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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 603
DEPARTMENT OF AGRICULTURE

FILED
05/29/2020 10:30 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Creates a notification process to remove sediment from traditionally maintained channels for agricultural drainage.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/30/2020 5:00 PM

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

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Filed By:
Amy Bingham
Rules Coordinator

HEARING(S)

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

DATE: 06/17/2020

TIME: 12:00 PM - 2:00 PM

OFFICER: Judith Callins

ADDRESS: Virtual Hearing:
GoToMeeting

www.gotomeet.me

Salem, OR 97301

SPECIAL INSTRUCTIONS:

https://www.gotomeet.me/MichaelPowers137/public-hearing---hb-2437-traditionally-maintained-6

DATE: 06/18/2020

TIME: 6:00 PM - 8:00 PM

OFFICER: Judith Callins

ADDRESS: Virtual Hearing: Go To
Meeting

www.gotomeet.me

Salem, OR 97301

SPECIAL INSTRUCTIONS:

https://www.gotomeet.me/MichaelPowers137/public-hearing---hb-2437-traditionally-maintained-

For audio please use this call-in line:
1-844-766-2282; Pin 661241#

For audio please use this call-in line:
1-844-766-2282; Pin 661241#

NEED FOR THE RULE(S):

House bill 2437 directed Oregon Department of Agriculture to create a process by which a person could engage in maintenance of channels used for agricultural drainage without a permit from the Department of State Lands. This rule creates the notice process while ensuring that any maintenance is conducted in a manner that protects, maintains or improves ecological functions of the channels and upholds state objectives for fish recovery, protects wetlands, waterways and fish and wildlife habitats.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

House Bill 2437 (2019), ORS 196.960 through 196.919, OAR 141-085-0500 through 141-085-0785, information from the website at the Oregon Department of State Lands. Oregon.gov/ODA. Oregon.gov/DSL

FISCAL AND ECONOMIC IMPACT:

There are anticipated costs to Oregon Departments of Agriculture (ODA) and Fish and Wildlife (ODFW). These state agencies will need additional staff time and resources to develop and implement this new program. The Oregon Legislature has funded one new staff person for each of these agencies. The Oregon Department of State Lands (DSL) has a lesser though statutorily required role in developing and implementing this program. No new funds have been allocated to DSL for this program.

We estimate that landowners and water control districts will see reduced time and resource costs.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

Oregon Department of Agriculture, Oregon Department of Fish and Wildlife and Department of State Lands will have increased staff time in order to implement this and run the program.

Local government may include those counties with Oregon planning Goal 5 riparian regulations. Where the maintenance allowed under this impacts regulated stream channels, the local counties may require additional planning for and replanting of riparian vegetation. Where this work would be permitted by DSL, local counties would be involved as well. Additional costs for some counties would occur only if this notice program results in more maintenance activities than under a DSL permit program.

The public includes landowners and water control districts will have a cost of compliance, although we anticipate the cost will be less than the DSL permit system.

A) There are approximately 37,000 ranches, farms and land owners in Oregon. Those operations throughout the state with agricultural drainage channels that qualify for the notice will be impacted.

B) Applicants will be required to properly fill out the notice forms, cost is expected to be minimal, consisting of time, computer access, and internet access. The cost of completing and submitting a notice is expected to be less than completing and submitting an Individual Permit.

C) No additional equipment will be needed. No additional professional services will be required. There will be some labor and administration required in filling out the notice forms. The cost is estimated to be minimal.

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

Small business owners and operators of farms and ranchers were on the Rules Advisory Committee.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

603-095-4000, 603-095-4005, 603-095-4010, 603-095-4015, 603-095-4020, 603-095-4025, 603-095-4030, 603-095-4035, 603-095-4040, 603-095-4045, 603-095-4050, 603-095-4055, 603-095-4060

ADOPT: 603-095-4000

RULE SUMMARY: Provides for a new notification process implemented by Oregon Department of Agriculture for the maintenance of channels used for agricultural drainage without a Removal-Fill permit from the Oregon Department of State Lands under certain circumstances.

CHANGES TO RULE:

603-095-4000

Purpose and Applicability

The purpose of these rules is to simplify the process by which agricultural landowners may maintain channels used for agricultural drainage while ensuring that any maintenance is conducted in a manner that protects, maintains or improves ecological functions of the channels and upholds state objectives for fish recovery, and protects wetlands, waterways and fish and wildlife habitats. Maintenance of channels used for agricultural drainage is critical to the operational and economic viability of Oregon's farm and ranch lands.

Statutory/Other Authority: ORS 196.816

Statutes/Other Implemented: ORS 196.600 to 196.905

ADOPT: 603-095-4005

RULE SUMMARY: Provides for a new notification process implemented by Oregon Department of Agriculture for the maintenance of channels used for agricultural drainage without a Removal-fill permit from the Oregon Department of State Lands under certain circumstances.

CHANGESTO RULE:

603-095-4005

Definitions

As used in these rules unless the context requires otherwise:¶

- (1) "Channel" means the defined bed and bank that serve to confine where a stream of water runs. ¶
- (2) "Converted wetland" means agriculturally managed wetlands that, on or before June 30, 1989, were brought into commercial agricultural production by diking, draining, leveling, filling or any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that are managed for commercial agricultural purposes. "Converted wetlands" does not include any stream, slough, ditched creek, spring, lake or any other waters of this state that are located within or adjacent to a converted wetland area. ¶
- (3) "Drainage ditch" means a manmade water conveyance channel that is for the purpose of draining water away from lands. A ditch that is used to drain water away from lands but may also be used to convey water to lands for irrigation during certain times of the year is considered a drainage ditch. Channels that are manipulated streams are not considered ditches. ¶
- (4) "Dry channel" means channel conditions where no flowing or standing water is present in the area to be maintained at the commencement of or during the channel maintenance activity, other than small quantities of water that may occur in low areas of the channel as a direct result of active maintenance activities. For the channel of a waterway that is subject to tidal influence, flowing or standing water may not be present during all tidal conditions. A dry channel that receives water from one or more precipitation events that results in pooling or flow of water is no longer dry for the purposes of this definition. ¶
- (5) "Essential Indigenous Anadromous Salmonid Habitat" means the streams designated pursuant to ORS 196.810 that are necessary to prevent the depletion of indigenous anadromous salmonid species during their life history stages of spawning and rearing, and any adjacent off-channel rearing or high-flow refugia habitat with a permanent or seasonal surface water connection to an ESH stream. ¶
- (6) "Farming operations" 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, nursery stock, Christmas trees; or any other agricultural or horticultural use or animal husbandry or any combination thereof. Pasture and woodlands accompanying land in the farming operations are also defined as part of the farming operations. ¶
- (7) "Intermittent Stream" means a stream or other waterway which flows during a portion of every year. ¶
- (8) "Maintenance" or "maintenance activity" means channel upkeep and removal from the channel of sediment, vegetation or debris, in the minimum amount necessary to restore the serviceability of the traditionally maintained channel for facilitating drainage. ¶
- (9) "Material" means rock, gravel, sand, silt and other inorganic substances and large woody debris, removed from waters of this state and any materials organic or inorganic that constitute fill placed in waters of this state. ¶
- (10) "Perennial Stream" means a stream that has continuous flow in parts of its bed all year long during years of normal precipitation. ¶
- (11) "Regional Dry Maintenance Time Period" means that period of time designated by the Oregon Department of Fish and Wildlife as the permissible time period for that region in which to begin and complete maintenance activities for a traditionally maintained channel. ¶
- (12) "Routinely subject to maintenance" means the periodic upkeep of a traditionally maintained channel to maintain the minimum drainage functions necessary to facilitate drainage related to farming operations. ¶
- (13) "Serviceable for facilitating drainage" means a channel that in the past five years the channel has adequately facilitated drainage of farming operations. ¶

(14) "Streambank" or "bank" means the physical container of the waters of this state, bounded on freshwater bodies by the ordinary high water line or bankfull stage, and in tidal bays and estuaries by the limits of the highest measured tide. The "bed" is typically the horizontal section and includes non-vegetated gravel bars. The "bank" is typically the vertical portion. ¶

(15) "Traditionally maintained channel" means the channel of a segment, set of segments or the entirety of a drainage ditch, intermittent stream or perennial stream that: ¶

(a) Has been routinely subject to maintenance to facilitate drainage related to farming or ranching and ¶

(b) Has been serviceable for facilitating drainage within the past five years. ¶

(16) "Valid notice" or "Valid Notification" means a completed notification on a form provided by the Oregon Department of Agriculture, reviewed by the Oregon Department of Agriculture, and posted on the Oregon Department of Agriculture website.¶

(17) "Waters of This State" means natural waterways, tidal and non-tidal bays, intermittent streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the boundaries of this state, all other navigable and non-navigable bodies of water in this state and those portions of the ocean shore, as defined in ORS 390.605, where removal-fill activities are regulated under a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act, as amended.¶

(18) "Wetland" or "Wetlands" means those areas that are 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.

Statutory/Other Authority: ORS 196.816

Statutes/Other Implemented: ORS 196.816

ADOPT: 603-095-4010

RULE SUMMARY: Provides for a new notification process implemented by Oregon Department of Agriculture for the maintenance of channels used for agricultural drainage without a Removal-Fill permit from the Oregon Department of State Lands under certain circumstances.

CHANGESTO RULE:

603-095-4010

Agricultural Drainage Maintenance Regions

(1) The Oregon Department of Agriculture shall create five regions of the state for the purpose of implementing these rules.¶

(a) Region One shall include the following Oregon Counties: Washington, Yamhill, Polk, Marion, Benton, and Linn.¶

(b) Region Two shall include the following Oregon Counties: Multnomah, Clackamas, Lane, Douglas, Coos, and Curry.¶

(c) Region Three shall include the following Oregon Counties: Columbia, Clatsop, Tillamook, Lincoln, Josephine, and Jackson.¶

(d) Region Four shall include the following Oregon Counties: Hood River, Wasco, Jefferson, Deschutes, Crook, Klamath, Lake, and Harney. ¶

(e) Region Five shall include the following Oregon Counties: Sherman, Gilliam, Wheeler, Morrow, Grant, Umatilla, Union, Wallowa, Baker, and Malheur. (10)¶

(2) Upon adoption of these rules:¶

(a) Region One will become operable/effective upon adoption of these rules in 2020.¶

(b) Region Two will become operable/effective no later than May 1, 2021.¶

(c) Region Three will become operable/effective no later than May 1, 2022. ¶

(d) Region Four will become operable/effective no later than May 1, 2023. ¶

(e) Region Five will become operative/effective no later than May 1, 2024.

Statutory/Other Authority: ORS 196.816

Statutes/Other Implemented: ORS 196.816

ADOPT: 603-095-4015

RULE SUMMARY: Provides for a new notification process implemented by Oregon Department of Agriculture for the maintenance of channels used for agricultural drainage without a Removal-Fill permit from the Oregon Department of State Lands under certain circumstances.

CHANGESTO RULE:

603-095-4015

Notification to the Oregon Department of Agriculture - Maintenance Without a Permit; Types of Maintenance Activities

(1) Notification to the Oregon Department of Agriculture shall be given for the maintenance activities of existing traditionally maintained channels that meet the following:

(a) Limited to maintenance of dry traditionally maintained channels that are in existence or operation at the time of the activities; and

(b) Have been routinely subject to maintenance so as to facilitate drainage related to farming operations; and

(c) Have been serviceable for facilitating drainage within the past five calendar years as determined at the time of notification; and

(d) Maintenance activities do not include those activities prohibited by the mandatory conditions or otherwise prohibited by these rules.

(2) Activities not covered by notification. A notification may not be filed for the following activities:

(a) Activities within a channel that is not a traditionally maintained channel, as defined in 603-095-4005(15).

(b) Development or construction of new channels, or alteration of a channel that has not been serviceable for facilitating drainage within the past five calendar years as of the date of intended notification, or channel relocation activities as defined in ORS 196.800(1).

(c) Maintenance activities that will result in converting wetlands to uplands.

(d) Maintenance activities that will change the depth or functionality of a wetland.

(e) Maintenance activities that will result in the removal of more than 3,000 cubic yards per linear mile of traditionally maintained channels over the course of the five-year notification period.

(f) Maintenance activities that will result in the spreading of material in a wetland or converted wetland in a volume greater than 3,000 cubic yards per linear mile of traditionally maintained channels over the course of the five-year notification period.

(g) Maintenance activities that will result in a change in location of a channel caused by the digging of a new channel and the diversion of the flow from the old channel into the new channel.

(h) Maintenance activities that will result in an increase in the width or depth of the traditionally maintained channel beyond the width or depth of the traditionally maintained channel that is routinely maintained to facilitate drainage.

(i) Any activity not allowed in ORS 196.906 - 196.919 that would otherwise require a permit from the Oregon Department of State Lands as provided in ORS 196.682 et seq. or as required pursuant to OAR 603-095-4025(2).

(3) Nothing in OAR 603-095-4000 through 603-095-4060 limits or otherwise changes the exemptions under ORS 196.921.

Statutory/Other Authority: ORS 196.816

Statutes/Other Implemented: ORS 196.816

ADOPT: 603-095-4020

RULE SUMMARY: Provides for a new notification process implemented by Oregon Department of Agriculture for the maintenance of channels used for agricultural drainage without a Removal-Fill permit from the Oregon Department of State Lands under certain circumstances.

CHANGESTO RULE:

603-095-4020

Notification to Oregon Department of Agriculture - Districts and Persons

(1) Notwithstanding the permit requirements of ORS 196.810, a person may engage in removal-fill activities, or both, for conducting maintenance of a traditionally maintained channel without a permit from the Oregon Department of State Lands if:

(a) The person has a valid notice on file with the Oregon Department of Agriculture prior to initiating activities for the maintenance of a traditionally maintained channel; or

(b) The Department has not responded within 45 days of receiving a complete notification per ORS 196.915(3) and OAR 603-095 4020(6); and

(c) The maintenance activities are conducted in compliance with the notice described in paragraphs (a) or (b) of this subsection and with ORS 196.913 and 196.915.

(2) Notwithstanding the permit requirements of ORS 196.810, a district organized under ORS chapter 545, 547, 552 or 553 or a district improvement company or district improvement corporation organized under ORS chapter 554 may engage in removal-fill activities, or both, for conducting maintenance of a traditionally maintained channel without a permit from the Oregon Department of State Lands if:

(a) The district, company or corporation has a valid notice on file with the Oregon Department of Agriculture prior to initiating activities for the maintenance of a traditionally maintained channel; or

(b) The Department has not responded within 45 days of receiving a complete notification per ORS 196.915(3) and OAR 603-095 4020(6); and

(c) The maintenance activities are conducted in compliance with the notice described in paragraphs (a) or (b) of this subsection and with ORS 196.913 and 196.915; and

(d) The governing body of the district, company or corporation, as part of the notice filed pursuant to subsection (3) of this section, agrees to submit to the jurisdiction of the Oregon Department of State Lands and the Oregon Department of Agriculture for purposes of enforcement of ORS 196.906 to 196.919.

(3) At least 45 days prior to initiating removal-fill activities consistent with these rules and ORS 196.906 - 196.919 any person or district seeking to conduct these maintenance activities must provide notice to the Oregon Department of Agriculture. The notice submitted to the Oregon Department of Agriculture must be complete and accurate.

(4) The Department shall determine if the notice is complete and accurate within five days of receiving a notice. The notice will be considered received only when the required information is complete and accurate and the necessary forms are on file at the Oregon Department of Agriculture. The Department shall promptly return incomplete or inaccurate notifications to the submitting party, and maintenance activities under ORS 196.906 - 196.919 and these rules may not be initiated.

(5) Submitted notifications shall be completed on forms provided by the Oregon Department of Agriculture. The level of detail required may vary by maintenance activity complexity, potential impact, and other factors. In addition to any additional information required by the Department, the notice must include:

(a) A map to scale or aerial photograph, on which all maintenance activities are clearly delineated. The following information shall be shown on or accompany the map or aerial photograph:

(A) The location of and linear miles of channel to be maintained shall be clearly depicted. The start and stop points of each segment proposed for maintenance shall be identified with the latitude and longitude coordinates.

(B) The estimated volume per linear mile of material that will be removed from the channel over the five-year period.

(C) The location of all temporary and permanent areas where the fill material will be placed. Describe the

placement method.

(D) For all temporary areas where material will be placed, the date by when the material will be removed, and the location of where the material will be permanently placed. Describe the placement method.

(E) If the maintenance activities will be undertaken in part by a district, company or corporation described in paragraph (1) of this section and in part by persons subject to the jurisdiction of the district, company or corporation, clearly identify which activities will be undertaken by the district, company or corporation and which activities will be undertaken by a person subject to the jurisdiction of the district, company or corporation

(b) Where more than one maintenance activity is occurring under a single notification then each activity must be delineated as described in paragraph (4)(a).

(6) The person who signed the notice shall immediately contact the Oregon Department of Agriculture and report any subsequent change to information contained in the notification. However, any additions to the locations or increase in volume of activities described in the notice shall require a separate notification. The separate notification shall be submitted prior to conducting any additional maintenance activities not covered by the original notice.

(7) Except as otherwise provided in these rules, the Oregon Department of Agriculture shall provide a response to a notice that is filed with the Department no later than 45 days after a complete notification is received. The response shall include any conditions in addition to those required under ORS 196.913 and OAR 605-095-4030(1), pursuant to the process described OAR 603-095-4025, for maintenance activities to occur in the traditionally maintained channel without a removal-fill permit. In addition to mandatory conditions that must be provided for each notice per OAR 603-095-4030(1), the Oregon Department of Agriculture shall include those conditions provided under ORS 196.913(2) and OAR 603-095-4025.

(8) Work as described in the notice may not commence until the notification has undergone review as described in these rules and all mandatory and required conditions for the notification are posted on the Oregon Department of Agriculture website. If the Department has not responded within 45 days of receiving a complete notification per ORS 196.915(3) and OAR 603-095 4020(7), then maintenance activities may proceed pursuant to ORS 196.913 and these rules. The five-year effective date for the valid notice starts on the date that the notification becomes valid.

(9) Valid notices posted on the Oregon Department of Agriculture website will contain all conditions required to proceed with maintenance activities for a traditionally maintained channel. Once posted to the website, a copy of the valid notice will be sent to the address on the notification via US mail and email.

(10) If a variance is granted by the Department, the terms and conditions of the variance shall be incorporated into the conditions of an amended valid notice and posted as part of the notification on the Department website.

Statutory/Other Authority: ORS 196.816

Statutes/Other Implemented: ORS 196.816

ADOPT: 603-095-4025

RULE SUMMARY: Provides for a new notification process implemented by Oregon Department of Agriculture for the maintenance of channels used for agricultural drainage without a Removal-Fill permit from the Oregon Department of State Lands under certain circumstances.

CHANGESTO RULE:

603-095-4025

Review of Notification; Consultation with the Oregon Department of Fish and Wildlife; Final Determination by the Oregon Department of State Lands

(1) No later than five days after receiving a complete notification, the Oregon Department of Agriculture shall provide a copy of the notice to the Oregon Department of Fish and Wildlife. ¶

(2) Upon receiving a copy of the notice, the Oregon Department of Fish and Wildlife has 30 days to respond to the Oregon Department of Agriculture. The Oregon Department of Fish and Wildlife response may indicate that a review was conducted and work may proceed, or may provide the Oregon Department of Agriculture with recommendations on:¶

(a) Whether the maintenance activities described in the notice will meet the requirements of ORS 196.913 ; and¶

(b) Whether conditions, in addition to those required ORS 196.913, are necessary to address the presence of endangered or threatened species, to protect endangered or threatened species' habitat quality or quantity, or to otherwise protect the existing functions of the channel. ¶

(3) The Oregon Department of Agriculture will process the notice pursuant to ORS 196.906 to ORS 196.919 if ODFW does not respond within 30 days.¶

(4) Upon receiving a response from the Oregon Department of Fish and Wildlife, the Oregon Department of Agriculture shall include in a valid notice any recommended conditions received unless the recommended conditions are denied pursuant to paragraphs (3)(a) through (3)(d) below. ¶

(a) If the Oregon Department of Agriculture disagrees with any Oregon Department of Fish and Wildlife recommended conditions, the Oregon Department of Agriculture may consult with the Oregon Department of Fish and Wildlife to resolve the disagreement.¶

(b) If the two agencies do not reach consensus on how to address the disagreement, the Oregon Department of Agriculture shall provide a copy of the notice, the recommendations of the Oregon Department of Fish and Wildlife, and a summary of the disagreement to the Oregon Department of State Lands. ¶

(c) Pursuant to ORS 196.915(2), within five days of receiving the information in paragraph (3)(b) above, the Oregon Department of State Lands has authority to make the final determination of what additional conditions may be necessary for the maintenance activity to occur without a removal-fill permit, or whether the activity may occur without a removal-fill permit. ¶

(d) Referral of a notice and recommendations by the Oregon Department of Agriculture to the Oregon Department of State Lands is considered a response for the purposes of OAR 603-095-4020(7).

Statutory/Other Authority: ORS 196.816

Statutes/Other Implemented: ORS 196.816

ADOPT: 603-095-4030

RULE SUMMARY: Provides for a new notification process implemented by Oregon Department of Agriculture for the maintenance of channels used for agricultural drainage without a Removal-Fill permit from the Oregon Department of State Lands under certain circumstances.

CHANGESTO RULE:

603-095-4030

Mandatory Notice Conditions

A valid notice shall include the following mandatory conditions under which traditionally maintained channel maintenance activities must occur. A valid notice may also include recommended conditions as provided in OAR 603-095-4025(2) which become mandatory for the purposes of determining compliance with a valid notice.¶

- (1) A traditionally maintained channel must be dry before the commencement of any removal activities in the channel. If there is standing water in the channel that is due to a single rain event and the presence of the water is not indicative of a stream, a person must request a variance on a form provided by the Oregon Department of Agriculture prior to initiation of channel maintenance activities.¶
- (2) A person must begin and complete activities that require removal of material from the traditionally maintained channel during the applicable regional dry maintenance time period, as designated by the Oregon Department of Fish and Wildlife, for the region where the traditionally maintained channel is located.¶
- (3) The body of any motorized equipment that is used to conduct removal-fill activities must be operated from the streambank or bank of the channel, with only the bucket of the motorized equipment that actively removes material operating within the channel.¶
- (4) Any excavation of the bottom of the channel must be on a smooth grade and in a manner that does not create depressions or grade changes within the channel.¶
- (5) Maintenance activities must be conducted in a manner that minimizes new erosion in the channel.¶
- (6) Removal of woody vegetation must be limited to the minimum amount needed to complete the maintenance activity.¶
- (7) Revegetation must occur for any riparian areas that serve as a buffer adjacent to the channel and that experience vegetation loss as a result of the maintenance activity. This condition is satisfied whether revegetation occurs naturally or after seeding. Revegetation shall result in adequate ground cover to keep the banks stable and prevent erosion. Revegetation shall not result in the establishment of noxious weeds as identified by the Oregon Department of Agriculture as an A List Weed or B List Weed at the time of the revegetation work.¶
- (8) All work related to the maintenance activity must be conducted only from one bank of the channel, on either the north or east side, when practicable, to minimize the ecological impacts of the maintenance activity.¶
- (9) Motorized equipment used for maintenance activities must utilize existing crossings, if crossing the channel is necessary to complete maintenance activities. ¶
- (10) Maintenance activities must begin at the most upstream location of the traditionally maintained channel and progress downstream.¶
- (11) Material that is removed from the channel may be temporarily placed in a wetland or converted wetland located adjacent to the channel to dry, provided that the material must, no later than one-year after the date that the maintenance activity was completed, be moved uplands or be spread in a thin layer outside the riparian area that serves as a buffer adjacent to the channel. Material may only be permanently spread in a thin layer where agricultural activity presently and historically has occurred ¶
- (12) Maintenance activities may not result in converting wetlands to uplands and may not materially change the depth or functionality of a wetland. ¶
- (13) Impacts to wetlands caused by channel maintenance activities must be temporary and must be limited to wetlands adjacent to the channel, impacts related to accessing the site to conduct removal activities in the channel, and the removal of material and the disposal of material.¶
- (14) Maintenance activities may not result in a change in location of a channel through the digging of a new channel and the diversion of the flow from the old channel into the new channel. Maintenance activities may not

cause or result in increasing the width or depth of the channel beyond the width or depth to which the channel has routinely been maintained to facilitate drainage.[¶]

(15) Maintenance activities must not result in alteration of any existing inlet or outlet connections with other waterways.[¶]

(16) The temporary placement of material along one side of the traditionally maintained channel must include gaps or flow paths to allow channel floodwaters to access the fields upland of the channel.

Statutory/Other Authority: ORS 196.816

Statutes/Other Implemented: ORS 196.816

ADOPT: 603-095-4035

RULE SUMMARY: Provides for a new notification process implemented by Oregon Department of Agriculture for the maintenance of channels used for agricultural drainage without a Removal-Fill permit from the Oregon Department of State Lands under certain circumstances.

CHANGESTO RULE:

603-095-4035

Certifications of Compliance with Other Applicable Laws

(1) No person may conduct channel maintenance activities in a manner that violates applicable laws related to fish passage or water quality.¶¶

(2) In order to maintain a simple regulatory approach for the maintenance of traditionally maintained channels used for agricultural drainage and also to conduct maintenance activities in a manner that protects, maintains or improves the ecological functions of the channels, persons filing a notification must certify that the person conducting the maintenance activities will comply with OAR 603-095-4030 by certifying that all of the following are applicable to the location where the maintenance activities will be conducted:¶¶

(a) Non-point Source Pollution. A person filing a notification with the Oregon Department of Agriculture must certify that they have reviewed and, in conducting channel maintenance activities, will comply with relevant statutes and rules governing those activities as provided in ORS 568.900 et seq. and the agricultural water quality management plans and rules governing the area where maintenance activities will be conducted.¶¶

(b) Regional Dry Maintenance Time Period. A person filing a notification with the Department must certify that the planned maintenance activities will occur only during the regional dry maintenance time period for the area of the planned maintenance activities, as designated by the Oregon Department of Fish and Wildlife.

Statutory/Other Authority: ORS 196.816

Statutes/Other Implemented: ORS 196.816

ADOPT: 603-095-4040

RULE SUMMARY: Provides for a new notification process implemented by Oregon Department of Agriculture for the maintenance of channels used for agricultural drainage without a Removal-Fill permit from the Oregon Department of State Lands under certain circumstances.

CHANGESTO RULE:

603-095-4040

Prohibitions

- (1) No person may commence any removal-fill activities for the maintenance of a traditionally maintained channel unless a valid notice is posted on the Oregon Department of Agriculture website, the Department has not responded within 45 days of receiving a complete notification per ORS 196.915(3) and OAR 603-095 4020(6), or unless a removal-fill permit, pursuant to ORS Chapter 196.911, is obtained from the Oregon Department of State Lands.
- (2) No person may commence any removal activities in a traditionally maintained channel that is not dry unless a variance is obtained from the Oregon Department of Agriculture. The variance may be granted for a channel that is not dry due to a rain event and not indicative of a perennial stream.
- (3) A person with a valid notice may not conduct activities that result in removal of more than 3,000 cubic yards per linear mile of a traditionally maintained channel over the course of the five-year period for which the notice is valid.
- (4) A person with a valid notice may only spread in a thin layer excavated material in a converted wetland or where agricultural activity presently and historically has occurred, and not in a volume of greater than 3,000 cubic yards per linear mile of traditionally maintained channel over the course of the five-year period for which the notice is valid.
- (5) A person with a valid notice may not conduct any maintenance activities, remove or place fill material in a channel that has been designated by the Oregon Department of State Lands as Essential Indigenous Anadromous Salmonid Habitat, per ORS 196.810.
- (6) A person with a valid notice may not, through the conduct or result of any maintenance activities, enlarge a water right or cause injury to an existing water right.
- (7) Maintenance activities must not violate any condition in the applicable valid notification.
- (8) No work associated with a valid notice may result in the permanent conversion of wetlands to uplands.
- (9) Maintenance activities shall not include altering traditionally maintained channels to allow for storage of water that could be used for irrigation or exceed the historic capacity of the channel.
- (10) Maintenance activities shall not be conducted in channels other than traditionally maintained channels, as defined in 603-095-4005(15).

Statutory/Other Authority: ORS 196.816

Statutes/Other Implemented: ORS 196.816

ADOPT: 603-095-4045

RULE SUMMARY: Provides for a new notification process implemented by Oregon Department of Agriculture for the maintenance of channels used for agricultural drainage without a Removal-Fill permit from the Oregon Department of State Lands under certain circumstances.

CHANGESTO RULE:

603-095-4045

Variances

(1) Prior to initiation of maintenance activities, a person with a valid notice on file with the Oregon Department of Agriculture may request a variance from any mandatory condition in the valid notice. Commencement of channel maintenance activities may not occur until the Department provides a concurrence or denial of the variance request. ¶

(2) Requests for a variance must be submitted on a form provided by the Department of Agriculture and shall include at a minimum the following information:¶

(a) The mandatory condition(s) that are the subject of the request for the variance;¶

(b) The reasons for the request for the variance; and¶

(c) Proposed alternative actions that avoid or reduce the adverse effects to the resource and that protects, maintains, or improves the ecological function of the channel(s).¶

(3) Within five days of receiving a complete variance request form, the Oregon Department of Agriculture shall forward the request for variance to the Oregon Department of Fish and Wildlife for review and consultation.¶

(4) After consultation with the Oregon Department of Fish and Wildlife, the Department of Agriculture may authorize the variance with additional conditions or modification of conditions. ¶

(5) The Oregon Department of Agriculture may decide to deny the variance request. ¶

(a) All actions performed under a variance must demonstrate that they avoid or reduce the adverse effects to the resource, and that they protect, maintain, or improve the ecological function of the channel(s).¶

(b) If a request for variance is not granted, work under the notice may commence and proceed only in accordance with mandatory conditions posted in the valid notice on the Department website.

Statutory/Other Authority: ORS 196.816

Statutes/Other Implemented: ORS 196.816

ADOPT: 603-095-4050

RULE SUMMARY: Provides for a new notification process implemented by Oregon Department of Agriculture for the maintenance of channels used for agricultural drainage without a Removal-Fill permit from the Oregon Department of State Lands under certain circumstances.

CHANGESTO RULE:

603-095-4050

Entry Upon Land

(1) Subject to paragraph (2) of this subsection, the Oregon Department of Agriculture or the Oregon Department of Fish and Wildlife may enter onto and inspect lands for which notices have been filed under ORS 196.900 - 196.919 and these rules in order to develop the recommendations and response required by under ORS 196.900 - 196.919 and these rules or to ascertain compliance with ORS 196.900 - 196.919 and these rules. ¶

(2) To enter onto and inspect lands under this subsection: ¶

(a) The Oregon Department of Agriculture shall first make a reasonable attempt to notify the landowner; and ¶

(b) The Departments may only enter onto and inspect the lands at a reasonable time. ¶

(c) Per ORS 196.915(6), the Oregon Department of Fish and Wildlife may not, without the express agreement of the person, district, company or corporation that filed the notice, enter onto and inspect the lands unless accompanied by the Oregon Department of Agriculture.

Statutory/Other Authority: ORS 196.816

Statutes/Other Implemented: ORS 196.816

ADOPT: 603-095-4055

RULE SUMMARY: Provides for a new notification process implemented by Oregon Department of Agriculture for the maintenance of channels used for agricultural drainage without a Removal-Fill permit from the Oregon Department of State Lands under certain circumstances.

CHANGESTO RULE:

603-095-4055

Compliance and Enforcement Procedures

(1) Upon finding that a person has engaged in removal-fill activities for the maintenance of a traditionally maintained channel without a permit required under ORS 196.810 and in violation of ORS 196.911, 196.913, or 196.915, and these rules, the Oregon Department of Agriculture, in consultation with the Oregon Department of State Lands and the Oregon Department of Fish and Wildlife, shall notify the person and direct the person to take any actions necessary to bring the maintenance activities into compliance with ORS 196.911, 196.913, or 196.915 and these rules within a reasonable period of time. ¶

(2) In all cases, the Oregon Department of Agriculture, in consultation with the Oregon Department of State Lands, shall make reasonable efforts to induce voluntary compliance, prior to the assessment of any civil penalty under ORS 196.890 for violation of ORS 196.911, 196.913, or 196.915 and these rules. ¶

(3) The Oregon Department of Agriculture may refer noncompliance concerns to the Oregon Department of State Lands to initiate any enforcement actions.

Statutory/Other Authority: ORS 196.816

Statutes/Other Implemented: ORS 196.816

ADOPT: 603-095-4060

RULE SUMMARY: Provides for a new notification process implemented by Oregon Department of Agriculture for the maintenance of channels used for agricultural drainage without a Removal-Fill permit from the Oregon Department of State Lands under certain circumstances.

CHANGESTO RULE:

603-095-4060

Expedited Review

(1) Upon a request from the person submitting a notice under ORS 196.911 and these rules, the Oregon Department of Agriculture and the Oregon Department of Fish and Wildlife may provide for expedited review under ORS 196.915(4) and these rules, if the expedited review is necessary to allow for maintenance activities to occur within a specific time period. ¶

(2) Expedited review requests shall be completed on a form provided by the Oregon Department of Agriculture. The form must be filled out completely and accurately. If not the Oregon Department of Agriculture may deny the request. The Department, in consultation with the Oregon Department of Fish and Wildlife, will consider immediate threats to public health, safety, or substantial property, including crop and farm land.

Statutory/Other Authority: ORS 196.816

Statutes/Other Implemented: ORS 196.816