

OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 736
PARKS AND RECREATION DEPARTMENT

FILED

11/27/2023 9:41 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Additional changes for updating rules for exclusion process from park properties and the ocean shore.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 01/04/2024 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.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

CONTACT: Helena Kesch
503-881-4637
Helena.Kesch@opr.d.oregon.gov

725 Summer St NE, Ste C
Salem, OR 97301

Filed By:
Helena Kesch
Rules Coordinator

NEED FOR THE RULE(S)

Oregon State Parks strives to provide safe and welcoming recreational spaces for all visitors with a commitment in managing, enhancing and protecting Oregon's natural, scenic and culturally-significant landscapes. If a visitor demonstrates behaviors, issues or problems that threaten park staff, visitors and/or the natural landscape, the agency may turn to Division 10, General Park Area Rules, General Regulations or Division 21, General Ocean Shore State Recreation Area Rules to support excluding the visitor for a specific period of time.

The proposed rulemaking will update the exclusion and appeal process. A recent court challenge pointed out the existing rules were vague and too open to interpretation by OPRD staff. The suit was resolved with a commitment to improve the rule's fairness and clarity. The updates will clarify excluding individuals from Oregon State Parks who commit state park rule violations that endanger the safety of visitors, staff or park resources; provide clear information on how excluded individuals may request an appeal; and how the appeals will be processed.

After reviewing public comment, the agency has decided that additional rule language is needed to clarify the exclusion decision-making process, to include exclusion conditions and timeline.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Oregon Parks and Recreation Rulemaking webpage: <https://www.oregon.gov/opr/prp/pages/prp-rulemaking.aspx>

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

The department estimates that there may be a positive racial equity impact based on the rule amendment, however the agency does not have data regarding the race and ethnicity of those excluded from park properties and the ocean shore. Improvements in clarity and due process will benefit all individuals.

FISCAL AND ECONOMIC IMPACT:

There may be a minimal additional cost and staff time to the agency for a more robust exclusion process.

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 state agency impacted would only be OPRD. Members of the public impacted could be those excluded from park properties and the ocean shore.

(2) There is no impact on small businesses.

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

Small businesses are not impacted by this rule so they are not included.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

736-010-0020, 736-021-0040

AMEND: 736-010-0020

RULE SUMMARY: This rule addresses behavior for park visitors. Amendments add exclusion process and schedule.

CHANGES TO RULE:

736-010-0020

General Regulations ¶¶

(1) The director may establish seasons, overnight lengths of stay, camper checkout times and procedures to adjust daily park property opening and closing times, and portions of a park property that are permanently closed or limited to specific uses or activities by the public. These may differ from park property to park property and from time to time, but shall be indicated on the state park website, published maps, brochures, the current state parks guide booklet, or on posted signs at the park property.¶¶

(2) Unless otherwise specifically established by the director the following apply:¶¶

(a) The maximum length of stay for campers is 14 consecutive nights in a 17-night span. After three nights out of the park, campers may return to start a new stay.¶¶

(b) The maximum length of stay for hiker/biker sites is three consecutive nights in a seven-night period per park.¶¶

(c) Unless otherwise posted or specifically open for an event or activity, the hours of operation for a day use area are dawn to dusk.¶¶

(3) The director, by written agreement, may cooperatively exercise jurisdiction and authority over a park property with a county, city, or political subdivision thereof for the purposes of enforcing state park rules, and applicable state, county or city laws.¶¶

(4) A person shall observe and abide by all instructions, warnings, restrictions, and prohibitions on posted signs and notices and from park employees.¶¶

(5) A park manager or park employee may seek compliance from the public with any state park rule.¶¶

(6) A park manager or department enforcement officer may order any person that violates any state park rule to leave a park property.¶¶

(7) A park manager or a department enforcement officer may exclude a person that violates any state park rule from the park property or multiple park properties for a specified period of time.¶¶

(a) The duration of an exclusion is based on severity of the state park rule violation. In determining the duration of the exclusion, the park manager or a department enforcement officer will consider whether the violation: ¶¶

(A) affected:¶¶

(i) Visitor or staff safety:¶¶

(ii) Park resources, as defined in OAR 736-010-0015(17); and ¶

(iii) Park operations; or ¶

(B) involved: ¶

(i) Repeat violation of any state park rule, or ¶

(ii) Bias crime as provided in section (11) and ORS 390.997 ¶

(8b) A peace officer may seek compliance from the public wi The enforcement officer shall issue a written exclusion notice. An enforcement officer that is not a peace officer may request the assistance of a peace officer and mental health practitioner or other agency in delivery of an exclusion. ¶

(c) Exclusion notices shall contain, at a minimum: ¶

(A) The date of the issuance; ¶

(B) Effective dates of exclusion; ¶

(C) Citation to each state park rule violation involved in the exclusion; ¶

(D) Notice of consequences of possible criminal trespass should the person fail to comply with the exclusion as provided in section (12)(b); ¶

(E) State park property, as defined in OAR 736-010-0015(14), that the person is expelled from throughout the duration of the exclusion; and ¶

(F) The procedure for filing an appeal of the exclusion. ¶

(d) The duration of exclusion determined under subsection (a) shall be based on the rule violation following the any state park rule and may order a person who violates one or more state park rules to leave a park property agency exclusion schedule described below: ¶

(A) Level 1 exclusions may be issued for violations with minimal visitor impact or park resource damage. Level 1 exclusions are issued for repeat violations when other enforcement tools have been used or when the enforcement officer deems other enforcement tools will not generate compliance. ¶

(B) Level 2 exclusions may be issued for increased visitor impact or park resource damage valued at less than \$1,000 including behavior that results in a park area closure or repair taking up to three months or behavior that is intimidating, verbally abusive or hostile. ¶

(C) Level 3 exclusions may be issued for violations with serious visitor impact or park resource damage valued at less than \$3,000 including behavior that results in closure or repair taking up to six months or repeated violations which result in unsafe conditions for staff or park visitors. ¶

(D) Level 4 exclusions may be issued for violations with significant visitor impact or park resource damage valued at over \$3,000 including behavior that may result in closure of entire park for safety. Level 4 exclusions may include fighting, promoting, or encouraging fighting, or harassing park employees in the performance of their duties. ¶

(E) Level 5 exclusions may be issued for violations which result in closure of entire park properties for safety or result in irreplaceable park damage. Committing or attempting to commit acts of violence to park staff or visitors may result in a level 5 exclusion. ¶

(9F) A peace officer may exclude or recommend that the park manager exclude a person who violates any state park rule; federal, state, county, or city law; or cour Level 6 exclusions may be issued for repeat violations during or after the exclusion of a level 5 exclusion. ¶

(G) Exclusions issued under 736-010-0020(11) for conviction of bias crimes pursuant to ORS 390.997 are outside the scope of this exclusion matrix. ¶

(H) Level 1 exclusions are issued for up to 30 days within a geographic area of a park property, management unit, county, or district requiring Park Manager approval. Park Manager may delegate approval authority to enforcement officer. ¶

(I) Level 2 exclusions are issued for 31-90 days within a geographic area of a park property, management unit, county, or district and requires a Park Manager approval. Park Manager may delegate approval authority to enforcement officer. ¶

(J) Level 3 exclusions are issued for 91-180 days within a geographic area of a management unit, county, district, or region, and requires District Manager approval. ¶

(K) Level 4 exclusions may be issued for 181 days to 1 year within a geographic area of a district, region or statewide and requires both District Manager and Region Director approval. ¶

(L) Level 5 exclusions are issued for 366 days to five years within a geographic area of a region or statewide and requires Deputy Director approval. ¶

(M) Level 6 exclusions are issued for five years and above within a geographic area of a region or statewide and requires Deputy Director approval. ¶

(N) Enforcement officers will determine the level of exclusion based on the totality of the situation. An individual with multiple past exclusions may result in a higher level or longer exclusion time frame. ¶

(O) If additional information is presented after an initial exclusion is written, the enforcement officer may reevaluate the exclusion level. This may result in a reissuance at a different level or a rescind. ¶

- (e) A person subject to an exclusion pursuant to this section may appeal the exclusion to the agency on the agency website, by mail, phone or email. ¶
- (f) To be valid, an appeal submitted under subsection (d) must include:¶
- (A) a statement for the basis of appeal; and¶
- (B) the exclusion notice number; and ¶
- (C) Contact information of person requesting the appeal, including email, phone number, or mailing address.¶
- (g) If any information in paragraphs (e)(A)-(C) is missing, the department will not begin the appeal process until the information is complete.¶
- (h) An agency review panel shall review valid appeal requests submitted under subsection (d). The agency review panel shall determine whether the exclusion is substantiated or unsubstantiated based on rule violation and the evidence provided. The agency shall formally respond within 30 calendar days of the appeal request. ¶
- (A) An appeal request for order from a park property or multiple park properties for a specified period of time, an exclusion up through 180 days shall be reviewed by an agency review panel within the local area.¶
- (B) An appeal request for an exclusion for more than 180 days shall be convened by an agency unit outside of park operations.¶
- (C) The individual may request an in-person or online review during the appeal process.¶
- (i) During the duration of an appeal, an exclusion:¶
- (A) Shall remain in effect for:¶
- (i) Voluntary conduct or acts that are detrimental to visitor or staff safety; or action of serious or significant damage to park resources park operations; or any combination thereof; and¶
- (ii) Unless the exclusion period expires during the appeal process;¶
- (B) Shall be suspended for:¶
- (i) Conduct that is expressive or communicative, including activity such as picketing, demonstrating, leafletting, or delivering a speech, and¶
- (ii) Conduct that is involuntary or unavoidable. ¶
- (C) May be stayed for violations under subsection (a)(B)(i) upon a request from the excluded individual.¶
- (8) A peace officer may seek compliance from the public with any state park rule, may order a person who violates one or more state park rules to leave a park property, and may assist in delivery of an exclusion notice under section (7).¶
- (9) A peace officer may order a park visitor to leave for up to 72 hours who violates any state park rule; federal, state, county, or city law; or court order from a park property or multiple park properties. ¶
- (10) A park manager or designated park employee may protect the safety or health of the public or protect park resources. This authority includes actions that may temporarily:¶
- (a) Permit or limit specific activities or uses in designated portions of a park property;¶
- (b) Designate a location within a park for a single use to avoid conflicts between users;¶
- (c) Restrict access to or close an entire park property;¶
- (d) Restrict access to or close a portion of a park property; or¶
- (e) Exclude a person from a park property as provided in section (7).¶
- (11) When notified by the court of a person subject to an exclusion from park property pursuant to Oregon Laws 2021, chapter 393, section 1, RS 390.997 the director will issue an exclusion in writing via certified mail to the individual.¶
- (a) Individuals convicted of ORS 166.155 will be excluded for up to one year after conviction.¶
- (b) Individuals convicted of ORS 166.165 or repeat offenders will be excluded for up to five years after conviction.¶
- (c) Exclusions issued under this section do not apply to the grounds of the State Capitol State Park.¶
- (d) The director or designee may waive an exclusion while a person is performing community service at a park property.¶
- (e) The director may revoke a person's exclusion after their successful completion of court-approved community service.¶
- (12) A person excluded from a park property may contest the exclusion notice by filing a written appeal within seven days of the exclusion date. The person excluded must submit the appeal to the District Manager responsible for the park where the notice of exclusion was issued.¶
- ~~(13) The following situations are criminal trespass in the second degree, a Class C misdemeanor, per ORS 164.245:¶~~
- ~~(a) A person ordered to leave a park property that remains present as a visitor;¶~~
- ~~(b) A person excluded from a park property that enters or remains present as a visitor;¶~~
- ~~(c) A person enters a closed or restricted portion of a park property; and¶~~
- ~~(d) A person engages in an activity that has been specifically prohibited or restricted at a park property or a portion of a park property.~~

Statutory/Other Authority: ORS 390.050, 390.121, 390.124
Statutes/Other Implemented: ORS 390.124

AMEND: 736-021-0040

RULE SUMMARY: This rule addresses behavior for ocean shore visitors. Amendments add exclusion process and schedule.

CHANGES TO RULE:

736-021-0040

General Regulations ¶¶

(1) The director, by written agreement, may cooperatively exercise jurisdiction and authority over the ocean shore state recreation area with a county, city, or political subdivision thereof for the purposes of enforcing this division and applicable state, county or city laws. Local government regulations pertaining to the ocean shore state recreation area are provided in division 30.¶¶

(2) A park employee may seek compliance from the public with any ocean shore state recreation area rules. (A person may not obstruct, harass or interfere with a park employee's official duties, including enforcing ocean shore state recreation area rules.¶¶

(3) A park manager or designated park employee may order any person who violates any ocean shore state recreation area rule to leave an ocean shore area.¶¶

(4) A park manager or an enforcement officer may exclude a person who violates any ocean shore state recreation area rule from the ocean shore area for a specified period of time as provided in 736-010-0020(7).¶¶

(5) A peace officer, pursuant to a written agreement with the department, may seek compliance from the public with any ocean shore state recreation area rule and may order a person who violates one or more rules to leave the ocean shore area.¶¶

(6) A peace officer, pursuant to a written agreement with the department, may exclude a person who violates one or more of the following from an ocean shore state recreation area for a specified period of time:¶¶

(a) Ocean shore state recreation area rule;¶¶

(b) Federal, state, county, or city law; or¶¶

(c) Court order.¶¶

(7) The department may take action to protect ocean shore resources, to protect public health and safety, to provide security, to avoid user conflicts, or for other reasons deemed necessary. These actions include but are not limited to the following:¶¶

(a) Allowing by permit or limiting specific activities or uses in designated portions of the ocean shore state recreation area;¶¶

(b) Designating locations within the ocean shore state recreation area for specific uses, to avoid conflicts between users;¶¶

(c) Restricting access to or closing all or a portion of the ocean shore state recreation area; or¶¶

(d) Temporarily excluding a person from a portion or all ocean shore state recreation area.¶¶

(8) A person excluded from the ocean shore state recreation area under sections (4), (6), or (7) may contest the exclusion notice by filing a written appeal ~~within seven business days of the exclusion date. The person excluded must submit the appeal to the department district manager responsible for the ocean shore state recreation area where the notice of exclusion was issued~~ as provided in OAR 736-010-0020(7)(d).

Statutory/Other Authority: ORS 390.660

Statutes/Other Implemented: ORS 390.124, 390.635, 390.660