

-EXCERPT-

Oregon Bulletin

April 1, 2011

Department of Environmental Quality
Chapter 340

Rule Caption: Rule amendments for residential woodstoves and other solid fuel burning devices.

Adm. Order No.: DEQ 2-2011

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Rules Adopted: 340-262-0400, 340-262-0450, 340-262-0500, 340-262-0600, 340-262-0700, 340-262-0800, 340-262-0900

Rules Amended: 340-012-0054, 340-012-0140, 340-200-0040

Rules Repealed: 340-262-0010, 340-262-0020, 340-262-0030, 340-262-0040, 340-262-0050, 340-262-0100, 340-262-0110, 340-262-0120, 340-262-0130, 340-262-0200, 340-262-0210, 340-262-0220, 340-262-0230, 340-262-0240, 340-262-0250, 340-262-0300, 340-262-0310, 340-262-0320, 340-262-0330

Subject: This rulemaking implements the requirements of Senate Bill 102, a measure passed by the 2009 Oregon Legislature to protect Oregonians from uncontrolled wood smoke. The rules implement the statutory requirement for homeowners to remove and destroy any uncertified woodstove at the time of home sale and to notify DEQ. The rules subject a broader range of home and commercial heating devices (including outdoor wood-fired boilers and other uncontrolled wood burning devices) to certification requirements. Unless these heating devices meet the certification requirements, they will not be allowed to be sold in Oregon. The rules also update DEQ rules for implementing a wood burning curtailment program in a nonattainment area if needed.

These rules will also be submitted to the U.S. Environmental Protection Agency as a revision to the Oregon State Implementation Plan under OAR 340-200-0040.

Rules Coordinator: Maggie Vandehey—(503) 229-6878

340-012-0054

Air Quality Classification of Violations

(1) Class I:

(a) Constructing a new source or modifying an existing source without first obtaining a required New Source Review/Prevention of Significant Deterioration (NSR/PSD) permit;

(b) Operating a major source, as defined in OAR 340-200-0020, without first obtaining the required permit;

(c) Exceeding a Plant Site Emission Limit (PSEL);

(d) Failing to install control equipment or meet performance standards as required by New Source Performance Standards under OAR 340 division 238 or National Emission Standards for Hazardous Air Pollutant Standards under OAR 340 division 244;

(e) Exceeding a hazardous air pollutant emission limitation;

(f) Failing to comply with an Emergency Action Plan;

(g) Exceeding an opacity or emission limit (including a grain loading standard) or violating an operational or process standard, that was established pursuant to New Source Review/Prevention of Significant Deterioration (NSR/PSD), or the Western Backstop SO₂ Trading Program;

(h) Exceeding an emission limit or violating an operational or process standard that was established to limit emissions to avoid classification as a major source, as defined in OAR 340-200-0020;

(i) Exceeding an emission limit, including a grain loading standard, by a major source, as defined in OAR 340-200-0020, when the violation was detected during a reference method stack test;

(j) Failing to perform testing or monitoring, required by a permit, rule or order, that results in failure to show compliance with a Plant Site Emission Limit (PSEL) or with an emission limitation or a performance standard set pursuant to New Source Review/Prevention of Significant Deterioration (NSR/PSD), National Emission Standards for Hazardous Air Pollutants (NESHAP), New Source Performance Standards (NSPS), Reasonable Achievable Control Technology (RACT), Best Achievable Control Technology (BACT), Maximum Achievable Control Technology (MACT), Typically Achievable Control Technology (TACT), Lowest Achievable Emissions Rates (LAER) or adopted pursuant to section 111(d) of the Federal Clean Air Act;

(k) Causing emissions that are a hazard to public safety;

- (l) Violating a work practice requirement for asbestos abatement projects;
- (m) Storing or accumulating friable asbestos material or asbestos-containing waste material;
- (n) Conducting an asbestos abatement project, by a person not licensed as an asbestos abatement contractor;
- (o) Violating an OAR 340 division 248 disposal requirement for asbestos-containing waste material;
- (p) Failing to hire a licensed contractor to conduct an asbestos abatement project;
- (q) Openly burning materials which are prohibited from being open burned anywhere in the state by OAR 340-264-0060(3), or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262-0900(1).
- (r) Failing to install certified vapor recovery equipment.
- (s) Delivering for sale a noncompliant vehicle by an automobile manufacturer in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257.
- (t) Exceeding an Oregon Low Emission Vehicle average emission limit set forth in OAR 340 division 257.
- (u) Failing to comply with Zero Emission Vehicle (ZEV) sales requirements set forth in OAR 340 division 257.
- (v) Failing to obtain a Motor Vehicle Indirect Source Permit as required in OAR 340 division 257.
- (w) Selling, leasing, or renting a noncompliant vehicle by an automobile dealer or rental car agency in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257.

(2) Class II:

- (a) Constructing or operating a source required to have an Air Contaminant Discharge Permit (ACDP) without first obtaining such permit, unless otherwise classified;
- (b) Violating the terms or conditions of a permit or license, unless otherwise classified;
- (c) Modifying a source in such a way as to require a permit modification from the department without first obtaining such approval from the department, unless otherwise classified;
- (d) Exceeding an opacity limit, unless otherwise classified;
- (e) Exceeding a Volatile Organic Compound (VOC) emission standard, operational requirement, control requirement or VOC content limitation established by OAR 340 division 232;
- (f) Failing to timely submit an ACDP annual report;
- (g) Failing to timely submit a certification, report, or plan as required by rule or permit, unless otherwise classified;
- (h) Failing to timely submit a permit application or permit renewal application;
- (i) Failing to comply with the open burning requirements for commercial, construction, demolition, or industrial wastes in violation of OAR 340-264-0080 through 0180;
- (j) Failing to comply with open burning requirements in violation of any provision of OAR 340 division 264, unless otherwise classified; or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262-0900(2).
- (k) Failing to replace, repair, or modify any worn or ineffective component or design element to ensure the vapor tight integrity and efficiency of a stage I or stage II vapor collection system;
- (l) Failing to provide notification of an asbestos abatement project;
- (m) Failing to perform a final air clearance test or submit an asbestos abatement project air clearance report for an asbestos abatement project; or
- (n) Violating on road motor vehicle refinishing rules contained in OAR 340-242-0620.
- (o) Failing to comply with an Oregon Low Emission Vehicle reporting, notification, or warranty requirement set forth in OAR division 257.

(3) Class III:

- (a) Failing to perform testing or monitoring required by a permit, rule or order where missing data can be reconstructed to show compliance with standards, emission limitations or underlying requirements;
- (b) Constructing or operating a source required to have a Basic Air Contaminant Discharge Permit without first obtaining the permit;
- (c) Modifying a source in such a way as to require construction approval from the department without first obtaining such approval from the department, unless otherwise classified;
- (d) Failing to provide proper notification of an asbestos abatement project or failing to revise a notification when necessary, unless otherwise classified;
- (e) Submitting a late air clearance report that demonstrates compliance with the standards for an asbestos abatement project; or
- (f) Licensing a noncompliant vehicle by an automobile dealer or rental car agency in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020, 468A.025 & 468A.045

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 5-1980, f. & ef. 1-28-80; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 31-1990, f. & cert. ef. 8-15-90; DEQ 2-1992, f. & cert. ef. 1-30-92; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 21-1994, f. & cert. ef. 10-14-94; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; Renumbered from 340-012-0050, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

Determination of Base Penalty

(1) Except for Class III violations and for penalties assessed under OAR 340-012-0155, the base penalty (BP) is determined by applying the type, class and magnitude of the violation to the matrices set forth in this section. For Class III violations, no magnitude determination is required.

(2) \$8,000 Penalty Matrix:

(a) The \$8,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Title V permit or an Air Contaminant Discharge Permit (ACDP) issued pursuant to New Source Review (NSR) regulations or Prevention of Significant Deterioration (PSD) regulations, or section 112(g) of the federal Clean Air Act.

(B) Open burning violations as follows:

(i) Any violation of an open burning statute, rule, permit or related order committed by a permitted industrial facility.

(ii) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned, except when committed by a residential owner-occupant.

(C) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) by an automobile manufacturer.

(D) Any violation of 468B.025(1)(a) or (1)(b), or of ORS 468B.050(1)(a) by a person without an National Pollutant Discharge Elimination System (NPDES) permit.

(E) Any violation of a water quality statute, rule, permit or related order by:

(i) A person that has a NPDES permit, or that has or should have a Water Pollution Control Facility (WPCF) permit, for a municipal or private utility sewage treatment facility with a permitted flow of five million or more gallons per day.

(ii) A person that has a major industrial source NPDES permit.

(iii) A person that has a population of 100,000 or more, as determined by the most recent national census, and either has or should have a WPCF Municipal Stormwater Underground Injection Control (UIC) System Permit, or has a NPDES Municipal Separated Storm Sewer Systems (MS4) Stormwater Discharge Permit.

(iv) A person that has or should have a WPCF permit for a major vegetable or fruit processing facility, for a major mining operation involving over 500,000 cubic yards per year, or for any mining operation using chemical leaching or froth flotation.

(v) A person that installs or operates a prohibited Class I, II, III, IV or V UIC system, except for a cesspool.

(F) Any violation of an underground storage tanks statute, rule, permit or related order committed by the owner, operator or permittee of 10 or more UST facilities or a person who is licensed or should be licensed by the department to perform tank services.

(G) Any violation of a heating oil tank statute, rule, permit, license or related order committed by a person who is licensed or should be licensed by the department to perform heating oil tank services.

(H) Any violation of ORS 468B.485, or related rules or orders regarding financial assurance for ships transporting hazardous materials or oil.

(I) Any violation of a used oil statute, rule, permit or related order committed by a person who is a used oil transporter, transfer facility, processor or re-refiner, off-specification used oil burner or used oil marketer.

(J) Any violation of a hazardous waste statute, rule, permit or related order by:

(i) A person that is a large quantity generator or hazardous waste transporter.

(ii) A person that has or should have a treatment, storage or disposal facility permit.

(K) Any violation of an oil and hazardous material spill and release statute, rule, or related order.

(L) Any violation of a polychlorinated biphenyls (PCBs) management and disposal statute, rule, permit or related order.

(M) Any violation of ORS Chapter 465, UST or environmental cleanup statute, rule, related order or related agreement.

(N) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or any violation of a solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a solid waste disposal permit.

(ii) A person with a population of 25,000 or more, as determined by the most recent national census.

(b) The base penalty values for the \$8,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$8000;

(ii) Moderate — \$4000;

(iii) Minor — \$2000.

(B) Class II:

(i) Major — \$4000;

(ii) Moderate — \$2000;

(iii) Minor — \$1000.

(C) Class III: \$750.

(3) \$6,000 Penalty Matrix:

(a) The \$6,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have an ACDP permit, except for NSR, PSD and Basic ACDP permits.

(B) Any violation of an asbestos statute, rule, permit or related order except those violations listed in section (5) of this rule.

(C) Any violation of a vehicle inspection program statute, rule, permit or related order committed by an auto repair facility.

(D) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) by an automobile dealer or an automobile rental agency.

(E) Any violation of a water quality statute, rule, permit or related order committed by:

(i) A person that has a NPDES Permit, or that has or should have a WPCF Permit, for a municipal or private utility sewage treatment facility with a permitted flow of two million or more, but less than five million, gallons per day.

(ii) A person that has a minor industrial source NPDES Permit, or has or should have a WPCF Permit, for an industrial source.

(iii) A person that has or should have applied for coverage under an NPDES or a WPCF General Permit, except an NPDES Stormwater Discharge 1200-C General Permit for a construction site of one acre or more, but less than five acres in size and except for an NPDES 700-PM General Permit for suction dredges.

(iv) A person that has a population of less than 100,000 but more than 10,000, as determined by the most recent national census, and has or should have a WPCF Municipal Stormwater UIC System Permit or has an NPDES MS4 Stormwater Discharge Permit.

(v) A person that has or should have a WPCF permit for a mining operation involving from 100,000 up to 500,000 cubic yards other than those operations using chemical leachate or froth flotation.

(vi) A person that owns, and that has or should have registered, a UIC system that disposes of wastewater other than stormwater or sewage.

(F) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of five to nine UST facilities.

(G) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a waste tire permit; or

(ii) A person with a population of more than 5,000 but less than or equal to 25,000, as determined by the most recent national census.

(H) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a small quantity generator.

(b) The base penalty values for the \$6,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$6,000.

(ii) Moderate — \$3,000.

(iii) Minor — \$1,500.

(B) Class II:

(i) Major — \$3,000.

(ii) Moderate — \$1,500.

(iii) Minor — \$750.

(C) Class III: \$500.

(4) \$2,500 Penalty Matrix:

(a) The \$2,500 penalty matrix applies to the following:

(A) Any violation of any statute, rule, permit, license, or order committed by a person not listed under another penalty matrix.

(B) Any violation of an air quality statute, rule, permit or related order committed by a person not listed under another penalty matrix.

(C) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned by a residential owner-occupant.

(D) Any violation of a vehicle inspection program statute, rule, permit or related order committed by a natural person, except for those violations listed in section (5) of this rule.

(E) Any violation of a water quality statute, rule, permit, license or related order not listed under another penalty matrix and committed by:

(i) A person that has an NPDES permit, or has or should have a WPCF permit, for a municipal or private utility wastewater treatment facility with a permitted flow of less than two million gallons per day.

(ii) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that is more than one, but less than five acres.

(iii) A person that has a population of 10,000 or less, as determined by the most recent national census, and either has an NPDES MS4 Stormwater Discharge Permit or has or should have a WPCF Municipal Stormwater UIC System Permit.

(iv) A person who is licensed to perform onsite sewage disposal services or who has performed sewage disposal services.

(v) A person, except for a residential owner-occupant, that owns and either has or should have registered a UIC system that disposes of stormwater or sewage.

(vi) A person that has or should have a WPCF individual stormwater UIC system permit.

(F) Any violation of an onsite sewage disposal statute, rule, permit or related order, except for a violation committed by the residential owner-occupant.

(G) Any violation of an UST statute, rule, permit or related order if the person is the owner, operator or permittee of two to four UST facilities.

(H) Any violation, except a violation related to a spill or release, of a used oil statute, rule, permit or related order committed by a person that is a used oil generator.

(I) Unless listed under another penalty matrix, any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a conditionally exempt generator if the violation does not impact the person's generator status.

(J) Any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by a person with a population less than 5,000, as determined by the most recent national census.

(K) Any violation of the labeling requirements of ORS 459A.675 through 459A.685.

(L) Any violation of rigid pesticide container disposal requirements by a conditionally exempt generator of hazardous waste.

(b) The base penalty values for the \$2,500 penalty matrix are as follows:

(A) Class I:

(i) Major — \$2500;

(ii) Moderate — \$1250;

(iii) Minor — \$625.

(B) Class II:

(i) Major — \$1250;

(ii) Moderate — \$625;

(iii) Minor — \$300.

(C) Class III: \$200.

(5) \$1,000 Penalty Matrix:

(a) The \$1,000 penalty matrix applies to the following:

(A) Any violation of an open burning statute, rule, permit or related order committed by a residential owner-occupant at the residence, not listed under another penalty matrix.

(B) Any violation of visible emissions standards by operation of a vehicle.

(C) Any violation of an asbestos statute, rule, permit or related order committed by a residential owner-occupant.

(D) Any violation of an onsite sewage disposal statute, rule, permit or related order of OAR chapter 340, division 44 committed by a residential owner-occupant.

(E) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of one UST facility.

(F) Any violation of an HOT statute, rule, permit or related order not listed under another penalty matrix.

(G) Any violation of a dry cleaning facility statute, rule, permit or related order.

(H) Any violation of a statute, rule, permit or order relating to rigid plastic containers, except for violation of the labeling requirements under OAR 459A.675 through 459A.685.

(I) Any violation of a statute, rule or order relating to the opportunity to recycle.

(J) Any violation of OAR chapter 340, division 262 or other statute, rule or order relating to solid fuel burning devices, except a violation related to the sale of new or used solid fuel burning devices or the removal and destruction of used solid fuel burning devices.

(K) Any violation of an UIC system statute, rule, permit or related order by a residential owner-occupant, when the UIC disposes of stormwater or sewage.

(L) Any violation by a person that has or should have applied for coverage under an NPDES 700-PM General Permit for Suction Dredges.

(b) The base penalty values for the \$1,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$1000;

(ii) Moderate — \$500;

(iii) Minor — \$250.

(B) Class II:

(i) Major — \$500;

(ii) Moderate — \$250;

(iii) Minor — \$125.

(C) Class III: \$100.

Stat. Auth.: ORS 468.020 & 468.090 - 468.140

Stats. Implemented: ORS 459.995, 459A.655, 459A.660, 459A.685 & 468.035

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 33-1990, f. & cert. ef. 8-15-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; Renumbered from 340-012-0042, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

340-200-0040

State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, 42 U.S.C.A 7401 to 7671q.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval. The State Implementation Plan was last modified by the Commission on February 18, 2011.

(3) Notwithstanding any other requirement contained in the SIP, the Department may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 CFR

51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

NOTE: Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000, f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 11-2008, f. & cert. ef. 8-29-08; DEQ 12-2008, f. & cert. ef. 9-17-08; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 3-2009, f. & cert. ef. 6-30-09; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 2-2010, f. & cert. ef. 3-5-10; DEQ 5-2010, f. & cert. ef. 5-21-10; DEQ 14-2010, f. & cert. ef. 12-10-10; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

340-262-0400

Purpose and Applicability of Rules

(1) The State of Oregon promotes the use of cleaner solid fuel burning devices to reduce smoke created from wood heating and other solid fuels. Smoke from wood burning can be a significant source of air pollution and can have serious health consequences for people with asthma, respiratory or heart conditions or other illnesses. Children and the elderly are especially at risk.

(2) This Division regulates the sale and use of residential and commercial solid fuel burning devices to implement Oregon's air quality regulations for public health and safety.

(3) Subject to the requirements in this Division and ORS 468A.100 through 468A.180, the Lane Regional Air Protection Agency is designated by the Environmental Quality Commission as the agency responsible for implementing this Division within its area of jurisdiction. The Regional Agency must implement the requirements and procedures contained in this Division unless the Regional Agency adopts superseding rules at least as restrictive as this Division.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.460 - 468A.515, 468A.100 - 468A.180

Hist.: DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

340-262-0450

Definitions

The definitions in OAR 340-200-0020 and this rule apply to this Division. If OAR 340-0200-0020 and this rule define the same term, the definition in this rule applies to this Division.

(1) "Antique woodstove" means a woodstove built before 1940 that has an ornate construction and a current market value substantially higher than a common woodstove manufactured during the same period.

(2) "Central wood-fired furnace" means an indoor, wood-fired furnace that is thermostatically controlled, has a dedicated cold air inlet and dedicated hot air outlet, and is connected to heating ductwork for the entire residential structure.

(3) "CFR" means Code of Federal Regulations.

(4) "Consumer" means a person who buys a solid fuel burning device for personal use.

- (5) "Cookstove" means an indoor wood-burning appliance designed for the primary purpose of cooking food.
- (6) "Dealer" means a person that sells solid fuel burning devices to retailers or other dealers for resale. For the purpose of this Division, a dealer that is also an Oregon retailer shall be considered to be only a retailer.
- (7) "DEQ" means Oregon Department of Environmental Quality.
- (8) "Destroy" means to demolish or decommission to the extent that restoration or reuse as a heating device is impossible.
- (9) "EPA" means United States Environmental Protection Agency.
- (10) "EQC" means Environmental Quality Commission
- (11) "Federal Regulations" means 40 CFR, Part 60, Subpart AAA as in effect on July 1, 2010.
- (12) "Fireplace" means a site-built or factory-built masonry fireplace that is designed to be used with an open combustion chamber and that is without features to control air-to-fuel ratios.
- (13) "Hydronic heater" means a fuel-burning device which may be equipped with a heat storage unit, and which is designed to:
- (a) Burn wood or other automatically fed fuels such as wood pellets, shelled corn, and wood chips;
 - (b) Be installed according to the manufacturer's specifications either indoors or outdoors; and
 - (c) Heat building space and/or water via the distribution, typically through pipes, of a fluid heated in the device, typically water or a water/antifreeze mixture.
- (14) "Manufacturer" means a person who designs a solid fuel burning device, constructs a solid fuel burning device or constructs parts for solid fuel burning devices.
- (15) "Masonry heater" means a site-built or site-assembled, solid fueled heating device constructed of structural masonry mass used to store heat from intermittent fires burned rapidly in the structure's firebox and slow release the heat to the site. Such solid-fueled heating device must meet the design and construction specifications set forth in ASTM E 1602-03, "Guide for Construction of Solid Fuel Burning Masonry Heaters."
- (16) "New solid fuel burning device" or "new device" means a solid fuel burning device defined under ORS 468A.485(4)(a) that has not been sold, bargained, exchanged, given away, acquired secondhand, or otherwise had its ownership transferred from the person who first acquired it from a retailer.
- (17) "PM10" means particulate matter less than 10 microns.
- (18) "PM2.5" means particulate matter less than 2.5 microns.
- (19) "Pellet stove" means a heating device that uses wood pellets, or other biomass fuels designed for use in pellet stoves, as its primary source of fuel.
- (20) "Phase 1 emission level qualified model" is a model of a hydronic heater that achieves an average emission level of 0.60 lbs/million Btu heat input or less for all fuel types listed in the owner's manual and/or mentioned in marketing/sales materials, as acknowledged by EPA in writing to the manufacturer as part of EPA's acceptance of the model as a qualified model.
- (21) "Phase 2 emission level qualified model" is a model of a hydronic heater that achieves an average emissions level of 0.32 lbs/million Btu heat output or less for all fuel types listed in the owner's manual and/or mentioned in marketing/sales materials, and that did not exceed 18.0 grams/hr of fine particles in any individual test run that was used in the calculation of the average, as acknowledged by EPA in writing to the manufacturer as part of EPA's acceptance of the model as a qualified model pursuant to the EPA Hydronic Heater Program Phase 2 Partnership Agreement.
- (22) "Residential structure" has the meaning given that term in ORS 701.005.
- (23) "Retailer" means a person engaged in the sale of solid fuel burning devices directly to consumers.
- (24) "Solid fuel burning device" or "device" means a woodstove or any other device that burns wood, coal or other nongaseous or non-liquid fuels for aesthetic, space-heating or water-heating purposes in or for a private residential structure or a commercial establishment and that has a heat output of less than one million British thermal units per hour. Solid fuel burning device does not include:
- (a) Fireplace;
 - (b) Antique stove;
 - (c) Pellet stoves;
 - (d) Masonry heaters;
 - (e) Central, wood-fired furnaces; and
 - (f) Saunas.
- (25) "Trash burner" means any equipment that is used to dispose of waste by burning and has not been issued an air quality permit under ORS 468A.040.
- (26) "Treated Wood" means wood of any species that has been chemically impregnated, painted or similarly modified to prevent weathering and deterioration.
- (27) "Used solid fuel burning device" or "used device" means a solid fuel burning device that has been sold, bargained, exchanged, given away, or otherwise has had its ownership transferred.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.
 Stat. Auth.: ORS 468 & 468A
 Stats. Implemented: ORS 468A.460 - 468A.515
 Hist.: DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

340-262-0500

Certification of Solid Fuel Burning Devices for Sale as New

- (1) By order, the department may certify solid fuel burning devices that have been certified by the United States

Environmental Protection Agency as meeting EPA emission performance standards and certification labeling standards pursuant to:

(a) 40 CFR part 60, subpart AAA, as in effect on July 1, 2010; or
(b) Any equivalent or more stringent standard adopted by the United States Environmental Protection Agency subsequent to July 1, 2010.

(2) By order, the department may certify solid fuel burning devices that have not been certified by the United States Environmental Protection Agency, but that were previously certified by the department as meeting emission performance standards and certification labeling standards on or after July 1, 1986 pursuant to ORS 468A.480.

(3) By order, the department may certify any hydronic heater that has been accepted by EPA as a Phase 1 or Phase 2 emission level qualified model pursuant to the EPA Hydronic Heater Program, and that meets the requirements of subsections (a) and (b) below:

(a) The hydronic heater must have a permanent “qualifying label” attached that meets the requirements of the EPA Hydronic Heater Program Phase 2 Partnership Agreement or similar agreement for the EPA Phase 1 program; and

(b) The hydronic heater must have been installed by March 1, 2011, and the owner of the hydronic heater must confirm notice of installation to the department, on a department provided form, by July 1, 2011.

(4) By order, the department may certify solid fuel burning devices that have been tested using a test method that is equivalent to the test methods in 40 CFR part 60, subpart AAA as in effect on July 1, 2010, if:

(a) Testing is done by a method that has been determined to be equivalent by DEQ; and

(b) The test results show the solid fuel burning device emits no more than 7.5 g/hr.

(5) The department shall maintain a list of all devices certified pursuant to this rule.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.460 - 468A.515

Hist.: DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

340-262-0600

New and Used Solid Fuel Burning Devices Sold in Oregon

(1) No person may advertise to sell, offer to sell or sell a new or used solid fuel burning device in Oregon unless:

(a) The device has been certified for sale as new by DEQ pursuant to OAR 340-262-0500, or by EPA pursuant to 40 CFR part 60, subpart AAA; and the device is permanently labeled as certified, or in the case of a hydronic heater is

(b) Permanently labeled as a Phase 1 or Phase 2 emission level qualified model, with a label authorized by DEQ or EPA.

(2) Exempt devices. The following are exempt from this rule:

(a) Pellet stoves;

(b) Antique woodstoves;

(c) Cookstoves

(d) Fireplaces;

(e) Masonry heaters;

(f) Central, wood-fired furnaces; and

(g) Saunas.

(3) Exempt consumer transactions. Consumer transactions are exempt from this rule, if the consumer:

(a) Sells a used solid fuel burning device to a person in the business of reusing, reclaiming or recycling scrap metal and the person destroys the device; or

(b) Remits a used device to a retailer for a price reduction on a new residential heating system.

(4) Prohibited label alteration. No person may alter DEQ or EPA authorized labels.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.460 - 468A.515

Hist.: DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

340-262-0700

Removal and Destruction of Used Solid Fuel Burning Devices

(1) Unless exempt under section (4), when a residential structure is sold in Oregon, all used solid fuel burning devices must be removed and destroyed if the devices were not certified for sale as new by DEQ or EPA and are not permanently labeled as certified, or in the case of a hydronic heater is permanently labeled as a Phase 1 or Phase 2 emission level qualified model, with a label authorized by DEQ or EPA.

(2) The removal and destruction of a used solid fuel burning device is the responsibility of the seller of the residential structure, unless the seller and buyer agree in writing that it is the buyer’s responsibility. If the seller retains responsibility, the seller shall remove and destroy the device prior to the closing date of the sale of the residential structure. If the buyer accepts responsibility, the buyer shall remove and destroy the device within 30 days after the closing date of the sale of the residential structure.

(3) The seller or buyer, as determined pursuant to sections (1) and (2), must:

(a) Remove all used solid fuel burning devices on the real property sold with the residential structure, including but not limited to devices in a residence, garage, workshop, outbuilding, or any other structure.

(b) Destroy all used solid fuel burning devices, pursuant to the definition of “destroy” in OAR 340-262-0450, by taking

them to a facility or entity that will render the devices incapable of being used as heating devices.

(c) Obtain a receipt from the place of destruction that verifies the delivery of all used solid fuel burning devices. The receipt must include:

(A) Date of delivery to place of destruction;

(B) Name and address for the place of destruction; and

(C) Description of all used solid fuel burning devices delivered for destruction.

(d) Notify DEQ of the removal and destruction of all used solid fuel burning devices on DEQ issued paper or electronic forms. The forms will require the following information:

(A) Name, current mailing address, and phone number of the person removing the stove;

(B) Address and tax lot number of the residential structure being sold;

(C) Closing date of sale of the residential structure if the buyer is the responsible party, or the estimated closing date of sale if the seller is the responsible party;

(D) The receipt or receipt information obtained under subsection (3)(c); and

(E) A signed statement certifying that the information is accurate to the best of the certifying individual's knowledge.

(4) Exemptions. The following are exempt from removal and destruction pursuant to this rule:

(a) Fireplaces;

(b) Cookstoves;

(c) Antique woodstoves;

(d) Pellet stoves;

(e) Masonry heaters;

(f) Central wood-fired furnaces; and

(g) Saunas.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.460 - 468A.515

Hist.: DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

340-262-0800

Wood Burning and Other Heating Devices Curtailment Program

(1) Applicability.

(a) The wood burning and other heating devices curtailment program applies to any portion of the state where required as an emission reduction strategy or contingency plan for PM10 or PM 2.5 nonattainment or maintenance areas as an element of the State of Oregon Clean Air Act Implementation Plan adopted under OAR 340-200-0040.

(b) If a local government or regional authority has not adopted or is not adequately implementing a curtailment program in any area of the state where such a program is required, the Department will operate and enforce a program to curtail solid fuel heating during periods of air stagnation.

(c) To determine whether a local government or regional authority has failed to adopt or adequately implement a curtailment program, the Department shall consider whether a local government or regional authority:

(A) Has adopted an ordinance that requires the curtailment of solid fuel heating at forecasted air pollution levels which are consistent with the curtailment conditions and requirements specified in sections (3) and (4);

(B) Is issuing on a daily basis, curtailment advisories to the public consistent with section (5); and

(C) Is conducting surveillance for compliance and is taking adequate enforcement actions consistent with sections (6) to (8).

(2) **Exempt from this rule.** Curtailed heating under this rule does not apply to:

(a) Solid fuel burning devices or other solid fuel heating operated within a household classified to be less than or equal to 125 percent of the current federal poverty income guidelines accessible through the Oregon Center for Public Policy;

(b) Solid fuel burning devices operated in a residence where the solid fuel burning device is the sole heating source; and

(c) Pellet stoves, unless the pellet stove is located in a nonattainment area in this state that does not attain compliance with standards for particulate matter established by the commission pursuant to ORS 468A.025.

(3) **Air stagnation levels.** DEQ or DEQ's representative must use appropriate data and technology to establish the air stagnation levels used to curtail burning in PM10 or PM 2.5 nonattainment areas. The program must designate a:

(a) *Stage I advisory* when the PM10 or PM 2.5 standard is being approached; and

(b) *Stage II advisory* when an exceedance of the PM10 or PM 2.5 standard is forecast as imminent.

(4) **Curtailed burning.** Unless exempt under section (2), the wood burning curtailment program prohibits operation of:

(a) All heating by means of solid fuel, including but not limited to solid fuel burning devices, fireplaces, masonry heaters, pellet stoves, trash burners and all devices described in ORS 468A.485(4)(b), that were not certified for sale as new by DEQ or EPA, during a designated Stage I advisory when the PM10 or PM2.5 standard is being approached.

(b) All heating by means of solid fuel, including but not limited to solid fuel burning devices, fireplaces, masonry heaters, pellet stoves, trash burners and all devices described in ORS 468A.485(4)(b), whether or not those devices were certified for sale as new by DEQ or EPA, during a designated Stage II advisory when an exceedance of the PM10 or PM2.5 standard is forecasted to be imminent.

(5) **Daily air pollution advisories.** DEQ or the DEQ representative (local or regional government) must disseminate daily air pollution advisories to the local community that must include any air stagnation levels under section (3) and curtailed burning under section (4) during the winter wood heating season.

(6) **Monitoring and enforcement.** DEQ or the DEQ representative:

(a) Must monitor compliance with the wood burning curtailment program during curtailed burning under section (4); and

(b) May initiate enforcement action for smoke emitted through a flue or chimney during curtailed burning under section (4).

Smoke emitted during curtailed burning raises a rebuttable presumption of a violation subject to OAR chapter 340, division 12.

(7) **Exempt from enforcement action.** A person may respond to an enforcement action initiated under subsection (6)(b) by submitting a signed affidavit and documentation sufficient for DEQ to establish:

(a) For a low income exemption under subsection (2)(a), a copy of the previous year tax returns with redacted Social Security Numbers. The tax return must reflect the total combined household income for the past year; or

(b) For a sole-source heating exemption under subsection (2)(b), a signed affidavit attesting to the device's status as the sole heating source of the residence. The exemption is valid for the current woodheating season in which the person is claiming the exemption.

(8) **Exempt status review.** DEQ or the DEQ representative must review documentation submitted under section (7) to determine the exempt status of the household or solid fuel burning device. DEQ shall notify the person claiming exempt status of the:

(a) Approval of exempt status and the dismissal of the enforcement action under section (6); or

(b) Denial of exempt status including the reason.

(9) **Suspension of Department program.** DEQ shall suspend the operation and enforcement of (2) through (8) of this rule if the Department determines the local government or regional authority has adopted and is adequately implementing a wood burning and other heating devices curtailment program that is at least as stringent as the program outlined in this rule.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.460 - 468A.515

Hist.: DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

340-262-0900

Materials Prohibited from Burning

No person may cause or allow any of the following materials to be burned in a solid fuel burning device, fireplace, a trash burner or any other device described in ORS 468A.485(4)(b):

(1)(a) Garbage;

(b) Treated wood;

(c) Plastic or plastic products;

(d) Rubber or rubber products;

(e) Animal carcasses;

(f) Products that contain asphalt;

(g) Waste petroleum products;

(h) Paint;

(i) Chemicals;

(j) Products containing lead, mercury or other heavy or toxic metals;

(k) Materials containing asbestos; and

(l) Particleboard.

(2) Paper or paper products, except for paper used to kindle a fire.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.460 - 468A.515

Hist.: DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

Notes

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