

**OREGON ADMINISTRATIVE RULES
OREGON DEPARTMENT OF AGRICULTURE
CHAPTER 603, DIVISION 95**

Malheur River Basin

603-095-0900

Purpose

(1) These rules have been developed to implement a water quality management area plan for the Malheur River Basin Agricultural Water Quality Management Area pursuant to authorities vested in the department through ORS 568.900 - 568.933 and ORS 561.190 - 561.191, due to a determination by the Environmental Quality Commission to establish Total Maximum Daily Loads and allocate a load to agricultural nonpoint sources. The area plan is known as the Malheur River Basin Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to outline requirements for landowners in the Malheur River Basin Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion. Compliance with Division 95 rules is expected to aid in the achievement of applicable water quality standards in the Malheur River Basin Water Quality Management Area.

(3) Failure to comply with any provisions of the Malheur River Basin Agricultural Water Quality Management Area Plan:

(a) does not constitute a violation of OAR 603-095-0000 to 603-090-0120, or of OAR 603-095-0010 to OAR 603-095-0960;

(b) is not intended by the department to be evidence of a violation of any federal, state, or local law by any person.

(4) Nothing in the Malheur River Basin Agricultural Water Quality Management Area Plan shall be:

(a) construed as an effluent limitation or standard under the federal Water Pollution Control Act, 33 USC §§ 1251-1376;

(b) used to interpret any requirement of OAR 603-095-0900 to OAR 603-095-0960.

Statutory Authority: ORS 561.190 - 568.191, ORS 568.909

Statutes Implemented: ORS 568.900 - 568.933

603-095-0920

Geographic and Programmatic Scope

(1) The Malheur River Basin Agricultural Water Quality Management Area includes the drainage area of the Malheur River and all its tributaries from the headwaters to the mouth, and the Moores Hollow and Jacobsen Gulch subbasins. The physical boundaries of the Management Area are indicated on the map included as Appendix 1 of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Malheur River Basin Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands that are lying idle or on which management has been deferred, and forested lands with agricultural activities, with the exception of public lands managed by federal agencies.

(3) Current productive agricultural use is not required for the provisions of these rules to apply. For example, highly erodible lands with no present active use are within the purview of these rules.

(4) The provisions and requirements outlined in these rules may be adopted by reference by Designated Management Agencies with appropriate authority and responsibilities in other geographic areas of the Malheur River Basin Agricultural Water Quality Management Area.

(5) For lands in agricultural use within other Designated Management Agencies' or state agency jurisdictions, the department and the appropriate Local Management Agency shall work with these Designated Management Agencies to assure that provisions of these rules apply, and to assure that duplication of any services provided or fees assessed does not occur.

Statutory Authority: ORS 568.909

Statutes Implemented: ORS 568.900 - 568.933

603-095-0940

Required Prevention and Control Measures

(1) All landowners or operators conducting activities on lands in agricultural use shall comply with the following criteria. A landowner shall be responsible for only those conditions caused by agricultural activities conducted on land controlled by the landowner. A landowner is not responsible for prohibited conditions resulting from actions by another landowner. Conditions resulting from unusual weather events (equaling or exceeding a 25-year storm event) or other exceptional circumstances are not the responsibility of the landowner. Limited duration activities may be exempted from these conditions subject to prior approval by the department. The intent of these rules, in accordance with the Clean Water Act, is to protect clean water while also maintaining the economic viability of individual farming enterprises.

(2) Placement, Delivery, or Sloughing of Wastes: Effective upon adoption:

No person subject to these rules shall violate any provision of ORS 468B.025 or ORS 468B.050.

(3) Irrigation Surface Water Return Flow

(a) After January 1, 2006, irrigation surface water return flow to waters of the state shall not cause an excessive, systematic, or persistent increase in sediment levels already present in the receiving waters, except where the return flows do not cause the receiving waters to exceed established sediment standards.

(b) A landowner conducting irrigation activities in accordance with a plan approved in writing by the department or its designee shall be deemed to be in compliance with this rule.

(4) Active Streambank Erosion

(a) By January 1, 2006, no person may cause active streambank erosion beyond the level that would be anticipated from natural disturbances given existing hydrologic characteristics.

(5) Riparian Vegetation

(a) By January 1, 2006, no conditions are allowed that prevent the establishment and development of adequate riparian vegetation consistent with vegetative site capability to control water pollution by providing control of erosion, filtering of sediments, moderation of solar heating and infiltration of water into the soil profile.

(6) Range and Pasture Management

(a) By January 1, 2006, vegetative condition on rangelands and pasturelands shall be managed such that the functionality of the watershed is not impaired. Watershed function includes the ability of vegetation to filter sediment, utilize nutrients, control soil erosion, optimize infiltration of water to the soil profile, and minimize the rate and maximize the duration of runoff from precipitation.

(b) A landowner conducting range and pasture management activities in accordance with a plan approved in writing by the department or its designee shall be deemed to be in compliance with this rule.

Statutory Authority: ORS 568.909

Statutes Implemented: ORS 568.900 - 568.933

603-095-0960

Complaints and Investigations

(1) When the department receives notice of an apparent occurrence of agricultural pollution through a written complaint, its own observation, through notification by another agency, or by other means, the department may conduct an investigation. The department may, at its discretion, coordinate investigation activities with the appropriate Local Management Agency.

(2) Each notice of an apparent occurrence of agricultural pollution shall be evaluated in accordance with the criteria in ORS 568.900 to 568.933 or any rules adopted thereunder to determine whether an investigation is warranted.

(3) Any person allegedly being damaged or otherwise adversely affected by agricultural pollution or alleging any violation of ORS 568.900 to 568.933 or any rules adopted thereunder may file a complaint with the department.

(4) The department will evaluate or investigate a complaint filed by a person under section OAR 603-095-0960(3) if the complaint is in writing, signed and dated by the complainant and indicates the location and description of:

(a) The property and/or waters of the state allegedly being damaged or impacted; and

(b) The property allegedly being managed under conditions violating criteria described in ORS 568.900 to 568.933 or any rules adopted thereunder.

(5) As used in section OAR 603-095-0960(4), “person” does not include any local, state or federal agency.

(6) Notwithstanding OAR 603-095-0960, the department may investigate at any time any complaint if the department determines that the violation alleged in the complaint may present an immediate threat to the public health or safety.

(7) If the department determines that a violation of ORS 568.900 to 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OARs 603-090-0060 through 603-090-0120.

Statutory Authority: ORS 568.915, 568.918 and 568.933

Statutes Implemented: ORS 568.900 - 568.933

Appendix 1

