall be limited to the minimum number of acres and occasions reasonably needed to ensure adequate fire fighting personnel training.

(3) Consultation with the Department by the fire department or rural fire protection district is required in order to identify the appropriate atmospheric dispersion and burning conditions for optimum smoke dispersal to protect the public from smoke impacts.

(4) No training fires shall be allowed on any acreage that is in a critical non-burn area, State Fire Marshal safety buffer zone, Priority Area, or on a Problem Field, and shall comply with the requirements in subsection (3) of these rules.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 18-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0133

Preparatory Burning

The Department encourages the preparatory burning of portions of selected fields to reduce or eliminate potential fire hazards and safety problems and to expedite the subsequent burning of the field. Such burning shall be consistent with smoke management considerations and subject to the following conditions:

(1) Each responsible person shall limit the acres burned to the minimum necessary to eliminate potential fire hazards or safety problems but in no case exceed five acres for each burn unless specifically authorized by the Department.

(2) Each responsible person conducting preparatory burning shall employ backfiring burning techniques.

(3) Each responsible person conducting preparatory burning shall comply with the provisions of OAR 603-077-0110 through 603-077-0113 and 837-110-010 through 837-110-090.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 18-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0135

Experimental Burning

The Department in conjunction with the Department of Environmental Quality may allow open field burning for demonstration or experimental purposes pursuant to the provisions of ORS 468A.620, consistent with smoke management considerations and subject to the following conditions:

(1) Acreage experimentally open field burned, propane flamed, or stack burned shall not exceed 1,000 acres annually.

(2) Acreage experimentally burned shall not apply to the district allocation or to the maximum annual acreage limit specified in OAR 603-077-0113(1)(a), (c), or (d).

(3) Such burning is exempt from the provisions of OAR 603-077-0115 but must comply with the provisions of 603-077-0110 and 603-077-0112, except that the Department may elect to waive all or part of the per acre open field burning or propane flaming fee.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0137

Burning Fees Outside Willamette Valley

In accordance with ORS 468A.615(1)(b) each person open field burning perennial or annual grass seed crops in counties outside the Willamette Valley, shall pay the Department \$8.00 for each acre burned.

Stat. Auth.: ORS 561.190
 Stats. Implemented: ORS 468A.585
 Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 18-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 10-2009(Temp), f. & cert. ef. 7-15-09 thru 12-1-09; Administrative correction 12-23-09; DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0139

Emergency Open Burning

The OARs regarding Emergency Opening Burning are defined by the Oregon Department of Environmental Quality in OAR 340-266-0065. If approved, the open field burning of the emergency burn will be conducted by the Department in accordance with these rules.

Stat. Auth.: ORS 561.190
 Stats. Implemented: ORS 468A.585
 Hist.: DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0140

Emergency Burning Cessation

Pursuant to ORS 468A.610 and upon finding of danger to public health or safety, the Commission or the Department of Environmental Quality may order temporary emergency cessation of all open field burning in any area of the Willamette Valley.

Stat. Auth.: ORS 561.190
 Stats. Implemented: ORS 468A.585
 Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 10-2009(Temp), f. & cert. ef. 7-15-09 thru 12-1-09; Administrative correction 12-23-09; DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0145

Propane Flaming

(1) The use of propane flammers, mobile field sanitizing devices, and other field sanitation methods specifically approved by the Department are subject to the following conditions:

- (a) The field shall first be prepared as follows:
 - (A) Either the field must have previously been open burned and the appropriate fees paid; or
 - (B) The field stubble must be flail-chopped, mowed, or otherwise cut close to the ground and the loose straw removed so the remaining stubble will not sustain an open fire.
- (b) Propane flaming operations shall comply with the following criteria:

(A) Unless otherwise specifically restricted by the Department propane flaming may be conducted only between the hours of 9 a.m. and sunset between June 1 and August 31 of each year and 9 a.m. to 1/2 hour before sunset between September 1 and October 14 of each year;

(B) Propane flammers shall be operated in overlapping strips, crosswise to the prevailing wind, beginning along the downwind edge of the field;

(C) No person shall cause or allow propane flaming which results in sustained open fire. Should sustained open fire create excessive smoke all flame and smoke sources shall be immediately and actively extinguished;

(D) No person shall cause or allow any propane flaming which results in visibility impairment on any Interstate highways or roadways specified in OAR 837-110-0080(1) and (2). Should visibility impairment occur, all flame and smoke sources shall be immediately and actively extinguished;

(E) The acreage must be registered and permits obtained pursuant to OAR 603-077-0112;

(F) No person shall cause or allow propane flaming when either the relative humidity at the nearest reliable measuring station exceeds 65 percent or the surface winds exceed 15 miles per hour;

(G) All regrowth over eight inches in height shall be mowed or cut close to the ground and removed.

(c) All propane flaming operations shall be conducted in accordance with the State Fire Marshal's safety requirements specified in OAR 837-110-0100 through 837-110-0155;

(d) No person shall cause or allow to be initiated or maintained any propane flaming or other mobile fire sanitation methods not certified by the Department on any day or at any time if the Department has determined and notified the State Fire Marshal that propane flaming is prohibited because of adverse meteorological or air quality conditions.

(2) The Department may issue restrictive limitations on the amount, density or frequency of propane flaming or other mobile fire sanitation methods in any area when meteorological conditions are unsuitable for adequate smoke dispersion, or deterioration of ambient air quality occurs.

Stat. Auth.: ORS 561.190
 Stats. Implemented: ORS 468A.585
 Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0155

Stack Burning

The open burning of piled or stacked residue from perennial or annual grass seed or cereal grain crops used for seed production is allowed subject to the following conditions:

(1) No person shall cause or allow to be initiated or maintained any stack burning on any day or at any time if the Department has notified Oregon Emergency Management that such burning is prohibited because of meteorological or air quality conditions.

(2) No person shall cause or allow stack burning of any grass seed or cereal grain residue unless said residue is dry and free of all other combustible and non-combustible material.

(3) Each responsible person shall make every reasonable effort to promote efficient burning, minimize smoke emissions, and extinguish any stack burning which is in violation of any rule of the Commission.

(4) No stack burning shall be conducted within any State Fire Marshal buffer zone "non-combustible ground surface" area (e.g., within 1/4 mile of Interstate I-5, or 1/8 mile of any designated roadway), as specified in OAR 837-110-0080.

(5) The acreage must be registered and permitted pursuant to OAR 603-077-0112.

(6) Unless otherwise specifically agreed by the parties, after the straw is removed from the fields of the grower, the responsibility for the further disposition of the straw, including burning or disposal, and payment of the appropriate fees, shall be upon the person who bales, removes, controls, or is in possession of the straw.

Stat. Auth.: ORS 561.190
 Stats. Implemented: ORS 468A.585
 Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 17-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0165

Definitions for Enforcement Procedures and Civil Penalties

Unless otherwise required by context, as used in OAR 603-077-0170-603-077-0195:

(1) "Class One Equivalent" or "Equivalent," which is used only for the purposes of determining the value of the "P" factor in the civil penalty formula, means two Class Two violations, one Class Two and two Class Three violations, or three Class Three violations.

(2) "Compliance" means meeting the requirements of the Department's statutes, rules, permits or orders.

(3) "Director" means the Director of the Department or the Director's authorized deputies or officers.

(4) "Department" means the Department of Agriculture.

(5) "Documented Violation" means any violation which the Department or other government agency records after observation, investigation or data collection.

(6) "Flagrant" means any documented violation where the Respondent had actual knowledge of the law and had consciously set out to commit the violation.

(7) "Formal Enforcement Action" means an action signed by the Director or authorized representatives or deputies which is issued to a Respondent for a documented violation. Formal enforcement actions may require the Respondent to take action within a specified

time frame, and/or state the consequences for the violation or continued noncompliance.

(8) "Intentional" means conduct by a person with a conscious objective to cause the result of the conduct.

(9) "Magnitude of the Violation" means the extent and effects of a violator's deviation from the Department's statutes, rules, standards, permits or orders. In determining magnitude the Department shall consider all available applicable information, including such factors as: duration, intensity, and the extent of the effects of the violation. Deviations shall be categorized as major, moderate or minor as set forth in OAR 603-077-0180.

(10) "Negligence" or "Negligent" means failure to take reasonable care to avoid a foreseeable risk of committing an act or omission constituting a violation.

(11) "Order" means:

(a) Any action satisfying the definition given in ORS Chapter 183; or

(b) Any other action so designated in ORS Chapters 468 or 468A.

(12) "Person" includes, but is not limited to, individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, states and their agencies, and the Federal Government and its agencies.

(13) "Prior Significant Action" means any violation established either with or without admission of a violation by payment of a civil penalty, or by a final order of the Department.

(14) "Reckless" or "Recklessly" means conduct by a person who is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of care a reasonable person would observe in that situation.

(15) "Respondent" means the person to whom a formal enforcement action is issued.

(16) "Risk of Harm" means the individual or cumulative possibility of harm to public health or the environment caused by a violation or violations. Risk of harm shall be categorized as major, moderate or minor.

(17) "Systematic" means any documented violation which occurs on a regular basis.

(18) "Violation" means a transgression of any statute, rule, order, license, permit, or any part thereof and includes both acts and omissions. Violations shall be categorized as Class One (or I), Class Two (or II) or Class Three (or III), with Class One designating the most serious class of violation.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 18-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04

603-077-0170

Consolidation of Proceedings

Notwithstanding that each and every violation is a separate and distinct offense, and in cases of continuing violations, that each day's continuance is a separate and distinct violation, proceedings for the assessment of multiple civil penalties for multiple violations may be consolidated into a single proceeding.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98

603-077-0175

Enforcement Actions

(1) Notice of Noncompliance (NON):

(a) Informs a person of a violation, and the consequences of the violation or continued noncompliance. The notice may state the actions required to resolve the violation and may specify a time by which compliance is to be achieved and that the need for formal enforcement action will be evaluated;

(b) Shall be issued by the Director or authorized representative;

(c) May be issued for all classes of documented violations;

(d) Shall be a contested case order for purposes of judicial review.

(2) Notice of Civil Penalty Assessment (CPA):

(a) Is issued pursuant to ORS 468A.992, and OAR 603-077-0177 and 603-077-0180;

(b) Shall be issued by the Director or authorized representative.

(3) Order:

(a) Is issued pursuant to ORS Chapters 183, 468, 468A;

(b) May be in the form of a Department Order, Stipulation and Final Order (SFO) or a Mutual Agreement and Order:

(A) Department Orders shall be issued by the Director or authorized representative;

(B) All other Orders:

(i) May be negotiated;

(ii) Shall be signed by the Director or authorized representative and the authorized representative of each other party.

(c) May be issued for any Class of violation.

(4) The enforcement actions described in sections (1) through (3) of this rule in no way limit the Department from seeking legal or equitable remedies as provided by ORS Chapters 468, 468A, and 561.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 18-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04

603-077-0177

Civil Penalty Schedule Matrices

In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation relating to field burning pertaining to statutes, rules, permits or orders by service of a written notice of assessment of civil penalty upon the Respondent. The amount of any civil penalty shall be determined through the use of the following matrix in conjunction with the formula contained in OAR 603-077-0180:

Civil penalty matrix

Magnitude of Violation — Major — Moderate — Minor.

Class I — \$6,000 — \$3,000 — \$1,500.

Class II — \$3,000 — \$1,500 — \$750.

Class III — \$500 — \$250 — \$10.

No civil penalty issued by the Director pursuant to this matrix shall be less than fifty dollars (\$50) or more than ten thousand dollars (\$10,000) for each day of each violation. This matrix shall apply to the following: Any violation related to field burning statutes, rules, permits or orders.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0180

Civil Penalty Determination Procedure

(1) When determining the amount of civil penalty to be assessed for any violation, the Director or authorized representative shall apply the following procedures:

(a) Determine the class and the magnitude of each violation:

(A) The class of a violation is determined by consulting OAR 603-077-0195;

(B) The magnitude of the violation shall be moderate unless:

(i) If the Department finds that the violation had a significant adverse impact on the environment, or posed a significant threat to public health, a determination of major magnitude shall be made. In making a determination of major magnitude, the Department shall consider all available applicable information including such factors as: The degree of deviation from applicable statutes, rules, standards, permits or orders, and the extent of the effects of the violation. In making this finding, the Department may consider any single factor to be conclusive for the purpose of making a major magnitude determination;

(ii) If the Department finds that the violation had no potential for or actual adverse impact on the environment, nor posed any threat to public health, or other environmental receptors, a determination of minor magnitude shall be made. In making a determination of minor magnitude, the Department shall consider all available applicable information including such factors as: The degree of deviation from the applicable statutes, rules, standards, permits or orders, and

the extent of the effects of the violation. In making this finding, the Department may consider any single factor to be conclusive for the purpose of making a minor magnitude determination.

(b) Choose the appropriate base penalty (BP) established by the matrices of OAR 603-077-0177 after determining the class and magnitude of each violation;

(c) Starting with the base penalty, determine the amount of penalty through application of the formula: $BP + ((.1 \times BP) (P + H + O + R + C)) + EB$ where:

(A) "P" is whether the Respondent has any prior significant actions relating to statutes, rules, orders and permits pertaining to environmental quality or pollution control. The values for "P" and the finding which supports each are as follows:

(i) 0 if no prior significant actions or there is insufficient information on which to base a finding;

(ii) 1 if the prior significant action is one Class Two or two Class Threes;

(iii) 2 if the prior significant action(s) is one Class One or equivalent;

(iv) 3 if the prior significant actions are two Class One or equivalents;

(v) 4 if the prior significant actions are three Class Ones or equivalents;

(vi) 5 if the prior significant actions are four Class Ones or equivalents;

(vii) 6 if the prior significant actions are five Class Ones or equivalents;

(viii) 7 if the prior significant actions are six Class Ones or equivalents;

(ix) 8 if the prior significant actions are seven Class Ones or equivalents;

(x) 9 if the prior significant actions are eight Class Ones or equivalents;

(xi) 10 if the prior significant actions are nine Class Ones or equivalents;

(xii) In determining the appropriate value for prior significant actions as listed above, the Department shall reduce the appropriate factor by:

(I) A value of 2 if the date of issuance of all the prior significant actions are greater than three years old but less than five years old;

(II) A value of 4 if the date of issuance of all the prior significant actions are greater than five years old;

(III) In making the above reductions, no finding shall be less than zero.

(xiii) Any prior significant action which is greater than ten years old shall not be included in the above determination.

(B) "H" is past history of the Respondent in taking all feasible steps or procedures necessary or appropriate to correct any violation cited in any prior significant actions. In no case shall the combination of the "P" factor and the "H" factor be a value less than zero. In such cases where the sum of the "P" and "H" values is a negative numeral the finding and determination for the combination of these two factors shall be zero. The values for "H" and the finding which supports each are as follows:

(i) -2 if Respondent took all feasible steps to correct each violation contained in any prior significant action;

(ii) 0 if there is no prior history or if there is insufficient information on which to base a finding.

(C) "O" is whether the violation was repeated or continuous. The values for "O" and the finding which supports each are as follows:

(i) 0 if the violation existed for one day or less and did not recur on the same day;

(ii) 2 if the violation existed for more than one day or if the violation recurred on the same day.

(iii) 2 if Respondent took some but not all feasible steps to correct each violation contained in any prior significant action.

(iv) 4 if Respondent took no steps to correct each violation contained in any prior significant action.

(D) "R" is whether the violation resulted from an unavoidable accident, or a negligent, intentional or flagrant act of the Respondent. The values for "R" and the finding which supports each are as follows:

(i) 0 if an unavoidable accident, or if there is insufficient information to make a finding;

(ii) 2 if negligent;

(iii) 6 if intentional; or

(iv) 10 if flagrant.

(E) "C" is the Respondent's cooperativeness and efforts to correct the violation. The values for "C" and the finding which supports each are as follows:

(i) -2 if Respondent was cooperative and took reasonable efforts to correct the violation or minimize the effects of the violation;

(ii) 0 if there is insufficient information to make a finding, or if the violation or the effects of the violation could not be corrected;

(iii) 2 if Respondent was uncooperative and did not take reasonable efforts to correct the violation or minimize the effects of the violation.

(F) "EB" is the approximated dollar sum of the economic benefit that the Respondent gained through noncompliance. The Department may increase the penalty by the approximated dollar sum of the economic benefit, provided that the sum penalty does not exceed the maximum allowed for the violation by rule or statute. After determining the base penalty and applying the civil formula penalty above to determine the gravity and magnitude based portion of the civil penalty, "EB" is to be determined as follows:

(i) Add to the formula the approximate dollar sum of the economic benefit gained through noncompliance, as calculated by determining both avoided costs and the benefits obtained through any delayed costs, where applicable;

(ii) The Department need not calculate nor address the economic benefit component of the civil penalty when the benefit obtained is de minimis.

(2) In addition to the factors listed in section (1) of this rule, the Director may consider any other relevant rule of the Department and shall state the effect the consideration had on the penalty. On review, the Department shall consider the factors contained in section (1) of this rule and any other relevant rule of the Department.

(3) The Department may reduce any penalty based on the Respondent's inability to pay the full penalty amount. If the Respondent seeks to reduce the penalty, the Respondent has the responsibility of providing to the Department documentary evidence concerning Respondent's inability to pay the full penalty amount:

(a) When the Respondent is currently unable to pay the full amount, the first option should be to place the Respondent on a payment schedule with interest on the unpaid balance for any delayed payments. The Department may reduce the penalty only after determining that the Respondent is unable to meet a long term payment schedule;

(b) In appropriate circumstances, the Department may impose a penalty that may result in a Respondent going out of business. Such circumstances may include situations where the violation is intentional or flagrant or situations where the Respondent's financial condition poses a serious concern regarding the ability or incentive to remain in compliance.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 18-2003, f. & cert. ef. 5-15-03;

DOA 22-2004, f. & cert. ef. 8-10-04

603-077-0185

Written Notice of Assessment of Civil Penalty; When Penalty Payable

(1) A civil penalty shall be due and payable ten days after the order assessing the civil penalty becomes final and the civil penalty is thereby imposed by operation of law or on appeal. A person against whom a civil penalty is assessed shall be served with a notice in the form and manner provided in ORS 183.415 and OAR chapter 137, division 003.

(2) The written notice of assessment of civil penalty shall comply with ORS 468.135(1) and 183.090, relating to notice and contested case hearing applications, and shall state the amount of the penalty or penalties assessed.

(3) The rules prescribing procedure in contested case proceedings contained in OAR chapter 137, division 003 shall apply thereafter.

Stat. Auth.: ORS 561.190
 Stats. Implemented: ORS 468A.585
 Hist.: DOA 2-1998, f. & cert. ef. 3-3-98

603-077-0187

Compromise or Settlement of Civil Penalty by Director

(1) Any time after service of the written notice of assessment of civil penalty, the Director may compromise or settle any unpaid civil penalty at any amount that the Director deems appropriate. Any compromise or settlement executed by the Director shall be final.

(2) In determining whether a penalty should be compromised or settled, the Director may take into account the following:

(a) New information obtained through further investigation or provided by Respondent which relates to the penalty determination factors contained in OAR 603-077-0180;

(b) The effect of compromise or settlement on deterrence;

(c) Whether Respondent has or is willing to employ extraordinary means to correct the violation or maintain compliance;

(d) Whether Respondent has had any previous penalties which have been compromised or settled;

(e) Whether the compromise or settlement would be consistent with the Department's goal of protecting the public health and environment;

(f) The relative strength or weakness of the Department's case.

Stat. Auth.: ORS 561.190
 Stats. Implemented: ORS 468A.585
 Hist.: DOA 2-1998, f. & cert. ef. 3-3-98

603-077-0188

Stipulated Penalties

Nothing in OAR chapter 603, division 077 shall affect the ability of the Director to include stipulated penalties in a Stipulation and Final Order, Consent Order, Consent Decree or any other agreement issued under ORS Chapters 183, 468, or 468A.

Stat. Auth.: ORS 561.190
 Stats. Implemented: ORS 468A.585
 Hist.: DOA 2-1998, f. & cert. ef. 3-3-98

603-077-0190

Additional Civil Penalties

In addition to any other penalty provided by law, the following violations are subject to the civil penalties specified below:

(1) Any person planting contrary to the restriction of subsection (1) of ORS 468A.580 pertaining to the open field burning of cereal grain acreage shall be assessed by the Department a civil penalty of \$25 for each acre planted contrary to the restrictions.

(2) Any person who intentionally or recklessly violates any provisions of ORS Chapters 468 or 468A or any rule or standard or order of the Department adopted or issued pursuant to ORS 468 or 468A, which results in or creates the imminent likelihood for an extreme hazard to the public health or which causes extensive damage to the environment shall incur a penalty up to \$100,000. When determining the civil penalty sum to be assessed under this section, the Director shall apply the following procedures:

(a) Select one of the following base penalties after determining the cause of the violation:

- (A) \$50,000 if the violation was caused recklessly;
- (B) \$75,000 if the violation was caused intentionally;
- (C) \$100,000 if the violation was caused flagrantly.

(b) Then determine the civil penalty through application of the formula: $BP + ((.1 \times BP) (P + H + O + C)) + EB$, in accordance with OAR 603-077-0180(1)(c).

Stat. Auth.: ORS 561.190
 Stats. Implemented: ORS 468A.585
 Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 22-2004, f. & cert. ef. 8-10-04

603-077-0195

Field Burning Classification of Violations

Violations pertaining to field burning shall be classified as follows:

(1) Class One:

(a) Violation of any order of the Department listed under OAR 603-077-0175(4);

(b) Systematic failure to keep records required by a permit, rule or order;

(c) Open field burning in a manner that causes a hazard to public safety;

(d) Causing or allowing open field burning without first obtaining a valid open field burning permit;

(e) Causing or allowing open field burning or stack burning where prohibited by OAR 603-077-0110(7) or 603-077-0155(4);

(f) Causing or allowing any propane flaming which results in visibility impairment on any Interstate Highway or Roadway specified in OAR 837-011-0080(1) and (2);

(g) Failing to immediately and actively extinguish all flames and smoke sources when any propane flaming results in visibility impairment on any Interstate Highway or Roadway specified in OAR 837-011-0080(1) and (2);

(h) Causing or allowing propane flaming of grass seed or cereal grain crops, stubble, or residue without first obtaining a valid propane flaming burning permit;

(i) Stack burning grass seed or cereal grain crop residue without first obtaining a valid stack burning permit;

(j) Open field burning, propane flaming, stack burning when State Fire Marshal restrictions are in effect;

(k) Causing or allowing propane flaming which results in sustained open flame in a fire safety buffer zone along any Interstate Highway or Roadway specified in OAR 837-011-0080(1) or (2);

(l) Failure to provide access to premise or records when required by law, rule, permit, or order.

(m) Any violation that causes a major harm or poses a major risk of harm to public health or the environment.

(2) Class Two:

(a) Failure to actively extinguish all flames and major smoke sources from open field or stack burning when prohibition conditions are imposed by the Department or when instructed to do so by an agent or employee of the Department;

(b) Causing or allowing a propane flaming operation to be conducted in a manner which causes or allows an open flame to be sustained;

(3) Class Three: Any violation related to open field burning, propane flaming, or stack burning which is not otherwise classified in these rules.

Stat. Auth.: ORS 561.190
 Stats. Implemented: ORS 468A.585
 Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 18-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04

DIVISION 80

LAND USE COORDINATION

603-080-0005

Land Use Coordination

(1) This division is applicable to the approval of actions and projects described below under the following department programs. These are:

(a) Approval of lease applications for plats for commercial cultivation of oysters on state lands in coastal estuaries pursuant to ORS Chapter 622.

(b) Approval of conservation planning and implementation grants to local Soil and Water Conservation Districts pursuant to ORS Chapter 568.

(c) Review of soils reports pursuant to ORS 215.710(5) and OAR 603 division 80.

(d) Approval of any other action(s) under a department program subsequently determined to affect land use pursuant to OAR 660 division 30.

Chapter 603 Department of Agriculture

(2) In order to approve an action or project under a program listed in OAR 603-080-0005(1)(a)–(d), the department shall find that it complies with the Statewide Planning Goals and is compatible with acknowledged city and county comprehensive plans and land use regulations. To make its goal compliance and plan compatibility findings, the department shall comply with OAR 603-080-0005(2)–(4) and shall also adhere to the procedures in the department’s state agency coordination program which is hereby adopted by reference.

(3) Except where the department is required to address directly the Statewide Planning Goals under section (4) of this rule, the department shall make its goal compliance findings based on the land use compatibility information provided to the department by the affected city or county or project applicant. Such documentation shall be submitted to the department in a manner established by the department and in accordance with applicable procedures set forth in the department’s state agency coordination program.

(4) The department shall adopt findings demonstrating compliance with the Statewide Planning Goals if a situation ever arises where the department must approve a project action but is unable to rely upon or is not provided with the appropriate land use compatibility information by the affected city or county or project applicant. In this instance, the department shall comply with OAR 660-030-0065 and the applicable procedures in the department’s state agency coordination program to make the necessary goal compliance findings.

Stat. Auth.: ORS 197.180

Stats. Implemented: ORS 197.180, 215.705 & 215.710

Hist.: AD 13-1990, f. & cert. ef. 6-13-90; AD 12-1994, f. & cert. ef. 8-30-94; AD 16-1995, f. & cert. ef. 11-20-95

Dwellings on High Value Lots of Record

603-080-0015

Purpose

These rules apply to the review of soils reports that propose to change the soil class, soil rating or other soil designations on a specific lot or parcel pursuant to ORS 215.710(5)(b). The department’s review decision does not itself authorize a dwelling or any other development.

Stat. Auth.: ORS 215.705

Stats. Implemented: ORS 215.705 & 215.710

Hist.: AD 12-1994, f. & cert. ef. 8-30-94; AD 16-1995, f. & cert. ef. 11-20-95

603-080-0020

Definitions

(1) The following definitions apply to words used in OAR 603-080-0015 to 603-080-0050:

(a) “County” means the county in which the lot or parcel at issue is located;

(b) “Department” means the Oregon Department of Agriculture;

(c) “Director” means the Director of the Oregon Department of Agriculture;

(d) “Lot” has the meaning provided in ORS 92.010 and 215.010;

(e) “Parcel” has the meaning provided in ORS 92.010 and 215.010; and

(f) “Person” means individuals, corporations, associations, firms, partnerships, joint stock companies, and governmental entities.

(2) Definitions for other words used in these rules shall be consistent with interpretations given by the courts and the Oregon Land Use Board of Appeals to the same or similar terms in ORS Chapters 197 and 215, unless a different meaning is clearly indicated by context.

Stat. Auth.: ORS 215.705

Stats. Implemented: ORS 215.70 & 215.710

Hist.: AD 12-1994, f. & cert. ef. 8-30-94; AD 16-1995, f. & cert. ef. 11-20-95

603-080-0030

Acceptable Credentials

(1) Until January 1, 1997, the following credentials of soil scientists conducting the soil surveys are the minimally acceptable qualifications under ORS 215.710(5)(b)(A):

(a) A soil scientist who is certified as a soils classifier by the ARCPACS (A Federation of Certifying Boards in Agronomy, Biology, Earth and Environmental Sciences); or

(b) A soil scientist who can document the following qualifications:

(A) Uses and understands the physical, chemical, mineralogical and biological properties that apply to pedology;

(B) Has proficiency in the practice of applying pedology to soil investigation, classification, education, and consultation on the effect of measured, observed and inferred soil properties and their use. The practice of applying pedology includes the preparation of soil descriptions, maps, reports, and interpretations that apply to private or public work; and

(C) Has a bachelor’s degree in soil science together with a minimum of five years of professional experience as a soils classifier, or has a master’s or doctoral degree in soil science together with a minimum of three years of professional experience as a soils classifier.

(2) Beginning January 1, 1997, the only minimally acceptable credentials for a soil scientist under ORS 215.710(5)(b)(A) shall be a soil scientist certified as a soils classifier by ARCPACS (subsection (1)(a) of this rule). Soil scientists who documented their qualifications under subsection (1)(b) of this rule must be certified as a soils classifier on or before January 1, 1997, in order to continue to meet the minimally acceptable credentials for a soil scientist under ORS 215.710(5)(b)(A).

(3) At its discretion, the department may verify the submitted credentials of a soil scientist.

Stat. Auth.: ORS 215.705

Stats. Implemented: ORS 215.705 & 215.710

Hist.: AD 12-1994, f. & cert. ef. 8-30-94; AD 16-1995, f. & cert. ef. 11-20-95

603-080-0040

Acceptable Soils Reports

The department shall consider the soils analyses in soils reports soundly and scientifically based if they meet the following:

(1) General Information, shall include:

(a) The title of the report;

(b) Land owner for whom the report has been prepared;

(c) Names of soil scientist(s) conducting the field work and preparer(s) of the report, along with their certification numbers and qualifications as required in OAR 603-080-0030(2);

(d) Land use case file number (if available);

(e) County in which the survey was conducted;

(f) Location of the project site, including the township, range, section, and lot(s) number;

(g) Present zoning designation;

(h) Current land use;

(i) A description of the purpose of the investigation.

(2) Previous Mapping or Background: The soil scientist shall provide a copy of the applicable and most current National Cooperative Soil Survey map(s) provided by the Natural Resources Conservation Service (NRCS), with the area of investigation outlined on the map(s). The scale of the map(s) shall be identified and a list of the map units under investigation be listed. The applicable interpretations and inclusions for the map units for which the investigation is being made shall also be provided.

(3) Methods Used By Soil Scientist: The soil scientist shall describe the methodologies used for the preparation of the report and shall include the following:

(a) The level of order of survey used in the field survey, scale and type of maps used for field investigations, number of sample locations and observation points all confirming or disagreeing with the NRCS mapping units. The level of order of survey shall be one or more higher than the NRCS survey as described in the **NRCS Soil Survey Manual, 1993**;

(b) The date/s of the field investigation;

(c) The methods used for observations (backhoe, auger, shovel etc.) and methods used for documentation (for slope, color, pH etc.);

(d) A notation of any limitations encountered during the field investigation such as soil depth, drainage, slope or inaccessibility.

(4) Results, Findings, Decisions: The soils report shall describe how the level of order of survey used on this investigation differs from that used by NRCS in the original soil survey. The soils report shall also include:

(a) An overview of the geology or geologic setting, describing sources of parent material, bedrock and related factors;

(b) A description of the landforms and topography, confirming the relationship of landforms to soil mapping units;

(c) A description of on-site and adjacent hydrology, including surface and subsurface features, intermittent versus perennial, flood plain and floodways and other related information;

(d) A description of the revised soil mapping units with their range of characteristics, explaining how and why they differ from NRCS soil mapping. The soils report shall include a summary of soil characteristic variabilities incorporating significance of preceding weather (above or below average) and crops and natural vegetation present;

(e) A tabulation of all previous and revised soil mapping units complete with their acreages and land use classifications.

(5) Summary or Conclusion: The soils report shall contain a section reiterating the purpose of the investigation, explaining the significance of the revised soil mapping and describing any other significant issues related to the report's purpose.

(6) References: This section shall be used to detail the qualifications of field investigators and the preparers of the report. This section may also list any manuals or publications utilized or referenced by the report.

(7) Attachments: Other informational materials provided as attachments, such as maps, figures or appendices shall include the following and shall be printed on 8-1/2" X 11" wherever possible:

(a) Vicinity map with a scale of 1:48,000 or smaller showing the project location;

(b) The NRCS soils map with a scale of 1:20,000 or larger outlining the project site;

(c) Site condition map (aerial photo) with a scale of 1:5,000 or larger outlining the project site;

(d) Topography map with a scale of 1:24,000 or larger outlining the project site;

(e) Assessor's map with a scale of 1:5,000 or larger outlining the project site;

(f) Revised soils map of the project site with a scale of 1:5,000 or larger;

(g) Soil profile and site observation notes;

(h) Representative soil profile descriptions of any soil mapping unit identified that is not described in the published soil survey for the area mapped.

Stat. Auth.: ORS 215.705

Stats. Implemented: ORS 215.705 & 215.710

Hist.: AD 12-1994, f. & cert. ef. 8-30-94; AD 16-1995, f. & cert. ef. 11-20-95

603-080-0050

Review Statement

(1) Within 30 days of the receipt of the soils report from the applicant, the director or his designee shall determine the acceptability of the consultant's credentials and whether the analysis in the report is soundly and scientifically based.

(2) The department shall provide a written statement to the applicant on its findings and these findings shall be an order in other than a contested case for purposes of judicial review under Oregon's Administrative Procedure Act ORS 183.484.

Stat. Auth.: ORS 215.705

Stats. Implemented: ORS 215.705 & 215.710

Hist.: AD 12-1994, f. & cert. ef. 8-30-94; AD 16-1995, f. & cert. ef. 11-20-95

603-080-0060

Notification of Application

(1) The department shall maintain a list of persons requesting notification of applications. The department may prepare separate lists for specified geographic areas.

(2) Once the department determines that an application is complete, the department shall notify all persons on the lists referred to in section (1) of this rule and OAR 603-080-0040(2).

(3) Notice shall be in the form prescribed by the department and include information about the filing of the application, the general nature of the contested case proceedings, the appointment of the hearings officer and the requirements for a petition to participate in the contested case hearing as a party, limited party or interested agency.

(4) Notice may be personally served or sent by first class mail.

Stat. Auth.: ORS 561.190 & 215.705

Stats. Implemented: ORS 215.705

Hist.: AD 12-1994, f. & cert. ef. 8-30-94

DIVISION 82

OYSTER, CLAM AND MUSSEL LEASES

603-082-0010

Purpose

The purpose of this division is:

(1) To establish procedures, standards and requirements to be used by the department to determine if a new plat application that proposes to lease and use state lands located in coastal estuaries for the commercial cultivation of oysters, clams or mussels is consistent with ORS 622.210 to 622.360.

(2) Establish procedures, standards and requirements for the sale, lease, assignment, conveyance, relinquishment or other transfer of shellfish plats.

(3) Establish procedures, standards and requirements for the withdrawal of unproductive and abandoned lands.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 622.210 - 662.360

Hist.: DOA 11-2003, f. & cert. ef. 2-27-03

603-082-0020

Definitions

For purposes of OAR 603-082-0010 through 603-082-0100, the definitions in ORS 183.310 and 622.210 apply. In addition:

(1) "Claimant" means a person or agency that claims control of a plat granted by the department under ORS 622.210 to 622.992.

(2) "Cultivation" means the process of growing or farming cultured oysters, clams or mussels with the primary intent to make a profit in money. Cultivation includes activities associated with bed or site preparation, seeding, grow out and harvesting and includes methods that:

(a) Are or may be used on an operation of a similar nature;

(b) Are or may become generally accepted, reasonable and prudent in conjunction with the commercial production of oysters, clams or mussels; and

(c) Comply with applicable laws.

(3) "Cultivator" means any person cultivating oysters, clams or mussels on or within a plat.

(4) "Department" means the State Department of Agriculture.

(5) "Impact" means the actual, expected or predictable results upon navigation, fish and wildlife habitat, recreational activities, commerce or other public uses.

(6) "Plat" means an area:

(a) The department has found to be available and classified as suitable for oyster, clam or mussel cultivation, pursuant to ORS 622.250; and

(b) The department has granted to an applicant for oyster, clam or mussel cultivation pursuant to ORS 622.250.

(7) "Public trust values" include commerce, navigation, fishing and recreation.

(8) "State land" means submerged and submersible lands within the boundaries of the State of Oregon.

(9) "Submerged lands" are lands lying below the line of ordinary low water of all title navigable and tidally influenced water within the State of Oregon.

(10) "Submersible lands" are lands lying between the line of ordinary high water and the line of ordinary low water of all title navigable and tidally influenced water within the State of Oregon.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 622.210 - 662.360

Hist.: DOA 11-2003, f. & cert. ef. 2-27-03

603-082-0030

Application Requirements

(1) Applicants for new oyster, clam or mussel plats shall complete and submit an application form prescribed and provided by the department including the following supplemental information:

(a) A legal description of the area applied describing the boundaries of the area and specifying its acreage.

(b) A map of sufficient detail to allow the area applied for to be readily identified.

(c) An application fee as established by ORS 622.250(1).

(d) An affidavit of publication indicating fulfillment of subsection (2) of this section.

(2) The applicant shall cause notice of the application to be published once a week for two consecutive weeks in a newspaper of general circulation in each county where any area is applied for, or any part thereof, is located. The notice must state the name of the applicant, the type of operation the applicant proposes to conduct, and a general and legal description of the area. The notice shall also state that any comments regarding the proposed plat may be submitted to the department.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 622.230

Hist.: DOA 11-2003, f. & cert. ef. 2-27-03

603-082-0040

Plat Application Review

Upon receipt of an application for an oyster, clam or mussel lease, an applicant shall be eligible for an authorization of a plat if the director determines that:

(1) The application is complete pursuant to OAR 603-082-0030. If an application is determined to be incomplete, the department shall notify the applicant of exactly what information is missing within 45 days of the receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete on receipt of the missing information.

(2) The subject area is suitable for cultivation or can be rendered suitable for cultivation with conditions imposed by the department in the final order and grant certificate.

(3) In the case of an application for the cultivation of clams or mussels, the proposed plat shall involve an oyster plantation claim or plat that was in effect on June 1, 1997. The proposed clam or mussel plat area may include not more than 20 percent of the lands subject to the existing oyster claim or plat and shall include not less than one acre.

(4) The proposed plat will not restrict the rights of the public to use the waters of the state in a normal and customary manner.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 622.230, 622.250 & 622.320

Hist.: DOA 11-2003, f. & cert. ef. 2-27-03

603-082-0050

Classifying Lands Suitable for Cultivation

(1) In determining if an area is suitable for cultivation of oysters, clams or mussels, the department shall consider the following:

(a) Consistency with local land use regulations, plans and zoning requirements and with the Statewide Planning Goals.

(b) Consistency with applicable local, state or federal laws.

(c) Certification or approval status by the department for harvest intended for human consumption.

(d) Compatibility with existing commercial fishing and shellfish operations including crabbing, shrimping and clamming.

(e) Impacts on fish and wildlife habitat.

(f) Impacts on navigation.

(g) Compatibility with recreational activities, commerce or other public uses or public trust values.

(h) Evidence that the land is owned by the state.

(i) If the land is available for shellfish cultivation.

(2) The department shall consult with appropriate local, state and federal agencies to determine whether lands proposed by an applicant are suitable for shellfish cultivation. A local, state or federal agency may request in writing to receive notice of new plat applications.

(3) The classification of state lands for cultivation for a specific proposed plat area may occur concurrent with the processing and review of an application for a new plat.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 622.240 & 622.250

Hist.: DOA 11-2003, f. & cert. ef. 2-27-03

603-082-0060

Action by the Director

(1) The director may issue a proposed order approving, approving with conditions or denying a plat application. The director may grant or deny an application no later than the 90th day from after the date of publication of the notice referred to in OAR 603-082-0030(2). The 90 day time period may be extended for a reasonable period of time at the request of the applicant and approval of the department.

(2) The proposed order shall include or be accompanied by the following:

(a) A caption with the name of the department, the name of the claimant and a case number if used;

(b) A statement describing the purpose and effect of the proposed order, and the factual and legal basis for it, including citation to the statutes and rules relied upon;

(c) A statement of the claimant's right to challenge the proposed order by requesting a hearing, and that the request must meet the following requirements:

(A) A request for hearing must identify the matter appealed by the claimant's name, the date of the proposed order and the department's case number, if any;

(B) A request for a hearing must explain how the claimant considers the proposed order to be legally or factually incorrect.

(C) To be timely, a request for a hearing must be received by the department by the close of business on the 30th day after the date of the proposed order.

(d) A statement of additional rights and risks of the claimant, including at least the following:

(A) A statement informing the claimant that if a request for hearing is not received by the department by the established date, the claimant will have waived the right to a hearing and the proposed order will be final.

(B) A hearing in response to a request will be limited to the issues raised in the request;

(C) The claimant has the right to be represented by an attorney, but if the claimant is an agency, a corporation or an unincorporated association, the claimant must be represented by an attorney.

(e) How to get more information and the department staff member and address or facsimile number to which a request for hearing must be sent.

(f) A hearing shall be conducted pursuant to ORS 183.415 et seq.

(3) Upon final approval of a plat, a boundary survey shall be prepared and submitted to the department before a Grant Certificate is issued. A professional surveyor licensed in Oregon shall conduct the survey.

(4) The boundary corners of existing and new plats shall be plainly and distinctly marked out by a means that does not obstruct navigation.

Stat. Auth.: ORS 561.190 & 622.320

Stats. Implemented: ORS 622.250

Hist.: DOA 11-2003, f. & cert. ef. 2-27-03

603-082-0070

Transfer of Plats

(1) Sales, leases, assignments, conveyances, relinquishments and other transfers of oyster plantations and claims, or parts thereof, or of plats for the cultivation of oysters, clams or mussels may be made by reference to the plat filed as provided in ORS 622.210 to 622.300 and 622.320. The heirs, successors, assignees and lessees of those plats are entitled to continued possession of such plats by compliance with ORS 622.210 to 622.300 and 622.320.

(2) A person proposing to sell, lease, assign, convey, relinquish or otherwise transfer an oyster plantation claim or a plat for the cultivation of oysters, clams or mussels shall provide the department

notice of such transaction within 30 days of the effective date of the transaction.

(3) The filing of such a notice, if other than a relinquishment, shall be accompanied by a claim or plat certificate reissuance fee established in ORS 622.340(3) for each affected claim or plat.

(4) The failure to provide the notice required by subsection (2) of this section shall result in the department holding the lessor of record of the claim or plat responsible for compliance with the provisions of ORS 622.210 to 622.360 and all provisions of the lease grant certificate.

Stat. Auth.: ORS 561.190
Stats. Implemented: ORS 622.340
Hist.: DOA 11-2003, f. & cert. ef. 2-27-03

603-082-0080

Annual Fees and Taxes

(1) Persons using state lands for cultivating oysters, clams or mussels shall pay annual cultivation fees and use taxes quarterly to the department. Fees and taxes become delinquent 30 days after the end of the quarter. Use taxes shall be in the amount established by ORS 622.290(1).

(2) Annual cultivation fees and use taxes shall be assessed in lieu of property taxes, lease fees or rental charges for the use of lands upon which oysters, clams or mussels are grown and harvested.

Stat. Auth.: ORS 561.190
Stats. Implemented: ORS 622.290
Hist.: DOA 11-2003, f. & cert. ef. 2-27-03

603-082-0090

Withdrawal of Unproductive and Abandoned Lands

(1) The rules of procedure in OAR 603-082-0090 are in addition to the procedural requirements of the Attorney General’s Model Rules of Procedure, codified at OAR 137-003-0501 to 137-003-0692. In the case of conflict, this division controls over the Model Rules, unless the Model Rules establish a mandatory requirement.

(2) The director may issue a proposed order withdrawing any portion of a plat from a claimant if the director finds the portion of the plat is unproductive or abandoned as described in ORS 622.280 and OAR 603-082-0090(3). The proposed order shall include or be accompanied by the following:

(a) A caption with the name of the department, the name of the claimant and a case number if used;

(b) A short and plain statement describing the purpose and effect of the proposed order, and the factual and legal basis for it, including citation to the statutes and rules relied upon;

(c) A statement of the claimant’s right to challenge the proposed order by requesting a hearing, and that the request must meet the following requirements:

(A) A request for hearing must identify the matter appealed by the claimant’s name, the date of the proposed order and the department’s case number, if any;

(B) A request for a hearing must explain how the claimant considers the proposed order to be legally or factually incorrect.

(C) To be timely, a request for a hearing must be received by the department by the close of business on the 30th day after the date of the proposed order.

(d) A statement of additional rights and risks of the claimant, including at least the following:

(A) A statement informing the claimant that if a request for hearing is not received by the department by the established date, the claimant will have waived the right to a hearing and the proposed order will be final.

(B) A hearing in response to a request will be limited to the issues raised in the request;

(C) The claimant has the right to be represented by an attorney, but if the claimant is an agency, a corporation or an unincorporated association, the claimant must be represented by an attorney.

(e) How to get more information and the department staff member and address or facsimile number to which a request for hearing must be sent.

(f) A hearing shall be conducted pursuant to ORS 183.415 et seq.

(3) Pursuant to ORS 622.280, a plat or portion of a plat may be found to be unproductive or abandoned under any of the following circumstances:

(a) If more than one-half the lands in the plat are unproductive for a period of three years or more after the filing of the plat under chapter 675, Oregon Laws 1969. Lands are unproductive when:

(A) The claimant fails to pay the fees or use taxes referred to in ORS 622.290, unless the department determines that there was reasonable cause for such failure.

(B) Evidence shows that cultivated oysters, clams or mussels have not been produced or harvested for a period of three years.

(b) If any portion of a plat is not marked in the manner provided by ORS 622.320, that portion of the plat may be considered abandoned.

(c) If any portion of a plat is held by a claimant for purposes other than oyster, clam or mussel cultivation, that portion of the plat may be considered abandoned.

(d) Evidence indicates that the plat is being used in a manner contrary to the conditions imposed on the plat as indicated in the Final Order and Grant Certificate.

(e) When the claimant requests in writing that their rights, claims and leases to any portion of a plat be terminated by the department.

(4) Lands may not be found to be abandoned if the reason for unproductiveness is any of the following:

(a) Restrictions imposed by governmental health authorities;

(b) The unavailability of seed; or

(c) Infestation of the plat by pest or disease.

(5) Nothing in this rule affects any oyster cultivation right acquired prior to January 1, 1982, pursuant to chapter 675, Oregon Laws 1969.

Stat. Auth.: ORS 561.190
Stats. Implemented: ORS 622.280 & 622.310
Hist.: DOA 11-2003, f. & cert. ef. 2-27-03

603-082-0100

Scheduling, Notice and Conduct of Hearings

(1) The department shall provide notice of the hearing containing at least the following information: If the claimant or the claimant’s representative fails to appear at the time and place specified for the hearing, the department’s file or files on the matter automatically become part of the record as prima facie evidence in support of the Order, and the Hearing Officer will decide the case based on that record;

(2) A hearing in response to a timely request shall be limited to the issues raised in the request. Evidence and argument shall not be taken on issues not raised in the claimant’s request for appeal.

Stat. Auth.: ORS 561.190
Stats. Implemented: ORS 622.210 - 622.360
Hist.: DOA 11-2003, f. & cert. ef. 2-27-03

DIVISION 90

**AGRICULTURAL WATER QUALITY
MANAGEMENT PROGRAM**

603-090-0000

Preamble

(1) ORS 568.900 to 568.933 authorizes the Oregon Department of Agriculture to develop and carry out an agricultural water quality management area plan for agricultural and rural lands where a water quality management plan is required by state or federal law. In executing this responsibility, the department develops, adopts, and periodically modifies programs to effectuate agricultural water quality management area plans in the applicable geographic areas.

(2) These administrative rules establish policies, guidelines, and specific requirements for the development and content of agricultural water quality management area plans and rules, requirements of agricultural water quality management area plans and rules for applicable geographic areas, the process of landowner appeal of specific required actions, and enforcement procedures to be followed by the department.

(3) Agricultural water quality management area plans are plans that comprehensively outline measures that will be taken to prevent and control water pollution from agricultural activities and soil erosion on agricultural and rural lands located in a management area which requires such a plan and for which boundaries have been established by the department.

(4) Agricultural water quality management area rules are adopted by the department to implement an agricultural water quality management area plan. Area rules are the only enforceable aspect of an agricultural water quality management area plan.

(5) It is the policy of the department that:

(a) Cooperation between private and public entities be encouraged during the development and implementation of water quality management area plans;

(b) To the full extent possible, pollution prevention activities be the focus of water quality management area plans;

(c) Voluntary adoption of land management activities be encouraged through education and demonstration programs to achieve the goals and objectives of water quality management area plans;

(d) Enforceable mechanisms be available to address water pollution problems where voluntary compliance is not achieved;

(e) Enforcement action be pursued only when reasonable attempts at voluntary solutions have failed; and

(f) Measures required of individual landowners under agricultural water quality management area rules provide as much flexibility as reasonably possible.

Stat. Auth.: ORS 561 & 568.900 - 568.933

Stats. Implemented: ORS 568.900 - 568.933

Hist.: AD 9-1994, f. & cert. ef. 7-26-94; DOA 16-2006, f. & cert. ef. 9-15-06

603-090-0010

Definitions

Unless other required by the context, as used in this Division:

(1) "Agency of this state" has the meaning given in ORS 568.210(1).

(2) "Area Plan" or "Agricultural Water Quality Management Area Plan" means a plan for the prevention and control of water pollution from agricultural activities and soil erosion in a management area the boundaries of which have been designated under ORS 568.909.

(3) "Area Rules" or "Agricultural Water Quality Management Area Rules" are administrative rules adopted by the state Department of Agriculture, in consultation with the state Board of Agriculture, for the implementation of the Area Plan adopted under ORS 568.909.

(4) "Board" means the state Board of Agriculture.

(5) "Department" means the state Department of Agriculture.

(6) "Director" means the director of the state Department of Agriculture.

(7) "Individual Water Quality Management Plan" means a plan for the prevention or control of water pollution for an individual landowner.

(8) "Landowner" includes any landowner, land occupier or operator as defined in ORS 568.903.

(9) "Local Management Agency" means any agency of this state, including but not limited to a soil and water conservation district, which has been designated by the department to undertake activities within a management area whose boundaries have been designated under ORS 568.909.

(10) "Local Management Area Advisory Committee" means a committee established by the department under OAR 603-090-0020.

(11) "Operator" has the meaning given in ORS 568.900(2).

(12) "Pollution" or "water pollution" has the meaning given in ORS 468B.005(3).

(13) "Water" or "the waters of the state" has the meaning given in ORS 468B.005(8).

Stat. Auth.: ORS 561 & 568.900 - 568.933

Stats. Implemented: ORS 568.900 - 568.933

Hist.: AD 9-1994, f. & cert. ef. 7-26-94; DOA 16-2006, f. & cert. ef. 9-15-06

603-090-0020

Local Water Quality Management Area Advisory Committee

(1) The department shall establish a local water quality management area advisory committee for each water quality management

area established under these rules. The local water quality management area advisory committee shall represent a balance of affected persons. The local water quality management area advisory committee must provide an opportunity for a high level of citizen involvement in the development and implementation of the agricultural water quality management area plan and rules. The members of each local water quality management area advisory committee shall be appointed by the director in consultation with the board. The director and board shall consider the recommendations, if any, of the designated local management agency when making advisory committee appointments.

(2) A local water quality management area advisory committee shall consist of not more than twelve members, unless otherwise determined by the director in consultation with the board.

(3) A local water quality management area advisory committee shall be composed primarily of landowners in the affected local agricultural water quality management area. Membership may include, but is not limited to:

(a) State Board of Agriculture representatives;

(b) Persons serving on local soil and water conservation districts;

(c) Private landowners;

(d) Representatives of local, state and federal boards, commissions and agencies;

(e) Members of Indian tribes;

(f) Members of the public;

(g) Persons associated with industry;

(h) Members of academic, scientific and professional communities;

(i) Public and special interest groups.

(4) The local water quality management area advisory committee's responsibilities shall include but are not limited to:

(a) Participation in the development and ongoing modifications of the agricultural water quality management area plan and rules;

(b) Recommendation of strategies necessary to achieve water quality goals and objectives outlined in the agricultural water quality management area plan;

(c) Biennial review of the progress of implementation of the agricultural water quality management area plan and rules, including enforcement actions taken, and requests for alternate measures that have been granted or denied;

(d) Submittal of biennial, written reports to the Board and the director, including

(A) A summary of meetings held, advisory committee members present, actions taken, and progress and impediments toward implementation of the agricultural water quality management area plan; and

(B) Recommendations for modifications that may be necessary to achieve the purpose of the agricultural water quality management area plan as provided in OAR 603-090-0030.

(5) The Local Advisory Committee may reconvene as frequently as necessary to carry out the duties described above in OAR 603-090-0020(4).

Stat. Auth.: ORS 561 & 568.900 - 568.933

Stats. Implemented: ORS 568.900 - 568.933

Hist.: AD 9-1994, f. & cert. ef. 7-26-94; DOA 16-2006, f. & cert. ef. 9-15-06

603-090-0030

Requirements of Agricultural Water Quality Management Area Plan and Rules

(1) Agricultural water quality management area plans must describe a program to achieve the water quality goals and standards necessary to protect designated beneficial uses related to water quality, as required by state and federal law. An area plan shall include but not be limited to a description of the geographical area and physical setting to which the area plan applies, a listing of water quality issues of concern, a listing of current designated beneficial uses that are being adversely affected, a statement that the goal of the area plan is to prevent and control water pollution from agricultural activities and soil erosion and to achieve applicable water quality standards, a statement of the water quality objectives of the area plan, a description of the pollution prevention and control measures deemed

necessary by the department to achieve the goal, a schedule for implementation of the necessary measures that is adequate to meet applicable dates established by law, guidelines for public participation, and a strategy for ensuring that the necessary measures are implemented.

(2) Agricultural water quality management area rules are the only enforceable aspect of an area plan. Area rules must be sufficient to assure that landowners in compliance with the area rules will prevent and control water pollution from agricultural activities and soil erosion. Some level of erosion and runoff can occur on agricultural and rural lands but must be within the limitations established by existing water quality laws.

Stat. Auth.: ORS 561 & 568.900 - 568.933
Stats. Implemented: ORS 568.900 - 568.933
Hist.: AD 9-1994, f. & cert. ef. 7-26-94; DOA 16-2006, f. & cert. ef. 9-15-06

603-090-0040

Specific Action Requirements — Appeals

(1) Pursuant to ORS 568.912, a landowner subject to agricultural water quality management area rules may be required to undertake certain specific actions. The required specific actions may but need not be incorporated into an individual water quality management plan. A landowner may appeal a specific action requirement by filing a formal request for alternate measures as provided in OAR 603-090-0050.

(2) Prior to filing a formal request for alternate measures, a landowner may informally consult with the department regarding the specific actions required to comply with the agricultural water quality management area rules. Such consultation, however, shall not extend the time periods required for filing a formal request.

(3) A general requirement for an individual water quality management plan may not be appealed under this provision.

Stat. Auth.: ORS 561 & 568.900 - 568.933
Stats. Implemented: ORS 568.900 - 568.933
Hist.: AD 9-1994, f. & cert. ef. 7-26-94; DOA 16-2006, f. & cert. ef. 9-15-06

603-090-0050

Request for Alternate Measures — Filing, Content, and Approval

(1) A request for alternate measures shall be made in writing and filed with the director. The request may be filed at anytime.

(2) A request shall include a detailed description of proposed alternate measures and sufficient information to determine whether the request satisfies the requirements of section (3) of this rule.

(3) A request for alternate measures shall be approved if the director, following consultation with other agencies as appropriate, finds that the alternate measures will provide a level of water quality protection equivalent to that which is provided by the specific actions required to comply with the agricultural water quality management area rules.

(4) The director shall determine whether to allow a request for alternate measures within 60 days after the request is received unless the landowner agrees to extend the period or the director makes a determination that a longer period of time is required to obtain sufficient information to evaluate the request. If the request is filed while an enforcement action is pending, this 60 day period shall not begin to run until the enforcement action has been concluded. The enforcement action shall not be considered concluded if an appeal is pending or civil penalties remain unpaid.

(5) The director’s decision to approve or deny a request for alternate measures shall be made in writing and shall be an order in other than a contested case for purposes of judicial review.

Stat. Auth.: ORS 561 & 568.900 - 568.933
Stats. Implemented: ORS 568.900 - 568.933
Hist.: AD 9-1994, f. & cert. ef. 7-26-94; DOA 16-2006, f. & cert. ef. 9-15-06

Enforcement Procedures

603-090-0060

Definitions

Unless otherwise required by the context, as used in this Division:

(1) “Compliance” means meeting the requirements of ORS 568.900 to 568.933 or any of the department’s rules or orders pursuant thereto.

(2) “Flagrant Violation” means any violation where the respondent had actual knowledge of the law and knowingly committed the violation.

(3) “Formal Enforcement Action” means any order of the director or the director’s designee which is issued to a respondent in connection with a violation and requires the respondent to cease the violation, refrain from further violations, pay a civil penalty, or take other actions with respect to the violation. Formal enforcement actions include, but are not limited to, notices of noncompliance, civil penalty assessment, compliance schedules and stipulated or consent orders.

(4) “Intentional” means conduct by a person with a conscious objective to cause the result of the conduct.

(5) “Negligence” or “Negligent” means failure to take reasonable care to avoid a foreseeable risk of committing a violation.

(6) “Order” has the meaning given in ORS 183.310(5).

(7) “Past occurrence of violations” means any violation for which a notice of noncompliance or assessment of civil penalty was issued within the preceding ten years. It does not include a violation if the notice is the subject of a pending appeal or if the notice has been withdrawn or successfully appealed.

(8) “Person” includes individuals, corporations, associations, firms, joint stock companies, public and municipal corporations, political subdivisions of the state and any agencies thereof, and the federal government and any agency thereof.

(9) “Previous notice of the same or similar violation” means a notice of noncompliance or assessment of civil penalties for the same or a similar type of violation that was issued within the preceding five years. It includes a notice for the same or a similar type of violation which is the subject of a pending appeal. It does not include a notice that has been withdrawn or successfully appealed.

(10) “Reckless” means conduct by a person who is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of care a reasonable person would observe in that situation.

(11) “Repeat Violation” means the recurrence of the same type of violation as a violation for which a notice of noncompliance or assessment of civil penalty was issued within the preceding ten years. It does not include a violation if the previous notice is the subject of a pending appeal or if the notice has been withdrawn or successfully appealed.

(12) “Respondent” means the person to whom a formal enforcement action is directed.

(13) “Rule” has the meaning given in ORS 183.310(8).

(14) “Violation” means failure to comply with any rule or order made by the department pursuant to ORS 568.900 to 568.933 and includes both acts and omissions.

(15) “Wastes” has the meaning given in ORS 468B.005(7).

Stat. Auth.: ORS 561 & 568.900 - 568.933
Stats. Implemented: ORS 568.900 - 568.933
Hist.: AD 9-1994, f. & cert. ef. 7-26-94

603-090-0070

Consolidation of Enforcement Proceedings

Notwithstanding that each and every violation is a separate and distinct offense, and in cases of continuing violations, that each day’s continuance is a separate and distinct violation unless otherwise determined by the department, proceedings for the assessment of multiple civil penalties for multiple violations against a landowner may be consolidated into a single proceeding.

Stat. Auth.: ORS 561 & 568.900 - 568.933
Stats. Implemented: ORS 568.900 - 568.933
Hist.: AD 9-1994, f. & cert. ef. 7-26-94

603-090-0080

Enforcement Actions

(1) A Notice of Noncompliance:

Chapter 603 Department of Agriculture

(a) Shall inform the landowner of the violation, including a reference to a particular statute, administrative rule(s) or order involved, the location of the violation when appropriate, and the consequences of the violation or future violations;

(b) Shall direct the subject landowner to perform those actions necessary to comply with the water quality management area rules and orders made pursuant to the area rules;

(c) Shall specify a reasonable period of time by which compliance is to be achieved not to exceed 30 business days after the date of the notice, or if the violation requires more than 30 days to correct, a period of time contained in a plan of correction acceptable to the department;

(d) Shall be issued by the director or the director's designee;

(e) Shall be in writing and shall be served personally or by registered or certified mail;

(f) Shall in all cases also be mailed or delivered to the legal owner of the property;

(g) Shall be an order other than a contested case for purposes of judicial review.

(2) A plan of Correction:

(a) Shall include a statement of the actions that must be taken by the landowner to eliminate the violation and shall include a schedule stating the time by which each of the actions is required to be accomplished to achieve compliance;

(b) May include requirements for the landowner to report the completion of specific actions;

(c) Shall be in writing and shall be sent to the landowner by registered or certified mail or served personally;

(d) Shall be an order other than a contested case for the purposes of judicial review.

(3) The department shall make a reasonable attempt to consult with the subject landowner in the development of a plan of correction.

(4) Failure to perform any of the requirements of a plan of correction may be considered by the department to be a failure to correct the violation within the period of time set for correction by the department.

(5) A Notice of Civil Penalty Assessment:

(a) Shall be issued by the director or the director's designee;

(b) Shall be issued in a manner consistent with the provisions of ORS 183.415, 568.900 to 568.933, and OAR chapter 137;

(c) Shall be in writing and shall be served personally or by registered or certified mail;

(d) Shall include but not be limited to:

(A) A reference to the particular statute, administrative rules or order involved;

(B) A short or plain statement of the matters asserted or charged including a reference to the location of the violation when appropriate;

(C) A statement of the amount of the penalty and how it was calculated;

(D) A statement of the person's right to request a hearing within ten business days from the date of receipt of the notice and an explanation of how a hearing may be requested;

(E) A statement that the notice becomes a final order unless the person on whom the civil penalty is assessed makes a written request for a hearing within ten business days from the date of receipt of the notice.

Stat. Auth.: ORS 561 & 568.900 - 568.933

Stats. Implemented: ORS 568.900 - 568.933

Hist.: AD 9-1994, f. & cert. ef. 7-26-94; DOA 16-2006, f. & cert. ef. 9-15-06

603-090-0090

Hearing Procedures

All formal hearings requested by the respondent concerning a civil penalty assessment shall be conducted in accordance with applicable contested case procedures as outlined in ORS 183.310 to 183.550, and OAR chapter 137.

Stat. Auth.: ORS 561 & 568.900 - 568.933

Stats. Implemented: ORS 568.900 - 568.933

Hist.: AD 9-1994, f. & cert. ef. 7-26-94

603-090-0100

Entry of Order, Appeal Rights, and Payment of Civil Penalties

(1) If a person having received a notice of civil penalty assessment fails to request a hearing as specified in OAR 603-090-0090, or if after the hearing the person is found to be in violation of the provisions of these rules, an order may be entered by the department assessing a civil penalty.

(2) The order shall be signed by the director or the director's designee.

(3) If the order is not appealed, any penalty is due and payable ten business days after the order imposing the civil penalty becomes final by operation of law or on appeal.

(4) When an order assessing civil penalty becomes final by operation of law or on appeal and the amount of the penalty is not paid within 10 days after the order becomes final, the order may be recorded with the county clerk in any county of this state as provided by ORS 183.090(6) and proceedings to enforce the order may be initiated in accordance with 183.090(12).

Stat. Auth.: ORS 561 & 568.900 - 568.933

Stats. Implemented: ORS 568.900 - 568.933

Hist.: AD 9-1994, f. & cert. ef. 7-26-94

603-090-0110

Civil Penalty Assessment

(1) In addition to any other penalty provided by law, the department may assess a civil penalty against a landowner for failing to comply with the requirements of agricultural water quality management area rules adopted under ORS 568.900 to 568.933 including orders to implement the area rules. The amount of civil penalty shall be determined using the two matrices contained in OAR 603-090-0120 in conjunction with the formula contained in OAR 603-090-0120(4). The amount of the initial civil penalty may not exceed \$2,500 and any subsequent civil penalties for a repeat occurrence may not exceed \$10,000 per violation.

(2) Prior to assessment of a civil penalty for a violation, the department shall provide a notice of noncompliance to the landowner. No advance notice or period to achieve compliance prior to assessment of a civil penalty shall be required under section (1) of this rule and the department may issue a notice of civil penalty assessment if:

(a) The violation is intentional; or

(b) The landowner has received a previous notice of the same or similar violation.

(3) The amount of any civil penalty imposed shall be reduced by the amount of any civil penalty imposed by the Environmental Quality Commission or the Department of Environmental Quality if the latter penalties are imposed on the same person and are based on the same violation.

(4) Magnitude of Violation: The magnitude of a violation shall be categorized as follows:

(a) Category I (Major):

(A) A violation of a department order issued as part of or in connection with a formal enforcement action;

(B) Failure to provide access to premises or records when required by statute, rule or order;

(C) Any direct discharge of wastes that enters the waters of the state, either without a waste discharge permit, or from a point not authorized by a waste discharge permit;

(D) Submitting records, reports or application forms that are false, misleading, or fraudulent;

(E) Failure to provide notification of a spill or upset condition that results in a nonpermitted discharge of public waters;

(b) Category II (Moderate):

(A) Failure to submit a plan or report if required by rule;

(B) Placing wastes such that the wastes are likely to enter the waters of the state by any means;

(C) Any violation of a department rule or order which is not classified elsewhere in these rules as major or minor.

(c) Category III (Minor): Failure to operate in accordance with an approved individual water quality management plan.

(5) The gravity of effect of the violation shall be determined by consideration of the individual or cumulative possibility of harm to

public health or the environment caused by a violation or violations. Gravity of effect shall be classified as high, medium or low. The existence of one or more factors determined to be high level shall result in the gravity of effect considered to be of high level. Lacking any factor determined to be of high level, the existence of one or more factors of medium level shall result in the gravity of effect to be considered to be of medium level. Lacking any factor of high or medium level shall result in the gravity being of low level:

(a) Gravity of Effect — High Level:

(A) Significant injury to crops, wildlife or livestock; or

(B) Surface or groundwater contamination of a level that poses a significant risk of harm to public health or the environment.

(b) Gravity of Effect — Medium Level: Surface or groundwater contamination that causes a loss of beneficial uses or a violation of applicable water quality standards, but does not pose a significant threat to human health or the environment.

(c) Gravity of Effect — Minor Level: Water contamination not found or not found at a level in excess of applicable water quality standards.

Stat. Auth.: ORS 561 & 568.900 - 568.933

Stats. Implemented: ORS 568.900 - 568.933

Hist.: AD 9-1994, f. & cert. ef. 7-26-94; DOA 16-2006, f. & cert. ef. 9-15-06

603-090-0120

Civil Penalty Determination Procedure

In determining the amount of a civil penalty to be assessed for any violation of the requirements of agricultural water quality management area rules adopted under ORS 568.900 to 568.933, the department shall apply the following procedure:

(1) Determine the magnitude of the violation as specified in OAR 603-090-0110(4).

(2) Determine the gravity of effect pertinent to the violation as specified in OAR 603-090-0110(5).

(3) Using the magnitude of the violation and the gravity of effect identified, and depending on whether it is the first or a repeat violation, determine the base penalty (B) by reference to the appropriate matrix contained in this rule. [Table not included. See ED. NOTE.]

(4) Calculate the amount of the civil penalty to be assessed utilizing the formula: $B + [(.1 \times B) (P + H + R)] = \text{Penalty Amount}$ where:

(a) B = Base penalty is the primary penalty for a given violation derived from the appropriate matrix contained in OAR 603-090-0120;

(b) P = Past occurrence of violations of the requirements of water quality management area rules adopted under ORS 568.900 to 568.933. P will be weighted from 0 to 6 in the following manner:

(A) 0 = no prior violation or insufficient evidence on which to base a finding;

(B) 1 = past occurrence of a Category III violation;

(C) 2 = past occurrence of a Category II violation or two category III violations;

(D) 3 = past occurrence of a Category I violation, two Category II violations, or three Category III violations;

(E) 4 = past occurrence of two Category I violations, three Category II violations or four Category III violations;

(F) 5 = past occurrence of three Category I violations, four Category II violations, or five or more Category III violations;

(G) 6 = past occurrence of more than three Category I violations or five or more Category II violations.

(c) H = History of the person in taking all feasible steps or procedures necessary and appropriate to prevent or correct a violation. H will be weighted from -2 to 2 in the following way:

(A) -2 = the person took all feasible steps to correct any prior violations:

(B) 0 = there is no prior history or insufficient information on which to base a finding;

(C) 1 = the person took some, but not all feasible steps to correct prior violations;

(D) 2 = the person took no action to correct prior violations.

(d) R = Preventability of the violation and whether negligence or misconduct was involved. R will be weighted from -2 to 7 in the following way:

(A) -2 = the person's actions determined to be violative were unavoidable;

(B) 0 = information is insufficient to make any finding;

(C) 3 = the person's actions determined to be violative were reasonably avoidable;

(D) 7 = the person's actions were flagrant or reckless.

(5) A civil penalty imposed under the applicable statutes and these rules may be remitted or reduced at the director's discretion upon such terms and conditions that are proper and consistent with public health and safety.

(6) At the discretion of the director, a respondent who is unable to pay the full amount of a civil penalty may be allowed to pay the civil penalty by means of a schedule of payments which may include payment of interest on the unpaid balance for any delayed payments.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 561 & 568.900 - 568.933

Stats. Implemented: ORS 568.900 - 568.933

Hist.: AD 9-1994, f. & cert. ef. 7-26-94; DOA 16-2006, f. & cert. ef. 9-15-06

DIVISION 95

AGRICULTURAL WATER QUALITY MANAGEMENT PROGRAM

603-095-0010

Definitions

Unless otherwise required by the context, as used in this Division:

(1) "Active Channel Erosion" means gullies or channels which at the largest dimension have a cross sectional area of at least one square foot and which occur at the same location for two or more consecutive years.

(2) "Adequate vegetative buffer" means an area that is maintained in vegetative cover that maintains at least 70 percent ground cover.

(3) "Agency of this state" has the meaning given in ORS 568.210(1).

(4) "Agricultural use" means the use of land for the raising or production of livestock or livestock products, poultry or poultry products, milk or milk products, fur-bearing animals; or for the growing of crops such as, but not limited to, grains, small grains, fruit, vegetables, forage grains, nursery stock, Christmas trees; or any other agricultural or horticultural use or animal husbandry or any combination thereof. Wetlands, pasture, and woodlands accompanying land in agricultural use are also defined as in agricultural use.

(5) "Agricultural Water Quality Management Area Plan" or "area plan" means a plan for the prevention and control of water pollution from agricultural activities and soil erosion in a management area whose boundaries have been designated under ORS 568.909.

(6) "Approved Voluntary Water Quality Farm Plan" or "approved voluntary plan" means a Voluntary Water Quality Farm Plan which has been developed according to standards and specifications developed by the department and which has been approved by the Local Management Agency with jurisdiction in the area for which the plan was developed.

(7) "Best Management Practice" means a practice, or combination of practices, that is determined to be the most effective practicable (including technological, economical, and institutional considerations) means of preventing or reducing the amount of pollution generated by nonpoint sources of pollution to a level compatible with water quality goals. Best Management Practices may include structural and nonstructural practices, conservation practices, and operation and maintenance procedures.

(8) "Confined Animal Feeding Operation" has the meaning given in ORS 468.687.

(9) "Department" means the state Department of Agriculture.

(10) "Designated Management Agency" means a public agency which possesses the legal authority, technical competence, organizational ability, and financial resources to carry out all or part of

the nonpoint source control program as stipulated in an agreement with the Department of Environmental Quality.

(11) "District" or "soil and water conservation district" has the meaning given in ORS 568.210.

(12) "Erosion, soil" means the general process by which soils are removed from the surface of the land by the action of water, wind, ice, or gravity.

(13) "Erosion rate, sheet and rill" means the annualized amount of soil material lost from a field or parcel of land due to sheet and rill erosion, expressed in tons of soil eroded per acre per year, and calculated according to the Universal Soil Loss Equation (USLE) or the Revised Universal Soil Loss Equation (RUSLE).

(14) "Erosion, rill" means an erosion process in which numerous small channels only several inches deep are formed and which occurs mainly on recently disturbed soils. The small channels formed by rill erosion would be obliterated by normal smoothing or tillage operations.

(15) "Erosion, sheet" means the removal of a fairly uniform layer of soil from the land surface by runoff water.

(16) "Erosion, streambank" means erosion within a perennial stream or river which is caused by the action of water flowing in a concentrated stream acting against the soil confining its flow.

(17) "Excessive soil loss" means soil loss that is greater than the standards set forth in Oregon Administrative Rules adopted by the Oregon Department of Agriculture to implement any Agricultural Water Quality Management Area Plan adopted pursuant to ORS 568.900 through 568.933. Excessive soil loss may be evidenced by sedimentation on the same parcel of land, on adjoining land, in wetlands or a body of water, or by ephemeral, active channel, or streambank erosion; or by calculations using the USLE or RUSLE showing soil loss exceeding the soil loss tolerance factor.

(18) "Field Office Technical Guide" means the localized document currently used by the soil and water conservation district and developed by the United States Department of Agriculture, Natural Resources Conservation Service which provides:

- (a) Soil descriptions;
- (b) Sound land use alternatives;
- (c) Adequate conservation treatment alternatives;
- (d) Standards and specifications of conservation practices;
- (e) Conservation cost-return information;
- (f) Practice maintenance requirements;
- (g) Soil erosion prediction procedures; and
- (h) A listing of local natural resource related laws and regulations.

(19) "Formal complaint" means a complaint against a landowner or operator alleging a violation of a requirement of any Water Quality Management Area Plan adopted pursuant to ORS 568.900 through 568.933 at a specific site. The complaint shall be submitted in writing stating the nature and location of the violation and shall be filed with the department or by agreement with the department, with the Local Management Agency with jurisdiction over the site in question.

(20) "Highly erodible lands" means soils with a potential erodibility of eight times the soil loss tolerance factor.

(21) "Informal complaint" means a water pollution complaint, not formally filed with the department.

(22) "Irrigation water discharge" means the release of irrigation return flows to surface waters.

(23) "Land disturbing activity" means any activity not directly related to general farming resulting in a disturbance of the natural condition or vegetative covering of the earth's surface.

(24) "Landowner" includes any landowner, land occupier or operator as defined in ORS 568.903.

(25) "Load allocation" has the meaning given in OAR 340-041-0006(19).

(26) "Local Management Agency" means any agency of this state, including but not limited to a soil and water conservation district, which has been designated by the department through an inter-agency agreement to undertake activities within a management area whose boundaries have been designated under ORS 568.909.

(27) "Near-stream management area" means the area extending 25 feet as measured along the ground surface from the top of the streambank of a perennial stream or river, or the ordinary high-water mark of a pond or a lake.

(28) "Nonpoint sources" has the meaning given in OAR 340-041-0006(17).

(29) "Operator" has the meaning given in ORS 568.900(2).

(30) "Ordinary high-water mark" means the point on the streambank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other recognizable characteristics.

(31) "Pasture" means land with a permanent, uniform cover of grasses or legumes used for providing forage for livestock. A pasture does not include any area where supplemental forage feeding is provided on a regular basis.

(32) "Perennial stream" means a natural channel in which water flows continuously and which is shown on a United States Geological Survey quadrangle map.

(33) "Point source pollution" means water pollution which emanates from a clearly identifiable discharge point.

(34) "Pollution" or "water pollution" has the meaning given in ORS 468B.005(3).

(35) "Prohibited condition" means a condition of the land which is not allowed under division 95 rules.

(36) "Riparian vegetation" means plant communities consisting of plants dependent upon or tolerant of the presence of water near the ground surface for at least part of the year.

(37) "Runoff" means the portion of rainfall, other precipitation, or irrigation water that leaves a location in the form of surface water.

(38) "RUSLE" means the Revised Universal Soil Loss Equation, which is a method used to estimate soil loss by sheet, rill, and wind erosion.

(39) "Sediment" means soil particles, both mineral and organic, that are in suspension, are being transported, or have been moved from the site of origin by flowing water or gravity.

(40) "Sewage" has the meaning given in ORS 468B.005(4).

(41) "Sloughing" means a slip or downward movement of an extended layer of soil resulting from the undermining action of water or the earth disturbing activity of man.

(42) "Soil" means unconsolidated mineral or organic material that overlies bedrock, on the immediate surface of the earth, that serves as a medium for the growth of plants.

(43) "Soil disturbing activity" means any agricultural use resulting in a disturbance of the natural condition of vegetative surface or soil surface exceeding 10,000 square feet in area, including, but not limited to tilling, clearing, grading, excavating, grazing, and feedlot usage, but not including such minor land disturbing activities as home gardens and individual landscaping and maintenance.

(44) "Soil loss" means soil moved from a given site by the forces of erosion and redeposited at another site, on land or in a body of water.

(45) "Soil loss tolerance factor" or "T" means maximum average annual amount of soil loss from erosion, as estimated by the Universal Soil Loss Equation (USLE) or the Revised Universal Soil Loss Equation (RUSLE), and expressed in tons per acre per year, that is allowable on a particular soil. This represents the tons of soil (related to the specific soil series) which can be lost through erosion annually without causing significant degradation of the soil or potential for crop production.

(46) "Streambank" means the boundary of protected waters and wetlands, or the land abutting a channel at an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape; commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For perennial streams or rivers, the streambank shall be at the ordinary high-water mark.

(47) "Surface drainage field ditch" is a graded ditch for collecting excess water in a field.

(48) "Total Maximum Daily Load" or "TMDL" has the meaning given in OAR 340-041-0006(21).

(49) “USLE” means the Universal Soil Loss Equation, which is a method used to estimate soil loss by sheet, rill, and wind erosion.

(50) “Vegetative cover” means grasses or other low growing plants grown to keep soil from being blown or washed away.

(51) “Voluntary Water Quality Farm Plan” or “voluntary plan” means a plan for the prevention or control of water pollution from agricultural activities and soil erosion for an individual landowner.

(52) “Wasteload allocation” or “WLA” has the meaning given in OAR 340-041-0006(20).

(53) “Wastes” has the meaning given in ORS 468B.005(7) and includes but is not limited to commercial fertilizers, soil amendments, composts, animal wastes, vegetative materials or any other wastes.

(54) “Waste discharge” or “waste discharges” means the discharge of waste, either directly or indirectly, into waters of the state.

(55) “Water” or “waters of the state” has the meaning given in ORS 468B.005(8).

(56) “Water quality limited” has the meaning given in OAR 340-041-0006(30).

(57) “Woodland” means an area with a stand of trees that has a canopy cover as shown on the most recent aerial photographs of at least 50 percent, being at least one acre in size and having a minimum width measured along the ground surface of at least 132 feet.

Stat. Auth.: ORS 561.190 & 568.909

Stats. Implemented: ORS 561.190 & 568.900 - 568.933

Hist.: AD 3-1996, f. & cert. ef. 4-9-96; DOA 22-1999, f. & cert. ef. 10-6-99; DOA 23-1999, f. & cert. ef. 10-6-99

603-095-0020

General Purpose

(1) These rules have been developed to effectuate the implementation of water quality management area plans pursuant to authorities vested in the department through ORS 568.900–568.933.

(2) The purpose of these rules is to outline requirements for landowners conducting agricultural activities in areas for which the department designates boundaries for the purpose of developing and implementing a water quality management area plan pursuant to ORS 568.900–568.933.

Stat. Auth.: ORS 561.020, 561.190 & 568.909

Stats. Implemented: ORS 568.900 - 568.933

Hist.: AD 3-1996, f. & cert. ef. 4-9-96

603-095-0030

General Policies

It is the policy of the department that:

(1) Cooperation between private and public entities be encouraged during implementation of agricultural water quality management area plans for the prevention and control of water pollution from agricultural activities and soil erosion;

(2) Voluntary adoption of best management practices to prevent or control water pollution from agricultural activities and soil erosion be encouraged through education programs, demonstration projects, and availability of technical assistance; and

(3) Enforcement action to achieve compliance with water quality management area plans and rules be pursued only when reasonable attempts at voluntary solutions have failed.

Stat. Auth.: ORS 561.140 & 561.190

Stats. Implemented: ORS 568.900 - 568.933

Hist.: AD 3-1996, f. & cert. ef. 4-9-96

603-095-0040

Appeals

Any appeals of specific actions required of a landowner or operator by the department under division 095 rules shall be pursued according to the provisions of the appeals process in OAR 603-090-0040.

Stat. Auth.: ORS 568.912

Stats. Implemented: ORS 568.912

Hist.: AD 3-1996, f. & cert. ef. 4-9-96

Tualatin River Subbasin

603-095-0100

Purpose

(1) These rules have been developed to help implement a water quality management area plan for the Tualatin River Watershed Agricultural Water Quality Management Area pursuant to authorities vested in the Oregon Department of Agriculture (department) through ORS 568.900-568.933 and 561.190-561.191. The plan is known as the Tualatin River Watershed Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to provide requirements for landowners and operators (as defined in ORS 568.903) in the Tualatin River Watershed Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion and to meet water quality standards.

Stat. Auth.: ORS 561.190 - 561.561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: AD 3-1996, f. & cert. ef. 4-9-96; DOA 4-2015, f. & cert. ef. 1-29-15

603-095-0120

Geographic and Programmatic Scope

(1) The Tualatin River Watershed Agricultural Water Quality Management Area includes the drainage area of the Tualatin River upstream from the confluence with the Willamette River near West Linn. The physical boundaries of the Tualatin River Watershed are mapped in Appendix A of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Tualatin River Watershed Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands lying idle or on which management has been deferred, and forested lands with agricultural activities, except for public lands managed by federal agencies, Tribal Trust lands, and activities subject to the Oregon Forest Practices Act (ORS Chapter 527).

(3) Current productive agricultural use or profitability is not required for the provisions of these rules to apply.

(4) For lands in agricultural use within other Designated Management Agencies’ or state agency jurisdictions, the department and the appropriate Local Management Agency will work with these Designated Management Agencies to assure that provisions of these rules apply and that any services or fees are not duplicated.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: AD 3-1996, f. & cert. ef. 4-9-96; DOA 4-2015, f. & cert. ef. 1-29-15

603-095-0140

Requirements

All landowners or operators conducting activities on lands described in OAR 603-095-0120(2) and (3) must comply with the following rules: A landowner or operator is responsible for only those conditions caused by activities conducted on land managed by the landowner or operator. These rules do not apply to conditions resulting from unusual weather events or other exceptional circumstances that could not have been reasonably anticipated.

(1) Erosion:

(a) There must be no visible evidence of erosion resulting from agricultural activities in a location where the eroded sediment could enter waters of the state.

(b) Visible evidence of erosion consists of one or more of the following features:

(A) Sheet wash, noted by visible pedestalling, surface undulations, and/or flute marks on bare or sparsely-vegetated ground; or

(B) Active gullies, as described in OAR 603-095-0010(1); or

(C) Multiple rills, which have the form of gullies but are smaller in cross section than one square foot; or

(D) Soil deposition that could enter surface water; or

(E) Streambanks breaking down, eroding, tension-cracking, shearing, or slumping beyond the level that would be anticipated from natural disturbances given natural hydrologic characteristics; or

(F) Underground drainage tile outlets that contribute to soil or bank erosion.

(c) Private roads used for agricultural activities, including road surfaces, fill, ditch lines, and associated structures, must not contribute sediment to waters of the state. All private roads used for agricultural activities not subject to the Oregon Forest Practices Act are subject to this regulation.

(2) Streamside Vegetation:

(a) Landowners or operators must allow vegetation, consistent with site capability, to become established 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, such as would be expected to follow a 25-year, 24-hour storm.

(b) If any agricultural activity disturbs enough streamside vegetation to impair the conditions and functions described in 603-095-0140(2)(a), the landowner or operator must replant or restore the disturbed area with vegetation that will provide the functions required in 603-095-0140(2)(a).

(c) Agricultural activities are allowed if they do not impair the conditions and functions described in 603-095-0140(2)(a).

(3) Irrigation Water: Irrigation discharge, both surface and subsurface, that enters waters of the state must not exceed water quality standards or cause pollution of the receiving water.

(4) Nutrient Management: Landowners and operators must store and use feed, fertilizer, manure, and other sources of crop nutrients in a manner that prevents transport of pollutants to waters of the state.

(5) Waste: Persons subject to these rules must not violate any provision of ORS 468B.025 or 468B.050.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: AD 3-1996, f. & cert. ef. 4-9-96; DOA 3-2004, f. & cert. ef. 1-23-04; DOA 4-2015, f. & cert. ef. 1-29-15

603-095-0180

Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, notification by another agency, or other means, the department may conduct an investigation. The department may coordinate inspection activities with the appropriate Local Management Agency (as defined in ORS 568.906).

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

(3) Any person alleging any violation of ORS 568.900 through 568.933, or any rules adopted thereunder, may file a complaint with the department.

(4) The department will evaluate and may investigate a complaint filed by a person under section OAR 603-095-0180(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 603-095-0180(4) "person" does not include any local, state, or federal agency.

(6) If the department determines that a violation of ORS 568.900 through 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OAR 603-090-0060 through 603-090-0120. Appendix A: Map. [Appendix not included. See ED. NOTE.]

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 561.190 - 561.191

Stats. Implemented: ORS 568.900 - 568.933

Hist.: AD 3-1996, f. & cert. ef. 4-9-96; DOA 4-2015, f. & cert. ef. 1-29-15

603-095-0300

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Umatilla Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900-568.933 and 561.190-561.191. The area plan is known as the Umatilla Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Umatilla Agricultural Water Quality Management Area for the prevention and control of water pollution from agricultural activities and soil erosion. Compliance with Division 95 rules is expected to aid in the achievement of applicable water quality standards in the Umatilla Agricultural Water Quality Management Area.

Stat. Auth.: ORS 561.190 - 561.191, 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 22-1999 f. & cert. ef. 10-6-99; DOA 22-2006, f. & cert. ef. 12-21-06

603-095-0320

Geographic and Programmatic Scope

(1) The Umatilla Agricultural Water Quality Management Area includes all land that drains into the Umatilla River and all land in Oregon that drains directly to the Columbia River between the Umatilla River and the Walla Walla River. The physical boundaries of the Umatilla Agricultural Water Quality 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 Umatilla Agricultural Water Quality Management Area in agricultural use and agricultural and rural lands which are lying idle or on which management has been deferred, with the exception of public lands managed by federal agencies (e.g., U.S. Forest Service, U.S. Fish and Wildlife Service), lands which make up the Reservation of the Confederated Tribes of the Umatilla, and activities which are subject to the Forest Practices Act.

(3) The provisions of these rules apply to all agricultural and rural land whether or not in current productive agricultural use.

(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 Umatilla Agricultural Water Quality 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 will 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.

[ED. NOTE: Appendix referenced are available from the agency.]

Stat. Auth.: ORS 561.190 - 561.191, 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 22-1999 f. & cert. ef. 10-6-99; DOA 22-2006, f. & cert. ef. 12-21-06

603-095-0340

Prevention and Control Measures

(1) All landowners or operators conducting activities on lands in agricultural use must be in compliance with the following rules. A landowner is responsible for only those conditions caused by activities conducted on land managed by the landowner or operator. Rules will be applied with consideration of agronomic and economic impacts.

(a) These rules do not apply to conditions resulting from unusual weather events or other exceptional circumstances.

(b) Temporary exceptions to the rules are allowed when a specific integrated pest management plan is in place to deal with certain weed, insect pest, or disease problems.

(c) Unless otherwise indicated, the rules below become effective on January 1, 2008.

(2) Waste Management: Effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

(3) Soil Erosion and Sediment Control Landowners must control upland soil erosion using technically sound and economically feasible methods.

(a) Landowners must control active channel (gully) erosion to protect against sediment delivery to streams.

(b) On croplands, a landowner may demonstrate intent to comply with this rule by:

(A) Operating consistent with a Soil and Water Conservation District (SWCD)-approved conservation plan that meets Resource Management Systems (RMS) quality criteria for soil and water resources; or

(B) Operating in accordance with an SWCD-approved plan for Highly Erodible Lands (HEL) developed for the purpose of complying with the current US Department of Agriculture (USDA) farm program legislation and farming non-HEL cropland in a manner that meets the requirements of an approved USDA HEL compliance plan for similar cropland soils in the county; or

(C) Farming such that the predicted sheet and rill erosion rate does not exceed 5 tons/acre/year, as estimated by the Revised Universal Soil Loss Equation (RUSLE); or

(D) Constructing and maintaining terraces, sediment basins, or other structures sufficient to keep eroding soil out of streams.

(c) On rangelands, a landowner may demonstrate intent to comply with this rule by:

(A) Operating consistent with a Soil and Water Conservation District (SWCD)-approved conservation plan that meets Resource Management Systems (RMS) quality criteria for soil and water resources;

(B) Maintaining sufficient live vegetation cover and plant litter to capture precipitation, slow the movement of water, increase infiltration, and reduce excessive movement of soil off the site; or

(C) Minimizing visible signs of erosion, such as pedestal or rill formation and areas of sediment accumulation.

(d) Private roads that traverse rural lands or roads used for agricultural activities must be constructed and maintained such that road surfaces, fill and associated structures are designed and maintained to limit contributing sediment to waters of the state. All roads on agricultural lands not subject to the Oregon Forest Practices Act (OFPA) are subject to this regulation. Homesteads and other non-crop areas must be laid out and managed in a manner that controls soil erosion and prevents delivery of sediments to the stream. Stream crossings, with or without culverts or bridges, must be kept to a minimum, and must be installed and maintained to prevent sediment delivery to the stream. Agricultural lands must be managed to prevent runoff of sediment to public road drainage systems.

(4) Stream-side Area Management:

(a) Agricultural land management activities must not cause streambank instability.

(b) Agricultural land management near streams must include establishment and maintenance of riparian vegetation, vegetative buffers, filter strips, sediment retention structures, or equally effective water pollution control practices, placed so as to prevent sediment, thermal and other pollution of waters of the state.

(c) When establishment or reestablishment of crops occurs near waters of the state during the growing season (March through October), cropping and management systems must be employed that prevent erosion. An adequate vegetative buffer or equally effective erosion control practice must be provided during the winter months (November through March).

(5) Livestock Management:

(a) Pastures and rangeland must be managed to prevent sediment, nutrient and bacterial contributions to waters of the state. Adequate vegetative buffers or filter strips must be installed and maintained, and vegetative cover must be maintained or restored after use as needed to control contaminated runoff or weed infestations. Where appropriate, waste management systems must be installed to collect, store and utilize animal wastes.

(b) Barnyards, feedlots, drylots, confinement and non-pasture areas, and other livestock facilities located near waters of the state must employ an adequate runoff control system, or an equally effective pollution control practice. Where necessary to prevent waste

delivery, waste management systems must be installed to collect, store and utilize animal wastes.

(c) Grazing must be done in a manner that does not degrade waters of the state or negatively impact the stability of streambanks. Grazing management systems must be applied that allow for recovery of plants and leaves adequate vegetative cover to ensure stream-bank stability, reduce sediments entering the stream, and provide stream-side shading consistent with the site. The grazing management system must maintain or develop the desired vegetative cover.

(6) Irrigation Management:

(a) Irrigation systems must be designed and operated to prevent runoff of potential contaminants. Irrigation scheduling must consider such factors as soil conditions, crop, climate and topography.

(b) Overland return flows from irrigation must be managed to prevent the delivery of pollution including water temperature increases to waters of the state.

(7) Nutrient and Farm Chemical Management:

(a) Crop nutrient applications, including manure, sludge and commercial fertilizers, must be done at a time and in a manner that does not pollute waters of the state.

(b) Nutrients and farm chemicals must be stored in a location and condition that makes them unlikely to be carried into the waters of the state by any means.

(8) Channel and Drain Management Whenever major construction, reconstruction or maintenance occurs in ditches and water channels, exclusive of perennial and intermittent streams, they must be designed and maintained with a capacity to handle a greater than normal runoff event with a minimum likelihood of bank erosion or erosion impacts on nearby land areas.

Stat. Auth.: ORS 561.190 – 561.191, 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 22-1999 f. & cert. ef. 10-6-99; DOA 22-2006, f. & cert. ef. 12-21-06

603-095-0380

Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, 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 alleged occurrence of agricultural pollution will 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 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 603-095-0380(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 603-095-0380(4), “person” does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-0380, 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 through 568.933 or any rules adopted thereunder has occurred, that landowner may be subject to the enforcement procedures of the department outlined in OAR 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 – 561.191, 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 22-1999 f. & cert. ef. 10-6-99; DOA 22-2006, f. & cert. ef. 12-21-06

Upper Grande Ronde River Subbasin

603-095-0400

Purpose

(1) These rules have been developed to effectuate the implementation of a water quality management area plan for the Upper Grande Ronde River subbasin pursuant to authorities vested in the department through ORS 568.900–568.933, due to a determination by the Environmental Quality Commission to establish Total Maximum Daily Loads and allocate a load to agricultural nonpoint sources. The area plan is known as the Upper Grande Ronde River Subbasin Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Upper Grande Ronde River subbasin, for the prevention and control of water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Upper Grande Ronde River subbasin.

Stat. Auth.: ORS 568.909
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 23-1999, f. & cert. ef. 10-6-99

603-095-0420

Geographic and Programmatic Scope

(1) The Upper Grande Ronde River subbasin includes the drainage area of the Grande Ronde River from the headwaters to its confluence with the Wallowa River. The physical boundaries of the Upper Grande Ronde River subbasin 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 Upper Grande Ronde River subbasin in agricultural use and agricultural and rural lands which are lying idle or on which management has been deferred, with the exception of activities which are subject to the Forest Practices Act and to the lands of USDA Forest Service and USDI Bureau of Land Management.

(3) Current productive agricultural use or profitability is not required for the provisions of these rules to apply. For example, highly erodible lands with no present active use are 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 Upper Grande Ronde River subbasin.

Stat. Auth.: ORS 568.909
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 23-1999, f. & cert. ef. 10-6-99

603-095-0440

Prohibited Conditions

All landowners or operators conducting activities on lands in agricultural use shall be in compliance with the following criteria. A land occupier shall be responsible for only those prohibited conditions caused by activities conducted on land managed by the landowner or occupier. Criteria do not apply to conditions resulting from unusual weather events or other exceptional circumstances which could not have been reasonably anticipated. Limited duration activities may be exempted from these conditions subject to prior approval by the department.

(1) Soil erosion: By January 1, 2003:

(a) No agricultural land management or soil disturbing activity shall cause sheet or rill erosion in excess of the soil loss tolerance factor (T) on cropland, and no agricultural land management or soil disturbing activity shall cause active channel erosion that delivers sediment directly into the waters of the state; or

(b) No agricultural land management or soil disturbing activity shall exceed an alternative standard, approved by the Department, that assures protection of water quality; or

(c) No agricultural land management or soil disturbing activity shall cause a discharge of sediment to the waters of the state in excess of water quality standards.

(2) By January 1, 2003, no agricultural land management or soil disturbing activity shall cause streambanks to breakdown, erode, ten-

sion-crack, shear or slump beyond the level that would be anticipated from natural disturbances given existing hydrologic characteristics.

(3) By January 1, 2003, nutrient application rates and timing shall not exceed specific crop requirements. Crop requirements will be based on recommendations from the best available data applicable to a specific site.

(4) By January 1, 2003, construction and maintenance of surface drainage field ditches shall not result in sediment delivery to waters of the state from soil erosion caused by excessive channel slope, unstable channel cross-section or placement of disposed soils.

(5) By January 1, 2003, agricultural activities shall allow the development of riparian vegetation to control water pollution by providing control of erosion, filtering of sediments and nutrients, moderation of solar heating, and infiltration of water into the soil profile. Evaluation of riparian vegetation development will consider site specific capabilities and anticipated levels of natural disturbance. Where cropping or resource protection activities have occurred, an adequate vegetative buffer or equally effective pollution control practice must be in place.

(6) Waste discharges: Effective upon adoption of these rules:

(a) No person conducting agricultural land management or earth disturbing practices shall cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means.

(b) No person conducting agricultural land management or earth disturbing practices shall discharge any wastes into any waters of the state if the discharge reduces the quality of such waters below the water quality standards established by rule by the Environmental Quality Commission.

(c) No person conducting agricultural land management or earth disturbing practices shall violate the conditions of any waste discharge permit issued pursuant to ORS 468B or 568.

Stat. Auth.: ORS 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 23-1999, f. & cert. ef. 10-6-99

603-095-0460

Complaints and Investigations

(1) When the department receives notice of an apparent occurrence of agricultural pollution through a written complaint, its own observation, notification by another agency, or by other means, 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 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 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 not evaluate or investigate a complaint filed by a person under section (3) unless the complaint is in writing, signed and dated by the complainant and indicates the location and description of:

(a) The property and/or 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 (4), “person” does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-0460, 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 the public health or safety.

(7) Actions based on investigation findings: If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner shall be subject to

the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 23-1999, f. & cert. ef. 10-6-99

Yamhill River Subbasin

603-095-0500

Purpose

(1) These rules have been developed to effectuate the implementation of a water quality management area plan for the Yamhill River Subbasin pursuant to authorities vested in the Department through ORS 568.900-568.933. The area plan is known as the Yamhill River Subbasin Agricultural Water Quality Management Area Plan and is described in a guidance document that accompanies these rules.

(2) Failure to comply with any provisions of the Yamhill River Subbasin Agricultural Water Quality Management Area Plan:

(a) Does not constitute a violation of OAR 603-090-0000 to 603-090-0120, or of 603-095-0010 to 603-095-0560;

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

(3) Nothing in the Yamhill River 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 603-095-0500 to 603-095-0560.

(4) The purpose of these rules is to outline requirements for landowners in the Yamhill River Subbasin 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 Yamhill River Subbasin.

Stat. Auth.: ORS 568.909
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 20-2000, f. & cert. ef. 7-12-00

603-095-0520

Geographic and Programmatic Scope

(1) The Yamhill River Subbasin includes the drainage area of the Yamhill River upstream from the confluence with the Willamette River near Dayton. The Chehalem Creek drainage basin and a few other small creeks in Yamhill County which directly feed the Willamette River are also included. The physical boundaries of the Yamhill River Subbasin 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 Yamhill River Subbasin in agricultural use and agricultural and rural lands which are lying idle or on which management has been deferred, with the exception of lands which make up the Reservation of the Confederated Tribes of Grand Ronde and activities which are subject to the Forest Practices Act.

(3) Current 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 Yamhill River Subbasin.

(5) For lands in agricultural use within other Designated Management Agency 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.

Stat. Auth.: ORS 568.909
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 20-2000, f. & cert. ef. 7-12-00

603-095-0540

Prevention and Control Measures

All landowners or occupiers conducting activities on lands in agricultural use shall be in compliance with the following criteria. A landowner or occupier 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 occupier. Criteria do not apply to conditions resulting from unusual weather events or other exceptional circumstances which could not have been reasonably anticipated.

(1) Erosion prevention and sediment control:

(a) Landowners or occupiers shall prevent sheet and rill erosion in excess of four times the tolerable soil loss (T) leaving the property or being transported to streams.

(b) By January 1, 2005, landowners or occupiers shall prevent sheet and rill erosion in excess of two times the tolerable soil loss (T) leaving the property or being transported to streams.

(c) Sediment from sheet and rill, gully, or drainage way erosion shall not reduce the quality of waters below the water quality standards established by rule for such waters by the Environmental Quality Commission.

(d) Indicators of non-compliance for (a) through (c) above are:

(A) Visible soil deposition that could enter natural stream areas;

(B) Visible sloughing from drainage ways as a result of livestock grazing, tillage, or human destruction of riparian vegetation; or

(C) Underground drainage tile outlets either improperly installed or maintained allowing soil or bank erosion to actively occur.

(2) Landowners or occupiers shall not apply irrigation water in a manner that results in irrigation water discharge entering waters of the state. Indicator of non-compliance is irrigation water discharge entering waters of the state.

(3) Placement, Delivery, or Sloughing of Wastes:

(a) Effective upon adoption of these rules:

(A) Except as provided in ORS 468B.050, no person conducting agricultural land management shall:

(i) Cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to be carried into the waters of the state by any means.

(ii) Discharge any wastes into any waters of the state if the discharge reduces the quality of such waters below the water quality standards established by rule for such waters by the Environmental Quality Commission.

(B) No person shall violate the conditions of any waste discharge permit issued pursuant to ORS 468B.050 or 568.

(b) Indicators of non-compliance are:

(A) Runoff flowing through areas of high livestock usage and entering waters of the state; or

(B) Livestock waste located in drainage ditches or areas of flooding.

(4) Landowners or occupiers shall prevent crop nutrient applications that result in adverse impacts to waters of the state. Indicators of non-compliance are:

(a) Nutrients applied to open water; or

(b) Visible trail of compost, ash, or bio-solids to waters of the state.

(5) Landowners or occupiers shall prevent the application of chemicals in combination with irrigation water that results in transport into waters of the state. Indicator of non-compliance is chemigated water flowing into waters of the state.

(6) Roadways, staging areas, farmsteads, and heavy use areas shall be constructed and maintained to prevent sediment or runoff contaminants from reaching waters of the state. All roads on agricultural lands not subject to the Oregon Forest Practices Act (OFPA) are subject to this regulation. Public roads are excluded from this prevention and control measure. Indicators of non-compliance are:

(a) Surface runoff from farmsteads, roads, and staging areas that pick up contaminants and flow to waters of the state; or

(b) Visible gully erosion in roads or staging areas.

(7) Landowners or occupiers shall manage streamside areas to allow the establishment, growth, and/or maintenance of riparian vegetation appropriate to the site. Vegetation must be sufficient to provide shade and to protect the streamside area such that it maintains its integrity during high stream flow events such as those events which are reasonably expected to occur following a 25-year, 24-hour storm event.

(a) If any agricultural activity degrades riparian vegetation, the landowner or occupier shall replant or restore the disturbed area to an adequate cover as soon as practical.

(b) Indicator of non-compliance is active streambank sloughing or erosion as a result of tillage, grazing, or destruction of vegetation by the landowner or occupier.

Stat. Auth.: ORS 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 20-2000, f. & cert. ef. 7-12-00; DOA 36-2003, f. & cert. ef. 9-24-03

603-095-0560

Complaints and Investigations

(1) When the Department receives notice of an alleged occurrence of agricultural 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 alleged occurrence of agricultural pollution shall be evaluated in accordance with the criteria in ORS 568.900 to 568.933 adopted or any rules adopted thereunder to determine whether an investigation is warranted.

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

(4) The Department will evaluate or investigate a complaint filed by a person under section OAR 603-095-0560(3) if the complaint is in writing, signed and dated by the complainant and indicates the location and description of:

(a) The property and/or 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 603-095-0560(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-0560, 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 the 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 occupier 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 shall acknowledge the existence of the Voluntary Plan and direct the landowner to seek appropriate technical assistance and revise the plan and its implementation in a manner necessary to eliminate the violation.

(b) The landowner shall be subject to the enforcement procedures of the Department outlined in OARs 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 occupier is not making a reasonable effort to comply with the plan; or

(C) The Department determines that a landowner or occupier has not revised a plan per paragraph (a)(B) of this section within the time specified by the Department.

Stat. Auth.: ORS 568.915, 568.918 & 568.933

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 20-2000, f. & cert. ef. 7-12-00; DOA 36-2003, f. & cert. ef. 9-24-03

Lower Deschutes River Subbasin

603-095-0600

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Lower Deschutes Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900-568.933 and 561.190-561.191, due to a determination by the Environmental Quality Commission to establish Total Maximum Daily Loads and allocate a load to agricultural nonpoint sources. The area plan is known as the Lower Deschutes Agricultural Water Quality Management Area Plan. After adoption of the TMDLs, these rules will be reviewed and modified as needed to provide reasonable assurance that the load allocations for agriculture will be met.

(2) The purpose of these rules is to outline requirements for landowners in the Lower Deschutes Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Lower Deschutes Agricultural Water Quality Management Area.

Stat. Auth.: ORS 561.190 - 561.191 & 568.909

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 16-2000, f. & cert. ef. 6-12-00; DOA 4-2003, f. & cert. ef. 1-7-03

603-095-0620

Geographic and Programmatic Scope

(1) The Lower Deschutes Agricultural Water Quality Management Area includes the drainage area of the Deschutes River downstream from its confluence with Trout Creek to its confluence with the Columbia River near the city of The Dalles. It also includes all Oregon lands draining to the Columbia River between the Hood River drainage and the John Day Basin. The physical boundaries of the 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 Lower Deschutes Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that 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 lands that make up the Reservation of the Confederated Tribes of the Warm Springs.

(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 Lower Deschutes Agricultural Water Quality 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 will 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.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 561.190 - 561.191 & 568.909

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 16-2000, f. & cert. ef. 6-12-00

603-095-0640

Prohibited Conditions

(1) All landowners or operators conducting activities on lands in agricultural use will comply with the following criteria. Imple-

mentation of these rules will begin upon adoption and will be fully implemented by the dates listed below. A landowner is responsible for only those conditions caused by agricultural activities conducted on land controlled by the landowner. A landowner is not responsible for prohibited conditions resulting from actions by another landowner. Conditions resulting from unusual weather events or other exceptional circumstances are not the responsibility of the landowner.

(2) Soil Erosion on Uplands; effective on rule adoption, landowners must control soil erosion on uplands using practical and available methods.

(a) On croplands, a landowner may demonstrate compliance with OAR 603-095-0640(2) by:

(A) Operating consistent with a Soil and Water Conservation District (SWCD)-approved conservation plan that meets Resource Management System (RMS) quality criteria for soil and water resources; or

(B) Operating in accordance with an SWCD-approved plan for Highly Erodible Lands (HEL) developed for the purpose of complying with the current US Department of Agriculture (USDA) farm program legislation; and farming non-HEL cropland in a manner that meets the requirements of an approved USDA HEL compliance plan for similar cropland soils in the county; or

(C) Farming such that the predicted sheet and rill erosion rate does not exceed 5 tons/acre/year, as estimated by the Revised Universal Soil Loss Equation (RUSLE); or

(D) Constructing and maintaining terraces, sediment basins, or other structures sufficient to keep eroding soil out of streams.

(b) On rangelands, a landowner may demonstrate compliance with OAR 603-095-0640(2) by:

(A) Operating consistent with a Soil and Water Conservation District (SWCD)-approved conservation plan that meets Resource Management System (RMS) quality criteria for soil and water resources; or

(B) Maintaining sufficient live vegetation cover and plant litter to capture precipitation, slow the movement of water, increase infiltration, and reduce excessive movement of soil off the site; or

(C) Minimizing visible signs of erosion, such as pedestal or rill formation and areas of sediment accumulation.

(c) Landowners must control active gully erosion to protect against sediment delivery to streams. 'Active Gully Erosion' means gullies or channels that at the largest dimension have a cross-sectional area of at least one square foot and that occur at the same location for two or more consecutive years of cropping or grazing.

(3) Active Stream Bank Erosion; by January 1, 2005, active streambank erosion is not allowed beyond the amount expected for the specific stream flow regime and channel type. Stream channel modification that extends well beyond the level anticipated from natural disturbance given stream characteristics is not allowed.

(4) Placement, Delivery or Sloughing of Wastes; effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

(5) Riparian Vegetation; by January 1, 2005, agricultural management or soil-disturbing activities that preclude establishment and development of adequate riparian vegetation for streambank stability and shading, consistent with site capability, are not allowed.

Stat. Auth.: ORS 568.909
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 16-2000, f. & cert. ef. 6-12-00; DOA 4-2003, f. & cert. ef. 1-7-03

**603-095-0660
Complaints and Investigations**

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, 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 alleged occurrence of agricultural pollution will 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 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 603-095-0660(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 603-095-0660(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-0660, 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 568.915 & 568.918 - 568.933
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 16-2000, f. & cert. ef. 6-12-00; DOA 4-2003, f. & cert. ef. 1-7-03

Umpqua Basin

**603-095-0700
Purpose**

(1) These rules have been developed to implement a water quality management area plan for the Umpqua Basin Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900-568.933 and 561.190-561.191, due to a determination by the Environmental Quality Commission to establish Total Maximum Daily Loads and allocate a load to agricultural nonpoint sources. The area plan is known as the Umpqua Basin Agricultural Water Quality Management Area Plan. After adoption of the TMDLs, these rules will be reviewed and modified as needed to provide reasonable assurance that the load allocations for agriculture will be met. Nothing in the Umpqua Basin Agricultural Water Quality Management Area Plan or rules adopted by the department will allow the department to implement this plan or rules in a manner that is in violation of the U.S. Constitution, the Oregon Constitution or other applicable state laws.

(2) It is intended that the Umpqua Basin 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 Umpqua Basin Agricultural Water Quality Management Area Plan:

(a) Does not constitute a violation of OAR 603-090-0000 to 603-090-0120, or of 603-095-0010 to 603-095-0760;

(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 Umpqua Basin Agricultural Water Quality Management Area Plan shall be used to interpret any requirement of OAR 603-095-0010 to 603-095-0760.

Stat. Auth.: ORS 561.190 - 561.191 & 568.909
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 4-2001, f. & cert. ef. 1-10-01

**603-095-0720
Geographic and Programmatic Scope**

(1) The Umpqua Basin includes the drainage area for the South Umpqua, the North Umpqua, the mainstem Umpqua and the Smith River. The physical boundaries of the Umpqua basin 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 Umpqua Basin in agricultural use and agricultural and rural lands which are lying idle or on which management has been deferred, with the exception of

public lands managed by federal agencies (BLM, USFS and USFWS), 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 Umpqua Basin.

(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.

Stat. Auth.: ORS 561.190 - 561.191, 568.909 & 568.927
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 4-2001, f. & cert. ef. 1-10-01

603-095-0740

Conditions

(1) All landowners or occupiers conducting activities on lands in agricultural use shall be in compliance with the following criteria. A landowner is responsible for only those conditions caused by agricultural activities conducted by the landowner. A landowner is not responsible for unacceptable conditions resulting from the actions of another landowner or occupier. Conditions resulting from unusual weather events or other exceptional circumstances are not the responsibility of the landowner.

(2) Unless otherwise noted, these rules are effective one year after adoption.

(3) Substantial amounts of sediment (i.e. in excess of water quality standards for sedimentation) moving from agricultural lands into waters of the state as a result of agricultural activities is identified as an unacceptable condition. Offstream ponds which do not contribute to the downstream system under normal weather conditions are exempt as they are often used to trap and contain sediment.

(4) Substantial amounts of phosphorous (i.e. in excess of water quality standards) moving from agricultural lands into waters of the state as a result of agricultural activities is identified as an unacceptable condition.

(5) Substantial amounts of bacteria (i.e. in excess of water quality standards) moving from agricultural lands into waters of the state as a result of agricultural activities is identified as an unacceptable condition. Off stream ponds which do not contribute to waters where public exposure is possible are exempt from this rule.

(6) Agricultural management or soil-disturbing activities that preclude establishment and development of adequate riparian vegetation for streambank stability and shading, consistent with site capability, along a perennial stream which has a site potential for such vegetation is considered an unacceptable condition. Minimal breaks in shade vegetation for essential management activities are considered appropriate.

(7) Irrigation practices that contribute significant amounts of warmed surface water (more than 3% of water pumped during any one irrigation setting to return as surface runoff to a stream) back into a stream are considered an unacceptable condition.

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

Stat. Auth.: ORS 561.190 - 561.191, 568.909 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 4-2001, f. & cert. ef. 1-10-01

603-095-0760

Complaints and Investigations

(1) When the department receives notice of an apparent occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, 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 alleged occurrence of agricultural pollution will 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 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 603-095-0760(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 603-095-0760(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-0760, 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 568.915, 568.918 & 568.933
Statutes Implemented: ORS 568.900 - 568.933
Hist.: DOA 4-2001, f. & cert. ef. 1-10-01

North Coast Basin

603-095-0800

Purpose

(1) These rules have been developed to effectuate a water quality management area plan for the North Coast Basin pursuant to authorities vested in the department through ORS 561.190-561.191 and 568.900-568.933. Development of this plan is due to a determination by the Environmental Quality Commission to establish Total Maximum Daily Loads (TMDL) and allocate loads to agricultural water pollution sources. This plan also contributes to the state's program to restore and protect coastal waters in response to the federal Coastal Zone Management Act. The area plan is known as the North Coast Basin Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the North Coast Basin Agricultural Water Quality Management Area for the prevention and control of water pollution from agricultural activities and soil erosion. Compliance with these rules is expected to aid in the achievement of applicable water quality standards in the North Coast Basin.

(a) Failure to comply with any provisions of the North Coast Basin Agricultural Water Quality Management Area Plan:

(A) does not constitute a violation of OAR 603-090-0000 to 603-090-0120, or of 603-095-0010 to 635-095-0860;

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

(b) Nothing in the North Coast Basin 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 603-095-0800 through 603-095-0860.

Stat. Auth.: ORS 561.190 - 561.191 & 568.909
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 21-2000, f. & cert. ef. 7-12-00

603-095-0820

Geographic and Programmatic Scope

(1) The physical boundaries of North Coast Basin subject to these rules are indicated on the map included as Appendix A of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the North Coast Basin

in agricultural use, 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 Oregon 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 North Coast Basin.

(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.

[ED. NOTE: Appendices referenced are available from the agency.]
 Stat. Auth.: ORS 568.909
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 21-2000, f. & cert. ef. 7-12-00

603-095-0840

Required and Prohibited Conditions

(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 required and prohibited conditions 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 that could not have been reasonably anticipated.

(2) Healthy Riparian Streambank Condition. Effective upon rule adoption.

(a) Allow the natural and managed regeneration and growth of riparian vegetation — trees, shrubs, grasses, and sedges — along natural waterways (as defined in OAR 141-085-0010(27)) to provide shade to moderate water temperatures and bank stability to maintain erosion near background levels.

(b) The technical criteria to determine compliance with OAR 603-095-0840(2)(a) are:

(A) Ongoing renewal of riparian vegetation that depends on natural processes (including processes such as seed fall, seed bank in soil, or sprouting from roots, rhizomes, or dormant crowns) is evident.

(B) Ongoing growth of riparian vegetation that has a high probability of remaining or becoming vigorous and healthy is evident.

(C) Management activities minimize the degradation of established native vegetation while allowing for the presence of nonnative vegetation.

(D) Management activities maintain at least 50% of each year's new growth of woody vegetation — both trees and shrubs.

(E) Management activities are conducted in a manner so as to maintain streambank integrity through 25-year storm events.

(c) Exemptions:

(A) Levees and dikes are exempt from the Healthy Riparian Streambank Condition OAR 603-095-0840(2)(a) and (b), except for areas on the river-side of these structures that are not part of the structures and which can be vegetated without violating U.S. Army Corps of Engineers vegetation standards.

(B) Drainage areas where the only connection to other waterbodies are through pumps shall be exempt from the Healthy Riparian Streambank Condition OAR 603-095-0840(2)(a) and (b).

(C) Access to natural waterways for livestock watering and stream crossings are allowed such that livestock use is limited to only the amount of time necessary for watering and crossing the waterway.

(D) Drainage and irrigation ditches managed in compliance with OAR 603-095-0840(3) are exempt from the Healthy Riparian Streambank Condition 603-095-0840(2)(a) and (b).

(3) Drainage and irrigation ditches (channels legally constructed). Effective upon rule adoption.

(a) Construction, maintenance, and use of surface drainage ditches shall not result in sediment delivery to waters of the state from soil erosion caused by excessive channel slope, unstable channel cross section, or placement of disposed soils.

(b) Ditch bank vegetation shall be present to stabilize earthen ditch banks.

(c) Technical criteria to determine compliance with OAR 603-095-0840(3)(a) and (b) are:

(A) Construction and maintenance of drainage and irrigation ditches utilize ditch slope and ditch cross section that are appropriate to the site.

(B) Disposed soils from construction and maintenance of drainage and irrigation ditches are placed such that sediment delivery to waters of the state from the placement of these soils is consistent with natural background sediment delivery from these sites.

(d) Exemptions: Bank vegetation damaged and soils exposed during maintenance (as defined in OAR 141-085-0010(22)) and construction, in accordance with Division of State Lands rules. Bank vegetation must be reestablished as soon as practicable after construction and maintenance are completed. However, sediment delivery to waters of the state shall not result from inappropriate ditch slope and cross section or from placement of disposed soils.

(4) Tide Gates. Effective upon rule adoption. Tide gates shall open and close as designed.

(5) Erosion and Sediment Control. Effective upon rule adoption.

(a) No cropland erosion in excess of the soil loss tolerance factor (T) for the subject field, as determined by the Revised Universal Soil Loss Equation (RUSLE) for soil loss, will occur. Exceptions: The department shall establish an alternate erosion control standard for croplands which the department determines cannot practically or economically achieve the soil loss tolerance factor. Any alternate erosion control standard for croplands established by the department shall assure that delivery of sediment to adjacent water sources is reduced to the maximum extent practicable.

(b) Private roads that traverse rural lands or private roads used for agricultural activities shall be constructed and maintained such that road surfaces, fill and associated structures are designed and maintained to limit contributing sediment to waters of the state. All private roads on agricultural lands not subject to the Oregon Forest Practices Act are subject to this regulation. Exceptions: Roads subject to the Oregon Forest Practices Act.

(c) Agricultural lands shall be managed to prevent and control runoff of sediment to public road drainage systems.

(d) Except for operations governed by the Oregon Forest Practices Act, no activities related to the conversion of woodland to non-woodland agricultural uses that require removal of the majority of woody material from a parcel of land, such that the land no longer meets the definition of woodland, shall be conducted in a manner which results in the placement of soil, the delivery of sediment or the sloughing of soil into waters of the state, the initiation or aggravation of streambank erosion, or the loss of a healthy riparian streambank condition as defined in OAR 603-095-0840(2).

(6) Manure, Nutrients, and Other Waste. Effective upon rule adoption.

(a) No person conducting agricultural land management shall cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means.

(b) No person conducting agricultural land management shall discharge any wastes into the waters of the state if the discharge reduces the quality of such waters below the water quality standards established by rule for such waters by the Environmental Quality Commission.

(c) No person shall violate the conditions of any waste discharge permit issued under ORS 468B.050.

(d) Exceptions: Access to natural waterways for livestock watering and stream crossings are allowed such that livestock use is limited to only the amount of time necessary for watering and crossing the waterway.

Stat. Auth.: ORS 568.909

Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 21-2000, f. & cert. ef. 7-12-00

603-095-0860

Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by any other means, 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 alleged occurrence of agricultural 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 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 603-095-0860(3) if the complaint is in writing, signed and dated by the complainant and indicates the location and description of:

(a) The property and 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 603-095-0860, "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-0860, 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 the 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 Water Quality Farm Plan exists and the landowner or occupier 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 Water Quality Farm Plan and direct the landowner to seek appropriate technical assistance and 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 OARs 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 Water Quality Farm 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 Water Quality Farm Plan exists and the landowner or occupier is not making a reasonable effort to comply with the plan; or

(C) The department determines that a landowner or occupier has not revised a plan per OAR 603-095-0860(7)(a)(B) within the time specified by the department.

Stat. Auth.: ORS 568.915, 568.918 & 568.933
 Stats. Implemented: ORS 568.900 - 568.933
 Hist. DOA 21-2000, f. & cert. ef. 7-12-00

Malheur River Basin

603-095-0900

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Malheur River Basin Agricultural Water Quality Management Area pursuant to authorities vested in

the department through ORS 568.900–568.933 and 561.190–561.191. The area plan is known as the Malheur River Basin Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Malheur River Basin Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Malheur River Basin Water Quality Management Area.

(3) Failure to comply with any provisions of the Malheur River Basin Agricultural Water Quality Management Area Plan:

(a) Does not constitute a violation of OAR 603-090-0000 to 603-090-0120, or of 603-095-0010 to 603-095-0960;

(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 Malheur River Basin 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 603-095-0900 to 603-095-0960.

Stat. Auth.: ORS 561.190 & 561.191
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 6-2001, f. & cert. ef. 3-26-01

603-095-0920

Geographic and Programmatic Scope

(1) The Malheur River Basin Agricultural Water Quality Management Area includes the drainage area of the Malheur River and all its tributaries from the headwaters to the mouth, and the Moores Hollow and Jacobsen Gulch subbasins. The physical boundaries of the Management Area are indicated on the map included as Appendix I of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Malheur River Basin Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that 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.

(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 Malheur River Basin Agricultural Water Quality 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.

[ED. NOTE: Appendices referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 & 561.191
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 6-2001, f. & cert. ef. 3-26-01

603-095-0940

Prohibited Conditions

(1) All landowners or operators conducting activities on lands in agricultural use shall comply with the following criteria. A landowner shall be responsible for only those conditions caused by agricultural activities conducted on land controlled by the landowner. A landowner is not responsible for prohibited conditions resulting from actions by another landowner. Conditions resulting from unusual weather events (equalling or exceeding a 25-year storm event) or other exceptional circumstances are not the responsibility of the landowner. Limited duration activities may be exempted from these conditions subject to prior approval by the department. The intent of these rules, in accordance with the Clean Water Act, is to

protect clean water while also maintaining the economic viability of individual farming enterprises.

(2) Placement, Delivery, or Sloughing of Wastes: Effective upon adoption: No person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

(3) Irrigation Surface Water Return Flow:

(a) After January 1, 2006, irrigation surface water return flow to waters of the state shall not cause an excessive, systematic, or persistent increase in sediment levels already present in the receiving waters, except where the return flows do not cause the receiving waters to exceed established sediment standards.

(b) A landowner conducting irrigation activities in accordance with a plan approved in writing by the department or its designee shall be deemed to be in compliance with this rule.

(4) Active Streambank Erosion: By January 1, 2006, no person may cause active streambank erosion beyond the level that would be anticipated from natural disturbances given existing hydrologic characteristics.

(5) Riparian Vegetation: By January 1, 2006, no conditions are allowed that prevent the establishment and development of adequate riparian vegetation consistent with vegetative site capability to control water pollution by providing control of erosion, filtering of sediments, moderation of solar heating and infiltration of water into the soil profile.

(6) Range and Pasture Management:

(a) By January 1, 2006, vegetative condition on rangelands and pasturelands shall be managed such that the functionality of the watershed is not impaired. Watershed function includes the ability of vegetation to filter sediment, utilize nutrients, control soil erosion, optimize infiltration of water to the soil profile, and minimize the rate and maximize the duration of runoff from precipitation.

(b) A landowner conducting range and pasture management activities in accordance with a plan approved in writing by the department or its designee shall be deemed to be in compliance with this rule.

Stat. Auth.: ORS 561.190 & 561.191
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 6-2001, f. & cert. ef. 3-26-01

603-095-0960

Complaints and Investigations

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

(2) Each notice of an apparent occurrence of agricultural 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 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 603-095-0960(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 603-095-0960(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-0960, 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the

landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 & 561.191
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 6-2001, f. & cert. ef. 3-26-01

North and Middle Forks John Day River

603-095-1000

Purpose

(1) These rules have been developed to implement a water quality management area plan pursuant to authorities vested in the department through ORS 568.900-568.933. The area plan is known as the North and Middle Forks John Day River Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the North and Middle Forks John Day River Management Area, for the prevention and control of water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the North and Middle Forks John Day River subbasins.

(3) Failure to comply with any provisions of the North and Middle Forks John Day River Agricultural Water Quality Management Area Plan:

(a) Does not constitute a violation of OAR 603-090-0000 through 603-090-0120, or of 603-095-0010 through 603-095-1060;

(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 North and Middle Forks John Day River Agricultural Water Quality Management Area Plan shall be used to interpret any requirement of OAR 603-095-1000 through 603-095-1060.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 16-2002, f. & cert. ef. 6-14-02

603-095-1020

Geographic and Programmatic Scope

(1) The North and Middle Forks John Day River Agricultural Water Quality Management Area includes the area that drains into the North and Middle Forks of the John Day River upstream from the confluence with the mainstem John Day River near Kimberly. The physical boundaries of the North and Middle Forks John Day River 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 North and Middle Forks John Day River subbasins in agricultural use and agricultural and rural lands which are lying idle or on which management has been deferred, with the exception of public lands managed by federal agencies (USFS and BLM) and activities that are subject to the Oregon Forest Practices Act.

(3) Current productive agricultural use is not required for the provisions of these rules to apply. For example, fallow croplands or rested pastures 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 North and Middle Forks John Day River Agricultural Water Quality 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.

[ED. NOTE: Appendices referenced are available from the agency.]
Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 16-2002, f. & cert. ef. 6-14-02

603-095-1040

Prevention and Control Measures

(1) Limitations:

(a) All landowners or operators conducting activities on agricultural lands are provided the following exemptions from the requirements of OAR 603-095-1040 (Prevention and Control Measure).

(A) A landowner or operator shall be responsible for water quality resulting from conditions caused by the management of the landowner or operator.

(B) Rules do not apply to conditions resulting from unusual weather events or other circumstances not within the reasonable control of the landowner or operator. Reasonable control of the landowner means that technically sound and economically feasible measures must be available to address conditions described in Prevention and Control Measures.

(b) Rule implementation schedule:

(A) OAR 603-095-1040(2) is effective upon adoption;

(B) OAR 603-095-1040(3) through (6) are effective January 1, 2006;

(C) Effective upon adoption of these rules, all landowners or operators should immediately begin technically sound, economically feasible efforts where needed to achieve measurable progress towards compliance with these rules.

(c) These rules may be modified as a result of the biennial review of the progress of implementation of the North and Middle Forks John Day River Agricultural Water Quality Management Area Plan.

(2) Waste Management: Effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

(3) Uplands Management:

(a) Cropland, rangeland and pasture condition must allow, within the capability of the site, vegetation sufficient to protect water quality.

(b) Private roads and farmsteads must be in a condition that protects water quality by controlling soil erosion and suspended sediment concentrations in runoff.

(4) Riparian Area Management: Riparian area condition must allow the establishment, growth and active recruitment of riparian vegetation, consistent with the vegetative capability of the site, for protection of water quality.

(5) Irrigation Management: Irrigation must be done in a manner that limits the amount of pollutants in the runoff from the irrigated area.

(6) Livestock Management:

(a) Livestock confinement areas must have an adequate runoff control system or equally effective pollution control practice sufficient to control runoff of sediment and animal waste.

(b) OAR 603-095-1040(6)(a) applies to all livestock confinement areas except those required to have a permit under ORS 468B.050.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 16-2002, f. & cert. ef. 6-14-02

603-095-1060

Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, 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 pollution shall be evaluated in accordance with the criteria in ORS 568.900 through 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 pollution or alleging any violation of ORS 568.900 through 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 603-095-1060(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 through 568.933 or any rules adopted thereunder.

(5) As used in section OAR 603-095-1060(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-1060(4), 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 through 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OAR 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 16-2002, f. & cert. ef. 6-14-02

Hood River

603-095-1100

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Hood River Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900–568.933 and 561.190–561.191, due to a determination by the Environmental Quality Commission to establish Total Maximum Daily Loads and allocate a load to agricultural nonpoint sources. The area plan is known as the Hood River Agricultural Water Quality Management Area Plan. After adoption of the TMDLs, these rules will be reviewed and modified as needed to provide reasonable assurance that the load allocations for agriculture will be met.

(2) The purpose of these rules is to outline requirements for landowners in the Hood River Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Hood River Agricultural Water Quality Management Area.

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

(a) Does not constitute a violation of OAR 603-090-0000 to 603-090-0120, or of 603-095-0010 to 603-095-1160;

(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 Hood River 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 603-095-1100 to 603-095-1160.

Stat. Auth.: ORS 561.190 & 561.191

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 7-2001, f. & cert. ef. 3-26-01

603-095-1120

Geographic and Programmatic Scope

(1) The Hood River Agricultural Water Quality Management Area is comprised of the Hood River drainage and all other Oregon lands draining to the Columbia River between and including Eagle Creek to the west and Fir Mountain to the east. The physical boundaries of the 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 Hood River Agricultural Water Quality Management Area in agricultural use, agri-

cultural and rural lands that 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 Tribal Trust lands.

(3) Current productive agricultural use is not required for the provisions of these rules to apply.

(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 Hood River Agricultural Water Quality 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 will 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.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 561.190 & 561.191

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 7-2001, f. & cert. ef. 3-26-01

603-095-1140

Requirements

(1) Landowners must comply with OAR 603-095-1140(2) through (3) within the following limitations: A landowner is responsible for only those conditions resulting from activities controlled by the landowner. A landowner is not responsible for conditions resulting from activities by landowners on other lands. A landowner is not responsible for conditions that: are natural, could not have been reasonably anticipated, or that result from unusual weather events or other exceptional circumstances.

(2) Streamside Vegetation: Effective upon adoption of these rules, agricultural activities must allow the establishment, growth, and maintenance of vegetation along streams. Vegetation must be sufficient to control water pollution by moderating solar heating, minimizing streambank erosion, filtering sediments and nutrients from overland flows, and improving the infiltration of water into the soil profile. The streambank should have sufficient vegetation to resist erosion during high streamflows, such as those reasonably expected to occur once every 25 years.

(3) Waste Management: Effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

Stat. Auth.: ORS 561.190 & 561.191

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 7-2001, f. & cert. ef. 3-26-01

603-095-1160

Complaints and Investigations

(1) When the department receives notice of an apparent occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, 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 alleged occurrence of agricultural pollution will 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 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 603-095-1160(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 603-095-1160(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-1160, 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 & 561.191

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 7-2001, f. & cert. ef. 3-26-01

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 95 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 603-095-1200 through 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.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 11-2001, f. & cert. ef. 6-8-01

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.

[ED. NOTE: Appendices referenced are available from the agency.]
Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 11-2001, f. & cert. ef. 6-8-01

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

(b) 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)(a) Agricultural Waste. Effective upon rule adoption.

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

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 11-2001, f. & cert. ef. 6-8-01

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 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)(i) Irrigation management.

(ii) 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 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 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 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).

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 11-2001, f. & cert. ef. 6-8-01

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.

Stat. Auth.: ORS 568.915, 568.918 & 568.933
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 11-2001, f. & cert. ef. 6-8-01

Sandy Subbasin Management Area

603-095-1300

Purpose

(1) The purpose of these rules is to outline requirements for landowners in the Sandy Subbasin Management Area for the prevention and control of water pollution from agricultural activities and

soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Sandy Subbasin Management Area.

(2) It is intended that the Sandy 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 Sandy Subbasin Agricultural Water Quality Management Area Plan:

(a) Does not constitute a violation of OAR 603-090-0000 through 603-090-0120, or of 603-095-1300 through 603-095-1380;

(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 Sandy 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 603-095-1300 through 603-095-1380.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 12-2001, f. & cert. ef. 6-8-01

603-095-1320

Geographic and Programmatic Scope

(1) The Sandy Subbasin Management Area includes the drainage area of the Sandy River upstream from the confluence with the Columbia River near Troutdale. Tanner, Moffett, McCord, Horsetail, Oneonta, Multnomah, Coeopy, Bridal Veil, Young, Latourell and other small creeks which flow directly into the Columbia River are included in this Management Area. The physical boundaries of the Sandy 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 Sandy 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 Sandy 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.

[ED. NOTE: Appendices referenced are available from the agency.]
Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 12-2001, f. & cert. ef. 6-8-01

603-095-1340

Prevention and Control Measures

(1) All landowners or occupiers conducting activities on lands in agricultural use shall be in compliance with the following criteria. A landowner or occupier 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 occupier. 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 adoption.

(a) Streamside vegetation management shall allow the establishment, growth, control, and/or maintenance of riparian vegetation (for example: grasses, sedges, shrubs, and trees) appropriate to the site capability that is sufficient to provide shade and protection to the

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streamside area such that it maintains its integrity during high stream flow events up to and including those expected to occur during or following a 25-year, 24 hour storm event.

(b) Management strategies in the streamside area shall not reduce the control of erosion, lessen filtering of sediment and nutrients, or decrease the infiltration of water into the soil profile.

(3) Agricultural Waste Control. Effective upon rule adoption.

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

(b) Access to natural waterways for livestock watering and stream crossings are allowed such that livestock use is limited to only the amount of time necessary for watering and/or crossing the waterway.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 12-2001, f. & cert. ef. 6-8-01

603-095-1360

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 603-095-0010(51).

(2) In order to be considered for approval, voluntary plans shall be designed to meet criteria in OAR 603-095-1340. At a minimum, approved voluntary 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 603-095-1340;

(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)(i) Irrigation management.

(ii) 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 603-095-1360(2) and (3).

(F) Nutrient Management.

(G) Pesticide management to minimize off-site transport.

(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 603-095-1340; 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 603-095-1340 shall provide a schedule of implementation until the relevant criteria in 603-095-1340 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 603-095-1340 and the criteria for plan preparation contained in 603-095-1360(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 603-095-1340 or the criteria for plan preparation contained in 603-095-1360(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 603-095-1360(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 603-095-1360(5) and (6).

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 & 568.933

Hist.: DOA 12-2001, f. & cert. ef. 6-8-01

603-095-1380

Complaints and Investigations

(1) When the department receives notice of an apparent occurrence of agricultural water pollution through a written complaint, its own observation, through notification by another agency, or by other means, 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 603-095-1380(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 603-095-1380(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-1380, 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 the 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 voluntary plan pursuant to OAR 603-095-1380(6)(a)(B) within the time specified by the department.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 12-2001, f. & cert. ef. 6-8-01

Inland Rogue

603-095-1400

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Inland Rogue Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900 – 568.933 and 561.190 – 561.191. The area plan is known as the Inland Rogue Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Inland Rogue Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with OAR 603-095-1400 to 603-095-1460 is expected to aid in the achievement of applicable water quality standards in the Inland Rogue Agricultural Water Quality Management Area.

Stat. Auth.: ORS 561.190 – 561.191, 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 13-2001, f. & cert. ef. 6-8-01; DOA 1-2012, f. & cert. ef. 1-12-12;

DOA 15-2012, f. & cert. ef. 6-1-12

603-095-1420

Geographic and Programmatic Scope

(1) The Inland Rogue Agricultural Water Quality Management Area includes the drainage area of the Rogue River primarily within the political boundaries of Jackson and Josephine counties. It does not include the drainage area of the Lower Rogue outside the Josephine county boundary. The physical boundaries of the Inland Rogue Agricultural Water Quality 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 Inland Rogue Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that 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, reservation and tribal trust lands, 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 Inland Rogue Agricultural Water Quality Management Area.

(5) For lands in agricultural use within other Designated Management Agencies' or state agency jurisdictions, the Department of Agriculture (department) and the appropriate Local Management Agency will 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.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 13-2001, f. & cert. ef. 6-8-01; DOA 1-2012, f. & cert. ef. 1-12-12;

DOA 15-2012, f. & cert. ef. 6-1-12

603-095-1440

Prohibited Conditions

(1) All landowners or operators conducting activities on lands described above in OAR 603-095-1420(2) shall be in compliance with the following rules. A landowner shall be responsible for only those conditions caused by the activities of the landowner or operator. Rules do not apply to conditions resulting from unusual weather events or other exceptional circumstances that could not have been reasonably anticipated. Limited duration activities may be exempt from these conditions subject to approval by the department.

(2) Excessive Soil Erosion

(a) There shall be no visible evidence of erosion resulting from agricultural management in a location where erosion has contributed or will contribute sediment to waters of the state. Visible evidence of erosion may consist of the following features:

(A) Sheet wash, noted by visible pedestalling, surface undulations, and/or flute marks on bare or sparsely-vegetated ground;

(B) Visibly active gullies, as defined by OAR 603-095-0010(1);

(C) Multiple rills, which have the form of gullies, but are smaller, in cross-sectional area, than one square foot.

(3) Riparian Vegetation Destruction

(a) Agricultural management of riparian areas shall not impede the development and maintenance of adequate riparian vegetation to control water pollution, provide stream channel stability, moderate solar heating, and filter nutrients and sediment from runoff.

(b) This condition is not intended to prohibit riparian grazing where it can be done while managing for riparian vegetation required in OAR 603-095-1440(3)(a).

(c) Constructed ditches that carry only irrigation delivery and drainage water are exempt from conditions described in OAR 603-095-1440(3).

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(4) Surface Irrigation Return Flows Runoff of surface irrigation that enters waters of the state shall not exceed water quality standards or cause pollution of the receiving water.

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

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 13-2001, f. & cert. ef. 6-8-01; DOA 1-2012, f. & cert. ef. 1-12-12;

DOA 15-2012, f. & cert. ef. 6-1-12

603-095-1460

Complaints and Investigations

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

(2) Each notice of an alleged occurrence of agricultural pollution will 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 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 603-095-1460(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 603-095-1460(4), "person" does not include any local, state, or federal agency.

(6) Notwithstanding OAR 603-095-1460(4), 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Statutory Authority: ORS 561.190 - 561.191 & 568.912

Statutes Implemented: ORS 568.900 - 568.933

Hist.: DOA 1-2012, f. & cert. ef. 1-12-12; DOA 15-2012, f. & cert. ef. 6-1-12

Coos and Coquille Area

603-095-1500

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Coos and Coquille Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900-568.933 and 561.190-561.191. The area plan is known as the Coos and Coquille Agricultural Water Quality Management Area Plan. Nothing in the Coos and Coquille Agricultural Water Quality Management Area Plan or in OARs 603-095-1500 through 603-095-1560 will allow the department to implement this plan or rules in a manner that is in violation of the U. S. Constitution, the Oregon Constitution or other applicable state laws.

(2) The purpose of these rules is to outline requirements for landowners in the Coos and Coquille Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules (OARs 603-095-1500 through 603-095-1560) is expected to aid in the achievement of applicable water quality standards in the Coos and Coquille Water Quality Management Area.

(3) Failure to comply with any provisions of the Coos and Coquille Agricultural Water Quality Management Area Plan:

(a) Does not constitute a violation of OAR 603-090-0000 to 603-090-0120, or of 603-095-0010 to 603-095-1560;

(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 Coos and Coquille 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 603-095-1500 to 635-095-1560.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 11-2002, f. & cert. ef. 3-7-02

603-095-1520

Geographic and Programmatic Scope

(1) The Coos and Coquille Agricultural Water Quality Management Area is comprised of the Coos and Coquille drainages, the Tenmile drainage, the Twomile drainage, the Fourmile drainage (including the headwaters of South Fork Fourmile Creek), and those lands within Coos County that lie north of the county line west of its junction with Bethel Mountain Road. The physical boundaries of the Management Area are indicated on the map included as Appendix I of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Coos and Coquille Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that 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. These rules (OAR 603-095-1500 through 603-095-1560) will affect any lands in agricultural use on all non-Federal and non-Tribal lands in the Coos and Coquille Agricultural Water Quality Management Area.

(a) Agricultural use does not include the use of land for garden plots primarily used for the cultivation of vegetables, flowers, herbs or fruits for domestic or household use.

(b) The provisions of the Coos and Coquille Agricultural Water Quality Management Area Plan and OARs 603-095-1500 through 603-095-1560 shall not apply to any forest practice conducted on forestland as defined in ORS 527.620.

(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) For lands in agricultural use within other Designated Management Agencies' or state agency jurisdictions, the department and the appropriate Local Management Agency will 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.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 11-2002, f. & cert. ef. 3-7-02

603-095-1540

Prohibited Conditions

(1)(a) All landowners or operators conducting activities on lands in agricultural use will comply with the following criteria. A landowner is 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. A landowner is not responsible for conditions resulting from unusual weather events or other exceptional circumstances that could not have been reasonably anticipated.

(b) Limited duration activities may be exempt from these conditions subject to prior written approval by the department.

(2) Sediment Management: Effective three years after rule adoption, soil erosion associated with agricultural cultivation shall not deliver sediment sufficient to violate water quality standards.

(3) Nutrient Management: Effective three years after rule adoption, application and storage of manure, commercial fertilizer, and

other added nutrient inputs to agricultural lands will be done in a manner that minimizes the introduction of nutrients into waterways.

(4) Pesticide Management: Effective three years after rule adoption, in cranberry production, water storage systems that intercept agricultural drainage containing pesticides and that reapply this water will be designed to minimize percolation of drainage waters to groundwater or overflow of the impoundment to surface waters.

(5) Riparian Management:

(a) Effective three years after rule adoption, management activities in the riparian area will be conducted in a manner that allows the establishment, growth, and maintenance of riparian vegetation consistent with vegetative site capability so as to provide some combination of filtering capacity, sediment trapping, stream bank stability, and shade.

(b) Exemptions shall include stream crossings, access for irrigation equipment and other accepted water dependent agricultural uses when conducted in a manner that minimizes impacts on stream-bank stability.

(6) Irrigation Management: Effective three years after rule adoption, application (direct, chemigation, and fertigation) and irrigation systems will be managed to minimize runoff and the introduction of nutrients and farm chemicals into waterways.

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

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 11-2002, f. & cert. ef. 3-7-02

603-095-1560

Complaints and Investigations

(1) When the department receives notice of an apparent occurrence of agricultural 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 alleged occurrence of agricultural 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 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 603-095-1560(3) if the complaint is in writing, signed and dated by the complainant and indicates the location and description of:

(a) The property and/or 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) Notwithstanding OAR 603-095-1560, the department may investigate at any time any complaint if the department determines that the violation alleged in the complaint may, is or impends to create an immediate threat to the public health or safety.

(6)(a) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

(b) Enforcement action shall be pursued only when reasonable attempts at voluntary solutions have failed.

(7) The department may not impose a civil penalty on a landowner for a first violation of OAR 603-090-0000 through 603-090-0120, or of 603-095-1500 through 603-095-1560 unless the department:

(a) Has notified the landowner of the violation in writing that describes, with reasonable specificity, the factual basis for the department's determination that a violation has occurred; and

(b) has prescribed a reasonable time for the landowner to correct the violation that may not exceed 30 days after the first notice of violation, unless the violation requires more than 30 days to correct, in which case the department shall specify a reasonable period of time to correct the violation in a plan of correction issued to the landowner.

(8) No notice of violation or period to comply shall be required under subsection (8) of this section if:

(a) The violation is intentional; or

(b) The landowner has received a previous notice of the same or similar violation.

(9) The department, or a designee of the department shall periodically, and in no event less than once biennially, consult with the department of justice to ensure that the actions of the department taken under ORS 568.915 are consistent with section 9, Article I of the Oregon Constitution, and the Fourth Amendment to the United States Constitution.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 11-2002, f. & cert. ef. 3-7-02

Middle Deschutes

603-095-1600

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Middle Deschutes Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900–568.933 and 561.190–561.191, due to a determination by the Environmental Quality Commission to establish Total Maximum Daily Loads and allocate a load to agricultural nonpoint sources. The area plan is known as the Middle Deschutes Agricultural Water Quality Management Area Plan. After adoption of the TMDLs, these rules will be reviewed and modified as needed to provide reasonable assurance that the load allocations for agriculture will be met.

(2) The purpose of these rules is to outline requirements for landowners in the Middle Deschutes Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Middle Deschutes Agricultural Water Quality Management Area.

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

(a) Does not constitute a violation of OAR 603-090-0000 to 603-090-0120, or of 603-095-0010 to 603-095-1660;

(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 Middle Deschutes 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 603-095-1600 to 635-095-1660.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 20-2001, f. & cert. ef. 9-20-01

603-095-1620

Geographic and Programmatic Scope

(1) The Middle Deschutes Agricultural Water Quality Management Area includes the Trout Creek and Willow Creek drainages, and the area along the eastern side of the Deschutes River between Trout Creek and Crooked River and east of Crooked River between confluence with Deschutes River and Sherwood Canyon to the north and Smith Rock to the south. The physical boundaries of the Management Area are indicated on the map included as Attachment 1 of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Middle Deschutes Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that are lying idle or on

which management has been deferred, and forested lands with agricultural activities, with the exception of Tribal Trust lands or public lands managed by federal agencies.

(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 Middle Deschutes Agricultural Water Quality 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 will 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.

[ED. NOTE: Attachments referenced are available from the agency.]

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 20-2001, f. & cert. ef. 9-20-01

**603-095-1640
Requirements**

(1) Landowners must comply with OAR 603-095-1640(2) through (6) within the following limitations: A landowner is responsible for only those conditions resulting from activities controlled by the landowner. A landowner is not responsible for conditions resulting from activities by landowners on other lands. A landowner is not responsible for conditions that: are natural, could not have been reasonably anticipated, or that result from unusual weather events or other exceptional circumstances.

(2) Streamside Area:

(a) By January 1, 2005, activities must allow the establishment and development of riparian vegetation, consistent with site capability, for streambank stability and stream shading.

(b) By January 1, 2005, activities must allow the establishment and development of vegetation or the presence of an equally effective erosion control device or practice for filtering out sediments before they enter perennial streams.

(3) Instream structures:

(a) Effective on rule adoption, temporary irrigation diversions must:

(A) Be constructed and operated only during periods of irrigation.

(B) Not hinder channel carrying capacity between November 1 and March 1 to accommodate anticipated or expected seasonal streamflow.

(C) Not increase instream turbidity during operation by more than 10%, compared to a point just upstream of the diversion.

(b) By January 1, 2007, temporary irrigation diversions must not contribute to channel instability.

(4) Waste Management: Effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

(5) Irrigation Tailwater: Effective on rule adoption, irrigation tailwater must not increase the turbidity of the perennial stream into which it drains by more than 10%, compared to a point just upstream of the tailwater discharge.

(6) Nutrients: Effective on rule adoption, nutrient application rates and timing must not exceed specific crop requirements. Crop nutrients will be based on recommendations from the best available data applicable to a specific site.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 20-2001, f. & cert. ef. 9-20-01

603-095-1660

Complaints and Investigations

(1) When the department receives notice of an apparent occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, 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 alleged occurrence of agricultural pollution will 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 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 603-095-1660(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 603-095-1660(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-1660, 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 20-2001, f. & cert. ef. 9-20-01

Walla Walla

603-095-1700

Purpose

(1) These rules have been developed to implement a water quality management area plan for the subbasin pursuant to authorities vested in the department through ORS 568.900-568.933. The area plan is known as the Walla Walla Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Walla Walla Agricultural Water Quality Management Area, for the prevention and control of water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Walla Walla River Subbasin.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 17-2002, f. & cert. ef. 6-14-02

603-095-1720

Geographic and Programmatic Scope

(1) The Walla Walla Agricultural Water Quality Management Area includes the area in Oregon that drains into the Walla Walla River. The physical boundaries of the Walla Walla River Subbasin 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 Walla Walla Agricultural Water Quality Management Area in agricultural use and agricultural and rural lands which are lying idle or on which management has been deferred, with the exception of public lands managed by federal agencies and activities that are subject to the Oregon Forest Practices Act.

(3) The provisions of these rules apply to all agricultural land whether or not in current productive agricultural use.

(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 Walla Walla River Subbasin.

(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.

[ED. NOTE: Appendices referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 17-2002, f. & cert. ef. 6-14-02

603-095-1740

Prevention and Control Measures

(1) Limitations:

(a) All landowners or operators conducting activities on agricultural lands are provided the following exemptions from the requirements of OAR 603-095-1740 (Prevention and Control Measures).

(A) A landowner or operator shall be responsible for only those conditions caused by activities conducted on land managed by the landowner or operator.

(B) A landowner or operator is not responsible for conditions resulting from unusual weather events or other uncontrollable circumstances.

(C) The Department will allow temporary exceptions when a specific integrated pest management plan is in place to deal with certain weed or pest problems.

(b) These rules may be modified as a result of the biennial review of the progress of implementation of the Walla Walla Agricultural Water Quality Management Area Plan.

(2) Waste Management Effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

(3) Streamside and Riparian Area Management:

(a) Except as provided in OAR 603-095-1740(3)(b), effective January 1, 2006, streamside area management must allow the establishment, growth and maintenance of riparian vegetation to promote habitat and protect water quality by filtering sediment, stabilizing streambanks, naturally storing water, and providing shade consistent with the vegetative capability of the site.

(b) OAR 603-095-1740(3)(a) does not apply to irrigation water conveyance systems, including, but not limited to, irrigation canals, ditches, laterals, and waterways, such as the Upper Little Walla Walla system, that in the normal course of operation have no return flow into perennial streams where coldwater fish species are present.

(4) Soil Erosion and Sediment Control:

(a) Effective on January 1, 2006, landowners must control upland soil erosion using practical and available methods.

(b) Landowners must control active channel erosion to protect against sediment delivery to streams.

(c) On croplands, a landowner may demonstrate compliance with OAR 603-095-1740(4)(a) by:

(A) Operating consistent with a Soil and Water Conservation District (SWCD) approved conservation plan that meets Resource Management Systems (RMS) quality criteria for soil and water resources; or

(B) Operating in accordance with an SWCD approved plan for Highly Erodible Lands (HEL) developed for the purpose of complying with the current US Department of Agriculture (USDA) farm program legislation; and farming non-HEL cropland in a manner that meets the requirements of an approved USDA HEL compliance plan for similar cropland soils in the county; or

(C) Farming such that the predicted sheet and rill erosion rate does not exceed 5 tons/acre/year, as estimated by the Revised Universal Soil Loss Equation (RUSLE); or

(D) Constructing and maintaining terraces, sediment basins, or other structures sufficient to keep eroding soil out of streams.

(d) On rangelands, a landowner may demonstrate compliance with this OAR 603-095-1740(4)(a) by:

(A) Operating consistent with a Soil and Water Conservation District (SWCD) approved conservation plan that meets Resource

Management Systems (RMS) quality criteria for soil and water resources; or

(B) Maintaining sufficient live vegetation cover and plant litter to capture precipitation, slow the movement of water, increase infiltration, and reduce excessive movement of soil off the site; or

(C) Minimizing visible signs of erosion, such as pedestal or rill formation and areas of sediment accumulation.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 17-2002, f. & cert. ef. 6-14-02

603-095-1760

Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, 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 alleged occurrence of agricultural pollution shall be evaluated in accordance with the criteria in ORS 568.900 through 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 pollution or alleging any violation of ORS 568.900 through 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 603-095-1760(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 through 568.933 or any rules adopted thereunder.

(5) As used in section OAR 603-095-1760(4), "person does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-1760(4), 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 through 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OAR 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 17-2002, f. & cert. ef. 6-14-02

Wallowa

603-095-1800

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Wallowa Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900-568.933. The area plan is known as the Wallowa Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Wallowa Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Wallowa Agricultural Water Quality Management Area.

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

(a) Does not constitute a violation of OAR 603-095-0000 to 603-090-0120, or of 603-095-0010 to 635-095-1860;

(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 Wallowa 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 603-095-1800 to 635-095-1860.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 21-2001, f. & cert. ef. 9-20-01

603-095-1820

Geographic and Programmatic Scope

(1) The Wallowa Agricultural Water Quality Management Area includes Wallowa River, Lower Grande Ronde River and Imnaha River subbasins. The physical boundaries of the 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 Wallowa Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that 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 Tribal Trust Lands.

(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 Wallowa Agricultural Water Quality 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.

[ED. NOTE: Appendices referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 21-2001, f. & cert. ef. 9-20-01

603-095-1840

Prohibited Conditions

(1) Limitations. A landowner shall be responsible for only those conditions caused by activities conducted on land managed by the landowner. Criteria do not apply to conditions resulting from unusual weather events or other exceptional circumstances which could not have been reasonably anticipated.

(2) Excessive Sheet and Rill Erosion:

(a) By January 1, 2006, soil erosion will be reduced to the "Soil Loss Tolerance Factor" or "T."

(b) For croplands which the department determines cannot practically or economically achieve "T" soil erosion will be reduced to 5 tons per acre per year averaged over the length of the rotation.

(c) Reduction of soil erosion will be calculated by the Revised Universal Soil Loss Equation (RUSLE), with supporting data from the Natural Resource Conservation Service Field Office Technical Guide and similar data from other credible sources.

(3) Excessive Gully Erosion:

(a) By January 1, 2006, no person shall cause conditions on the land that contribute to gully erosion delivering sediment directly to the waters of the state. Gullies are defined as channels which at the largest dimension have a cross sectional area of at least one square foot and which occur at the same location for two or more consecutive years.

(b) No violation of this condition will be deemed to have occurred if the affected landowner has established and maintained a department or local Designated Management Agency approved effective management program. An effective management program shall provide assurance that reasonable steps have been taken to lessen and manage gully formation.

(4) Pollution Control and Waste Management. Effective on rule adoption: No person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

(5) Streamside Conditions. By January 1, 2006, no person may contribute to conditions that preclude establishment and development of adequate riparian vegetation for streambank stability and shading, consistent with site capability.

(6) Irrigation Return Flow:

(a) By January 1, 2006, no person may cause bacteria levels in irrigation tailwater to exceed state water quality standards. When the irrigation water at the point of initial application already exceeds the bacteria standard, then the bacteria level in the tailwater cannot be higher than the level in the irrigation water at the point of initial application.

(b) A landowner shall be responsible for only those conditions caused by activities conducted on land managed by the landowner. Criteria do not apply to conditions resulting from unusual weather events, natural background levels of bacteria or other exceptional circumstances which could not have been reasonably anticipated.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth: ORS 561.190 - 561.191 & 568.909
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 21-2001, f. & cert. ef. 9-20-01

603-095-1860

Complaints and Investigations

(1) When the department receives notice of an apparent occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, 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 alleged occurrence of agricultural pollution will 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 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 603-095-1860(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 603-095-1860(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-1860, 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 21-2001, f. & cert. ef. 9-20-01

Molalla/Pudding/French Prairie/North Santiam Subbasins

603-095-1900

Purpose

(1) The purpose of these rules is to outline requirements for landowners in the Molalla/Pudding/French Prairie/North Santiam Subbasins 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 qual-

ity standards in the Molalla/Pudding/French Prairie/North Santiam Subbasins.

(2) It is intended that the Molalla/Pudding/French Prairie/North Santiam Subbasins 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 Molalla/Pudding/French Prairie/North Santiam Subbasins Agricultural Water Quality Management Area Plan:

(a) Does not constitute a violation of OAR 603-090-0000 to 603-090-0120, or of 603-095-1900 to 603-095-1980;

(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 Molalla/Pudding/French Prairie/North Santiam Subbasins Agricultural Water Quality Management Area Plan shall:

(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 603-095-1900 through 603-095-1980.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 3-2002, f. & cert. ef. 1-18-02

603-095-1920

Geographic and Programmatic Scope

(1) The Molalla/Pudding/French Prairie/North Santiam Subbasins includes the drainage areas of the Molalla, Pudding, North Santiam, and Santiam Rivers. In the area known as French Prairie, all the creeks and drainages between the towns of Saint Paul and Donald that flow directly into the Willamette River are also part of this management area. The Willamette River is the western boundary. The physical boundaries of the Molalla/Pudding/French Prairie/North Santiam Subbasins 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 Molalla/Pudding/French Prairie/North Santiam Subbasins in agricultural use, 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 Molalla/Pudding/French Prairie/North Santiam Subbasins.

(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.

[ED. NOTE: Appendices referenced are available from the agency.]
Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 3-2002, f. & cert. ef. 1-18-02

603-095-1940

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) Chemigated Irrigation Water. Effective upon rule adoption. Landowners or operators shall use the application of chemicals in

combination with irrigation water in a manner that does not adversely impact waters of the state.

(3) Surface Drainage and Irrigation Ditches. Effective upon rule adoption. Construction, maintenance, and use of surface drainage field ditches or surface irrigation field ditches shall cause no pollutant delivery to waters of the state from soil erosion induced by excessive channel slope, unstable channel cross section or placement of disposed spoils.

(4) Erosion Prevention and Sediment Control. Effective upon rule adoption. Soil erosion rate shall not exceed five tons per acre per year between October 1 and September 30 if the resulting sediment has access to and enters the waters of the state. The erosion rate will be determined using standard scientific methods.

(a) Visual on-site indicators for erosion to surface water include sheet and rill erosion that combines to a concentrated flow that runs into a waterway or road ditch, or any waters of the state.

(b) Other visual indicators include sediment deposition from overland flow in channels that are carrying or connected to waters of the state. Field measurements may include depth of sheet and rill erosion on the field and by inspection of exposed roots from soil erosion.

(5) Irrigation. Effective upon rule adoption. Irrigation systems shall be designed and operated to minimize runoff of potential pollutants. Irrigation scheduling shall be appropriate to each site and consideration shall be given to water use efficiency, off-target minimization, soil conditions, crop, climate and topography.

(6) Waste: Livestock and Other. Effective upon rule adoption.

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

(b) Landowners and operators shall prevent the runoff or leaching of contaminated water from feed and manure storage piles into waters of the state, including but not limited to groundwater.

(7) Nutrients. Effective upon rule adoption. Landowners or operators shall use and apply crop nutrients in a manner that prevents transport into the waters of the state.

(8) Riparian Management Area. Effective upon rule adoption.

(a) A Riparian Management Area (RMA) that allows for the natural or managed development of riparian vegetation and riparian function over time shall be provided along all streams. This shall include the natural or managed establishment and maintenance of riparian vegetation, such as grasses, sedges, shrubs, and trees, appropriate to site capability, and that in the normal course of time will provide shade and protect streambank stability from flows at or below those expected to occur during or following a 25-year, 24 hour storm event.

(b) Sufficient RMA width will be site specific, and may vary by, for example, soil type, size of stream, and agricultural use.

(9) Roads and Staging Areas. Effective upon rule adoption.

(a) Roadways, staging areas, and heavy use areas shall be constructed and maintained to prevent sediment or runoff contaminants from adversely affecting waters of the state.

(b) Exemptions: Public roads and roads subject to the Oregon Forest Practices Act.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 3-2002, f. & cert. ef. 1-18-02

603-095-1960

Voluntary Water Quality Farm Plans

(1) Intent: Landowners or operators are encouraged but are not required to develop and implement an Approved Voluntary Water Quality Farm Plan (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 603-095-0010(51).

(2) In order to be considered for approval, Voluntary Plans shall be designed to meet criteria in OAR 603-095-1940. At a minimum, Approved Voluntary 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 for-

mulation of the Voluntary Plan to assure it achieves the criteria in OAR 603-095-1940;

(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. 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 603-095-1960(1) and (2).

(F) Nutrient management.

(G) Pesticide management to minimize off-site transport.

(H) Chemigated irrigation water.

(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 it meets the standards of the 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 603-095-1940; 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 603-095-1940 shall provide a schedule of implementation until full compliance with 603-095-1940 is accomplished.

(5) Approval:

(a) The Local Management Agency shall approve or disapprove Voluntary Plans and 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 603-095-1940 and the criteria for plan preparation contained in 603-095-1960(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 603-095-1940 or the criteria for plan preparation contained in 603-095-1960(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 603-095-1960(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 Man-

agement 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 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 603-095-1960(5) and (6).

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 3-2002, f. & cert. ef. 1-18-02

603-095-1980

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 603-095-1980(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.

(c) As used in section OAR 603-095-1980(4), "person" does not include any local, state or federal agency.

(5) Notwithstanding OAR 603-095-1980, 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 the public health or safety.

(6) 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 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 OARs 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 per paragraph (a)(B) of this section within the time specified by the Department.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 3-2002, f. & cert. ef. 1-18-02

Upper Mainstem and South Fork John Day River

603-095-2000

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Upper Mainstem and South Fork John Day River Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900–568.933 and 561.190–561.191. The area plan is known as the Upper Mainstem and South Fork John Day Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Upper Mainstem and South Fork John Day River Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Upper Mainstem and South Fork John Day River Water Quality Management Area.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 5-2003, f. & cert. ef. 1-7-03

603-095-2020

Geographic and Programmatic Scope

(1) The Upper Mainstem and South Fork John Day River Management Area include the area that drains into the John Day River upstream of Picture Gorge. The physical boundaries of the Management Area are indicated on the map included as Attachment 1 of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Management Area in agricultural use, agricultural and rural lands that 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.

(3) Current productive agricultural use is not required for the provisions of these rules to apply.

(4) The provisions and requirements outlined in these rules may be adopted by reference by Designated Management Agencies with appropriate authority and responsibilities in the 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 does not occur.

[ED. NOTE: Attachments referenced are available from the agency.]
Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 5-2003, f. & cert. ef. 1-7-03

603-095-2040

Prevention and Control Measures

(1) Limitations. All landowners or operators conducting activities on agricultural lands are provided the following exemptions from the requirements of OAR 603-095-2040(2)–(6) (Prevention and Control Measures).

(a) A landowner or operator shall be responsible for water quality caused only by conditions on land managed by the landowner or operator.

(b) Criteria do not apply to conditions resulting from unusual weather events or other circumstances not within the reasonable control of the landowner or operator. Reasonable control of the landowner means that technically sound and economically feasible measures must be available to address conditions described in Prevention and Control Measures.

(2) Waste Management: Effective on rule adoption, no person subject to these rules shall violate any provisions of ORS 468B.025 or 468B.050.

(3) Livestock Management: By January 1, 2006, livestock areas shall be managed to control direct discharge of pollutants.

(4) Uplands Management: By January 1, 2006, within the vegetative growth capability of the site, private land and access route management must foster sufficient vegetation to protect water quality by providing infiltration, filtering of sediment and animal wastes, and stabilization of soil.

(5) Streamside Management: By January 1, 2006, management of streamside areas must allow the establishment, growth and active recruitment of vegetation, consistent with the vegetative growth capability of the site, for protection of water quality by filtering sediment, stabilizing streambanks, and providing shade.

(6) Irrigation Management: By January 1, 2006, irrigation must be done in a manner that limits the amount of pollutants entering waters of the state.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 5-2003, f. & cert. ef. 1-7-03

603-095-2060

Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, 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 alleged occurrence of agricultural 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 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 603-095-2060(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 603-095-2060(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-2060(4), 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 the public health or safety.

(7) If the department determines that a violation of ORS 569.900 to 568.933 or any rules adopted therefore has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OAR 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 5-2003, f. & cert. ef. 1-7-03

Southern Willamette Valley

603-095-2100

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Southern Willamette Valley Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900–568.933 and 561.190–561.191. The area plan is known as the Southern Willamette Valley Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Southern Willamette Valley Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Southern Willamette Valley Agricultural Water Quality Management Area.

(3) Failure to comply with any provisions of the Southern Willamette Valley Agricultural Water Quality Management Area Plan:

(a) Does not constitute a violation of OAR 603-090-0000 to 603-090-0120, or of 603-095-0010 to 603-095-2160;

(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 Southern Willamette Valley 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 603-095-2100 to 603-095-2160.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 18-2002, f. & cert. ef. 6-14-02

603-095-2120

Geographic and Programmatic Scope

(1) The Southern Willamette Valley Agricultural Water Quality Management Area includes the drainage area of the McKenzie River, Middle Fork of the Willamette River, Coast Fork of the Willamette River, and Willamette River mainstem upstream from the confluence with the McKenzie River near Eugene. The physical boundaries of the Southern Willamette Valley Agricultural Water Quality 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 Southern Willamette Valley Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that are lying idle or on which management has been deferred, and forest lands with agricultural activities, with the exception of public lands managed by federal agencies.

(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 Southern Willamette Valley Agricultural Water Quality 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.

[ED. NOTE: Appendices referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 18-2002, f. & cert. ef. 6-14-02

603-095-2140

Characteristics to Achieve

(1) All landowners or operators conducting activities on lands in agricultural use shall comply with the following criteria. A landowner shall be responsible for only those conditions caused by activities conducted on land controlled by the landowner. A landowner is not responsible for violations of the characteristics to achieve resulting from actions by another landowner. Conditions resulting from unusual weather events (equaling or exceeding a 25-year, 24-hour storm event) or other exceptional circumstances are not the responsibility of the landowner. Limited duration activities may be exempted from these conditions subject to prior written approval by the department.

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

(3) Riparian areas: By January 1, 2004, agricultural management shall allow establishment and maintenance of vegetation along perennial streams consistent with the capability of the site to provide riparian functions necessary to help moderate solar heating and for streambanks to withstand flows resulting from a 25-year, 24-hour storm event.

(4) Erosion and Nutrients:

(a) By January 1, 2004, soil erosion from agricultural activities shall not exceed the tolerable soil loss T.

(b) By January 1, 2004, landowners or operators shall prevent pollution from irrigation surface water return flow to waters of the state.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 18-2002, f. & cert. ef. 6-14-02

603-095-2160

Complaints and Investigations

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

(2) Each notice of an alleged occurrence of agricultural 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 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 603-095-2160(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 603-095-2160(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-2160, 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 18-2002, f. & cert. ef. 6-14-02

Mid Coast

603-095-2200

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Mid Coast Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900–568.933 and 561.190–561.191. The area plan is known as the Mid Coast Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Mid Coast Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Mid Coast Agricultural Water Quality Management Area.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 22-2002, f. & cert. ef. 9-30-02

603-095-2220

Geographic and Programmatic Scope

(1) The Mid Coast Agricultural Water Quality Management Area includes the drainage area of the Salmon, Siletz, Yaquina, Alsea, Yachats, Siuslaw, Siltcoos Rivers, and Tahkenitch Lake, as well as other small streams between these watersheds that drain directly to the Pacific Ocean. The physical boundaries of the Mid Coast Agricultural Water Quality 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 Mid Coast Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that are lying idle or on which management has been deferred, and forest lands with agricultural activities, with the exception of public lands managed by federal agencies.

(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 Mid Coast Agricultural Water Quality 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.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 22-2002, f. & cert. ef. 9-30-02

603-095-2240

Prevention and Control Measures

(1) All landowners or operators conducting activities on lands in agricultural use shall comply with the following criteria. A landowner shall be responsible for only those conditions caused by activities conducted on land controlled by the landowner. A landowner is not responsible for violations of Prevention and Control Measures resulting from actions by another landowner. Conditions resulting from unusual weather events (equaling or exceeding a 25-year, 24-hour storm event) or other exceptional circumstances are not the responsibility of the landowner. Limited duration activities may be exempted from these conditions subject to prior approval by the department.

(2) Near-Stream Management Areas. Effective January 1, 2005:

(a) Agricultural activities must allow for the establishment and development of riparian vegetation consistent with site capability. Vegetation must be sufficient to provide the following riparian functions: shade, streambank integrity during stream flows following a 25-year storm event, and filtration of nutrients and sediment.

(b) Exemptions:

(A) Levees and dikes are exempt from OAR 603-095-2240(2)(a) except for areas on the river-side of these structures that are not part of the structures and which can be vegetated without violating U.S. Army Corps of Engineers vegetation standards.

(B) Drainage areas where the only connection to other water bodies is through pumps shall be exempt from OAR 603-095-2240(2)(a).

(C) Access to natural waterways for stream crossings and livestock watering are allowed provided OAR 603-095-2240(2)(a) is met.

(D) Legally constructed drainage and irrigation ditches as defined in Division of State Lands Rules and ditches subject to Division of State Lands fill-removal laws are exempt from OAR 603-095-2240(2).

(3) Effective on rule adoption, landowners or operators shall prevent nutrient applications that cause pollution to waters of the state.

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

(5) Erosion and Sediment Control:

(a) Effective January 1, 2004, agricultural activities will not cause the following visual indicators of erosion where erosion may cause sediment runoff into waters of the state:

(A) Sheet erosion, noted by visible pedestalling, surface undulations, and/or flute marks on bare or sparsely vegetated ground;

(B) Visible active gullies;

(C) Multiple rills, which have the form of gullies, but are smaller in cross-sectional area than one square foot.

(b) This prevention and control measure applies to farm roads and staging areas, pastures, cropland, and other areas where agricultural activities occur.

(6) By January 1, 2003, landowners must prevent pollution from irrigation return flow to waters of the state.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 22-2002, f. & cert. ef. 9-30-02

603-095-2260

Complaints and Investigations

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

(2) Each notice of an alleged occurrence of agricultural 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 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 603-095-2260(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 603-095-2260(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-2260, 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 22-2002, f. & cert. ef. 9-30-02

Middle Willamette

603-095-2300

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Middle Willamette Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900–568.933 and 561.190–561.191. The area plan is known as the Middle Willamette Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Middle Willamette Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Middle Willamette Agricultural Water Quality Management Area.

Stat. Auth: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 6-2003, f. & cert. ef. 1-7-03

603-095-2320

Geographic and Programmatic Scope

(1) The Middle Willamette Agricultural Water Quality Management Area includes the drainage area of the Marys River, Luckiamute River, Ash Creek, Dixon Creek, Frazier Creek, Rickreall Creek, and Glen Creek, as well as several smaller streams that drain directly to the Willamette River. The physical boundaries of the Middle Willamette Agricultural Water Quality 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 Middle Willamette Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that are lying idle or on which management has been deferred, and forest lands with agricultural activities, with the exception of public lands managed by federal agencies.

(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 Middle Willamette Agricultural Water Quality 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.

[ED. NOTE: Appendices referenced are available from the agency.]
 Stat. Auth: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 6-2003, f. & cert. ef. 1-7-03

603-095-2340

Prevention and Control Measures

All landowners or operators conducting activities on lands in agricultural use shall comply with the following criteria. A landowner shall be responsible for only those conditions caused by activities conducted on land controlled by the landowner. A landowner is not responsible for violations of the Prevention and Control Measures resulting from actions by another landowner. Conditions resulting from unusual weather events (equaling or exceeding a 25-year, 24-hour storm event) or other exceptional circumstances are not the responsibility of the landowner. Limited duration activities may be exempted from these conditions subject to prior written approval by the department.

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

(2) By January 1, 2003, agricultural activities shall allow the growth and establishment of vegetation along perennial streams consistent with site capability to promote infiltration of overland flow, streambank stability and provide moderation of solar heating. Minimal breaks in shade vegetation for essential management activities are considered appropriate.

Stat. Auth: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 6-2003, f. & cert. ef. 1-7-03

603-095-2360

Complaints and Investigations

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

(2) Each notice of an alleged occurrence of agricultural 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 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 603-095-2360(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 603-095-2360(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-2360, 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 6-2003, f. & cert. ef. 1-7-03

South Santiam Agricultural Water Quality Management Area

603-095-2400

Purpose

(1) These rules have been developed to implement a water quality management area plan for the South Santiam Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900–568.933 and 561.190–561.191. The area plan is known as the South Santiam Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the South Santiam Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the South Santiam Agricultural Water Quality Management Area.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 7-2003, f. & cert. ef. 1-7-03

603-095-2420

Geographic and Programmatic Scope

(1) The South Santiam Agricultural Water Quality Management Area includes the drainage area of the South Santiam River, Calapooia River, and several smaller streams that drain directly to the Willamette River. The physical boundaries of the South Santiam Agricultural Water Quality 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 South Santiam Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that are lying idle or on which management has been deferred, and forest lands with agricultural activities, with the exception of public lands managed by federal agencies.

(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 South Santiam Agricultural Water Quality 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.

[ED. NOTE: Appendices referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 7-2003, f. & cert. ef. 1-7-03

603-095-2440

Prevention and Control Measures

All landowners or operators conducting activities on lands in agricultural use shall comply with the following criteria. A landowner shall be responsible for only those conditions caused by activities conducted on land controlled by the landowner. A landowner is not responsible for violations of the Prevention and Control Measures resulting from actions by another landowner. Conditions resulting from unusual weather events (equaling or exceeding a 25-year, 24-hour storm event) or other exceptional circumstances are not the responsibility of the landowner. Limited duration activities may be exempted from these conditions subject to prior written approval by the department.

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

(2) By January 1, 2003, agricultural activities along perennial streams shall allow for the establishment and maintenance of riparian vegetation consistent with site capability that promotes infiltration of overland flows, moderation of solar heating, and streambank stability.

(a) Minimal breaks in shade vegetation for essential management activities are considered appropriate.

(b) Management within the riparian area is allowed provided it does not compromise achieving the conditions described in (1)(b).

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 7-2003, f. & cert. ef. 1-7-03

603-095-2460

Complaints and Investigations

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

(2) Each notice of an alleged occurrence of agricultural 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 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 603-095-2460(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 603-095-2460(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-2460, 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 7-2003, f. & cert. ef. 1-7-03

Middle John Day River Subbasin

603-095-2500

Purpose

(1) These rules have been developed to implement a water quality management area plan for the subbasin pursuant to authorities vested in the department through ORS 568.900–568.933. The area plan is known as the Middle John Day Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Middle John Day Agricultural Water Quality Management Area for the prevention and control of water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 21-2003, f. & cert. ef. 7-8-03

603-095-2520

Geographic and Programmatic Scope

(1) The Middle John Day Agricultural Water Quality Management Area includes the area that drains into the John Day River between the Wheeler-Gilliam county line and the upstream end of Picture Gorge. The physical boundaries of the Middle John Day Agricultural Water Quality Management Area are indicated on the map included as an attachment to these rules.

(2) Operational boundaries for the land base under the purview of these rules include all agricultural and rural lands within the Middle John Day Agricultural Water Quality Management Area with the exception of public lands managed by federal agencies and activities that are subject to the Oregon Forest Practices Act.

(3) The provisions of these rules apply to all agricultural land whether or not in current productive agricultural use.

(4) 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.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 21-2003, f. & cert. ef. 7-8-03

603-095-2540

Prevention and Control Measures

(1) Limitations: All landowners or operators conducting activities on agricultural and rural lands are provided the following exemptions from the requirements of OAR 603-095-2540 (Prevention and Control Measures).

(a) A landowner or operator shall be responsible for only those conditions caused by activities conducted on land managed by the landowner or operator.

(b) Rules do not apply to conditions resulting from unusual weather events or other circumstances not within the reasonable control of the landowner or operator. Within the reasonable control of the landowner means that technically sound and economically feasible measures must be available to address conditions described in Prevention and Control Measures.

(c) The Department may allow temporary exceptions when a specific integrated pest management plan is in place to deal with certain weed or pest problems.

(2) Waste Management: Effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

(3) Effective by January 1, 2008, streamside management must allow the establishment, growth, and active recruitment of vegetation, consistent with the vegetative capability of the site, for protection of water quality by filtering sediment, stabilizing streambanks and providing shade.

(4) Effective January 1, 2008, irrigation must be done in a manner that limits the amount of pollutants entering waters of the state in the runoff from the irrigated area.

(5) Livestock Management, by January 1, 2008, areas used to control livestock, with a demonstrated impact on water quality, will be managed to control runoff of sediment or animal waste.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 21-2003, f. & cert. ef. 7-8-03

603-095-2560

Complaints and Investigations

(1) When the Department receives notice of an alleged occurrence of agricultural pollution through a written complain, its own observation, through notification by another agency, or by other means, 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 alleged occurrence of agricultural 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 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 603-095-2560(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 603-095-2560(4), "person does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-2560(4), 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OAR 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 21-2003, f. & cert. ef. 7-8-03

Upper Willamette and Upper Siuslaw Agricultural Water Quality Management Area

603-095-2600

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Upper Willamette and Upper Siuslaw Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900–568.933 and 561.190–561.191. The area plan is known as the Upper Willamette and Upper Siuslaw Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Upper Willamette and Upper Siuslaw Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Upper Willamette and Upper Siuslaw Agricultural Water Quality Management Area.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 23-2003, f. & cert. ef. 7-8-03

603-095-2620

Geographic and Programmatic Scope

(1) The Upper Willamette and Upper Siuslaw Agricultural Water Quality Management Area includes the drainage area of the Long Tom River, Upper Siuslaw River, and several smaller streams that drain directly to the Willamette River. The physical boundaries of the Upper Willamette and Upper Siuslaw Agricultural Water Quality Management Area are indicated on the map included as Appendix 1 of these rules. [Appendix not included. See ED. NOTE.]

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Upper Willamette and Upper Siuslaw Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that are lying idle or on which management has been deferred, and forest lands with agricultural activities, with the exception of public lands managed by federal agencies.

(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 Upper Willamette and Upper Siuslaw Agricultural Water Quality 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.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 23-2003, f. & cert. ef. 7-8-03

603-095-2640

Prevention and Control Measures

(1) All landowners or operators conducting activities on lands in agricultural use shall comply with the following criteria. A landowner shall be responsible for only those conditions caused by activities conducted on land controlled by the landowner. A landowner is not responsible for violations of the Prevention and Control Measures resulting from actions by another landowner. Conditions resulting from unusual weather events (equaling or exceeding a 25-year, 24-hour storm event) or other exceptional circumstances are not the responsibility of the landowner. Limited duration activities may

be exempted from these conditions subject to prior written approval by the department.

(2) Effective upon rule adoption, agricultural activities shall allow the establishment and development of riparian vegetation along perennial and intermittent streams for streambank stability, shading, and proper riparian function, consistent with site capability. Legally constructed drainage and irrigation ditches are exempt from OAR 603-095-2640(2).

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

(4) Corralled or enclosed livestock areas will be managed to control runoff of sediment and animal waste. Application and storage of manure will be done in a manner that minimizes the introduction of nutrients and bacteria to waterways.

(5) Effective January 1, 2004, agricultural activities will not cause the following visual indicators of erosion where erosion may cause sediment runoff into waters of the state:

(a) Sheet erosion; noted by scoured surfaces or pedestals of soil at the base of plants on sparsely vegetated or bare ground;

(b) Visible active gullies;

(c) Multiple rills, which have the form of gullies, but are smaller in cross-sectional area than one foot.

(d) This prevention and control measure applies to farm roads and staging areas, pastures, cropland, and other areas where agricultural activities occur.

(6) Construction, maintenance, and use of surface drainage field ditches or surface irrigation field ditches shall cause no pollutant delivery to waters of the state from soil erosion induced by excessive channel slope, unstable channel cross section or placement of disposed spoils.

(7) Agricultural activities shall not cause pollution from active channel erosion or other means of sediment delivery from intermittent streams and drainage ways.

(8) Roadways, staging areas, and heavy-use areas shall be constructed and maintained to prevent sediment or runoff contaminants from adversely affecting waters of the state. Exemptions: Public roads and roads subject to the Oregon Forest Practices Act.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 23-2003, f. & cert. ef. 7-8-03

603-095-2660

Complaints and Investigations

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

(2) Each notice of an alleged occurrence of agricultural 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 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 603-095-2660(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 603-095-2660(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-2660(4), 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 23-2003, f. & cert. ef. 7-8-03

Owyhee Agricultural Water Quality Management Area

603-095-2700

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Owyhee Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900–568.933 and 561.190–561.191. The area plan is known as the Owyhee Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Owyhee Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Owyhee Agricultural Water Quality Management Area.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 24-2003, f. & cert. ef. 7-8-03

603-095-2720

Geographic and Programmatic Scope

(1) The Owyhee Agricultural Water Quality Management Area includes the portions of the following subbasins that are within the state of Oregon’s boundaries: southern portion of the Middle Snake-Payette (USGS HUC 1705011503), Lower Owyhee, Middle Snake-Succor, Crooked-Rattlesnake, Jordan, Middle Owyhee, South Fork Owyhee, East Little Owyhee, and the Upper Quinn. The physical boundaries of the Owyhee Agricultural Water Quality 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 Owyhee Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that are lying idle or on which management has been deferred, and forest lands with agricultural activities, with the exception of public lands managed by federal agencies and Tribal Trust lands.

(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 Owyhee Agricultural Water Quality 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 do not occur.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 24-2003, f. & cert. ef. 7-8-03

603-095-2740

Prevention and Control Measures

(1) A landowner shall be responsible for only those conditions caused by activities conducted on land managed by the landowner. Criteria do not apply to conditions resulting from unusual weather events or other exceptional circumstances that could not have been reasonably anticipated.

(2) Pollution Control and Waste Management: Effective on rule adoption. No person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

(3) Streamside Conditions. By January 1, 2008, no person may contribute to conditions that preclude establishment and development of adequate riparian vegetation for streambank stability and shading, consistent with site capability.

(4) Irrigation Surface Water Return Flow:

(a) After January 1, 2008, irrigation surface water return flow to waters of the state shall not cause an excessive, systematic, or persistent increase in sediment levels already present in the receiving waters, except where the return flows do not cause the receiving waters to exceed established sediment standards.

(b) A landowner conducting irrigation activities in accordance with a plan approved in writing by the department or its designee shall be deemed to be in compliance with this rule.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 24-2003, f. & cert. ef. 7-8-03

603-095-2760

Complaints and Investigations

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

(2) Each notice of an alleged occurrence of agricultural 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 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 603-095-2760(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 603-095-2760(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-2760(4), 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 24-2003, f. & cert. ef. 7-8-03

Willow Creek

603-095-2800

Purpose

(1) These rules have been developed to implement a water quality management area plan for the subbasin pursuant to authorities vested in the department through ORS 568.900-568.933. The area plan is known as the Willow Creek Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Willow Creek Agricultural Water Quality Management Area, for the prevention and control of water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Willow Creek subbasin.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 34-2003, f. & cert. ef. 9-24-03

603-095-2820

Geographic and Programmatic Scope

(1) The Willow Creek Agricultural Water Quality Management Area includes the area that drains into Willow Creek or the Columbia River between Willow Creek and the Umatilla River. The physical boundaries of the Willow Creek subbasin are indicated on the map included as Attachment 1 of these rules.

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

(3) The provisions of these rules apply to all agricultural land whether or not in current productive agricultural use.

(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 Willow Creek subbasin.

(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.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 34-2003, f. & cert. ef. 9-24-03

603-095-2840

Prevention and Control Measures

(1) Limitations: All landowners or operators conducting activities on agricultural lands are provided the following exemptions from the requirements of OAR 603-095-2840 (Prevention and Control Measure).

(a) A landowner or operator shall be responsible for water quality resulting from conditions caused by the management of the landowner or operator.

(b) Rules do not apply to conditions resulting from unusual weather events or other circumstances not within the reasonable control of the landowner or operator. Reasonable control of the landowner means that technically sound and economically feasible measures must be available to address conditions described in Prevention and Control Measures.

(c) The Department may allow temporary exceptions when a specific integrated pest management plan is in place to deal with certain weed or pest problems.

(2) Waste Management: Effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

(3) Upland Management and Soil Erosion: By January 1, 2008, landowners must control upland soil erosion using practical and available methods.

(a) Landowners must control active channel (gully) erosion to protect against sediment delivery to streams.

(b) On croplands, a landowner may demonstrate compliance with this rule by:

(A) Operating consistent with a Soil and Water Conservation District (SWCD)-approved conservation plan that meets Resource Management Systems (RMS) quality criteria for soil and water resources; or

(B) Operating in accordance with an SWCD-approved plan for Highly Erodible Lands (HEL) developed for the purpose of complying with the current US Department of Agriculture (USDA) farm program legislation; and farming non-HEL cropland in a manner that meets the requirements of an approved USDA HEL compliance plan for similar cropland soils in the county; or

(C) Farming such that the predicted sheet and rill erosion rate does not exceed 5 tons/acre/year, as estimated by the Revised Universal Soil Loss Equation (RUSLE); or

(D) Constructing and maintaining terraces, sediment basins, or other structures sufficient to keep eroding soil out of streams.

(c) On rangelands, a landowner may demonstrate compliance with this rule by:

(A) Operating consistent with a Soil and Water Conservation District (SWCD)-approved conservation plan that meets Resource Management Systems (RMS) quality criteria for soil and water resources; or

(B) Maintaining sufficient live vegetation cover and plant litter to capture precipitation, slow the movement of water, increase infiltration, and reduce excessive movement of soil off the site; or

(C) Minimizing visible signs of erosion, such as pedestal or rill formation and areas of sediment accumulation.

(4) **Streamside Management:** By January 1, 2008, landowners must promote the establishment and development of adequate riparian vegetation for streambank stability, filtering sediment and shading, consistent with site capability.

(5) **Irrigation Management:** By January 1, 2008, irrigation must be done in a manner that limits the amount of pollutants in the runoff from the irrigated area or that leaches into groundwater.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 34-2003, f. & cert. ef. 9-24-03

603-095-2860

Complaints and Investigations

(1) When the Department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, 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 alleged occurrence of agricultural 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 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 603-095-2860(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 603-095-2860(4), "person does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-2860(4), 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OAR 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 34-2003, f. & cert. ef. 9-24-03

Lower John Day

603-095-2900

Purpose

(1) These rules have been developed to implement a water quality management area plan pursuant to authorities vested in the department through ORS 568.900-568.933. The area plan is known as the Lower John Day Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Lower John Day Agricultural Water Quality Man-

agement Area, for the prevention and control of water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Lower John Day subbasin.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 15-2004, f. & cert. ef. 6-17-04

603-095-2920

Geographic and Programmatic Scope

(1) The Lower John Day Agricultural Water Quality Management Area includes the area that drains into the John Day River and its tributaries downstream from but not inclusive of the Butte Creek drainage and all streams flowing into the Columbia River between the Lower Deschutes drainage and the Willow Creek drainage. The physical boundaries of the Lower John Day Agricultural Water Quality Management Area are indicated on the map included as Attachment 1 of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Lower John Day River subbasin in agricultural use and agricultural and rural lands which are lying idle or on which management has been deferred, with the exception of public lands managed by federal agencies (USFS and BLM) and activities that are subject to the Oregon Forest Practices Act.

(3) Current productive agricultural use is not required for the provisions of these rules to apply. For example, fallow croplands or rested pastures 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 Lower John Day Agricultural Water Quality 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.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 15-2004, f. & cert. ef. 6-17-04

603-095-2940

Prevention and Control Measures

(1) **Limitations:** All landowners or operators conducting activities on agricultural lands are provided the following exemptions from the requirements of OAR 603-095-2940(2), (3) and (4).

(a) A landowner or operator shall be responsible for water quality resulting from conditions caused by the management of the landowner or operator.

(b) These rules do not apply to conditions resulting from unusual weather events or other circumstances not within the reasonable control of the landowner or operator. Reasonable control of the landowner means that technically sound and economically feasible measures are used to address conditions described in Prevention and Control Measures.

(c) The Department may allow temporary exceptions when a specific integrated pest management plan is in place to deal with certain weed or pest problems.

(d) The capability of a site is the highest ecological status a site can attain given political, social, or economic constraints.

(2) **Waste Management:** Effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

(3) **Soil Erosion and Sediment Control:** By January 1, 2008, landowners must control upland soil erosion using technically sound and economically feasible methods.

(a) On croplands, a landowner may demonstrate compliance with this rule by:

(A) Operating consistent with a Soil and Water Conservation District (SWCD) approved conservation plan that meets Resource

Management Systems (RMS) quality criteria for soil and water resources; or

(B) Operating in accordance with an SWCD-approved plan for Highly Erodible Lands (HEL) developed for the purpose of complying with the current US Department of Agriculture (USDA) farm program legislation; and farming non-HEL cropland in a manner that meets the requirements of an approved USDA HEL compliance plan for similar cropland soils in the county; or

(C) Farming such that the predicted sheet and rill erosion rate does not exceed 5 tons/acre/year, as estimated by the Revised Universal Soil Loss Equation (RUSLE); or

(D) Constructing and maintaining terraces, sediment basins, or other structures sufficient to keep eroding soil out of streams.

(b) On rangelands, a landowner may demonstrate compliance with this rule by:

(A) Operating consistent with a Soil and Water Conservation District (SWCD)-approved conservation plan that meets Resource Management Systems (RMS) quality criteria for soil and water resources; or

(B) Maintaining sufficient live vegetation cover and plant litter, consistent with site capability, to capture precipitation, slow the movement of water, increase infiltration, and reduce excessive movement of soil off the site; or

(C) Minimizing visible signs of erosion, such as pedestal or rill formation and areas of sediment accumulation.

(c) Landowners must control active gully erosion to protect against sediment delivery to streams. 'Active Gully Erosion' means gullies or channels that at the largest dimension have a cross sectional area of at least one square foot and that occur at the same location for two or more consecutive years of cropping or grazing.

(4) **Streamside Management:** By January 1, 2008, management must allow the establishment and improvement, over time, of riparian vegetation for streambank stability, filtering sediment and shading, consistent with site capability.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 15-2004, f. & cert. ef. 6-17-04

603-095-2960

Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, 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 alleged occurrence of agricultural pollution shall be evaluated in accordance with the criteria in ORS 568.900 through 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 pollution or alleging any violation of ORS 568.900 through 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 603-095-2960(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 through 568.933 or any rules adopted thereunder.

(5) As used in section OAR 603-095-2960(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-2960(4), 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 through 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement proce-

dures of the department outlined in OAR 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 15-2004, f. & cert. ef. 6-17-04

Upper Deschutes

603-095-3000

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Upper Deschutes Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900-568.933 and 561.190-561.191. The area plan is known as the Upper Deschutes Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Upper Deschutes Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Upper Deschutes Agricultural Water Quality Management Area.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 25-2003, f. & cert. ef. 7-8-03

603-095-3020

Geographic and Programmatic Scope

(1) The Upper Deschutes Agricultural Water Quality Management Area consists of the Upper and Little Deschutes Subbasins, as defined by the State of Oregon. Additionally, it includes lands in the Crooked River drainage south of the Crooked River and west of the range line between R12E and R13E in T14S in order to include the entire Crooked River Ranch subdivision. The physical boundaries of the Management Area are indicated on the map included as Attachment 1 of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Upper Deschutes Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that 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 lands that are in Tribal Trust.

(3) 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 Upper Deschutes Agricultural Water Quality Management Area.

(4) For lands in agricultural use within other Designated Management Agencies' or state agency jurisdictions, the department and the appropriate Local Management Agency will 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.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 25-2003, f. & cert. ef. 7-8-03

603-095-3040

Requirements

(1) Landowners must comply with OAR 603-095-3040(2) through (3) within the following limitations: A landowner is responsible for only those conditions resulting from activities controllable by the landowner. A landowner is not responsible for conditions resulting from activities on other lands.

(2) Streamside Vegetation:

(a) Effective January 1, 2005, agricultural activities must allow the establishment and development of appropriate vegetation along natural and channelized streams, consistent with site capability. Noxious weeds are not appropriate vegetation. Vegetation must be adequate to prevent unnatural streambank erosion, moderate water temperature, and filter sediment and nutrients from surface runoff.

(b) Part (a) does not apply to irrigation water conveyance systems, including but not limited to irrigation canals, ditches, and laterals.

(3) ODA Authority to Control Water Pollution: Effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 25-2003, f. & cert. ef. 7-8-03

603-095-3060

Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, 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 alleged occurrence of agricultural pollution will 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 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 603-095-3060(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 603-095-3060(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-3060(4), 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 25-2003, f. & cert. ef. 7-8-03

Goose and Summer Lakes Basin

603-095-3100

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Goose and Summer Lakes Basin Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900–568.933 and 561.190–561.191. The area plan is known as the Goose and Summer Lakes Basin Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Goose and Summer Lakes Basin Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Goose and Summer Lakes Basin Agricultural Water Quality Management Area.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 22-2003, f. & cert. ef. 7-8-03

603-095-3120

Geographic and Programmatic Scope

(1) The Goose and Summer Lakes Basin Agricultural Water Quality Management Area consists of the Goose and Summer Lakes Basin, as defined by the State of Oregon. The physical boundaries of the Management Area are indicated on the map included as Attachment 1 of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Goose and Summer Lakes Basin Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that 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 lands that are held in Tribal Trust.

(3) 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 Goose and Summer Lakes Basin Agricultural Water Quality Management Area.

(4) For lands in agricultural use within other Designated Management Agencies' or state agency jurisdictions, the department and the appropriate Local Management Agency will 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.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 22-2003, f. & cert. ef. 7-8-03

603-095-3140

Requirements

(1) Landowners must comply with OAR 603-095-3140(2) through (3) within the following limitations: A landowner is responsible for only those conditions resulting from activities controlled by the landowner. A landowner is not responsible for conditions resulting from activities by landowners on other lands. A landowner is not responsible for conditions that: are natural, could not have been reasonably anticipated, or that result from unusual weather events or other exceptional circumstances.

(2) Streamside Vegetation:

(a) Effective August 1, 2008, management activities will allow the establishment, maintenance, or improvement of streamside vegetation for summer shade and streambank stability, based on site capability.

(b) Part (a) does not apply to flood control practices that have been historically used in the Management Area. These practices include, but are not limited to, the maintenance of flood-control channels, dikes and catch basins.

(c) Part (a) does not apply to irrigation water conveyance systems, including but not limited to irrigation canals, ditches, and laterals.

(3) Waste Management: Effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 22-2003, f. & cert. ef. 7-8-03

603-095-3160

Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, 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 alleged occurrence of agricultural pollution will 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 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 603-095-3160(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 603-095-3160(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-3160(4), 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 22-2003, f. & cert. ef. 7-8-03

Burnt River Agricultural Water Quality Management Area

603-095-3200

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Burnt River Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900–568.933. The area plan is known as the Burnt River Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Burnt River Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Burnt River Water Quality Management Area.

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

(a) Does not constitute a violation of OAR 603-095-0000 to 603-090-0120, or of 603-095-0010 to 603-095-3260;

(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 Burnt River 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 603-095-3200 to 603-095-3260.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 28-2003, f. & cert. ef. 8-4-03

603-095-3220

Geographic and Programmatic Scope

(1) The Burnt River Agricultural Water Quality Management Area includes all the drainage area of the Burnt River, from the headwaters to the confluence with the Snake River. The physical boundaries of the Management Area are indicated on the map included as Appendix 1 of these rules.

(2) Operational boundaries:

(a) All lands within the Burnt River Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that are lying idle or on which management has been deferred, and forested lands with agricultural activities are subject to OAR 603-095-0010 to 603-095-0040 and 603-095-3200 to 603-095-3260, except those lands excluded under paragraph (b) of this section.

(b) Lands excluded from OAR 603-095-3220(2)(a) are:

(A) Public lands managed by federal agencies;

(B) Tribal Trust Lands; and

(C) The property owned by Daryl and Barbara Hawes located at 20588 Hwy. 245 (T12S R37E: parts of sections 14, 23, 24 and 25. County tax lot number 2300).

(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 Burnt River Agricultural Water Quality 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.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 28-2003, f. & cert. ef. 8-4-03

603-095-3240

Prohibited Conditions

(1) A landowner shall be responsible for only those conditions caused by activities conducted on land owned or managed by the landowner. Criteria do not apply to conditions resulting from unusual weather events or other exceptional circumstances, which could not have been reasonably anticipated.

(2) Pollution Control and Waste Management. Effective on rule adoption: No person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

(3) Streamside Conditions.

(a) By January 1, 2006, activities will allow the establishment and development of riparian vegetation, consistent with site capability. Site capability will be determined by ODA in consultation with local resource management agencies.

(b) Landowners are not responsible for browsing and grazing by wildlife.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 28-2003, f. & cert. ef. 8-4-03

603-095-3260

Complaints and Investigations

(1) When the department receives notice of an apparent occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, 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 alleged occurrence of agricultural pollution will be evaluated in accordance with the criteria in ORS 568.900 to 568.933 or any rules adopted there under to determine whether an investigation is warranted.

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

(4) The department will evaluate or investigate a complaint filed by a person under section OAR 603-095-3260(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 there under.

(5) As used in section OAR 603-095-3260(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-3260, 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 28-2003, f. & cert. ef. 8-4-03

Greater Harney Basin

603-095-3300

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Greater Harney Basin Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900-568.933 and 561.190-561.191. The area plan is known as the Greater Harney Basin Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Greater Harney Basin Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Greater Harney Basin Agricultural Water Quality Management Area.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 35-2003, f. & cert. ef. 9-24-03

603-095-3320

Geographic and Programmatic Scope

(1) The Greater Harney Basin Agricultural Water Quality Management Area consists of the Malheur Lake Basin, as defined by the State of Oregon, with the exclusion of the Thousand Virgin Subbasin. The physical boundaries of the Management Area are indicated on the map included as Attachment 1 of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Greater Harney Basin Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that 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 lands that are held in Tribal Trust.

(3) 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 Greater Harney Basin Agricultural Water Quality Management Area.

(4) For lands in agricultural use within other Designated Management Agencies' or state agency jurisdictions, the department and the appropriate Local Management Agency will 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.

[ED. NOTE: Attachments referenced are available from the agency.]
Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 35-2003, f. & cert. ef. 9-24-03

603-095-3340

Requirements

(1) Landowners must comply with OAR 603-095-3340(2) through (3) within the following limitations. A landowner is responsible for only those conditions resulting from activities controlled by the landowner. A landowner is not responsible for conditions resulting from activities by landowners on other lands. A landowner is not responsible for conditions that: are natural, could not have been reasonably anticipated, or that result from unusual weather events or other exceptional circumstances.

(2) Desired Streamside Riparian Condition:

(a) Effective January 1, 2006, consistent with site capability, persons shall allow regeneration and growth of riparian vegetation along natural waterways to provide for:

- (A) Bank stabilization;
- (B) Filtration of sediments and nutrients;

(C) The sustainability of riparian community integrity through spring runoff and larger storm events; and

- (D) Shade and aquatic habitat.

(b) Part (a) allows water gaps, livestock watering, and hardened livestock crossings in streams that otherwise have desired streamside riparian conditions.

(c) Part (a) does not apply to natural waterways, such as sloughs and backwater areas, that only hold water for short periods of time during spring runoff.

(d) Technical criteria to determine compliance:

(A) Management activities maintain or improve streambank integrity, with a goal of withstanding a 25-year storm event; and

(B) Ongoing renewal and growth of riparian vegetation demonstrates sustainability and vigor.

(e) Compliance will be determined through objective methods using commonly accepted monitoring protocols.

(f) Definitions that apply specifically to OAR 603-095-3340(2):

(A) Riparian means a wetland transition zone that connects riverine aquatic habitats to upland areas.

(B) Natural waterways are streams or rivers that were created through natural processes. They may be altered by human activities, but not created as a result of human activities. Irrigation ditches that contain water diverted from the main channel are not natural waterways.

(C) Riparian Community Integrity is the sustainability of a healthy and vigorous riparian community over time.

(3) Waste Management Effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 35-2003, f. & cert. ef. 9-24-03

603-095-3360

Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, 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 alleged occurrence of agricultural pollution will 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 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 603-095-3360(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 603-095-3360(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-3360, 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the

landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 35-2003, f. & cert. ef. 9-24-03

Crooked River

603-095-3400

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Crooked River Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900-568.933 and 561.190-561.191. The area plan is known as the Crooked River Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Crooked River Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Crooked River Agricultural Water Quality Management Area.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 16-2004, f. & cert. ef. 6-17-04

603-095-3420

Geographic and Programmatic Scope

(1) The Crooked River Agricultural Water Quality Management Area consists of the Crooked River Basin with the following exceptions near the mouth of the Crooked River:

(a) Lands south of the Crooked River and west of the range line between R12E and R13E in T14S to exclude the entire Crooked River Ranch subdivision, which is in the Upper Deschutes Agricultural Water Quality Management Area; and

(b) Lands north of the Crooked River and west of Sherwood Canyon near Smith Rock, which are in the Middle Deschutes Agricultural Water Quality Management Area. The physical boundaries of the Management Area are indicated on the map included as **Attachment 1** of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Crooked River Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that 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 lands that are held in Tribal Trust.

(3) 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 Crooked River Agricultural Water Quality Management Area.

(4) For lands in agricultural use within other Designated Management Agencies' or state agency jurisdictions, the department and the appropriate Local Management Agency will 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.

[ED. NOTE: Attachments referenced are available from the agency.]
Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 16-2004, f. & cert. ef. 6-17-04

603-095-3440

Requirements

(1) Landowners must comply with OAR 603-095-3440(2) through (3) within the following limitations. A landowner is responsible for only those conditions resulting from activities controlled by the landowner. A landowner is not responsible for conditions resulting from activities by landowners on other lands. A landowner is not responsible for conditions that: are natural, could not have been reasonably anticipated, or that result from unusual weather events or other exceptional circumstances.

(2) Streamside Riparian Area Management:

(a) Effective January 1, 2009, agricultural management must allow establishment, growth, and active recruitment of streamside riparian vegetation, consistent with site capability, to moderate solar heating, stabilize streambanks, and filter sediment and nutrients from overland flows.

(b) Except as provided in (a), grazing, weed control, and other common agricultural activities are allowed in riparian areas.

(c) Water gaps and hardened crossings are allowed in streams that otherwise meet conditions required under (a).

(3) Waste Management Effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 16-2004, f. & cert. ef. 6-17-04

603-095-3460

Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, 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 alleged occurrence of agricultural pollution will 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 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 603-095-3460(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 603-095-3460(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-3460(4), 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: DOA 16-2004, f. & cert. ef. 6-17-04

Curry County Agricultural Water Quality Management Area

603-095-3500

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Curry County Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900-568.933 and 561.190-561.191. The area plan is known as the Curry County Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Curry County Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules (OARs 603-095-3500 through 603-095-3560) is expected to aid in the achievement of applicable water quality standards in the Curry County Water Quality Management Area.

Stat. Auth.: ORS 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 17-2004, f. & cert. ef. 6-17-04

603-095-3520

Geographic and Programmatic Scope

(1) The Curry County Agricultural Water Quality Management Area is comprised of all Curry County drainages and the Floras Creek drainage that extends into Coos County. The physical boundaries of the 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 Curry County Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that 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. These rules (OAR 603-095-3500 through 603-095-3560) will affect any lands in agricultural use on all non-Federal and non-Tribal lands in the Curry County Agricultural Water Quality Management Area.

(a) Agricultural use does not include the use of land for garden plots primarily used for the cultivation of vegetables, flowers, herbs, or fruits for non-commercial use.

(b) The provisions of the Curry County Agricultural Water Quality Management Area Plan and OARs 603-095-3500 through 603-095-3560 shall not apply to any forest activity subject to the Oregon Forest Practices Act, ORS 527.610.

(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) For lands in agricultural use within other Designated Management Agencies' or state agency jurisdictions, the department and the appropriate Local Management Agency will 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.

[ED. NOTE: Appendices referenced are available from the agency.]
 Stat. Auth.: ORS 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 17-2004, f. & cert. ef. 6-17-04

603-095-3540

Unacceptable Conditions

(1) All landowners or operators conducting activities on lands in agricultural use will comply with the following criteria. A landowner is responsible for only those conditions resulting from activities controlled 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 or other exceptional circumstances that could not have been reasonably anticipated. A landowner is not responsible for natural increases in nutrient or temperature loading.

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

(3) Effective June 3, 2007, agricultural management activities in the riparian area of perennial streams will be conducted in a manner that allows for the establishment, growth, and maintenance of riparian vegetation consistent with vegetative site capability so as to provide streambank stability and shade. Exemptions from OAR 603-095-3540(3) are:

(a) Stream crossings, access for irrigation equipment and other accepted water dependent agricultural uses when conducted in a manner that minimizes impacts on streambank stability.

(b) Streams that do not support native trout and are inaccessible to anadromous fish because of barriers at their junction with the Pacific Ocean.

(c) This rule is not intended to prohibit riparian grazing where it can do while meeting the above vegetative conditions.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 17-2004, f. & cert. ef. 6-17-04

603-095-3560

Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural 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 alleged occurrence of agricultural 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 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 603-095-3560(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 603-95-3560(4), "person" does not include any local, state, or federal agency.

(6) Notwithstanding OAR 603-095-3560(4), 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 17-2004, f. & cert. ef. 6-17-04

Powder/Brownlee Agricultural Water Quality Management Area

603-095-3600

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Powder/Brownlee Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900–568.933. The area plan is known as the Powder/Brownlee Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Powder/Brownlee Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Powder/Brownlee Agricultural Water Quality Management Area.

(3) Failure to comply with any provisions of the Powder/Brownlee Agricultural Water Quality Management Area Plan:

(a) Does not constitute a violation of OAR 603-095-0000 to 603-090-0120, or of 603-095-0010 to 635-095-3660;

(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 Powder/Brownlee 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 603-095-3600 to 635-095-3660.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 1-2004, f. & cert. ef. 1-12-04

603-095-3620

Geographic and Programmatic Scope

(1) The Powder/Brownlee Agricultural Water Quality Management Area includes the portions of the following sub-basins that are within the boundaries of the state of Oregon: the Powder (HUC 17050203) and the Brownlee Reservoir (HUC 17050201). The physical boundaries of the Powder/Brownlee Agricultural Water Quality 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 Powder/Brownlee Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that are lying idle or on which management has been deferred, and forest lands with agricultural activities, with the exception of public lands managed by federal agencies.

(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 Powder/Brownlee Agricultural Water Quality 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.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 1-2004, f. & cert. ef. 1-12-04

603-095-3640

Prevention and Control Measures

(1) A landowner shall be responsible for only those conditions caused by activities conducted on land owned or managed by the landowner. Criteria do not apply to conditions resulting from unusual weather events or other exceptional circumstances that could not have been reasonably anticipated.

(2) Pollution Control and Waste Management: Effective on rule adoption. No person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

(3) Streamside Conditions:

(a) By January 1, 2006, activities will allow the establishment and development of riparian vegetation, consistent with site capability. Site capability will be determined by ODA in consultation with local resource management agencies.

(b) Landowners are not responsible for browsing and grazing by wildlife.

(c) The rule does not specify any activities that must cease and does not require any particular activity to take place.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 1-2004, f. & cert. ef. 1-12-04

603-095-3660

Complaints and Investigations

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

(2) Each notice of an alleged occurrence of agricultural 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 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 603-095-3660(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 603-095-3660(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-3660, 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 1-2004, f. & cert. ef. 1-12-04

Lower Willamette

603-095-3700

Purpose

(1) These rules have been developed to implement a water quality management area plan for the subbasin pursuant to authorities vested in the department through ORS 568.900-568.933. The area plan is known as the Lower Willamette Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Lower Willamette Agricultural Water Quality Management Area for the prevention and control of water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards.

Stat. Auth: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 4-2004, f. & cert. ef. 1-23-04

603-095-3720

Geographic and Programmatic Scope

(1) The Lower Willamette Agricultural Water Quality Management Area includes the area that drains into the Willamette River between a point due east of Bolton and the confluence with the Columbia River. Also included are areas that drain into the Columbia Slough between a point straight north of Troutdale and the confluence with the Willamette River and the area that drains into Multnomah Slough from the south between the Columbia/Multnomah County line and the confluence with the Willamette River. The physical boundaries of the Lower Willamette Agricultural Water Quality Management Area are indicated on the map included as an attachment to these rules.

(2) Operational boundaries for the land base under the purview of these rules include all agricultural and rural lands within the Lower Willamette Agricultural Water Quality Management Area with the exception of public lands managed by federal agencies and activities that are subject to the Oregon Forest Practices Act.

(3) The provisions of these rules apply to all agricultural land whether or not in current productive agricultural use.

(4) 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.

Stat. Auth: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 4-2004, f. & cert. ef. 1-23-04

603-095-3740

Prevention and Control Measures

(1) All landowners or operators conducting activities on agricultural and rural lands are provided the following exemptions from the requirements of OAR 603-095-3740 (Prevention and Control Measures).

(a) A landowner or operator shall be responsible for only those conditions caused by activities conducted on land managed by the landowner or operator.

(b) Rules do not apply to conditions resulting from unusual weather events or other circumstances not within the reasonable control of the landowner or operator. Within the reasonable control of the landowner means that technically sound and economically feasible measures must be available to address conditions described in Prevention and Control Measures.

(c) The Department may allow temporary exceptions when a specific integrated pest management plan is in place to deal with certain weed or pest problems.

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

(3) Nutrient Management: Effective upon adoption.

(a) Landowners and operators shall prevent the runoff or leaching of contaminated water from feed and manure storage piles into waters of the state, including but not limited to groundwater.

(b) Landowners or operators shall store, use, and apply crop nutrients in a manner that prevents transport into the waters of the state.

(4) Erosion Management: Effective upon rule adoption, there shall be no visible evidence of erosion resulting from agricultural activities in a location where erosion contributes, or may contribute, sediment to waters of the state.

(a) Visible evidence of erosion consists of one or more of the following features:

(A) Sheet wash, noted by visible pedestalling, surface undulations, and/or flute marks on bare or sparsely-vegetated ground; or

(B) Visibly active gullies, as defined by OAR 603-095-0010(1); or

(C) Multiple rills, which have the form of gullies, but are smaller in cross sectional area than one square foot; or

(D) Visible soil deposition that could enter natural stream areas; or

(E) Streambanks breaking down, eroding, tension-cracking, shearing or slumping beyond the level that would be anticipated from natural disturbances given natural hydrologic characteristics; or

(F) Underground drainage tile outlets either improperly installed or maintained allowing soil or bank erosion to actively occur.

(b) Private roads used for agricultural activities shall be constructed and maintained such that road surfaces, fill, ditch lines, and associated structures are designed and maintained to prevent and control contributing sediment to waters of the state. All private roads not subject to the Oregon Forest Practices Act are subject to this regulation.

(c) Drainage and irrigation ditch construction and maintenance must be done such that:

(A) Ditch slope and ditch cross section are designed for the local soils and minimize erosion;

(B) Placement of disposed soils is done in a manner that prevents reintroduction to waters of the state; and

(C) Other appropriate best management practices are employed when necessary so that sediment delivery is consistent with water quality standards.

(5) Riparian Management: Effective upon rule adoption.

(a) Agricultural activities in Riparian Management Areas will allow for the development of riparian vegetation along streams to provide:

(A) Shade for minimizing solar heating of the stream;

(B) Streambank stability from flows at or below those expected to occur during or following a 25-year, 24-hour storm event;

(C) Filtration, settlement, and biological uptake of sediment, organic material, nutrients, and pesticides in surface runoff by intercepting or slowing overland flow;

(D) Improvement to water storage capacity of the riparian zone; and

(E) Protection of streams from flashy flows by infiltrating runoff and overland flow.

(b) The Riparian Management Area is defined by that area needed to achieve OAR 603-095-3740(5)(a)(A)–(E).

(c) Streams as used in OAR 603-095-3740(5)(a) are those that are identified in the 2001 Metro stream map Regional Land Information System (RLIS) lite *stm_line.shp* and *stm_fill.shp*.

(d) Riparian vegetation in OAR 603-095-3740(5) includes grasses, sedges, shrubs and trees that are consistent with site capability.

(e) Riparian area development can be through allowing natural processes to occur or through active management to accelerate achieving OAR 603-095-3740(5)(a)(A)–(E).

(f) Sufficient Riparian Management Area width will be site specific, and may vary by soil type, hydrology, climate, geology, and man-made limitations, and other factors.

(g) Within the entire Riparian Management Area the technical criteria to determine compliance with OAR 603-095-3740(5)(a) are:

(A) Ongoing renewal or establishment of riparian vegetation, especially native.

(B) Where sufficient functions required in OAR 603-095-3740(5)(a) have not been met, at least 50% of each year's new growth of woody vegetation, both trees and shrubs, is maintained.

(h) Management activities within the Riparian Management Area are allowed provided they do not compromise achieving the conditions described in 603-095-3740(4) and 603-095-3740(5)(a).

(i) Drainage and irrigation ditches are not subject to the riparian management provisions cited above but are subject to OAR 603-095-3740(4).

Stat. Auth: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933

Hist.: DOA 4-2004, f. & cert. ef. 1-23-04

603-095-3760

Complaints and Investigations

(1) When the Department receives notice of an alleged occurrence of agricultural pollution it may conduct an investigation. The department will coordinate inspection activities with the appropriate Local Management Agency.

(2) Each notice of an alleged occurrence of agricultural 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 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 603-095-3760(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 603-095-3760(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-3760(4), 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OAR 603-090-0060 through 603-090-0120.

Stat. Auth: ORS 561.190 - 561.191 & 568.912

Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 4-2004, f. & cert. ef. 1-23-04

Klamath Headwaters Area

603-095-3800

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Klamath Headwaters Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900–568.933 and 561.190–561.191. The area plan is known as the Klamath Headwaters Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Klamath Headwaters Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules (OARs 603-095-3800 through 603-095-3860) is expected to aid in the achievement of applicable water quality standards in the Klamath Headwaters Agricultural Water Quality Management Area.

Stat. Auth: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 10-2004, f. & cert. ef. 3-22-04

603-095-3820

Geographic and Programmatic Scope

(1) The Klamath Headwaters Agricultural Water Quality Management Area is comprised of the Upper Klamath Lake drainages, the west Klamath River drainages including the headwaters of Spencer Creek in Klamath County and Jenny, Cottonwood and Colstein Creeks in Jackson County, and excludes the entire Lost River Drainage and the Klamath Project lands on the west side of the Klamath River down to the Keno dam. The physical boundaries of the Management Area are indicated on the map included as Attachment 1 of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Klamath Headwaters Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that 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. These rules (OAR 603-095-3800 through 603-095-3860) will affect any lands in agricultural use on all non-Federal and non-Tribal lands in the Klamath Headwaters Agricultural Water Quality Management Area.

(a) Agricultural use does not include the use of land for garden plots used for the cultivation of vegetables, flowers, herbs, or fruits for non-commercial, personal use.

(b) The provisions of the Klamath Headwaters Agricultural Water Quality Management Area Plan and OARs 603-095-3800 through 603-095-3860 shall not apply to any forest activity subject to the Oregon Forest Practices Act, ORS 527.610.

(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) For lands in agricultural use within other Designated Management Agencies' or state agency jurisdictions, the department and the appropriate Local Management Agency will 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.

Stat. Auth: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 10-2004, f. & cert. ef. 3-22-04

603-095-3840

Unacceptable Conditions

(1) All landowners or operators conducting activities on lands in agricultural use will comply with the following criteria. A landowner is 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 or other exceptional circumstances that could not have been reasonably anticipated. A landowner is not responsible for natural increases in nutrient 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 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.

(c) Exemptions from OAR 603-095-3840(3)(a) and (b).

(A) Limited duration agricultural activities such as pump installation or livestock crossings provided they do not compromise achieving the conditions described in 603-095-3840(3)(a) and (b).

(B) Constructed irrigation delivery systems, dikes, borrow pits, drainage 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 standards.

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

Stat. Auth: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 10-2004, f. & cert. ef. 3-22-04

603-095-3860

Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural 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 alleged occurrence of agricultural 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 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 603-095-3860(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.

(c) As used in section OAR 603-095-3860(4), "person" does not include any local, state, or federal agency.

(5) Notwithstanding OAR 603-095-3860(4), 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 the public health or safety.

(6) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 10-2004, f. & cert. ef. 3-22-04

Lost River Subbasin

603-095-3900

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Lost River Subbasin Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900–568.933 and 561.190–561.191. The area plan is known as the Lost River Subbasin Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Lost River Subbasin Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with division 95 rules is expected to aid in the achievement of applicable water quality standards in the Lost River Subbasin Agricultural Water Quality Management Area.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 18-2004, f. & cert. ef. 6-17-04

603-095-3920

Geographic and Programmatic Scope

(1) The Lost River Subbasin Agricultural Water Quality Management Area is comprised of the Oregon portion of the Lost River subbasin, as defined by the US Geological Survey. The physical boundaries of the Management Area are indicated on the map included as **Attachment 1** of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Lost River Subbasin Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that 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 Tribal Trust lands.

(3) Current productive agricultural use is not required for the provisions of these rules to apply.

(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 Lost River Subbasin Agricultural Water Quality 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 will 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.

[ED. NOTE: Attachments referenced are available from the agency.]
 Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 18-2004, f. & cert. ef. 6-17-04

603-095-3940

Requirements

(1)(a) A landowner is responsible for only those conditions resulting from activities controlled by the landowner. A landowner is not responsible for conditions resulting from activities by landowners on other lands. A landowner is not responsible for conditions that are natural, could not have been reasonably anticipated, or that result from unusual weather events or other exceptional circumstances. Landowners will not be required to implement practices or management systems that are not practical and effective for their operation. Where a prohibited condition results from the requirement(s) of another government entity, the department will work with the other government entity and the landowner to resolve the condition. As long as the landowner is cooperating with the department in resolving the condition, the department will not assess a civil penalty against the landowner for that condition. Any enforcement action under this provision shall be consistent with the policies described in the water quality management area plan and OAR 603-090-0000(4)(e). The department will consider costs, benefits, and economic feasibility when working with a landowner to resolve a com-

pliance issue. The department will seek input from the local management agency prior to requiring a schedule of corrective practices.

(b) Unless otherwise restricted by state or federal law, conditions resulting from limited duration activities are exempt.

(2) Sheet Rill and Wind Erosion:

(a) Combined sheet, rill, and wind erosion of soil, averaged through a crop rotation period, must be less than or equal to T.

(b) If an alternative standard is needed for certain soils, the department and the Klamath SWCD, acting as the Local Management Agency, will request an alternative recommendation from the NRCS State Conservationist for an appropriate erosion control standard.

(3) Streamside Areas:

(a) By December 31, 2005, agricultural activities must allow the establishment or improvement of vegetation to provide bank stability and shading of natural streams consistent with the vegetative capability of the site. Evaluation of vegetation will consider conditions for a stream reach in contiguous ownership.

(b) Except as provided in (a), grazing, weed control, and other common agricultural activities are allowed in riparian areas.

(c) Channel maintenance provided for under ORS 196.600 to 196.905 (Removal Fill laws) is not subject to 603-095-3940(3)(a).

(4) Livestock Waste Management:

(a) Effective on rule adoption, landowners must prevent movement of animal waste into waters of the state from animal handling or feeding operations that concentrate animal waste.

(b) Waste storage and application shall be done in such a way as to keep from exceeding beneficial use for forage and/or crops.

(5) Waste Management Effective on rule adoption, no person subject to these rules shall violate any provision of ORS 468B.025 or 468B.050.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 18-2004, f. & cert. ef. 6-17-04

603-095-3960

Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, 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 alleged occurrence of agricultural pollution will 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 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 603-095-3960(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 603-095-3960(4), "person" does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-3960(4), 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 the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
 Stats. Implemented: ORS 568.900 - 568.933
 Hist.: DOA 18-2004, f. & cert. ef. 6-17-04

DIVISION 100

SHELLFISH SANITATION

603-100-0000

Definitions

As used in OAR 603-100-0000 to and including 603-100-0050 and in addition to the definitions set forth in ORS 622.010 and 622.080, the following shall apply:

(1) "Director" means the Director of the Department of Agriculture or authorized representative.

(2) "Certification Number" means the number assigned by the Department to each certified shellfish dealer. It consists of a one-to-five digit number preceded by the two-letter state abbreviation and followed by the two-letter symbol designating the type of operation certified.

(3) "Dealer" means every person or peddler engaged in the business of growing, harvesting, processing, or distributing shellfish. Dealers are certified and assigned a certification number by type of operation classified as follows:

(a) "Depuration processor (DP)" means a shellfish dealer who purchases or harvests shell stock from conditionally approved or restricted growing areas and submits such shell stock to an approved controlled purification process. Such dealers shall be certified as a shucker-packer and assigned a certification number designating depuration processor (DP) as the type of operation;

(b) "Distributor" means a jobber or wholesaler who furnishes or sells shellfish to retail outlets. Such dealers shall be certified as a distributor and assigned a certification number designating shellstock shipper (SS) as the type of operation;

(c) "Grower (GR)" means a dealer engaged in the business of growing shellfish intended for human consumption. Such dealers shall be certified as a grower and assigned a certification number designating (GR) as the type of operation;

(d) "Harvester (HV)" means a dealer who harvests shellfish intended for human consumption or employs persons to harvest shellfish intended for human consumption from growing areas. Such dealers shall be certified as harvesters and assigned a certification number designating harvester (HV) as type of operation;

(e) "Repackers (RP)" means dealers other than the original certified shucker-packer who repack shucked shellfish. Such dealers shall be certified as a shucker-packer, and assigned a certification number designating repacker (RP) as type of operation;

(f) "Reshippers (RS)" means dealers who receive shellfish, either shellstock or shucked stock in original containers from certified shellfish distributors and transship such shellfish to other dealers or to the final consumer. Such dealers will be certified as distributors, and assigned a certification number designating shellstock reshipper (RS) as the type of operation;

(g) "Shellstock shippers (SS)" means dealers who buy, sell, or ship shellstock. Such dealers will be certified as a distributor and assigned a certification number designating shellstock shipper (SS) as the type of operation. A shellstock shipper may ship shucked shellfish, but, is not authorized to shuck or repack shucked shellfish;

(h) "Shucker-packer (SP)" means dealers who shuck, pack, and repack shellfish. Such dealers will be certified as a shucker-packer and assigned a certification number designating shucker-packer (SP) as the type of operation.

(4) "Seed" means shellfish that are less than market size for human consumption and have a maximum shell length of:

- (a) Thirteen millimeters (1/2 inch) for mussels;
 - (b) Twenty-five millimeters (1 inch) for scallops;
 - (c) Nineteen millimeters (3/4 inch) for Olympia oysters;
 - (d) Nineteen millimeters (3/4 inch) for Kumomoto oysters;
 - (e) Fifty-one millimeters (2 inches) for other oyster species;
 - (f) Thirty-eight millimeters (1 and 1/2 inch) for geoducks; and
 - (g) Thirteen millimeters (1/2 inch) for other clam species.
- (5) "Shellfish" means:

(a) All edible species of oysters, either shucked or in the shell, fresh or frozen, whole or in part and intended for human consumption.

(b) All edible species of clams, either shucked or in the shell, fresh or frozen, whole or in part and intended for human consumption.

(c) All edible species of mussels, either shucked or in the shell, fresh or frozen, whole or in part and intended for human consumption.

(d) All edible species of scallops, either shucked or in the shell, fresh or frozen, whole or in part, except when the final product is the shucked adductor muscle only, and intended for human consumption.

(6) "State Waters" means waters that belong wholly to the state including the Territorial Sea out to the three mile limit.

Stat. Auth.: ORS 561.190 & 622.180

Stats. Implemented: ORS 622.180

Hist.: HD 24-1987, f. & ef. 11-30-87; AD 22-1993, f. & cert. ef. 12-15-93; Renumbered from 333-190-0000; DOA 1-2007, f. & cert. ef. 1-2-07; DOA 13-2012, f. 5-29-12, cert. ef. 1-1-13

603-100-0010

Sanitation of Shellfish Growing Areas and Harvesting, Processing and Distribution of Shellfish

As provided in ORS 622.180, the National Shellfish Sanitation Program, Guide for the Control of Molluscan Shellfish, 2009 Revision, is hereby adopted as the rules governing this subject matter in Oregon. The material covered is that governing growing area survey and classification, controlled relaying, patrol of harvest areas, control of harvesting, aquaculture, laboratory and administrative procedures. In addition the rules cover the harvesting, handling and shipping of shellfish; wet storage; shucking and packing shellfish; shellfish shipping, heat shock, depuration and application of Hazardous Analysis Critical Control Point (HACCP). These rules are recommended by the Interstate Shellfish Sanitation Conference and the Food and Drug Administration of Health and Human Services.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561.190 & 622.180

Stats. Implemented: ORS 622.180

Hist.: HD 24-1987, f. & ef. 11-30-87; AD 22-1993, f. & cert. ef. 12-15-93; Renumbered from 333-191-0000; DOA 11-1999, f. & cert. ef. 6-4-99; DOA 1-2007, f. & cert. ef. 1-2-07; DOA 13-2012, f. 5-29-12, cert. ef. 1-1-13; DOA 4-2014, f. & cert. ef. 2-24-14

Shellfish Facilities Plan Review

603-100-0030

Submission of Plans

(1) Plans for a new shellfish plant or storage facility construction or existing plant remodeling shall be submitted to the Department for review and approval at least 90 days prior to actual construction.

(2) Plans shall be submitted as blue-prints, photostats, or original drawing using India ink on substantial drawing paper. The following information shall be included in the plans:

(a) Plot plan of grounds on which building is to be constructed or addition is to be located showing size of area and boundaries;

(b) Floor and elevation plans drawn to scale showing the accurate location of equipment;

(c) Specifications and design detail of equipment, location of plumbing fixtures, and materials used in all processing and storage areas;

(d) If a privately owned public water system is used, plans meeting the specifications of OAR 333-061-0005 through 333-061-0095, Public Water Systems, must be submitted to and approved by the appropriate agency.

Stat. Auth.: ORS 561.190 & 622.180

Stats. Implemented: ORS 622.180

Hist.: HD 24-1987, f. & ef. 11-30-87; AD 22-1993, f. & cert. ef. 12-15-93; Renumbered from 333-198-0010

603-100-0040

Growers and Harvesters

(1) Growers and Harvesters must deliver shellfish intended for human consumption to a shellfish shipper certified by the Oregon Department of Agriculture within 24 hours of harvest.

(2) Growers and Harvesters may only sell shellfish intended for human consumption to shellfish shippers certified by the Oregon Department of Agriculture.

Stat. Auth.: ORS 561.190 & 622.180
 Stats. Implemented: ORS 622.180
 Hist.: DOA 1-2007, f. & cert. ef. 1-2-07

603-100-0050

Shellstock Harvesting and Distribution from Non-Interstate Approved Harvest Areas

(1) Each tag of any shellstock harvested from a non-interstate approved harvest area shall include the following statement in bold capitalized type, "OREGON DISTRIBUTION ONLY."

(a) This requirement is in addition to the Shellstock Identification requirements found in the 2009 Version of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish.

(2) Any person listed in the Interstate Certified Shellfish Shipper List (ICSSL) shall not sell or possess shellstock harvested from a non-interstate approved harvest area.

Stat. Auth.: ORS 561.190 & 622.180
 Stats. Implemented: ORS 622.180
 Hist.: DOA 13-2012, f. 5-29-12, cert. ef. 1-1-13

Fees

603-100-0100

Certificate Fees; Rules

As provided in ORS 622.080, the Oregon Department of Agriculture establishes the following fees for persons engaged in the growing, production, harvesting or distribution of shellfish:

(1) Persons who receive \$50,000 or less in annual gross income from all shellfish operations shall pay:

(a) \$300 for a certificate of shellfish sanitation as a shucker-packer, or repacker. For a person operating a shellfish shucking, packing or repacking plant for the distribution of shellfish;

(b) \$200 for a certificate of shellfish sanitation as a grower. For a person engaged in the business of growing shellfish;

(c) \$200 for a certificate of shellfish sanitation as a distributor, reshipper, or shellstock shipper. For any jobber or wholesaler who furnishes or sells shellfish to retail outlets;

(d) \$125 for a certificate of shellfish sanitation as a commercial harvester. For any person harvesting clams or mussels for commercial purposes.

(2) Persons who receive more than \$50,000, but not more than \$500,000 in annual gross income from all shellfish operations shall pay:

(a) \$600 for a certificate of shellfish sanitation as a shucker-packer, or repacker. For a person operating a shellfish shucking, packing or repacking plant for the distribution of shellfish;

(b) \$400 for a certificate of shellfish sanitation as a grower. For a person engaged in the business of growing shellfish;

(c) \$450 for a certificate of shellfish sanitation as a distributor, reshipper, or shellstock shipper. For any jobber or wholesaler who furnishes or sells shellfish to retail outlets;

(d) \$200 for a certificate of shellfish sanitation as a commercial harvester. For any person harvesting clams or mussels for commercial purposes.

(3) Persons who receive more than \$500,000 in annual gross income from all shellfish operations shall pay:

(a) \$1,200 for a certificate of shellfish sanitation as a shucker-packer, or repacker. For a person operating a shellfish shucking, packing or repacking plant for the distribution of shellfish;

(b) \$800 for a certificate of shellfish sanitation as a grower. For a person engaged in the business of growing shellfish;

(c) \$900 for a certificate of shellfish sanitation as a distributor, reshipper, or shellstock shipper. For any jobber or wholesaler who furnishes or sells shellfish to retail outlets;

(d) \$250 for a certificate of shellfish sanitation as a commercial harvester. For any person harvesting clams or mussels for commercial purposes.

Stat. Auth.: ORS 561.190 & 622.080
 Stats. Implemented: ORS 622.080
 Hist.: DOA 25-2012, f. 10-30-12, cert. ef. 1-1-13

603-100-0110

Annual Fees

As provided in ORS 622.290, the Oregon Department of Agriculture establishes the following annual cultivation fees for the use of state lands to cultivate oysters, clams, or mussels:

(1) For growing areas that have been classified as prohibited, persons shall pay \$5 per year for each acre claimed pursuant to Chapter 675, Oregon Laws 1969, or claimed pursuant to a plat made subsequent thereto.

(2) For growing areas that have been classified as approved, conditionally approved, restricted, or conditionally restricted shall pay \$14 per year for each acre claimed pursuant to Chapter 675, Oregon Laws 1969, or claimed pursuant to a plat made subsequent thereto.

Stat. Auth.: ORS 561.190 & 622.290
 Stats. Implemented: ORS 622.290
 Hist.: DOA 25-2012, f. 10-30-12, cert. ef. 1-1-13

Civil Penalties

603-100-0900

Purpose

The Oregon Department of Agriculture Food Safety Program licenses and inspects all facets of Oregon's food distribution system, except restaurants, to ensure food is safe for consumption. Education and technical assistance are vital to the prevention, correction, and abatement of food safety violations, and are preferred over regulatory action. However, regulatory action may be necessary to deter violations of food safety laws and rules, to educate persons about the consequences of such violations, and to compel compliance with food safety laws for the protection of consumers. The Department intends to initiate civil penalty actions when educational measures, technical assistance, warning letters, compliance agreements or other remedial measures fail to achieve compliance.

Stat. Auth.: ORS 561.190 & 622.996
 Stats. Implemented: ORS 622.996
 Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

603-100-0910

Definitions

As used in OAR 603-100-0920 through 603-100-0930, unless otherwise required by the context, the following terms will be construed to mean:

(1) "Interference" means hindering or impeding an activity or process, which includes, but is not limited to any harassment, unreasonable delay, threat, concealment, deceit, or obstruction.

(2) "Major," with respect to violations, means an incident, or series of incidents that cause a reasonable probability that serious adverse health consequences or death will occur.

(3) "Minor," with respect to violations, means an incident, or series of incidents that are not likely to cause adverse health consequences.

(4) "Moderate," with respect to violations, means an incident, or series of incidents that may cause temporary or medically reversible adverse health consequences, or where the probability of serious adverse health consequences is remote.

(5) "Repeat violation" means the recurrence of the same violation for each 24-hour period after a notice of noncompliance or assessment of civil penalty was issued within the preceding three years. It does not include a violation if the previous notice is the subject of a pending appeal or if the notice has been withdrawn or successfully appealed.

(6) "Same," with respect to violations, means an identical recurrence, exact repetition, or a continuation of a previous violation.

(7) "Violation" means the failure to comply with any requirement of ORS 622.010 to 622.180, or any rule adopted thereunder.

Stat. Auth.: ORS 561.190 & 622.996
 Stats. Implemented: ORS 622.996
 Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

603-100-0920

Schedule of Civil Penalties

In addition to any penalty available under ORS 561.190 or 622.992, the Department may impose a civil penalty with respective amounts for:

(1) Acting as a dealer without the certificate or certificates of shellfish sanitation issued by the Department as explained in ORS 622.020. Penalty — \$5,000 to \$10,000.

(2) Operating outside of the geographic area specified in a validated certificate of shellfish sanitation as explained in ORS 622.040. Penalty — \$5,000 to \$10,000.

(3) A dealer failing to display the certificate of a dealer or certificates of shellfish sanitation in accordance with the rules of ORS Chapter 622. Penalty — \$100.

(4) A dealer sending or accepting any shellfish without a signed statement in accordance with ORS 622.160. Penalties:

- (a) Minor — \$1,000 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(5) A dealer who gathers or receives shellfish from any source other than designated in the certificate or certificates of shellfish sanitation and fails to keep accurate records of the amount and source of such shellfish, fails to retain the records for at least 90 days, or fails to provide access to the Department for inspection as explained in ORS 622.170. Penalties:

- (a) Minor — \$1,000 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(6) Interference with a lawful inspection under ORS 622.180(2)(a). Penalty — \$5,000 to \$10,000.

(7) Interference with the taking of samples as requested by the Department under ORS 622.180(2)(b). Penalties:

- (a) Minor — \$1,000 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(8) Interference with the Department's condemnation, removal from sale, or destruction of any shellfish that are unfit for consumption, from an uncertified source, or are improperly certified as explained in ORS 622.180(1)(c). Penalty — \$5,000 to \$10,000.

(9) Violation of any requirement for dealers or harvesters found in the National Shellfish Sanitation Program, Guide for the Control of Molluscan Shellfish, 2009 Revision. Penalties:

- (a) Minor — \$1,000 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(10) Failure of a grower or harvester to deliver shellfish intended for human consumption to a certified shellfish shipper within 24 hours of harvest as explained in OAR 603-100-0040. Penalties:

- (a) Minor — \$1,000 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

(11) Failure to tag shellstock harvested from non-interstate approved harvest areas pursuant to OAR 603-100-0050. Penalties:

- (a) Minor — \$1,000 to \$4,000;
- (b) Moderate — \$4,001 to \$7,000; or
- (c) Major — \$7,001 to \$10,000.

Stat. Auth.: ORS 561.190 & 622.996
 Stats. Implemented: ORS 622.996
 Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

603-100-0930

Penalty factors; procedure

(1) In imposing a penalty pursuant to the schedule adopted pursuant to ORS 621.995, the Department shall consider the following factors, which are listed in prioritized order:

- (a) The immediacy and extent to which the violation threatens the public health or safety.
- (b) Any prior violations of statutes, rules or orders pertaining shellfish.
- (c) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(d) The economic and financial conditions of the person incurring the penalty, including any financial gains resulting from the violation.

(2) Each 24-hour period a violation continues after the period of time established for compliance will be considered a separate violation unless the Department finds a different period of time is more appropriate to describe the specific violation event.

(3) Repeat violations of OAR 603-024-0910 will be assessed as three times the penalty amount in OAR 603-024-0910, not to exceed \$10,000.

(4) A civil penalty imposed under this rule will comply with ORS 183.745, except that the written application for a hearing must be received by the Department no later than 10 days after the mailing or personal service of the notice of civil penalty.

Stat. Auth.: ORS 561.190 & 622.996
 Stats. Implemented: ORS 622.996
 Hist.: DOA 2-2013, f. & cert. ef. 2-7-13

DIVISION 110

STEWARDSHIP AGREEMENTS

603-110-0100

Purpose

(1) Improving fish and wildlife habitat and water quality can not succeed through laws and government actions alone. These rules implement ORS 541.423 which reflects and depends upon Oregonians characteristic spirit of volunteerism and stewardship. The rules provide the means for the Departments of Forestry and Agriculture to implement a voluntary and flexible conservation incentives program that recognizes and rewards agricultural, forest, and other landowners who choose to exceed regulatory criteria for conservation, restoration, and improvement of fish and wildlife habitat or water quality while managing land to meet their objectives. Stewardship agreements will be long-term and consider conservation from a property wide perspective, rather than at the scale of single localized projects.

(2) This program provides incentives for landowners who meet and exceed regulatory requirements to achieve conservation. Regulatory requirements are continually reviewed and revised in the face of new scientific information and changing social values. As such, the relevant habitat and water quality statutes provide the means to evaluate whether a landowner is meeting and exceeding regulatory criteria.

(3) For lands and activities falling under the Oregon Forest Practices Act, the purpose of the stewardship agreement program is also to more efficiently implement the provisions of the Act as a voluntary alternative to traditional mechanisms of forest operation planning, review, inspection, and enforcement.

(4) The stewardship agreement program will recognize other relevant landowner efforts, such as forest or agricultural certification and habitat conservation plans, which have been developed by landowners to meet their management objectives, as components that partially or fully qualify a landowner for a stewardship agreement.

(5) The stewardship agreement program may not meet the objectives of all landowners. Landowners who choose not to enter into stewardship agreements, although they may be qualified to do so, are not considered less protective of resources than those landowners who choose to enter into stewardship agreements.

(6) Voluntary conservation, restoration, and improvement of fish and wildlife habitat or water quality depends on effective partnerships with other parties. The stewardship agreement program seeks to develop and support cooperative and collaborative partnerships with federal, state, and local agencies and with private conservation and landowner organizations.

Stat. Auth.: ORS 541.423
 Stats. Implemented: ORS 541.423
 Hist.: DOA 20-2006, f. & cert. ef. 11-21-06

603-110-0200

Definitions

The following definitions apply to OAR 603-110-0100 through 603-110-1100.

(1) **“Landowner”** means the owner identified in the management plan and any agent or consultant authorized by the owner to implement the management plan.

(2) **“Stewardship agreement”** means a written agreement between the landowner and the Department(s) that ensures the implementation of a management plan meeting the intent of ORS 541.423.

(3) **“Management plan”** means a written, multi-resource strategy for a particular tract of farm, forest, or other land, describing how the landowner will manage the land under consideration for a stewardship agreement to meet the intent of ORS 541.423 as laid out in OAR 603-110-0100 to 1100).

(4) **“Department(s)”** refers to the Oregon Department of Forestry and/or the Oregon Department of Agriculture.

(5) **“Inventory”** means describing elements of land uses, such as pasture, crop land, timber land, habitat, and other natural features, but not information that is proprietary or sensitive to landowner financial interests.

(6) **“Pesticides”** include but are not limited to herbicides, insecticides, fungicides, and rodenticides. Pesticides are regulated under the Oregon Pesticide Control Law (ORS 634) and the Oregon Pesticide Regulations (OAR 603-057).

(7) **“Conservation”** means the management of land, water, and natural resources for the purpose of meeting human and ecological needs in a sustainable manner.

Stat. Auth.: ORS 541.423

Stats. Implemented: ORS 541.423

Hist.: DOA 20-2006, f. & cert. ef. 11-21-06

603-110-0300

Stewardship Agreement Application Process

(1) Landowner must submit a written application on a form provided by the Departments. Information required includes:

(a) Name, contact information, property location, total acres, county, etc.

(b) Name of watershed the property is located in.

(c) Map and description of property, land uses, habitats, and water features (this does not need to include detailed or sensitive information about economic uses of property; the purpose is to know property boundaries, what habitats are present, and the general land use context.

(d) Name(s) of plans and programs landowner is implementing or participating in (if any) and how they contribute to meeting the criteria in 603-110-0500, including a copy of current certification (if any) or other conservation agreements.

(e) Identification of state, regional, and local conservation goals that the stewardship agreement is implementing.

(f) Description of conservation efforts for fish, wildlife, and water quality that are being used or are proposed.

(g) Identify management plan subject to the application review and subsequent audits.

(2) A written management plan is required, which could be a combination of an existing plan and/or a plan developed specifically for this program. The management plan needs to be available to the Department(s) during the review process and for subsequent audits, but landowners are not required to provide a copy for retention by the Department(s).

(3) A management plan will include:

(a) Landowner’s name and contact information, total acreage, acreage in agriculture and forestry, legal description, watershed(s), date of plan, plan writer’s name and contact information.

(b) Landowner goals and objectives.

(c) Property description and inventory, including: vegetation, fish and wildlife habitats, soils,

(d) Protection and/or enhancement of resources that exceeds regulatory requirements through land management practices and activities that are designed to achieve conservation, restoration, and improvement of fish and wildlife habitat or water quality.

(e) Maps, aerial photographs, and other visual aids to illustrate the property description and management activities.

(f) For land and activities falling under the Oregon Forest Practices Act, specific sites or resource sites that are inventoried and protected under ORS 527.710(3)(a) and OAR 629-665-0000 to 0300, or that are listed under 629-605-0170(1). Examples of these sites include sensitive bird nesting, roosting and watering sites, resource sites used by threatened and endangered fish and wildlife species, or significant wetlands.

(4) It is the policy of the Department(s) to protect confidential information in its files. The Department(s) recognize that a written management plan marked as “confidential” on the face of the document is submitted to the Department(s) on the condition that the information will be kept confidential. Any information voluntarily submitted to the Department(s) in confidence and not otherwise required by law to be submitted should reasonably be considered confidential. Such information in the management plans that should reasonably be considered confidential includes information that qualifies as a trade secret under ORS 192.501(2), that is, non-patented information that is known only to certain people within the organization, has commercial value, and would give its users a business advantage over competitors. Other confidential information may include information submitted in confidence that qualifies under any other public record exemption set forth in 192.501.

(5) The handling of confidential materials shall be as follows:

(a) The Department will make immediate distribution to the appropriate personnel.

(b) Confidential material is stored in and returned to files at end of day and protected from visual inspection by unauthorized persons at all times.

(c) Confidential areas are kept secured after working hours.

Stat. Auth.: ORS 541.423

Stats. Implemented: ORS 541.423

Hist.: DOA 20-2006, f. & cert. ef. 11-21-06

603-110-0400

Application Review

(1) Applications will be reviewed jointly by the Departments.

(2) Application review will include a review of the past record of compliance with applicable laws and regulations regarding land use and management.

(3) The Departments will accept applications at any time and will review applications in a reasonable time, normally within 90 days.

(4) For applications covering lands in both agriculture and forest use, the Departments will designate one of the Departments to be the primary contact for development of the agreement, with both Departments approving the agreement.

(5) The Department(s) will consult with appropriate state and federal agencies and other conservation partners regarding potential issues related to their responsibilities and expertise.

(6) The Department(s) and landowner will work jointly to develop a draft stewardship agreement. This will include a site visit with the landowner.

Stat. Auth.: ORS 541.423

Stats. Implemented: ORS 541.423

Hist.: DOA 20-2006, f. & cert. ef. 11-21-06

603-110-0500

Criteria To Evaluate Adequacy Of A Landowner Management Plan To Meet Purpose Of Rules

(1) The management plan will include provisions to protect or conserve fish and wildlife habitat, water resources, and soil resources appropriate to the property and consistent with landowner objectives.

(2) The management plan will be reviewed against the following criteria (a)–(c) to determine whether the landowner is implementing management actions that exceed regulatory requirements for the conservation, restoration, and improvement of fish and wildlife habitat or water quality.

(a) Management actions to conserve, restore, and improve fish and wildlife habitat

(A) Specific conservation goals for fish and wildlife habitat are established.

(B) Alignment with Oregon’s ‘Comprehensive Wildlife Conservation Strategy’, an adopted subbasin plan, and/or other watershed or landscape-scale conservation plan is demonstrated.

(C) Invasive species are identified, controlled, and where possible, eliminated.

(D) Threatened, endangered, and at-risk species and associated habitats are protected, enhanced, or restored.

(E) Food, water, and shelter components of habitat for fish and wildlife are provided (e.g. snags, nesting trees, downed wood, side-channels, bat/bird/bee boxes hedgerows, field edges, etc.).

(F) Crop selection and/or management accommodates fish and wildlife habitat needs.

(G) Native habitat is restored and enhanced, consistent with historic vegetative patterns. Restoration includes diverse native species, structure, and age of vegetation appropriate to the site and its regional context.

(H) Special consideration is given to native habitats known to be uncommon, rare or at risk (i.e. prairie, oak woodland, bottomland hardwood forest).

(I) Natural hydrology is restored to provide habitat for native fish and other aquatic species.

(J) Where feasible, natural disturbance processes like fire and flooding are allowed to function.

(K) Road disturbances to fish and wildlife habitat are minimized.

(L) Fish passage limitations are addressed.

(M) Water diversions are screened or otherwise managed to provide fish passage and prevent entrapment.

(N) Water withdrawals are managed to enhance the needs of fish and wildlife habitat.

(b) Management actions to conserve, restore and improve water resources

(A) Riparian vegetation is protected, managed, or restored to provide erosion control, sediment and nutrient filtering, and other functions of a properly functioning riparian area.

(B) Sediment runoff and animal wastes are controlled at the source to prevent ground and/or surface water contamination.

(C) Vegetation and soils are managed to conserve water by encouraging infiltration and storage of rainfall in the soil.

(D) Irrigation and drainage systems are managed to prevent waste of water and to protect water quality.

(E) Road systems are managed to reduce or eliminate sediment delivery to streams and to prevent catastrophic failure.

(F) Cultural and biological pest prevention strategies are used to reduce or eliminate the need for pesticide applications (e.g. Integrated Pest Management).

(G) Precautions are taken to prevent leaks or spills of pesticides or petroleum products, such as fuel, motor oil, and hydraulic fluid, from reaching waters of the state and sensitive native habitats.

(c) Management actions to conserve, restore, and improve soil resources

(A) Tillage practices minimize degradation of soil quality and conserve organic matter and soil aggregation.

(B) Soils are protected from erosion by optimizing plant cover or residue throughout the year. Practices include but are not limited to: permanent vegetative cover in orchards, nurseries, and vineyards, mulch in row crops, and by using pastures and appropriate intensity, duration, and frequency of livestock grazing.

(C) Crop rotations that include cover crops are used to build soil organic matter and productivity.

(D) Soil disturbance and compaction during timber harvest is minimized.

(E) A comprehensive nutrient management plan or other means are used to conserve and recycle nutrients by converting organic wastes into productive uses and by seeking ways to generate nutrients on farm. Practices that can be used include but are not limited to: cover cropping, on-farm composting, and integrating livestock into farm production.

(F) Land management on steep slopes and fragile soils is conducted in a manner to reduce or eliminate impacts to the site.

Stat. Auth.: ORS 541.423

Stats. Implemented: ORS 541.423

Hist.: DOA 20-2006, f. & cert. ef. 11-21-06

603-110-0600 Stewardship Agreement

(1) The agreement will include the landowner’s commitment to:
(a) Implement the activities and monitoring identified in this agreement for enhancing conservation, restoration, and improvement of fish and wildlife habitat or water quality.

(b) Comply with and manage beyond relevant habitat and water quality rules and statutes.

(c) Allow audits and assist with the process, as appropriate.

(2) The agreement will identify the activities and monitoring that will be done for conservation, restoration, and improvement of fish and wildlife habitat or water quality.

(3) The agreement will include the Departments’ commitment to:

(a) Accept the agreement as demonstrating compliance with state regulatory requirements if the agreement demonstrates such compliance.

(b) Provide specific assistance or incentives that may include: information about conservation programs, certification for marketing purposes, technical assistance, coordination with other agencies to resolve issues.

(c) Strive to match participants with resources suitable to meet landowner objectives.

(4) For lands subject to the Oregon Forest Practices Act, the stewardship agreement may include sufficient detail to meet the requirements for:

(a) Written plans under ORS 527.670(3), OAR 629-605-0170, and 629-605-173;

(b) Fifteen-day waiting periods under OAR 629-605-0150(1), except as provided by ORS 527.670(9) for aerial chemical applications;

(c) Notification consistent with OAR 629-605-0140 and 629-605-0150; and

(d) Other administrative rules and statutes related to notification, such as for fire protection, taxation, safety, water withdrawals, or public subscriptions.

(5) Landowners may have active forest operations on lands that are part of a proposed stewardship agreement. If so, the stewardship agreement will immediately apply those operations when the stewardship agreement is finalized.

(6) Department access to stewardship agreement lands is limited to reviews and audits for which landowners have provided authority. Landowners may also choose to authorize additional limited access to lands under the stewardship agreement for purposes of biological effectiveness monitoring.

(7) The agreement will include the frequency of audits, which will be established based on the Departments’ evaluation of the relative complexity of the management plan and the terms of the stewardship agreement.

Stat. Auth.: ORS 541.423

Stats. Implemented: ORS 541.423

Hist.: DOA 20-2006, f. & cert. ef. 11-21-06

603-110-0700 Decision Authority

(1) The State Forester is delegated full authority by the Board of Forestry to implement the provisions of ORS 541.423, including but not limited to review of management plans and preparation and approval of stewardship agreements.

(2) Prior to approving a stewardship agreement, the Departments will provide public notice and 21 days for comment on the proposed agreement.

(3) When the Departments determine that comments from the review process are adequately addressed, the stewardship agreement will be approved.

(4) The Departments will give notice of approval, termination, and revisions of a stewardship agreement to each other, to the Oregon Department of Fish and Wildlife, and to the Oregon Watershed Enhancement Board.

(5) If the management plan includes potential chemical application operations related to forest operations, the State Forester will give notice of approval of a stewardship agreement to:

(a) Any person with surface water rights pursuant to ORS Chapter 537 who, under the provisions of 527.670(6), has previously requested in writing from the State Forester copies of notifications and written plans for chemical application operations within ten upstream miles of the water right location; and

(b) The community water system manager of any community water system where the surface water drainage area upstream of the intake is 100 square miles or less and the management plan includes potential aerial chemical application operations within 100 feet, or ground-based chemical application operations within 50 feet, of the Type D or domestic use portions of Type F streams that provide water used by the community water system.

(6) The Departments will notify persons who submitted timely comments of the approval of a stewardship agreement. Any person who submitted timely comments and who is adversely affected by the operations conducted under an approved or amended stewardship agreement may file a written request for a hearing to the appropriate Department.

(7) As provided for in ORS 568.912 and 527.700(1) and (2) a landowner may appeal an order denying approval of a stewardship agreement.

Stat. Auth.: ORS 541.423
Stats. Implemented: ORS 541.423
Hist.: DOA 20-2006, f. & cert. ef. 11-21-06

**603-110-0800
Stewardship Agreement Audits**

(1) The Department(s) will conduct periodic audits with the landowner on lands under a stewardship agreement.

(2) The landowner will provide authorization for the Department (or its designated agent) that is party to the stewardship agreement to conduct periodic audits on lands subject to the stewardship agreement to determine whether the management plan is being implemented and whether the stewardship agreement should be continued, revised, or discontinued.

(3) For the purpose of the stewardship agreement rules, an audit means a review of land management and resource sites identified in the stewardship agreement to determine if the terms and conditions of the stewardship agreement are being met.

(4) The frequency and the number of audits may vary based on the Departments' evaluation of the relative complexity of the management plan, the terms of the stewardship agreement, or the performance observed during previous audits.

(5) Audits will be conducted at least once every three years. Landowners may request additional audits to help them assess their performance under the stewardship agreement or to provide an annual government certification of their operation.

(6) The Departments will provide an audit report to the landowner within a reasonable period, normally 45 days, with recommendations for needed revisions to the stewardship agreement.

Stat. Auth.: ORS 541.423
Stats. Implemented: ORS 541.423
Hist.: DOA 20-2006, f. & cert. ef. 11-21-06

**603-110-0900
Revising Stewardship Agreements**

(1) The landowner and the Departments will cooperatively revise the stewardship agreement if:

- (a) The landowner requests a revision;

(b) An audit report recommends revising the stewardship agreement;

(c) Any portion of the land changes ownership resulting in that land being removed from the stewardship agreement as per 603-110-1000(3).

(2) All revisions to the stewardship agreement are subject to the review process outlined in 603-110-0700(2) and (3).

Stat. Auth.: ORS 541.423
Stats. Implemented: ORS 541.423
Hist.: DOA 20-2006, f. & cert. ef. 11-21-06

**603-110-1000
Terminating Stewardship Agreements**

(1) The appropriate Department will issue a written notice to terminate a stewardship agreement when:

(a) The landowner is negligent in meeting the terms of the stewardship agreement;

(b) The landowner willfully disregards the terms of the stewardship agreement; or

(c) The State Forester or Department of Agriculture and landowner fail to reach agreement about revisions required under OAR 603-110-0900 within a reasonable period, normally 45 days.

(d) Failure to comply with Federal environmental laws could be criteria for terminating or suspending a stewardship agreement.

(2) The written notice to terminate the stewardship agreement will state the conditions under section 603-110-1000(1) of this rule that exist and what, if any, remedies are necessary to avoid the termination.

(3) Any parcel of land that is sold or transferred to another landowner will immediately cease to be included in the stewardship agreement.

(4) Upon receiving a written notice to terminate the stewardship agreement, the landowner will suspend all portions of operations requiring written plans under the Forest Practices Act until written plans have been submitted and reviewed.

(5) The landowner may terminate the agreement after providing written notice to the lead Department for the agreement.

Stat. Auth.: ORS 541.423
Stats. Implemented: ORS 541.423
Hist.: DOA 20-2006, f. & cert. ef. 11-21-06

**603-110-1100
Periodic Review of Program**

(1) An interagency review of the Departments' implementation of the stewardship agreement program will be produced biennially, and presented to the Board of Forestry and Board of Agriculture. This report will include:

- (a) A description of the agreements approved;
- (b) Areas of concern regarding implementation of the program;
- (c) A review of the coordination between the two Departments;
- (d) Recommendations to revise or modify the program;
- (e) A review of program effectiveness for enhancing fish and wildlife habitat and water quality.

(2) An advisory group, including the Oregon Department of Fish and Wildlife, and other interested/involved parties, will be utilized to assist the Departments in conducting the biennial review.

Stat. Auth.: ORS 541.423
Stats. Implemented: ORS 541.423
Hist.: DOA 20-2006, f. & cert. ef. 11-21-06