

OFFICE OF THE SECRETARY OF STATE

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SECRETARY OF STATE

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AND TRIBAL LIAISON



ARCHIVES DIVISION

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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 603  
DEPARTMENT OF AGRICULTURE

**FILED**

06/13/2024 3:28 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Incorporate Senate Bill 85; make significant modifications to existing rules, including CAFO definition.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 07/22/2024 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:  
Sunny Summers  
Rules Coordinator

HEARING(S)

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

DATE: 07/15/2024

TIME: 1:00 PM - 2:30 PM

OFFICER: TBD

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 503-446-4951

CONFERENCE ID: 24700972214

SPECIAL INSTRUCTIONS:

Meeting ID: 247 009 722 14

Passcode: FiJB3a

Dial in by phone

+1 503-446-4951,,866933208#

NEED FOR THE RULE(S)

Senate Bill 85 was signed into law in July 2023, creating several new requirements and definitions for the Oregon Department of Agriculture (ODA) CAFO program, and necessitating a rulemaking to incorporate these changes. The changes incorporated as a result of Senate Bill 85 included new requirements that apply to new large CAFOs or expanding large CAFOs, including consultation requirements, requirements to submit a water supply plan, additional inspection requirements, and the requirement to obtain an individual rather than general, permit in some circumstances. The changes incorporated as a result of Senate Bill 85 also included some requirements imposed on small, medium, or large CAFOs renewing their permits. The reopening of the rules to address Senate Bill 85 also provided an opportunity for ODA to holistically reassess the rules, including correcting and updating outdated or

confusing language, reworking the definition of a "CAFO" to provide more clarity to producers which would be subject to the CAFO program, modifying the administrative review process applicable to various agency actions under the CAFO program, clarifying construction requirements, and making other significant changes.

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#### DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

OAR 603-074- OR Secretary of State Website

ORS 468B- OR State Legislature Website

Senate Bill 85- OR State Legislature Website

1400-B WPCF Permit- OR DEQ Website

Water Requirements of Livestock- Ontario Ministry of Agriculture, Food and Rural Affairs website

How Much Water Do My Animals Need Each Day?- University of California Cooperative Extension Foothill Farming Website

Livestock Water Requirements- North Dakota State University Extension Website

Livestock Watering Requirements-Quantity and Quality- British Columbia Ministry of Agriculture and Food Website

Water Requirements for Beef Cattle-Engineering #19- Field Office Technical Guide WA NRCS

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#### STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

Adoption of these rules may help small producers by clarifying what operations require a CAFO permit. The rules also address additional permit consideration in ground water management areas and critical ground water areas which may protect underserved communities that are disproportionately at risk in the state.

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#### FISCAL AND ECONOMIC IMPACT:

The potential magnitude of additional costs cannot be quantified at this time, however ODA expects the fiscal impact of adopting these rules to be minimal.

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#### 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).*

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s):

ODA does not expect any state agencies, units of local government, or members of the public at large to be economically affected by the rules. The primary economic effects of the rules are likely to be felt by members of the public who operate CAFOs. ODA also acknowledges that the rules may have indirect costs of time and labor expenditure for Oregon Water Resources Department and Department of Environmental Quality if they undergo rulemaking in response to ODA's rules or if they attend a preliminary consultation specified in rule.

(2) Effect on small businesses:

(a) estimate the number and type of small businesses subject to the rule(s);

All entities that meet the definition of a CAFO will be subject to regulation under the proposed rules. Currently there are 362 small and medium operations on a CAFO permit. It is estimated that 17 of the smallest permitted operations will not constitute CAFOs under the new definition of a CAFO, however they will continue to be regulated by ODA under the Agricultural Water Quality Program. The number of additional operations that will meet the definition of a CAFO and will be subject to the rules is not known.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the

rule(s);

Costs to comply are expected to be minimal, however, the Department recognizes that additional application and renewal requirements will incur indirect costs of time and labor to comply. These indirect costs are also expected to be minimal.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

Although engineered plans have been a program requirement, professional services may be a cost to comply with the rules. These costs are difficult to estimate given the wide range of operation size and complexity that will require engineered plans. ODA recognizes that additional application and renewal requirements will incur indirect costs of time and labor to comply, but these indirect costs are expected to be minimal.

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

Small businesses were consulted through three Rule Advisory Committee meetings held by the Department on the following dates:

- 4/4/2024
- 4/18/2024
- 5/2/2024

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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RULES PROPOSED:

603-074-0010, 603-074-0011, 603-074-0012, 603-074-0014, 603-074-0016, 603-074-0018, 603-074-0019, 603-074-0020, 603-074-0030, 603-074-0040, 603-074-0050, 603-074-0060, 603-074-0070, 603-074-0080

AMEND: 603-074-0010

RULE SUMMARY: Amends the definition of a CAFO and amends, incorporates, and removes other definitions relating to CAFO rules.

CHANGES TO RULE:

603-074-0010  
Definitions ¶

Unless the context or OAR chapter 340, division 051 or 052 require otherwise, as used in these rules:¶

(1) "Animal unit" means a unit of measure used to compare animals of different species, equal to 1,000 pounds of live weight. ¶

(2) "Annual fee" means that fee required each year of operation for each ~~confined animal feeding operation~~ CAFO with a national pollutant discharge elimination system (NPDES) permit or a water pollution control facilities (WPCF) ~~waste disposal permit including, but not limited to,~~ that fee required under ORS 561.255 as amended by ~~HB 2061 (2019)~~ permit. ¶

(23) "Compliance" means meeting the requirements of ORS Chapter 468 or 468B ~~or~~ and 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 oper~~ CAFO. A person not subject to regulations of a CAFO are subject to Agricultural Water Quality Management regulation,s or a confined animal feeding operation of ORS chapter 568, OAR chapter 603 divisions 90 and 95. ¶

(34) "Confined animal feeding operation (or CAFO)" 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 shipp~~ An operation that engages in the feeding or holding of animals: / ¶

(A) In buildings, /pens, or lots not sustaining vegetative growth ing 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 workshe normal growing season, for 12 hours or more per day for more than 120 days in a 12-month period, and has animal numbers as referred to in OAR 603-074-0011; or ¶~~

~~(B) With a waste water control facility and generates 100 gallons per day or more of liquid manure, process wastewater, or contaminated production area drainage; 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. ¶~~

~~(45) "Department" means the Oregon Department of Agriculture (ODA) or the Oregon Department of Environmental Quality (DEQ). ¶~~

~~(56) "Director" means the director of the Oregon Department of Agriculture or the director of the Oregon Department of Environmental Quality. ¶~~

~~(67) "Flagrant violation" means any violation where the respondent~~ Expanding CAFO means a CAFO that is expanding operational size into a new tier as described in OAR 603-074-0011. ¶

~~(8) "Expanding large CAFO" means a large CAFO in the largest tier described in OAR 603-074-0011 that is expanding the capacity of the large CAFO to manage animal wastes, consistent with the conditions of a permit issued under ORS 468B.050, to more than 20 percent of the capacity of the large CAFO. ¶~~

~~(9) "Flagrant" means conduct where the person had actual knowledge of the law and knowingly committed the violation. ¶~~

~~(710) "Formal enforcement action" means any order of the director or the director's designee that is issued to a respondent person in connection with a violation and requires the respondent person 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. ¶~~

~~(811) "General Permit" means CAFO NPDES General Permit #01-2016 (issued October-March 31, 200316) or CAFO WPCF General Permit #01-2015 (issued October 1, 2015) or any CAFO general permit subsequently issued. ¶~~

~~(912) "General permitted confined animal feeding operation CAFO" means: ¶~~

~~(a) A small confined animal feeding operation tier CAFO that is registered to a general NPDES or WPCF pPermit and has less than 200 dairy cattle, less than 300 cattle, or less than a the number of animals of other species as described in the attached table under a small operation; ¶~~

~~(b) A medium confined animal feeding operation table in OAR 603-074-0011 under a small operation or has fewer animal numbers but meets the definition of a CAFO under OAR 603-074-0010(4); ¶~~

~~(b) A medium tier CAFO that is registered to a general NPDES or WPCF pPermit and has between 200 and 699 mature dairy cattle, between 300 and 999 cattle, or the numbers of animals of other species as described in the attached table table in OAR 603-074-0011 for a medium operation; ¶~~

~~(c) A large Tier I confined animal feeding operation CAFO that is registered to a general NPDES or WPCF pPermit and has between 700 and 2,499 mature dairy cows, between 1,000 and 3,499 cattle, or numbers of other species described in the attached table for a Tier I large confined animal feeding the number of animals described in the table in OAR 603-074-0011 for a large Tier I operation; or is a large livestock auction yard or large seasonal feedlot that is registered to a general NPDES or WPCF Permit; or ¶~~

~~(d) A large Tier II confined animal feeding operation CAFO that is registered to a general NPDES or WPCF pPermit and has 2,500 or more mature dairy cows, 3,500 or more cattle, or numbers of other species described in the attached table for a Tier II large confined animal feeding operation. the numbers of animals described in the table in OAR 603-074-0011 for a large Tier II operation. ¶~~

~~(13) "Ground water management area or GWMA" means an area in which contaminants in the ground water have exceeded the levels established under ORS 468B.165, and that the affected area has been declared under ORS 468B.180. ¶~~

~~(104) "Individual Permit" means an NPDES Permit or a WPCF Permit issued to a confined animal feeding CAFO specific to its operation. ¶~~

~~(115) "Individual Permitted confined animal feeding operation CAFO" means: ¶~~

~~(a) A Tier I confined animal feeding operation CAFO that is registered to an individual NPDES or WPCF pPermit and has no more than 9,999 mature dairy cows, no more than 12,249 cattle, or nor more than the number of animals of other species described in the attached table for a Tier I individual confined animal feeding operation; or ¶~~

~~(b) A Tier II confined animal feeding operation described in the table in OAR 603-074-0011 for a Tier I individual CAFO; or ¶~~

~~(b) A Tier II CAFO that is registered to an individual NPDES or WPCF pPermit and that has 10,000 or more mature dairy cows, 12,250 or more cattle, or more than the number of other specie animals described in the attached table~~

~~for a Tier II individual confined animal feeding operation.~~ ¶

~~table in OAR 603-074-0011 for a Tier II individual CAFO.~~ ¶

~~(126) "Intentional" means conduct by a person with a conscious objective to cause the result of the conduct.~~ ¶

~~(137) "Livestock auction market" means a place of business to which the public may consign livestock for sale by auction open to public bidding or sold on a commission basis.~~ ¶

~~(148) "Manure" means manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.~~ ¶

~~(15) "Navigable waters" means all navigable waters of the United States and their tributaries; interstate waters; and interstate lakes, rivers, and streams that are used by interstate travelers for recreation or other purposes or from which fish or shellfish are taken and sold in interstate commerce or that are used for industrial purposes by industries in interstate commerce.~~ ¶

~~livestock excreta and soiled bedding, compost, or other materials commingled with livestock excreta.~~ ¶

~~(169) "Negligence" or "negligent" means failure to take reasonable care to avoid a foreseeable risk of committing a violation.~~ ¶

~~(1720) "New confined animal CAFO" means a CAFO that is seeking operation" means a newly constructed confined animal feeding operation that has never been permitted or a confined animal feeding unit under ORS 468B.050 to operate on a parcel of land on which no CAFO has previously operated. A CAFO is considered to have previously operated that is not newly constructed but which is not currently operated when it has been issued a WPCF or NPDES Permit.~~ ¶

~~(21) "New large CAFO" means a large CAFO that is seeking a permitted under either an individual or a general NPDES or WPCF permit but from which pollutants may discharge in ORS 468B.050 to operate on a parcel of land on which no CAFO has previously operated. A CAFO is considered to have previously operated when it has been issued a WPCF or NPDES Permit.~~ ¶

~~(18) previously operated when it has been issued a WPCF or NPDES Permit.~~ ¶

~~(22) "NPDES Permit" means a waste discharge permit issued in accordance with the National Pollutant Discharge Elimination System authorized by the Federal Clean Water Act, and OAR chapter 340, division 045.~~ ¶

~~(1923) "Order" has the meaning given in ORS 183.310(5). Parcel of land" means the tax lot, as identified by county records, on which the production area of a CAFO is located.~~ ¶

~~(204) "Person" means any individual, the United States and agencies thereof, any state, any individual, public or private corporation, political subdivision, governmental agency, municipality, co-partnership, association, firm, trust, estate or any other legal entity whatever.~~ ¶

~~(215) "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.~~ ¶

~~(226) "Pollution" or "water pollution" has the meaning given in ORS 468B.005(3).~~ ¶

~~(23) "Previous notice of the same or similar violation," as used in OAR 603-074-0070(2), means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.~~ ¶

~~(27) "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 ten 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.~~ ¶

~~(248) "Process wastewater" or "process wastes" means water directly or indirectly used or liquids created in the operation of the CAFO for any or all of the following including but not limited to: 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; and 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.~~ ¶

~~(259) "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, milk rooms, milking centers, cow yards, 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. ¶

~~(2630)~~ "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. ¶

~~(2731)~~ "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. ¶

~~(28)~~ "Respondent" means a person to whom a formal enforcement action is directed. ¶

~~(29)~~ "Rule" has the meaning given in ORS 183.310(8). ¶

~~(30)~~ ¶

~~(32)~~ "Seasonal Feedlot" means a CAFO which confines animals for six months or less duration and that may or may not have waste water control facilities in a feedlot. ¶

~~(313)~~ "Violation" means the failure to comply with any requirement of ORS Chapter 468 or 468B, or any rule, order or permit adopted or issued thereunder and relating to the control and prevention of pollution of the waters of the state from a confined animal feeding operation at a CAFO. 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. ¶

~~(324)~~ "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, liquid manure, process wastewater, or contaminated production area drainage (e.g., silage leachate, contaminated storm water runoff, etc.) at confined animal feeding operations. ¶

~~(35)~~ "Wastes" means sewage, industrial wastes, agricultural wastes, and all other liquid, gaseous, solid, radioactive or other substances which will or may cause pollution or tend to cause pollution of any waters of the state. ¶

~~(336)~~ "Wastes" has the meaning given in ORS 468B.005(7). ¶

~~(34)~~ "Water" or "the waters of the state" has the meaning given in ORS 468B.005(8) or "the waters of the state" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. ¶

~~(357)~~ "WPCF Permit" means a Water Pollution Control Facilities Permit to construct and operate a disposal system with no discharge to navigable waters that has been issued under OAR chapter 340, divisions 45 or 71.

Statutory/Other Authority: ORS 561.190, ORS 561.191, 468B.205

Statutes/Other Implemented: OL Ch. 248, HB 468B.205, ORS 468B.035, ORS 468B.050, 468B.2156

ADOPT: 603-074-0011

RULE SUMMARY: A table describing CAFO permit designations based on animal type and numbers.

CHANGES TO RULE:

603-074-0011

Permit Designations

Table describes CAFO permit designations based on animal type and numbers.

Statutory/Other Authority: ORS 561.190, 561.191, 561.255, 468B.050, 468B.215

Statutes/Other Implemented: 561.255, 468B.215, ORS 468B.205

RULE ATTACHMENTS MAY NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.



603-074-0011  
Permit Designations

Transfer fee for all sizes: \$200						
Application Fee	\$100	\$150	\$300		\$15,000	
Annual Fee	\$125	\$250	\$400	\$900	\$3,500	\$10,000
	General Permit				Individual Permit	
Operations that require permit	Small Tier	Medium Tier	Large Tier I <sup>1</sup>	Large Tier II	Individual Tier I	Individual Tier II
mature dairy cows <sup>2</sup>	20-199	200-699	700-2,499	2,500 or more	Up to 9,999	10,000 or more
veal calves	30-299	300-999	1,000-3,499	3,500 or more	Up to 12,249	12,250 or more
cattle <sup>3</sup>	40-299	300-999	1,000-3,499	3,500 or more	Up to 12,249	12,250 or more
swine ≥ 55 lbs	75-749	750-2,499	2,500-7,999	8,000 or more	Up to 19,999	20,000 or more
swine < 55 lbs	300-2,999	3,000-9,999	10,000-29,999	30,000 or more	Up to 49,999	50,000 or more
horses	15-149	150-499	500-1,499	1,500 or more	Up to 2,499	2,500 or more
sheep, lambs, or goats	300-2,999	3,000-9,999	10,000-39,999	40,000 or more	Up to 74,499	75,000 or more
turkeys	1,650-16,499	16,500-54,999	55,000-199,999	200,000 or more	Up to 349,999	350,000 or more
chickens, including laying hens or broilers, w/wet waste system	900-8,999	9,000-29,999	30,000-124,999	125,000 or more	Up to 199,999	200,000 or more
laying hens w/dry waste system	2,500-24,999	25,000-81,999	82,000-299,999	300,000 or more	Up to 449,999	450,000 or more
broiler chickens w/dry waste system	3,750-37,499	37,500-124,999	125,000-349,999	350,000 or more	Up to 499,999	500,000 or more
ducks w/dry waste system	1,000-9,999	10,000-29,999	30,000-124,999	125,000 or more	Up to 199,999	20,000 or more
ducks w/wet waste system	150-1,499	1,500-4,999	5,000 - 19,999	20,000 or more	Up to 49,999	50,000 or more
other animal type <sup>4</sup> or animal combination greater than 30 animal units	As determined by the Director					

<sup>1</sup> Also includes all large livestock auction yards and seasonal feedlots.

<sup>2</sup> Whether milked or dry.

<sup>3</sup> Other than mature dairy cows or veal calves; cattle include but is not limited to heifers, steers, bulls and cow/calf pairs.

<sup>4</sup> To determine the number of animals that require permit coverage, ODA will compare the operation to the most similar animal type in the table.



AMEND: 603-074-0012

RULE SUMMARY: Adds additional CAFO permit application materials and actions.

CHANGES TO RULE:

603-074-0012

Permit Application Procedures ¶¶

(1) Except as provided in OAR 603-074-0020 below, permits for ~~Confined Animal Feeding Operation~~CAFOs 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 request.~~(a) Before submitting an application for a permit for a new large CAFO or an expanding large CAFO, a person shall: ¶¶

(A) Request that DEQ or ODA schedule a preliminary consultation. ¶¶

(B) Participate in the preliminary consultation. ¶¶

(b) Before scheduling the preliminary consultation, the Department shall: ¶¶

(A) Notify the governing bodies of all federally recognized Indian Tribes in this state; and ¶¶

(B) Consult with the governing bodies of those Tribes, upon request by the governing bodies. ¶¶

(c) The preliminary consultation must: ¶¶

(A) Include the applicant, DEQ, ODA, the Oregon Water Resources Department (OWRD) and other relevant state agencies, as determined by DEQ and ODA. ¶¶

(B) Occur not more than 45 days after the request is received. ¶¶

(3) A new large CAFO that is proposed to be located in a GWMA and land applies manure, litter or process wastewater to land within the GWMA must seek coverage under an individual NPDES or individual WPCF permit. ¶¶

(4) A complete application for a CAFO permit consists of: an Application to Register (ATR), Land Use Compatibility Statement (LUCS), Nutrient Management Plan (NMP), Application Fee, and if applicable: ¶¶

(a) A signed declaration of the preliminary consultation, if the person is subject to a preliminary consultation described in subsection (2). ¶¶

(b) A Water Supply Plan (WSP) as described in OAR 603-074-0019, if: ¶¶

(A) A new or expanding CAFO applies for a permit on or after July 27, 2023. ¶¶

(B) A large CAFO renews its permit on or after July 1, 2024, or ¶¶

(C) A small or medium CAFO renews its permit on or after July 1, 2025. ¶¶

(c) Construction approval package as described in OAR 603-074-0018(3). ¶¶

(5) Once the Department receives a complete application for a CAFO permit, if applicable, the Department will issue a public notice and set a hearing under the applicable provisions of OAR chapter 340, division 45. ¶¶

(6) Ten days prior to issuing a public notice for a new large CAFO, the Department will inform the applicant of a new large CAFO the proposed date of the public notice period. After receiving a contested case hearing pursuant to ORS 183.413 to 183.470 firmation that the Department plans to issue a public notice and set a hearing, the applicant will send individual notice of the public comment period for the permit by mail to all persons on record as owning property within one-half mile of the parcel of land on which the new large CAFO is proposed to be located.

Statutory/Other Authority: ORS 561.468B.190, 561.191, 468B.050

Statutes/Other Implemented: ~~ORS 561.468B~~468B.050, ORS 468B.055, 468B.212, 468B.215

AMEND: 603-074-0014

RULE SUMMARY: Clarifies CAFO general permits and who must obtain coverage.

CHANGES TO RULE:

603-074-0014

Adoption of General Permits ~~¶~~

~~(1) The following general permits are adopted by reference in this rule and available for review at the department: ¶~~

~~(a) NPDES number 01 (Confined Animal Feeding Operations) (issued on March 31, 2016). ¶~~

~~(ab) NPDES/WPCF number 01 (Confined Animal Feeding Operations) (issued on October 1, 2003~~15~~). ¶~~

~~(bc) A complete copy of the each 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, or owning the land on which a CAFO is to be constructed, has a duty to obtain, as applicable, coverage under the Oregon CAFO General permit (NPDES number 01 or WPCF number 01) or coverage under an individual NPDES or individual WPCF Permit. ¶~~

~~(3) Any person owning or operating a CAFO, or owning the land on which a CAFO is to be constructed, must submit an ODA Application to Register (ATR) complete application package for a CAFO permit according to the following schedule: ¶~~

~~(a) All newly construct proposed CAFOs: Newly construct proposed CAFOs, including "new sources," must submit an ATR must submit a complete application described in OAR 603-074-0012(4) at least 180 days prior to the time that the CAFO intends to commence operation. ¶~~

~~(b) Existing unpermitted CAFOs that met the previous definition of concentrated animal feeding operations (AFO)s: CAFOs that were defined as concentrated under federal regulations in effect prior to April 14, 2003, must submit an ATR immediately. ¶~~

~~(c) For those existing CAFOs newly defined as concentrated AFOs as of April 14, 2003: CAFOs that met the federal definition of concentrated required to be permitted under ORS 468B.050 or ORS 468B.215 must submit a completed 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 application described in OAR 603-074-0012(4) immediately. ¶~~

~~(c) AFOs designated by the director: AFOs designated by the director as a concentrated AFOs after April 14, 2003: CAFOs that become defined as concentrated after April 14, 2003, must submit an ATR wi must submit a complete application described in OAR 603-074-0012(4) no later than 90 days after become being 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 notice of designation. ¶~~

~~(4) The Department may not issue a general NPDES or WPCF permit to a new large 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: ¶~~

~~(a) Is located in a GWMA; and ¶~~

~~(b) Applies manure, litter, or process wastewater to land within the GWMA.~~

Statutory/Other Authority: ORS 468B.050, 468.035, 468B.217, 561.190, 561.191 & OL 2001, Ch. 248, Sec. 1(2)

Statutes/Other Implemented: ORS 468B.050, 468B.200 – 468B.230, 561.191 & OL 2001, Ch. 248 561.191, ORS 468B.200-.230

AMEND: 603-074-0016

RULE SUMMARY: Corrects language surrounding the types of people involved in complaints.

CHANGES TO RULE:

603-074-0016

Complaint Evaluation ¶

(1) "Complaint" means information provided by a ~~person~~complainant 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~~CAFO. ¶

(2) If the ~~d~~Department finds, upon investigation of the complaint, that the complaint was groundless and made for the purposes of harassing the ~~operator~~, ~~the d~~erson against whom the complaint was filed, 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~~erson against whom the complaint was filed and complainant; ¶

(b) Number and validity of previous complaints filed by complainant against the ~~operator~~; same person; and ¶

(c) Frequency of complaints filed by complainant against the ~~operator~~erson.

Statutory/Other Authority: ORS 561.190, 561.191

Statutes/Other Implemented: ~~OL Ch. 248, HB 2156~~RS 468B.225

AMEND: 603-074-0018

RULE SUMMARY: Spells out the CAFO construction process and incorporates Senate Bill 85 requirements.

CHANGES TO RULE:

603-074-0018

Certification of Plans and Specifications on Construction Requirements

(1) For existing operations not previously permitted, 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 OAR 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 and process wastewater. For the 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.

(b) 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 facility is such that review is needed to ensure protection of waters of the state.

(3) Prior to constructing or substantially modifying a CAFO or waste water control facility at a CAFO, a construction approval package must be submitted to the Department, consisting of:

(a) A Construction Approval Request (CAR) form;

(b) Site map sufficient to detail the location of the proposed structures in the production area, the direction of manure or process wastewater flow, and stormwater diversion features;

(c) Updated NMP that incorporates the proposed systems and meets all NMP requirements including updated or anticipated calculations with the proposed facility changes, and

(d) Operation and maintenance documents for each of the structures listed in (4)(b) to be included in the updated NMP.

(4) Construction may not commence until the permittee is in receipt of a signed construction approval letter from ODA. Any notice of disapproval will contain itemized deficiencies. The Department may only issue signed approval upon receipt of:

(a) A complete construction approval package matching permit requirements, and

(b) Engineer stamped plans, by an engineer licensed in the state of Oregon, for, but not limited to: liquid storage systems to include lagoons, ponds, settling basins, and below ground storage and transfer tanks. Technical specifications of a prefabricated structure may be accepted in lieu of engineer stamped plans.

(5) Pre-population Inspections:

(a) The following CAFOs are subject to a pre-population inspection:

(A) A new or expanding CAFO that applies for a permit on or after July 27, 2023;

(B) A large CAFO that renews its permit on or after July 1, 2024, and

(C) A small and medium CAFO that renews its needed to ensure protection of waters of the state permit on or after July 1, 2025.

(b) After being issued a permit under ORS 468B.050, a permittee may not introduce animals to newly constructed facilities of a permitted CAFO, subject to a pre-population inspection, without an order from the Department under this section that authorizes the introduction of animals.

(c) Once construction at a CAFO that is subject to pre-population inspection is complete, the permittee shall notify the Department that it wishes to bring animals to newly constructed facilities, request a Department inspection, and respond to any requests from the Department for additional information under subsection (5)(c)(B) of this rule within 30 days of receipt of a request. The Department:

(A) Will inspect the CAFO;

(B) May request additional information from the permittee to allow the Department to analyze whether the

construction and installation of any systems to manage wastes including waste water control facilities and relevant operational functions of the CAFO comply with CAFO permit conditions; and ¶  
(C) Will issue an order that either approves or denies the request to bring animals to newly constructed facilities. The Department shall approve the request if the Department concludes that the construction and installation of any systems to manage wastes including waste water control facilities and relevant operational functions of the CAFO comply with CAFO permit conditions. If the Department is unable to conclude that the construction and installation of those systems of the CAFO comply with CAFO permit conditions, the Department shall issue an order of disapproval with itemized deficiencies.

Statutory/Other Authority: ORS 468.020, 468B.200 - 468B.230

Statutes/Other Implemented: ORS 468.005, 468B.005, 468B.055, 468B.205, 468B.215

ADOPT: 603-074-0019

RULE SUMMARY: Describes a new CAFO permit application material which must detail water sources to supply a CAFO and provides agency developed animal water consumption guidelines.

CHANGES TO RULE:

603-074-0019

Water Supply Plan

(1) A WSP shall identify all sources of the water that will be used to supply the level and duration of the water needs of the CAFO, including any ancillary operations of the CAFO, as described in the application, including but not limited to: livestock watering, cooling, or cleaning; facility washing, cleaning, or flushing; milk and food processing; dust control and domestic needs. ¶

(2) A WSP for a CAFO that uses stockwater as described in ORS 537.545(1)(a) must use animal water consumption guidelines provided by the Department in section (5) of this rule, to estimate the gallons per day that the CAFO will use. ¶

(3) After receiving a WSP described in section (1) of this rule, the Department shall request that OWRD review the WSP to determine whether the water uses identified in the WSP are legally authorized and allowable. ¶

(4) The Department may condition a permit under ORS 468B.050 on the recommendation of OWRD on one or more of the following: ¶

(a) Requiring a CAFO that uses stockwater, as described in ORS 537.545(1)(a), or a person renewing a permit under ORS 468B.050 for a CAFO to: ¶

(A) Install water metering and submetering devices concerning a new or expanding production area; and ¶

(B) Maintain quarterly water use data that OWRD may inspect annually, upon request by OWRD. ¶

(b) Prohibiting an expanding CAFO within a critical ground water area designated by order or pursuant to ORS 537.730 from increasing the CAFO's use of water per day under the exemption described in ORS 537.545(1)(a) by more than the limit described in ORS 537.545(1)(a). ¶

(5) Animal Water Consumption Guidelines. These are general animal water consumption guideline numbers used for the purposes of determining stockwater consumption needs, but the agency acknowledges the priority to protect animal welfare. SEE ATTACHED TABLE ¶

(6) A person that renews a WPCF or NPDES Permit shall attest upon renewal of the permit that the WSP for the CAFO that was previously approved by OWRD under section (3) of this rule is accurate and reflective of the operation.

Statutory/Other Authority: ORS 561.190, 561.191, 468B.050, 468B.216

Statutes/Other Implemented: 468B.050, 468B.216, ORS 468B.215

RULE ATTACHMENTS MAY NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.



603-074-0019 (5)  
Water Supply Plan

Type of Animal	Drinking water consumption (gallons per day)
<b>BEEF</b>	
Bull	20.6
Lactating	20
Gestating	17.5
Calf	10
Feeder cattle	24
<b>DAIRY</b>	
Bull	20
Milking cow	54
Dry cow	15
Heifer	10
Calf	10
<b>SWINE</b>	
Boar	6
Sow	6
Weaner	2
Feeder	3
<b>CHICKEN</b>	
Broiler	203.4/1000 birds
Layer	84.5/1000 birds
Breeder	85/1000 birds
Pullet	48/1000 birds
<b>TURKEYS</b>	
15-21wk	300.9/1000 birds
1-7wk	118.3/1000 birds
<b>SHEEP/GOATS</b>	
Ram	2
Gestating	2.5
Lactating	3.5
Lamb/kid	3.5
<b>EQUINE</b>	
Horses	21.7
Donkeys	15.6
Mules	15.6
<b>OTHERS</b>	
Consult with ODA	

AMEND: 603-074-0020

RULE SUMMARY: Cleans up and reorganizes fee language.

CHANGES TO RULE:

603-074-0020

Permit Fees ¶

~~(1) Initial Application Fee. Any person owning or operating a confined animal feeding operation under an NPDES CAFO permit or a WPCF CAFO permit~~ Each CAFO operating under an NPDES or WPCF Permit is subject to a two-part fee consisting of the applicable new permit application fee and annual fee as described in these rules. ¶

~~(2) A person submitting an application for a new NPDES CAFO permit or a WPCF CAFO permit~~ Permit must, at the time of application, submit the amount equal to the new permit application fee and the first year's annual fee. ¶

~~(3) A person is not required to submit a fee with an application for renewal of an NPDES CAFO permit or a WPCF CAFO permit.~~ ¶

~~(4) Initial.~~ ¶

~~(3) The amount of the new permit application fees~~ shall be as follows: ¶

~~(a) General permitted small confined animal feeding operation: CAFO: / \$100.~~ ¶

~~(b) General permitted medium confined animal feeding operation: CAFO: / \$150.~~ ¶

~~(c) General permitted tier 1 and tier 2 large confined animal feeding operation~~ large Tier I and Tier II CAFOs: / \$300. ¶

~~(d) Individual permitted Tier 1 and Tier 2 confined animal feeding operations: \$15,000.~~ II CAFOs: \$15,000. ¶

~~(e) See table in OAR 603-074-011.~~ ¶

~~(5) The annual fee.~~ Any person owning or operating a confined animal feed shall be paid to the Department as follows: ¶

~~(a) For the first year, immediately prior to permit issuance upon receipt of an invoice from the Department.~~ ¶

~~(b) For any person owning or operating a CAFO under an NPDES CAFO permit or a WPCF CAFO permit~~ must pay the applicable WPCF Permit, no later than June 30th of each calendar year, for as long as the NPDES or WPCF Permit is active. ¶

~~(6) The amount of the annual fee shall be paid to the Department no later than June 30 of each calendar year as follows:~~ ¶

~~(a) General permitted small confined animal feeding operation: CAFO: / \$125.~~ ¶

~~(b) General permitted medium confined animal feeding operation: CAFO: / \$250.~~ ¶

~~(c) General permitted Tier I large confined animal feeding operation: large Tier I CAFO: / \$400.~~ ¶

~~(d) General permitted Tier II large confined animal feeding operation: large Tier II CAFO: / \$900.~~ ¶

~~(e) Individual permitted Tier I confined animal feeding operation CAFO: \$3,500.~~ ¶

~~(f) Individual permitted Tier II confined animal feeding operation: CAFO: / \$10,000.~~ ¶

~~(g) See attached table.~~ ¶

~~(7) Transfer Fee.~~ table in OAR 603-074-0011. ¶

~~(6) Any person proposing to transfer a NPDES CAFO permit or a WPCF CAFO permit~~ Permit to another person, as provided in OAR 340-045-0040, shall submit a transfer fee of \$200 at the time a transfer application is submitted to the Department. ¶

~~(8) All fees must be made payable to the Oregon Department of Agriculture.~~

Statutory/Other Authority: ORS 561.190, 561.191, ~~ORS 468 B, 561~~561.255, 468B.215

Statutes/Other Implemented: ~~OL Ch. 248, HB 2156, HB 2061 (2019)~~561.255, 468B.215



AMEND: 603-074-0030

RULE SUMMARY: Clarifies the rule and corrects the language surrounding the types of people involved in violations.

CHANGES TO RULE:

603-074-0030

Multiple Violations: 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 of the same person may be consolidated into a single proceeding.

Statutory/Other Authority: ORS 468B.217, 468B.230, ~~561.190, 561.191~~

Statutes/Other Implemented: ORS ~~561.175~~468B.230

AMEND: 603-074-0040

RULE SUMMARY: Corrects the language surrounding the types of people involved in enforcement actions and changes the type of administrative and judicial review.

CHANGES TO RULE:

603-074-0040

Enforcement Actions ¶

Enforcement options include the following:¶

(1) A Notice of Noncompliance, which: ¶

(a) Informs the ~~owner or operator~~person 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~~person 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~~person 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 ~~d~~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 ~~p~~Plan of ~~e~~Correction, which: ¶

(a) Includes a statement of the actions that must be taken by the ~~owner or operator~~person 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~~person to report the completion of specific actions; ¶

(c) Is in writing and must be sent to the ~~owner or operator~~person 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 ~~d~~Department shall make a reasonable attempt to consult with the ~~subject owner or operator~~person 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 ~~d~~Department to be a failure to correct the violation within the period of time set for correction by the ~~d~~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, which is described in OAR 603-074-0070.~~

Statutory/Other Authority: ORS 468B.217, 468B.230, 561.190, 561.191

Statutes/Other Implemented: ~~ORS 561.175~~468B.230

REPEAL: 603-074-0050

RULE SUMMARY: Repealing due to this being in the APA.

CHANGES TO RULE:

~~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.~~

~~Statutory/Other Authority: ORS 468B.217, 468B.230, 561~~

~~Statutes/Other Implemented: ORS 561.175~~

REPEAL: 603-074-0060

RULE SUMMARY: Repealing due to this being in the APA.

CHANGES TO RULE:

~~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.~~

~~Statutory/Other Authority: ORS 468B.217, 468B.230, 561~~

~~Statutes/Other Implemented: ORS 561.175~~

AMEND: 603-074-0070

RULE SUMMARY: Minor grammatical and organizational changes, corrects serving requirements, and fixes references.

CHANGES TO RULE:

603-074-0070

Notice of 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~~A Notice of Civil Penalty Assessment:

(a) ~~Is issued by the director or the director's designee; and~~

(b) ~~Is issued in a manner consistent with the provisions of ORS 183.415, 468B.230 and OAR chapter 137.~~

(c) ~~In addition to any other penalty provided by law, may be assessed~~ 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~~CAFO. 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 OAR 603-074-0080(4).

(a) ~~Except for those animal feeding operation~~CAFOs defined in OAR 603-074-0010(34)(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 operation~~CAFOs defined in OAR 603-074-0010(34)(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 ~~d~~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 ~~d~~Department may issue a notice of civil penalty assessment if:

(a) The violation is intentional; or

(b) The ~~owner or operator~~person has received a previous notice of the same or similar violation; or

(c) The ~~facility meets the definition of an animal feeding operation as is a~~CAFO defined in OAR 603-074-0010(34)(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, DEQ,~~ 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 ~~d~~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 p~~WCPF or NPDES Permit, or from a point not authorized by a ~~waste discharge p~~the WCPF or NPDES 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 ~~d~~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(34)(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 (13)(b) of this rule.

Statutory/Other Authority: ORS 561.190, 561.191, 468B.217, 468B.230

Statutes/Other Implemented: ~~OL Ch. 248, HB 2156~~ 468B.230

AMEND: 603-074-0080

RULE SUMMARY: Minor grammatical changes and fixes references.

CHANGES TO RULE:

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(46). ¶
- (2) Determine the gravity of effect ~~pertinent to~~ of the violation as specified in OAR 603-074-0070(57). ¶
- (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.~~ ¶

¶

(a) Civil Penalty Matrix for First Violation ¶

Gravity of Effect-Magnitude of Violation ¶

High Medium Low ¶

: ¶

(A) High ¶

(i) Category 1 (Major)-\$1,200-\$800-\$400 ¶

¶

(ii) Category II (Moderate) \$600 ¶

(iii) Category III (Minor) \$240 ¶

(B) Medium ¶

(i) Category 1 (Major) \$800 ¶

(ii) Category II (Moderate) \$600-\$400-\$200 ¶

\$400 ¶

(iii) Category III (Minor) \$240-\$120-\$50 ¶

\$120 ¶

(C) Low ¶

(i) Category 1 (Major) \$400 ¶

(ii) Category II (Moderate) \$200 ¶

(iii) Category III (Minor) \$50 ¶

(b) Civil Penalty Matrix for Repeat Violations ¶

Gravity of Effect-Magnitude of Violation ¶

High Medium Low ¶

: ¶

(A) High ¶

(i) Category I (Major)-\$5,000-\$2,400-\$800 ¶

Category II (Moderate) \$1,600-\$800-\$400 ¶

¶

(ii) Category II (Moderate) \$1,600 ¶

(iii) Category III (Minor) \$400 ¶

(B) Medium ¶

(i) Category 1 (Major) \$2,400 ¶

(ii) Category II (Moderate) \$800 ¶

(iii) Category III (Minor) \$200 ¶

(C) Low ¶

(i) Category 1 (Major) \$800 ¶

(ii) Category II (Moderate) \$400 ¶

(iii) 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;(3). ¶

(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~~ person 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.

Statutory/Other Authority: ORS 468B.217, 468B.230, 561.190, 561.191

Statutes/Other Implemented: ~~ORS 561.175~~ 468B.230