

## NOTICES OF PROPOSED RULEMAKING

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**Oregon State Marine Board**  
**Chapter 250**

**Rule Caption:** Corrects alleged procedural irregularities related to rules prohibiting internal combustion motorboats/floatplanes on Waldo Lake.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-10-12	6 p.m.	Willamalane Park & Recreation District, Willamalane Center Ken Long Rm. 250 S 32nd St. Springfield, OR

**Hearing Officer:** Randy Henry

**Stat. Auth.:** ORS 830.110 & 830.175

**Stats. Implemented:** ORS 830.110 & 830.175

**Proposed Amendments:** 250-020-0221, 250-030-0030

**Last Date for Comment:** 4-10-12, Close of Hearing

**Summary:** The agency proposes to re-adopt OAR 250-020-0221 and 250-030-0030 in order to correct alleged procedural irregularities related to their previous adoption. Those rules implement the Oregon Scenic Waterway Act by prohibiting internal combustion motorboats and floatplanes on Waldo Lake, a statutorily designated state scenic waterway, in order to preserve the natural setting of Waldo Lake, minimize disturbance of its natural beauty, protect its aesthetic values, and provide an unimpaired quality of recreational experience. An exception is provided in the rules for official governmental use and emergency landings of floatplanes.

In a rule challenge pending in the Oregon Court of Appeals, Columbia Seaplane Pilots Assoc. v. State Marine Board, Oregon Court of Appeals Case No. A148192, certain procedural irregularities have been alleged, including the assertion that the fiscal impact statements for the challenged rules were inadequate. In order to provide an opportunity to correct the alleged procedural irregularities related to the previous rule adoption, the agency is initiating further rulemaking to enable the Board to take action on the basis of new fiscal impact statements and other relevant information. Such action could potentially take the form of re-adopting the rules, amending the rules to modify the prohibition of internal combustion motorboats and floatplanes on Waldo Lake, or repealing the rules.

**Rules Coordinator:** June LeTarte

**Address:** Oregon State Marine Board, P.O. Box 14145, Salem, OR 97309-5065

**Telephone:** (503) 378-2617

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Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***  
A Statement of Need and Fiscal Impact accompanies this form

<u>Oregon State Marine Board</u>	250
Agency and Division	Administrative Rules Chapter Number
<u>June LeTarte</u>	(503) 378-2617
Rules Coordinator	Telephone
<u>Oregon State Marine Board, P.O. Box 14145, Salem, OR 97309-5065</u>	
Address	

**RULE CAPTION**

Corrects alleged procedural irregularities related to rules prohibiting internal combustion motorboats/floatplanes on Waldo Lake

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

Hearing Date	Time	Location	Hearings Officer
Auxiliary aids for persons with disabilities are available upon request.			

**RULEMAKING ACTION**

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

**ADOPT:**

**AMEND:**

250-020-0221 and 250-030-0030

**REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**Statutory Authority:**

ORS 830.110 & ORS 830.175

**Other Authority:**

**Statutes Implemented:**

ORS 830.110 & ORS 830.175

**RULE SUMMARY**

The agency proposes to re-adopt OAR 250-020-0221 and 250-030-0030 in order to correct alleged procedural irregularities related to their previous adoption. Those rules implement the Oregon Scenic Waterway Act by prohibiting internal combustion motorboats and floatplanes on Waldo Lake, a statutorily designated state scenic waterway, in order to preserve the natural setting of Waldo Lake, minimize disturbance of its natural beauty, protect its aesthetic values, and provide an unimpaired quality of recreational experience. An exception is provided in the rules for official governmental use and emergency landings of floatplanes.

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

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

<u>04-10-2012 Close of Hearing</u>	<u>June LeTarte</u>	<u>June.Letarte@state.or.us</u>	<u>2-14-12 9:28a.m.</u>
Last Day (m/d/yyyy) and Time	Printed Name	Email Address	Date Filed

Last Day (m/d/yyyy) and Time  
for public comment

Printed Name

Email Address

Date Filed

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

ARC 923-2003

Secretary of State  
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon State Marine Board  
Agency and Division

250  
Administrative Rules Chapter Number

Corrects alleged procedural irregularities related to rules prohibiting internal combustion motorboats/floatplanes on Waldo Lake

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

In the Matter of:

OAR 250-020-0221 and 250-030-0030

Statutory Authority:

ORS 830.110 & ORS 830.175

Other Authority:

Stats. Implemented:

ORS 830.110 & ORS 830.175

Need for the Rule(s):

The agency proposes to re-adopt OAR 250-020-0221 and 250-030-0030 in order to provide an opportunity to correct certain alleged procedural irregularities related to their previous adoption. The agency is initiating further rulemaking to enable the Board to take action on the basis of new fiscal impact statements and other relevant information. Such action could potentially take the form of re-adopting the rules, amending the rules to modify the prohibition of internal combustion motorboats and floatplanes on Waldo Lake, or repealing the rules.

Documents Relied Upon, and where they are available:

Certificate and Order for Filing Permanent Administrative Rule OAR 250-020-00211(10) filed January 15, 2010:

Use of internal combustion motors in boats and floatplanes operating on the surface of Waldo Lake is prohibited year round. "Watercraft" includes boats and floatplanes operating on the surface of Waldo Lake. Official use of internal combustion motors in watercraft operated on the surface of Waldo Lake by local, state or federal governmental officials or agents is allowed for the following activities: search and rescue, law enforcement and fire suppression. Previous approval by the Willamette National Forest Supervisor is required for other activities undertaken by local, state or federal government officials or agents that involve use of internal combustion motors in watercraft operated on the surface of Waldo Lake. Emergency landings of private or governmental floatplanes on Waldo Lake are allowed without previous approval.

Certificate and Order for Filing Permanent Administrative Rule OAR 250-030-0030(4) filed May 06, 2010:

Use of internal combustion motors in boats and floatplanes operating on the surface of Waldo Lake is prohibited year round. "Watercraft" includes boats and floatplanes operating on the surface of Waldo Lake. Official use of internal combustion motors in watercraft operated on the surface of Waldo Lake by local, state or federal governmental officials or agents is allowed for the following activities: search and rescue, law enforcement and fire suppression. Previous approval by the Willamette National Forest Supervisor is required for other activities undertaken by local, state or federal government officials or agents that involve use of internal combustion motors in watercraft operated on the surface of Waldo Lake. Emergency landings of private or governmental floatplanes on Waldo Lake are allowed without previous approval.

Final OSMB Staff Report "Item B: Rulemaking on Boat Operation on Certain Waters in Lane County OAR 250-020-0221; proposal to ban the use of all motorboats and floatplanes on Waldo Lake" presented to the Board January 14, 2010.

Opening brief in Columbia Seaplane Pilots Association v. State Marine Board, Oregon Court of Appeals Case No. A148192.

The Oregon State Marine Board Rule Advisory Committee (RAC) January 23, 2012 meeting notes

Fiscal and Economic Impact:

As outlined below, the agency, on the basis of input from the Rule Advisory Committee (RAC), estimates that there will be limited or de minimis fiscal impact resulting from the re-adoption, modification, or repeal of these rules.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

Waldo Lake is located in the Willamette National Forest and the area surrounding the lake is managed by the US Forest Service. In 2010, the Forest Service installed signs at the lake notifying visitors entering the Waldo Lake recreation area that internal combustion motorboats were not permitted. This was done at a minimal cost to the Federal Government. If necessary, the removal of said signs would also be done at a minimal cost.

The Rule Advisory Committee (RAC) noted that the federal land manager or their concessionaire may see minor fiscal impacts if certain boat operators cease camping at or launching onto the waterway. Further, the RAC noted that the proposed rules do not prevent operation, just propulsion type. Historic use is generally by non-motorized users, so fiscal impacts should be small.

As advanced notification regarding future prohibition of motorized boat use prepared visitors for the change in regulation, no additional/special terrestrial or water patrols were deemed necessary or conducted. US Forest Service Forest Protection Officers routinely patrol the area and inform and educate visitors about appropriate and authorized uses of Waldo Lake and the surrounding recreation facilities. Information regarding the prohibition of internal combustion motorboats is incorporated into routine patrols and is posted on the Forest Service's website. Campground concession personnel also inform visitors of area regulations. As such, there are no anticipated costs of compliance associated with these rules.

Waldo Lake is not a contracted waterbody between Lane County Sheriff Office and the OSMB for marine patrol; nonetheless, between July 1, 2010 and June 30, 2011, the Marine Board reimbursed Lane County for six hours of marine patrol at \$67.00 per hour equally \$402.00. While there could be fiscal impacts to county government to provide law enforcement services to enforce these rules, as noted by the RAC, the agency does not anticipate any additional expenditure as a result of compliance with these rules.

There are no anticipated costs of compliance by other state agencies associated with this rulemaking.

While certain recreational water activities may be prohibited or modified, and other recreational water activities enhanced, the agency

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

The agency does not anticipate that small businesses will be significantly affected by re-adoption, modification or repeal of these rules. The rules apply to the operators of all boats on Waldo Lake; and such boat use is primarily recreational. Historically, usage of Waldo Lake by motorboats has been relatively low, given the poor fishing environment for this large lake. According to the US Forest Service, its 1998 visitor survey showed only 13.6 percent of all boating visitors used a boat motor during their visit, and boaters with motors represented only 5.5 percent of all visitors to Waldo Lake. Further, the Rule Advisory Committee concluded there is no direct cost to small businesses to comply with this rule. Since motorized boats are not allowed on the lake, gasoline purchases from fuel suppliers along Hwy 58 may decrease. Motor use on Waldo Lake was typically minor, so impacts will be small.

Although it is likely that some recreational boats used on Waldo Lake have been rented from small businesses, the prohibition on internal combustion motorboats allows operation of manually powered watercraft such as canoes and kayaks, which are commonly rented by recreationalists from small businesses located in Oregon. It can reasonably be assumed that usage of manually powered watercraft has increased since the prohibition on operation of internal combustion motorboats on Waldo Lake was put into place to create a wilderness paddling recreational experience. Hence, it is estimated that the net effect on small businesses of the prohibition of internal combustion motorboats has been essentially neutral.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

There are not any projected record keeping or other administrative activities required for compliance with these rules.

c. Equipment, supplies, labor and increased administration required for compliance:

The agency does not anticipate that there will be any equipment, supplies, or other increased labor or administrative costs required for compliance with these rules.

How were small businesses involved in the development of this rule?

If not, why?:

Two representatives from small businesses participated on the Rules Advisory Committee and their input was considered regarding the impact of the rules on small business. The Rules Advisory Committee designated that there would be no direct costs to small business to comply with these rules. As no substantive issues were identified, we do not believe that a less intrusive or less costly alternative for small business only would be consistent with the purpose of the rules, which is to provide an unimpaired quality of recreational experience by preserving the natural setting of Waldo Lake, minimizing disturbance of its natural beauty, and protecting its aesthetic values.

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Administrative Rule Advisory Committee consulted?: Yes

Yes, the Rules Advisory Committee met January 23, 2012 to discuss and provide input on potential fiscal impacts associated with these rules.

<u>04-10-2012 Close of Hearing</u>	<u>June LeTarte</u>	<u>June.Letarte@state.or.us</u>	<u>2-14-12 9:28 AM</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address	Date Filed

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

ARC 925-2007