

**OREGON ADMINISTRATIVE RULES
OREGON DEPARTMENT OF AGRICULTURE
CHAPTER 603, DIVISION 95
AGRICULTURAL WATER QUALITY MANAGEMENT PROGRAM**

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 - ORS 568.933 and ORS 561.190 - ORS 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.

Statutory Authority: ORS 561.190 - 561.191, and ORS 568.912

Statutes Implemented: ORS 568.900 - 568.933

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 OAR 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.

Statutory Authority: ORS 561.190 - 561.191, and ORS 568.912

Statutes Implemented: ORS 568.900 - 568.933

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 ORS 468B.050.

Statutory Authority: ORS 561.190 - 561.191, and ORS 568.912

Statutes Implemented: ORS 568.900 - 568.933

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 603-95-3860(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.

Statutory Authority: ORS 561.190 - 561.191, and ORS 568.912

Statutes Implemented: ORS 568.900 - 568.933

Attachment 1 – Map

