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ARCHIVES DIVISION

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

CHAPTER 333  
OREGON HEALTH AUTHORITY  
PUBLIC HEALTH DIVISION

**FILED**  
09/23/2019 8:28 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Adoption of annual fees; replacing fees associated with sanitary surveys

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/31/2019 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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Portland, OR 97232

Filed By:  
Brittany Hall  
Rules Coordinator

HEARING(S)

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

DATE: 10/17/2019

TIME: 9:00 AM

OFFICER: Staff

ADDRESS: Portland State Office

Building

800 NE Oregon St. Room 1D

Portland, OR 97232

NEED FOR THE RULE(S):

The Oregon Health Authority, Public Health Division (Authority) proposes to permanently adopt Oregon Administrative Rule (OAR) 333-061-0089 and permanently amend OAR 333-061-0076 related to the collection of fees to partially defray the cost of the Authority's regulation of public water systems. The revised fee structure is intended to better support the Authority's regulatory responsibilities and provide water suppliers a more predictable fee schedule.

Over the past several years, funding sources have generally remained static while agency costs have increased resulting in loss of staff positions and periodic backlogs of data entry and other work. Additionally, the Authority currently lacks the capacity to provide meaningful regulatory oversight for public water systems serving less than 15 service connections or less than 25 people. The revised fee structure will increase Authority revenue approximately \$1,850,000 every biennium to more fully support the Authority's regulatory responsibilities and account for other expenses, including five additional positions and increased support for local public health agency partners, as approved by the 2019 Legislature (SB 27; Oregon Laws 2019, chapter 509).

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

OAR chapter 333, division 061, ORS chapter 448, and Senate Bill 27 (Oregon Laws 2019, chapter 509) are available for

inspection at the Oregon Health Authority, Drinking Water Services, 800 NE Oregon Street, Suite 640, Portland, OR 97232 or by calling 971-673-0405.

Oregon Administrative Rules and Oregon Revised Statutes are also available on the web at:

- OAR 333-061: [http://arcweb.sos.state.or.us/pages/rules/oars\\_300/oar\\_333/333\\_061.html](http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_333/333_061.html)

- ORS chapter 448: [https://www.oregonlegislature.gov/bills\\_laws/ors/ors448.html](https://www.oregonlegislature.gov/bills_laws/ors/ors448.html)

Senate Bill 27 (Oregon Laws 2019, chapter 509) is also available at:

<https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/SB27>

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#### FISCAL AND ECONOMIC IMPACT:

Fees related to sanitary survey inspections, which are conducted once every three to five years, will be repealed in their entirety and be replaced by a regulatory fee collected every year, annualizing the previous expense for most water systems and accounting for other regulatory costs.

The proposed fee structure is designed to keep fees simple and relatively low for the smallest public water systems. Fees for state regulated water systems are proposed at \$75 per year. Fees for non-community water systems are proposed at \$150 per year, a \$300 increase over a five-year period. Fees for small community water systems serving 15 to 250 service connections are proposed at \$175 per year, a \$75 increase over a three-year period.

Fees for community water systems serving 251 to 500 service connections remain the same, proposed at \$540 to \$900 every year depending on whether water treatment is utilized at the water system, the type of treatment applied, whether water is exclusively sold on a wholesale basis, or whether finished water is purchased for the water system

Fees for community water systems serving 501 to 3,000 service connections are increased by approximately 20%.

Fees for community water systems supplying water through more than 3,000 service connections are increased substantially, with greater fees required as the number of service connections increases. These fees will apply to approximately 75 public water systems. For example, at community water systems without water treatment and serving more than 3,000 service connections, the previous fee was \$5,400 every three years. The proposed fee is \$3,000 every year for water systems serving from 3,001 to 5,000 service connections, \$5,625 every year for water systems serving from 5,001 to 10,000 service connections, \$9,000 every year for water systems serving from 10,001 to 15,000 service connections, \$13,500 every year for water systems serving from 15,001 to 30,000 service connections, \$31,500 every year for water systems serving from 30,001 to 100,000 service connections, and \$48,750 every year for water systems serving more than 100,000 service connections.

For community water systems designated as outstanding performers during a sanitary survey, the financial benefit of receiving a sanitary survey once every five years rather than once every three years will be lost because fees will not be associated with sanitary surveys.

The estimated cost per person per year of these proposed fees ranges from \$0.11 to \$0.37 for systems with more than 3,000 service connections, with the largest systems experiencing the lowest costs per person served. The proposed fee structure recognizes the economy of scale associated with larger systems.

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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) The proposed rule amendments are not expected to impact regulatory officials and there is no anticipated cost of compliance impact on state agencies or units of local government. The proposed rule amendments have no direct cost to the public, though it is recognized that these fees are likely to be passed on to water supplier ratepayers or customers in some manner.

(2)(a) Very small public water systems are often operated by small businesses including mobile home parks, recreational vehicle parks, private campgrounds, restaurants, tourist accommodations, stores, and workplaces. Increased fees paid by these businesses will increase their overall costs of providing services.

Approximately 700 public water systems are operated as small businesses; these are among the smallest public water systems and are assessed the lowest fees. Fees for most of these water systems will be increased by a nominal amount, from \$75 to \$425 over a five-year period as described in the Fiscal and Economic Impact section of this document. Two public water systems supplying water through more than 3,000 service connections are operated by a small business and expected to pay substantially higher fees according to OAR 333-061-0089.

(b) The proposed amendments are not expected to require any additional reporting, recordkeeping or other administrative activities.

(c) The proposed amendments are not expected to require any additional equipment, supplies, labor, or administrative costs.

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

The Drinking Water Advisory Committee, which includes representatives of privately-owned public water systems, has reviewed the proposed rules and related rulemaking documents including this Statement of Need and Fiscal Impact form.

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**WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES**

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**RULES PROPOSED:**

333-061-0076, 333-061-0089

AMEND: 333-061-0076

**RULE SUMMARY:** The proposed amendment of OAR 333-061-0076 repeals the fees associated with sanitary surveys,

also referred to as water system surveys, that are conducted once every three to five years. The annual fees proposed for adoption in OAR 333-061-0089, over a three-year period, are essentially equivalent to those associated with sanitary survey fees, except where water systems serve more than 3,000 service connections, where fees are increased.

CHANGES TO RULE:

333-061-0076

Sanitary Surveys ¶¶

(1) All sanitary surveys described by this rule and defined by OAR 333-061-0020(117) shall be conducted by the Authority.¶¶

(2) Every community, NTNC and TNC water system must undergo a sanitary survey at least every five years at a frequency determined by the Authority. Water suppliers must provide the Authority, upon request:¶¶

(a) Any existing information that will enable the Authority to conduct the sanitary survey, including but not limited to, records relating to: monitoring, reporting and data verification; water system management and operations; and operator certification.¶¶

(b) Access to the entirety of the public water system, including but not limited to: source of supply; treatment; distribution system; finished water storage; pumps; and pump facilities and controls.¶¶

(3) Every sanitary survey shall be recorded and a report sent to the water supplier following the site visit. The sanitary survey report shall include, at a minimum, the following components of a water system: source of supply; treatment; distribution system; finished water storage; pumps, pump facilities and controls; monitoring, reporting and data verification; system management and operations; and operator certification compliance.¶¶

(4) The sanitary survey report will identify any significant deficiency specified in this section or any violation of drinking water regulations discovered during the site visit. Significant deficiencies for all water systems include, but are not limited to:¶¶

(a) Surface Water Treatment:¶¶

(A) Incorrect location for compliance turbidity monitoring;¶¶

(B) For systems serving more than 3,300 people, no auto-dial, call-out alarm or auto-plant shutoff for low chlorine residual;¶¶

(C) For conventional or direct filtration, no auto-dial, call-out alarm or auto-plant shutoff for high turbidity when no operator is on-site;¶¶

(D) For conventional filtration, settled water turbidity not measured daily;¶¶

(E) For conventional or direct filtration, turbidity profile not conducted on individual filters at least quarterly;¶¶

(F) For cartridge filtration, no pressure gauges before and after cartridge filter;¶¶

(G) For cartridge filtration, filters not changed according to manufacturer's recommended pressure differential; and¶¶

(H) For diatomaceous earth filtration, body feed not added with influent flow.¶¶

(b) Groundwater Well Construction:¶¶

(A) Sanitary seal and casing not watertight;¶¶

(B) Does not meet setbacks from hazards;¶¶

(C) Wellhead not protected from flooding;¶¶

(D) No raw water sample tap;¶¶

(E) No treated sample tap, if applicable; and¶¶

(F) If well vent exists, not screened.¶¶

(c) Groundwater Springbox Construction:¶¶

(A) Not constructed of impervious, durable material;¶¶

(B) No watertight access hatch/entry;¶¶

(C) No screened overflow;¶¶

(D) Does not meet setbacks from hazards;¶¶

(E) No raw water sample tap; and¶¶

(F) No treated sample tap, if applicable.¶

(d) Disinfection:¶

(A) No means to adequately determine flow rate on contact chamber effluent line;¶

(B) Failure to calculate CT values correctly; and¶

(C) No means to adequately determine disinfection contact time under peak flow and minimum storage conditions.¶

(e) Finished water storage:¶

(A) Hatch not locked;¶

(B) Roof and hatch not watertight;¶

(C) No flap-valve or equivalent over drain/overflow; and¶

(D) No screened vent.¶

(5) Sanitary survey fees. All water suppliers are subject to a fee payable to the Authority for sanitary surveys conducted according to this rule on or before the due date specified on the invoice sent to the water supplier.¶

(a) For community water systems, the sanitary survey fee is based upon either the number of connections or the population served.¶

(A) For community water systems with more than 250 service connections, the sanitary survey fee shall be based upon the number of connections served by the system.¶

(B) For community water systems with 250 service connections or less, but serving more than 1,000 people, the sanitary survey fee shall be based upon the population served by the system. For wholesale community water systems in this category, the sanitary survey fee will be assessed as a community water system without water treatment (WT) as specified in the table below.¶

(b) TNCs identified as campgrounds with multiple handpumps will be considered one water system and assessed a single fee for the purposes of this rule.¶

(c) Late fees. A late fee will be assessed to any water supplier which fails to pay the required sanitary survey fee within 10 days of the due date in the invoice sent to the water supplier. The late fee may be waived at the discretion of the Authority. Fees for sanitary surveys are listed in Table 44.¶

(6) Response required when significant deficiencies are identified:¶

(a) For water systems that use surface water sources or GWUDI sources, water suppliers must respond in writing to the Authority within 45 days of receiving the sanitary survey report.¶

(A) The water supplier's response must include:¶

(i) The plan the water supplier will follow to resolve or correct the identified significant deficiencies;¶

(ii) The plan the water supplier will follow to resolve or correct any violations of drinking water regulations identified during the sanitary survey or at any other time; and¶

(iii) The schedule the water supplier will follow to execute the plan.¶

(B) The plans and schedules identified above in subparagraphs (6)(a)(A)(i) through (iii) of this rule must be approved by the Authority.¶

(b) For water systems that use only groundwater sources, water suppliers must consult with the Authority within 30 days of receiving written notice of a significant deficiency or a violation of these rules identified during the sanitary survey. Within 120 days of receiving written notice of a significant deficiency or violation of a drinking water regulation, water suppliers must:¶

(A) Have corrected the significant deficiency or rule violation; or¶

(B) Be in compliance with an Authority approved corrective action plan.¶

(7) Water suppliers that fail to respond to the Authority within the timeframe specified, are required to issue a tier 2 public notice as prescribed in OAR 333-061-0042(2)(b)(D).¶

(8) Water suppliers must correct the deficiencies or violations identified in the sanitary survey according to an Authority-approved schedule as described in section (6) of this rule. Failure to do so constitutes a violation of this rule.

Statutory/Other Authority: ORS 448.131, 448.150

Statutes/Other Implemented: ORS 448.131, 448.150

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

**333-061-0076**  
**Sanitary Surveys**

**Table 44**

<b>Water System Type</b>	<b># of connections</b>	<b>Population</b>	<b>Fee</b>	<b>Late Fee</b>
<b>Non-community water system (transient, non-transient, or state regulated)</b>	<b>N/A</b>	<b>N/A</b>	<b>\$450</b>	<b>\$50</b>
<b>Community water system</b>	<b>15-250</b>	<b>25-1,000</b>	<b>\$450</b>	<b>\$50</b>
<b>Community water system without WT classification</b>	<b>251-500</b>	<b>1,001-2,000</b>	<b>\$2,025</b>	<b>\$100</b>
	<b>501-1,000</b>	<b>2,001-4,000</b>	<b>\$2,700</b>	<b>\$100</b>
	<b>1,001-3,000</b>	<b>4,001-12,000</b>	<b>\$3,600</b>	<b>\$150</b>
	<b>≥3,000</b>	<b>≥12,000</b>	<b>\$5,400</b>	<b>\$150</b>
<b>Community water system) with WT classification</b>	<b>251-500</b>	<b>1,001-2,000</b>	<b>\$2,700</b>	<b>\$100</b>
	<b>501-1,000</b>	<b>2,001-4,000</b>	<b>\$3,600</b>	<b>\$100</b>
	<b>1,001-3,000</b>		<b>\$4,800</b>	<b>\$150</b>
	<b>≥3,000</b>	<b>≥12,000</b>	<b>\$7,200</b>	<b>\$150</b>
<b>Community (purchasing exclusively)</b>	<b>251-500</b>	<b>1,001-2,000</b>	<b>\$1,620</b>	<b>\$100</b>
	<b>501-1,000</b>	<b>2,001-4,000</b>	<b>\$2,160</b>	<b>\$100</b>
	<b>1,001-3,000</b>	<b>4,001-12,000</b>	<b>\$2,880</b>	<b>\$150</b>
	<b>≥3,000</b>	<b>≥12,000</b>	<b>\$4,320</b>	<b>\$150</b>

ADOPT: 333-061-0089

RULE SUMMARY: OAR 333-061-0089 is adopted to create an annual fee applicable to every public water system within Oregon, including water systems serving less than 15 service connections or 25 people. The annual fees proposed for adoption in OAR 333-061-0089, over a three-year period, are essentially equivalent to those associated with sanitary survey fees, except where water systems serve more than 3,000 service connections, where fees are increased.

CHANGES TO RULE:

333-061-0089

Annual Water System Fee

Water suppliers must pay an annual fee to partially defray the cost of the Authority's regulation of public water systems. ¶

(1) The fee is based on the classification of the water system according to Table 44. ¶

(a) For campgrounds where multiple handpumps exist, a single fee will be assessed. ¶

(b) For community water systems, the fee is based upon the number of service connections or the population served by the water system and water treatment applied at the water system. ¶

(A) Only water treatment applied to meet a water quality standard or treatment technique is considered when determining this fee. ¶

(B) For small community water systems with 250 service connections or less but serving more than 1,000 people, the lesser of the two fees will be assessed. ¶

(C) For water systems with more than 250 service connections, the fee is based on the number of connections. ¶

(D) For water systems without a distribution system and where water is exclusively delivered on a wholesale basis, the fee is based on the total population served by the water systems purchasing water directly from the wholesaler. ¶

(2) Water suppliers must pay the fee to the Authority on or before July 1st of every calendar year. ¶

(3) The Authority will assess a one-time late fee according to Table 44 to any water supplier that fails to submit the annual fee by July 31st of each year. The late fee may be waived at the discretion of the Authority.

Statutory/Other Authority: ORS 448.150

Statutes/Other Implemented: ORS 448.150

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



**333-061-0089**  
**Annual Water System Fee**

Table 44

	<u>Number of Service Connections</u>	<u>Population</u>	<u>Fee</u>	<u>Late Fee</u>
<u>State regulated</u>	<u>4-14</u>	<u>10-24</u>	<u>\$75</u>	<u>\$25</u>
<u>Non-community water system (transient, non-transient)</u>	<u>N/A</u>	<u>N/A</u>	<u>\$150</u>	<u>\$50</u>
<u>Small community water system with or without treatment</u>	<u>15-250</u>	<u>25-1,000</u>	<u>\$175</u>	<u>\$50</u>
<u>Community water system without water treatment</u>	<u>251-500</u>		<u>\$675</u>	<u>\$100</u>
	<u>501-1,000</u>		<u>\$1,125</u>	<u>\$100</u>
	<u>1,001-3,000</u>		<u>\$1,500</u>	<u>\$150</u>
	<u>3,001-5,000</u>		<u>\$3,000</u>	<u>\$150</u>
	<u>5,001-10,000</u>		<u>\$5,625</u>	<u>\$250</u>
	<u>10,001-15,000</u>		<u>\$9,000</u>	<u>\$250</u>
	<u>15,001-30,000</u>		<u>\$13,500</u>	<u>\$250</u>
	<u>30,001-100,000</u>		<u>\$31,500</u>	<u>\$500</u>
	<u>&gt;100,000</u>		<u>\$48,750</u>	<u>\$500</u>
<u>Community water system with water treatment</u>	<u>251-500</u>		<u>\$900</u>	<u>\$100</u>
	<u>501-1,000</u>		<u>\$1,500</u>	<u>\$100</u>
	<u>1,001-3,000</u>		<u>\$2,000</u>	<u>\$150</u>
	<u>3,001-5,000</u>		<u>\$4,000</u>	<u>\$150</u>
	<u>5,001-10,000</u>		<u>\$7,500</u>	<u>\$250</u>
	<u>10,001-15,000</u>		<u>\$12,000</u>	<u>\$250</u>
	<u>15,001-30,000</u>		<u>\$18,000</u>	<u>\$250</u>
	<u>30,001-100,000</u>		<u>\$42,000</u>	<u>\$500</u>
	<u>&gt;100,000</u>		<u>\$65,000</u>	<u>\$500</u>
<u>Community water system purchasing exclusively</u>	<u>251-500</u>		<u>\$540</u>	<u>\$100</u>
	<u>501-1,000</u>		<u>\$900</u>	<u>\$100</u>
	<u>1,001-3,000</u>		<u>\$1,200</u>	<u>\$150</u>
	<u>3,001-5,000</u>		<u>\$2,400</u>	<u>\$150</u>
	<u>5,001-10,000</u>		<u>\$4,500</u>	<u>\$250</u>
	<u>10,001-15,000</u>		<u>\$7,200</u>	<u>\$250</u>
	<u>15,001-30,000</u>		<u>\$10,800</u>	<u>\$250</u>
	<u>30,001-100,000</u>		<u>\$25,200</u>	<u>\$500</u>
	<u>&gt;100,000</u>		<u>\$39,000</u>	<u>\$500</u>

<u>Community water system exclusively acting as wholesaler without distribution</u>	<u>1,001-2,000</u>	<u>\$540</u>	<u>\$100</u>
	<u>2,001-4,000</u>	<u>\$900</u>	<u>\$100</u>
	<u>4,001-12,000</u>	<u>\$1,200</u>	<u>\$150</u>
	<u>12,001-20,000</u>	<u>\$2,400</u>	<u>\$150</u>
	<u>20,001-40,000</u>	<u>\$4,500</u>	<u>\$250</u>
	<u>40,001-60,000</u>	<u>\$7,200</u>	<u>\$250</u>
	<u>60,001-120,000</u>	<u>\$10,800</u>	<u>\$250</u>
	<u>120,000-400,000</u>	<u>\$25,200</u>	<u>\$500</u>
	<u>&gt;400,000</u>	<u>\$39,000</u>	<u>\$500</u>